

Present:
Mr. Justice Md. Salim

CRIMINAL APPEAL NO.92 OF 2005

Mohd. Selim Kashai and others
.....Convict-Appellants.
-Versus-
The State
.....Respondent.

Mr. Md. Shahidul Islam with
Mr. Md. Altaf Hossen Amani, Advocate
.....For the Appellants.

Mr. Monzurul Alam Sujan, DAG
Mr. Towhidul Islam, AAG
Mr. Syed Akhtarul Islam, AAG
-----For the State.

Heard on 21.04.2026, 28.04.2026 and 29.04.2026.

Judgment on 06.05.2026.

This appeal is directed against the judgment and order of conviction and sentence dated 28.11.2004 passed by the learned Assistant Sessions Judge, 1st Court, Barishal in Sessions Case No.76 of 2002 arising out of G.R. No.687 of 1997 corresponding to Kotwali Police Station Case No.45 dated 22.12.1997 convicting the accused-appellants under Section 323 / 379 / 387 of the Penal Code and sentencing them to suffer rigorous imprisonment for 7(seven) years with a fine

of Tk.1,000/- in default to suffer simple imprisonment for 3(three) month more.

The prosecution case, in brief, is that one Sheikh Sahidul Islam lodged the First Information Report with Kotwali Police Station against the accused appellants, alleging, inter alia, that on 22.12.1997 at about 9:30 a.m. when the informant along with others were engaged in election campaign and when they reached the south edge of the road 400 cubits off from his house the accused persons being armed with knife, iron rod, and then intercepted and demanded Tk.1,000/- as election toll; that as they had refused to pay then the accused No.1 dealt iron rod blow on his head but it was missed. Thereafter, all the accused assaulted him causing swelling injuries; that the accused No.1 snatched away Tk.7,330/- from his pocket while accused No.2 had taken a golden chain worth Tk.10,500/- and the accused No.2 had taken his wrist watch worth Tk.800/-.

The police investigated the case and, after investigation, submitted a charge sheet against the accused-appellants under Sections 341 / 385 / 387 / 323 / 379 of the Penal Code.

Being ready, the case was transmitted to the Sessions Judge, Barishal, for trial, where it was registered as Sessions Case No.76 of 2002.

Subsequently, the learned Assistant Sessions Judge, 1st Court, Barishal, framed charges against the convict-appellants under Sections 341 / 387 / 385 / 323 / 379 of the Penal Code. The charges were read over and explained to them, who pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as seven witnesses, while the defense examined none.

After the evidence was closed, the accused persons were examined under Section 342 of the Code of Criminal Procedure, when they pleaded their innocence.

Subsequently, after closure of the trial, the learned Assistant Sessions Judge, 1st Court, Barishal, by the impugned judgment and order dated 28.11.2004, convicted the accused-appellants under section 323 / 379 / 387 of the Penal Code and sentenced them to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Taka 1,000/- in default to suffers simple imprisonment for three months more.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the accused-appellants preferred the instant appeal.

Mr. Md. Shahidul Islam, the learned Counsel appearing on behalf of the convict-appellants, upon taking us through the impugned judgment, evidence, and other materials on record, submits that in the instant case the prosecution failed to examine the informant. The prosecution also failed to examine the investigating officer; therefore, the whole trial is vitiated, and the witnesses in their evidence contradicted each other; so, the impugned judgment is liable to be set aside.

On the contrary, Mr. Monzurul Alam Sujon, the learned Deputy Attorney General for the State, opposes the contention so made by the learned advocate for the accused-appellants and submits that failure to produce the informant and investigating officer in the witness box for examination, and cross-examination by the defense has not vitiated the trial. He also submits that the prosecution, by producing the other witnesses, successfully proved the charge against the appellants.

Be that as it may, in order to appreciate the submissions of the learned advocate for the appellants and the learned Deputy Attorney General, as well as for proper adjudication of the matter, we have gone through the impugned judgment, evidence, and other materials on record.

In order to bring home the charge, the prosecution side examined as many as 7 (seven) witnesses; among them-

P.W.1-Mizanur Rahman, in his examination-in-chief, stated that he knew the informant. The date of occurrence was on 26.03.1997 at 9:00 a.m.; while he, along with others, was engaged in an election campaign and had reached the eastern side of the house of Bakul Begum, the FIR named accused persons surrounded them and demanded extortion of Tk. 10,000/- and, on refusal to pay the same, the accused persons started a conflict and dealt a blow upon the informant, causing injury; Accused Selim snatched away Tk.7,330/- from the informant's pocket; Nizam snatched away a gold made chain; Soheli snatched away a watch.

In cross-examination by the defense, he stated that no one except him was present at the time of the occurrence, and

that Bokul Begum was the only woman candidate for the post of member.

P.W.2-Touhidul Bashir Hiru was declared hostile by the prosecution.

P.W.3-Abdul Aziz was also declared hostile by the prosecution.

P.W.4-Md. Nazrul Islam, part I.O., a formal witness who partially investigated the case.

P.W.5- Babu was declared hostile by the prosecution.

P.W.6-Sheikh Kabir, in his examination-in-chief, stated that the occurrence took place on 22.12.1997 at 9:30 a.m.; the informant is his brother; he learned that during the election campaign, the accused person stopped his brother's car and demanded Tk.10,000/- as extortion. He also knew that the accused had snatched a gold-made chain valued at Tk. 7330/- from the informant.

In cross-examination, he denied the suggestion that the incident occurred on a road where no cars could move.

P.W.7-Kabir Ahmed, S.I., a formal witness who filled up only the FIR column.

Analyzing the evidence on record, it appears that the informant was not examined as a witness as he had died, so it is not fatal for the prosecution. The I.O. also was not examined without any reason. P.W.1 is the only eye witness. However, he made a lame allegation against the appellants. PW. 2, PW. 3 and PW. 5 were declared tendered by the prosecution; P.W. 4, the I.O., a formal witness; and PW. 7, S.I., who filed the FIR, is also a formal witnesses. P.W. 6 is a hearsay witness whose evidence is not corroborated by any other witness. So, we are of the firm view that there is no direct or circumstantial evidence against the appellants.

The principle of circumstantial evidence to prove the guilt of an accused is that all the circumstances must themselves be proved beyond all reasonable doubt and the chain of circumstances should be proved without reasonable doubt so that the innocence of the accused is incompatible with the circumstances. If there be any missing link, the accused will escape through it, for in that case the prosecution case will not be proved to the hilt. Abscondance of an accused by itself proves no guilt. Normally, even an innocent person tries to keep out of the way if he learns of his false implication

in a serious case reported to the police. It is a somewhat weak link in the circumstances for establishing a person's guilt. Again, marks of injury do not involve an individual in the crime. It was incumbent on the courts below to properly scrutinize the material circumstances for determining whether the chain of circumstantial evidence is so complete as to lead to the only conclusion of the appellants' guilt. In the instant case, the trial Court below did not consider the same at all.

From the evidence extracted above, the materials on record, the facts and circumstances of the case, and the submissions of the learned advocate for the appellants, it appears that the prosecution failed to prove the case against the accused-appellants beyond a reasonable doubt; therefore, we are led to believe that the prosecution's case is a hoax one, having no ground under its legs. Thus, the appeal has substance, and the impugned judgment and order are liable to be set aside.

Resultantly, the appeal is allowed.

The impugned judgment and order dated 28.11.2004 passed by the learned Assistant Sessions Judge, 1st Court, Barishal in Sessions Case No.76 of 2002, is hereby set aside.

The accused-appellants are acquitted of the charges leveled against them and discharged from their bail bonds.

Send down the lower Court records with a copy of this judgment.

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(Md. Salim, J)

Kabir/BO