

Present:

Mr. Justice Md. Rezaul Hasan

And

Mr. Justice Mohammad Ullah

Criminal Revision No. 2047 of 1993

Mustafa Chowkider and another

.....Convict-Petitioners.

-Versus-

The State

.....Opposite-Party.

with

Criminal Revision No. 2048 of 1993

Aijuddin Bepari

.....Convict -Petitioner.

-Versus-

The State

.....Opposite Party.

Mr. Mowlovi Md. Wahidullah, Advocate

.....For the Convict-Petitioners.

Mr. Shafiul Bashar Bhandary, DAG.

.....For the Opposite Party.

Heard on 03. 06. 2012

and

Judgment on 04. 06. 2012

Mohammad Ullah, J.

Criminal Revision Nos. 2047 and 2048 of 1993 have been taken up for disposal by a common judgment as the learned Sessions Judge, Disposed of two Criminal Appeal Nos. 25 and 26 of 1993 on 31.10.1993 by a common judgment.

Upon two applications under section 435 read with section 439 of the Code of Criminal Procedure (**Shortly the Code, 1898**), Rules were issued by this court about sustainability of the judgment and order dated 30.10.1993 by which the learned Sessions Judge, Shariatpur by a common judgment dismissing both the Criminal Appeal Nos. 25 and 26 of 1993 directed against the judgment and order of conviction dated 31.7.1993 passed by the learned Additional District Magistrate, Shariatpur in G.R. Case No. 67 of 1992 and passed the order as follows :

The appellate court-

(a) maintained the conviction and sentence of the petitioners Mustafa Chowkider and Amin Bepari (petitioners of Criminal Revision No. 2047 of 1993) under section 457 of the Penal Code to suffer rigorous imprisonment for 2 years as decided by the trial court.

(b) maintained the conviction and sentence of the petitioner Aijuddin Bepari (petitioner of Criminal Revision No. 2048 of 1993) under section 457 of the Penal Code to suffer rigorous imprisonment for a period of 2 years, under section 326 of the Penal Code to suffer rigorous imprisonment for a

period of 2 years and also to pay a fine of Tk. 2,000/- in default to suffer rigorous imprisonment for 3 months and under section 307 of the Penal Code to suffer rigorous imprisonment for 3 years and also to pay a fine of Tk. 3,000/- in default to suffer rigorous imprisonment for 4 months as decided by the trial court with a direction to run the sentence consecutively.

(c) set aside the conviction and sentence of the appellants Samsuddin Chowkider, Hashem Chowkider, Hossain Chowkider and Farique Chowkider under section 457 of the Penal Code as decided by the trial court and found them not guilty and accordingly acquitted them of the charge.

By the Rule issuing order dated 02.01.1994 all the 3 convict-petitioners were granted bail and realization of fine was also stayed as imposed by the trial court.

It is noted that by the Rule issuing order dated 02. 01. 1994 in Criminal Revision No. 2048 of 1993 a direction was given that this

Criminal Revision No. 2048 of 1993 would be heard along with Criminal Revision No. 2047 of 1993.

The facts leading to issuance of the Rules are briefly stated below:

The informant Mst. Hajera Bibi (73), on 4.9.1992, lodged First Information Report (**shortly FIR**) with the Officer-in-Charge of Palong Police Station against the 3 convict petitioners and 17 others alleging inter alia that on the night following 3.4.1992 she was sleeping in the western varanda of her house. Her son Noor Hossain was also sleeping inside the house. On that night at about 3 a. m out of previous enmity and grudge the convict-petitioners and other FIR named accused persons equipped with deadly weapons entered into her house by breaking the door. The accused Farique, Mustafa Chowkider, Mokbul Bepari caught hold of her. Accused Aijudding Bepari, Hossain Chowkider, Amin Bepari, Hashem Chowkider, Kayem Chowkider, Mia Kha and Shamsul Chowkider dealt blows indiscriminately with their weapons upon her son Noor Hossain. At that time neighbouring witnesses, namely - Sattar Chowkider, Ramiz Kha, Ismail Chowkider and others, on hearing the hue and cry of her and her son Noor Hossain appeared at the place of occurrence and had seen the occurrence and also heard about the occurrence on the spot. Then her son Noor Hossain was firstly taken to the Shariatpur Sadar Hospital with serious

head injury, with the help of the neighbouring witnesses, and thereafter her son was taken to Dhaka P.G Hospital in deadly condition at the advice of the doctor of Sadar Hospital, Shariatpur. After getting admitted her son to P.G Hospital she lodged the FIR.

On the next day Palan Police Station Case No. 3 dated 4.9.1992 under sections 143,458, 326, 307 and 34 of the Penal Code was recorded against 20 accused persons including the petitioners.

After investigation Police submitted charge sheet against FIR named accused persons including the petitioners under sections 143, 458, 326, 307 and 34 of the Penal Code.

The trial court on 21.3.1993 framed charge against the 8 accused persons including the petitioners namely Aijuddin Bepari, Amin Bepari, Hossain Chowkider, Mustafa Chowkider, Farique Chowkider and Shamsul Chowkider under sections 457, 326 and 307 of the Penal Code and FIR named accused Mozammel alias Mozam Chowkider and Hashem Chowkider under sections 326 and 307 of the Penal Code.

In support of the charge, the prosecution has adduced and examined 11 witnesses. The defence adduced non, but cross examined all the 11 witnesses. During such cross examination, the defence pleas were taken in the form of suggestion that the case was false and it was

instituted to harass the accused persons out of previous enmity resulting from land dispute.

The trial court, after conclusion of trial, delivered its judgment and found the 7 accused persons guilty, and sentenced them including the present petitioners as stated before and acquitted accused Mozammel alias Mozam of the charge.

In the appeal preferred by the present petitioners and 4 others the appellate court dismissed the appeal in respect of the convict petitioners, as stated before.

Mr. Mowlovi Md. Wohidullah, the learned Advocate appearing in both the Criminal Revisions on behalf of the petitioners submits that the prosecution failed to prove the time, place and manner of the occurrence and the informant could not recognize the petitioners at the time of alleged occurrence that took place on the night following 3.9.1992.

He further submits that both the courts below erred in law in convicting the petitioners and found them guilty of the offence under sections 457, 326 and 307 of the Penal Code.

Mr. Wohidullah, lastly submits that both the courts below concurrently failed to notice that the prosecution did not prove the

means of recognition of the petitioners as alleged by the informant and as such the judgment and order of conviction is liable to be set aside.

In reply Mr. Shafiul Bashir Bhandari, the learned DAG submits that the prosecution has proved the charge beyond reasonable doubt against these petitioners by adducing 11 witnesses and thus the Rules are liable to be discharged. He further submits that both the courts below concurrently found and came to a conclusion that the convict petitioners and others are guilty of the offence under sections 457, 321 and 307 of the Penal Code. Thus there is nothing to interfere with the said concurrent findings of the courts below sitting in Revisional Jurisdiction.

On perusal of the trial court record we find no illegality in the holding of trial of the case.

We further find from the trial court record that the said court, in passing the judgment of conviction and sentence, considered and discussed the evidence on record and recorded its findings and decisions with reasons.

From the impugned judgment of the Appellate Court we further find that the learned Sessions Judge, Shariatpur independently discussed, analysed and assessed the evidence on record and recorded its own findings and decisions and has concurred with the finding of the trial

court with regard to the convict petitioners to the effect that they committed the offence under sections 457, 326 and 307 of the Penal Code as has been proved by the prosecution by adducing cogent, consistent and credible evidence.

In arriving at such decision, the appellate court considered the oral evidence adduced through 11 witnesses including the statements of the informant Mst. Hajera Bibi (73) (P.W-1), the victim witness Noor Hossain (P.W-2) and other neighbouring witnesses namely Ramiz Uddin Kha (P.W-3), Ismail Chowkider (P.W.-4) Ashalath Kha (P.W- 5), who have proved and, in the same voice, supported the prosecution case.

The Appellate Court also considered the evidence of P.W-8 Chattar Chowkider who, soon after the occurrence took place had seen the accused petitioners leaving the place of occurrence with deadly weapons by the flash of torch light (Exhibit - 2) and this witness also found the victim Noor Hossain (P.W-2) in a serious condition with his head injury.

Appellate Court also considered the evidence of P.W-10 Dr. Jatindra Chandra Mondal, Medical Officer, Sariatpur Sadar Hospital who treated the victim Noor Hossain on 4.9.1992 and issued Medical certificate and found the following injuries:

One incised wound on the left fronto-parieto occipital region which extends from the frontal region and up to occipital region of the head which was antero-posteriorly placed or longitudinally placed, measurement of the wound = $7\frac{1}{2}$ " \times $2\frac{1}{2}$ " \times bone depth with bone fracture with brain matter expose with profused bleeding. Wound was repaired. Wound was caused by heavy sharp cutting weapon. Blood clots were cleaned. Wound was stitched, cleaned, bandaged.

জখমীর অবস্থা ছিল:- severe anaemia B/P-90/60, তারপর 80/55 ছিল। অর্থাৎ রোগীর অবস্থা আন্তে আন্তে খারাপ হইতেছিল (alarming condition) Pt. Semiconscious ছিল। and responded to external stimuli. Nature:-Grievous in nature. Age of the injury is within six hours approximately.

This P.W. also proved the Medical certificate, release certificate and discharge certificate showing that the victim was in the hospital for 54 days in 2 counts and the appellate court also considered the documentary evidence being the seizure list.

The trial court as well as the appellate court also considered the dying declaration of the victim Noor Hossain (**Exhibit - 7**)

We have also perused the evidence on record and find no illegality or impropriety or infirmity in the impugned judgment of the appellate court with regard to conviction of the petitioners who committed the offence under the said sections of the Penal Code. We find no merit in these Rules and the Rules are liable to be discharged.

In the result, the Rules are discharged.

The accused petitioners Mustafa Chowkider, Amin Bepari and Aijuddin Bepari who were granted bail by this court by order dated 2.01.1994 are directed to surrender before the learned Chief Judicial Magistrate, Shariatpur within 60 days from the date of receipt of this judgment by the said court to serve out the remaining period of their respective sentences, as passed by the courts below.

However the period of custody of the convict petitioners before pronouncement of the judgment by the trial court on 31.7.1993 shall be deducted from the said period of imprisonment as per section 35A of the Code of Criminal Procedure, 1898.

Send down the lower court record with copy of this judgment and order to the learned Chief Judicial Magistrate, Shariatpur.

Md. Rezaul Hasan, J.

I agree.