

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 01 of 2018

Md. Jalal

.....**Convict Petitioner**

-versus-

The State

.....**Opposite Party**

Mr. Md. Kamrul Islam, Advocate

.... For the convict petitioner

Mr. Md. Shahidul Islam, AAG with

Ms. Sharmin Hamid, AAG

....For the State

Heard on 11.11.2024

Judgment delivered on 14.11.2024

On an application filed under section 439 read with section 535 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 07.03.2017 passed by the Additional Sessions Judge (In-charge), Court No.2, Chattagram in Criminal Appeal No. 368 of 2015 affirming those dated 17.08.2017 passed by the Metropolitan Magistrate, Court No. 3, Chittagong in G.R. Case No. 550 of 2009 corresponding Bakulia Police Station Case No.08(6)2009 convicting the petitioner under section 324 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 1(one) year and 6(six) months should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that on 12.06.2009 at 10.30 am P.W. 1 Abdur Rahman started from his house and when he reached in front of the house of the accused persons namely, 1. Md. Jalal 2. Md. Jamal and 3. Md. Nur, they encircled him and started scolding him with filthy language and threatened him with dear consequences if he brought the rod, bricks, sand and cement materials through the road of the accused. At that time, other accused persons remained in hiding armed with lathi and started beating him indiscriminately. At one point in time, accused Md. Jalal went to his house running and brought a sharp knife and dealt a knife blow to the left side of his chest which caused grievous bleeding injury. Subsequently, his son Amran and nephew Nur Alam hearing about the occurrence came to the place of occurrence and took him to Chattogram Medical College Hospital.

Police took up an investigation of the case and during the investigation, the investigating officer visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and after completing the investigation submitted charge sheet on 25.07.2009 against the accused Md. Jalal, Md. Jamal and Md. Nur under sections 341/323/324/506 of the Penal Code, 1860. The case record was sent on 18.03.2010 to the Metropolitan Magistrate, Court No. 3, Chattogram for trial and disposal of the case. During trial, charge was framed against the accused Md. Jalal under sections 341/324//506 of the Penal Code, 1860 and accused Md. Jamal and Md. Nur under section 323 of the Penal Code, 1860 which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following law.

The prosecution examined 06 witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any DW. After concluding the trial, the trial court by impugned judgment and order dated 17.08.2015 convicted the accused Md. Jalal under section 324 of the Penal Code, 1860 and sentenced to suffer rigorous imprisonment for 01 year and 06 months and acquitted accused Md.

Jamal and accused Md. Nur from the charge framed against them. Against the said judgment and order the accused Md. Jalal filed the Criminal Appeal No. 368 of 2015 before the Metropolitan Sessions Judge, Chattogram which was heard by Metropolitan Additional Sessions Judge, Court No. 2, Chattogram. After hearing the appeal, the appellate court below by impugned judgment and order affirmed the judgment and order passed by the trial court against which he obtained the instant rule.

The learned Advocate Md. Kamrul Islam appearing on behalf of the convict petitioner submits that P.W. 1 is the sole eye-witness of the occurrence and there is a contradiction in the evidence of P.Ws. 1 and 6 regarding injuries allegedly sustained by P.W. 1. The prosecution failed to prove the charge against convict petitioner beyond all reasonable doubt and the courts below failed to assess and evaluate the evidence of the prosecution witnesses following the correct principle of appreciation of evidence. He prayed for setting aside the impugned judgment and order passed by the courts below.

The learned Assistant Attorney General Ms. Sharmin Hamid appearing on behalf of the state submits that there is no contradiction in the evidence of P.W. 1 and P.W. 6. At the time of examination of P.W 1, P.W 6 found injury on the shoulder girdle (pectoral) which also includes the chest. She further submits that P.W. 1 is the victim whose evidence is corroborated by P.W. 6 and both the courts below on correct assessment and evaluation of the evidence convicted the petitioner. She prayed for discharging the rule.

I have considered the submission of the learned Advocate Mr. Md. Kamrul Islam who appeared on behalf of the convict petitioner and the learned Assistant Attorney General Ms. Sharmin Hamid who appeared on behalf of the state, perused the evidence, impugned judgments and orders passed by the courts below and the records.

On perusal of the evidence, it appears that P.W. 1 Abdur Rahman is the victim of the occurrence that took place on 12.06.2009 at 10.30 am and he lodged the FIR on 12.06.2009 at 20.30. In the FIR, it has been alleged that the

accused Md. Jalal dealt a knife blow to the left side of his chest which caused grievous bleeding injury. The informant P.W. 1 stated that the accused Jalal dealt a dagger blow to his left chest which caused a bleeding injury and immediately after the occurrence, he was taken to Chattogram Medical College Hospital and he lodged the FIR after collecting the medical certificate. P.W. 2 Bachchu Miah stated that while he was working, he saw that accused Jalal dealt a dagger blow to the left chest of Abdur Rahman. P.W. 3 Md. Musa stated that he went to the Hospital and found the injury on the chest of Abdur Rahman. During cross-examination, P.W. 3 stated that the son of Abdur Rahman informed him that his father sustained a knife blow by Md. Jalal. During cross examination P.W. 4 Investigating Officer Md. Humayun Kabir stated that the 'C' mark on the sketch map is the house of Forkan which is situated adjacent to the place of occurrence but he was not cited as a witness in the case. The 'D' mark on the sketch map is a shop of Md. Lokman. He was also not cited as a witness in the charge sheet. P.W. 5 Nur Alam stated that the accused Md. Jalal caused injury on the left side of the abdomen of P.W. 1 and he took him to Hospital. P.W. 6 Doctor Hiranmoy Datta examined P.W. 1 on 12.06.2009 at 11.20am and he issued the medical certificate which was prove as exhibit-6. In the medical certificate (exhibit-6) issued by P.W. 6 Doctor Hiranmoy Datto, it has been mentioned that he found injury over the anterior aspect of the left shoulder girdle.

On perusal of the evidence, it reveals that P.Ws. 1 Abdur Rahman and P.W. 2 Md. Bachchu Miah are eyewitnesses of the alleged occurrence. In the FIR, informant P.W. 1 Abdur Rahman stated that the accused Md. Jalal dealt a dagger blow to his chest. When he was examined as P.W. 1, he stated that accused Md. Jalal dealt a knife blow to the left side of his chest. P.W. 5 Nur Alam stated that accused Md. Jalal caused injury on the left side of his abdomen and he took the victim to Chattogram Medical College Hospital. P.W. 6 examined the victim P.W. 1 at Chattogram Medical College Hospital. He found one injury over anterior aspect of the left shoulder girdle. The left shoulder girdle and the chest are two different parts of the human body.

Therefore, there is a contradiction in the evidence of P.W. 1 and the medical certificate (exhibit-7) regarding the injury allegedly submitted by P.W. 1. There is also a contradiction in the evidence of P.Ws. 1 and 2 regarding the instrument allegedly used by the convict petitioner Md. Jalal. A dagger and a knife are 2 different instruments. Therefore there is also a contradiction in the evidence of P.W. 1 and the statement made in the FIR as regards the instruments used in the commission of the alleged offence. Both the courts below failed to assess the evidence of P.W. 1, 2, 5 and 6 and the medical certificate (exhibit-7) following the correct principle of appreciation of evidence and arrived at a wrong decision as to the guilt of the convict petitioner.

In view of the above evidence, I am of the view that there is a doubt about the occurrence allegedly committed by the convict petitioner Md. Jalal and the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the courts below against convict petitioner Md. Jalal is hereby set aside.

Send down the lower Court's record at once.