

Present:
Mr. Justice Md. Ataur Rahman Khan

Criminal Appeal No. 12006 of 2018

Helalur Rahman and others.
....Convict- Appellants.
-Versus-
The State and another
.....Respondents.

Mr. Md. Mustaque Ahmed, with
Ms. Fatima Aktar, Advocate
..... For the appellants.

Mr. M. Khaled Ahmed, with
Ms. Most Nasrin Sultan, with
Mr. Md. Al-Amin, Advocates.
.... For the respondent No. 2

Mrs. Anjuman Ara Begum, AAG
Mr. Miah Sirajul Islam, AAGs
..... For the State.

Heard On: 01.11.2023, 08.11.2023.

And

Judgment on: 21.11.2023.

Md. Ataur Rahman Khan, J:

This Criminal Appeal, at the instance of convict appellants, Helalur Rahman and others are directed against the Judgment and order of conviction and sentence dated 05.11.2018 passed by the Divisional Special Judge, Sylhet, in Sessions Case No. 430 of 2007, arising out of Kanaighat Police Station Case No.

17 dated 27.12.2006 convicted them under section 143/324/326/450 of the Penal Code and sentenced them to suffer rigorous imprisonment for 03 (three) months for the offence under section 143 of the Penal Code, rigorous imprisonment for 01 (one) year for the offence under section 324 of the Penal Code, rigorous imprisonment for 02 (two) years for the offence under section 326 of the Penal Code and also to pay a fine of Tk. 2000/- (two thousand) in default to suffer further term of imprisonment for 01 (one) month more and also convicted them under section 450 of the Penal Code to suffer rigorous imprisonment for 01 (one) year and also to pay a fine of Tk. 1000/- (one thousand) in default to suffer further term of imprisonment for 01 (one) month more and both the convictions will run concurrently.

The prosecution case, in brief, is that, one Noor Ahmed being informant lodged a First Information Report with Kanaighat Police Station on 27.12.2006 alleging inter alia that earlier he lodged FIR being

Kanaighat Police Station Case No. 17 dated 17.10.2006 under Section 143/447/385/387/379 of the Penal Code against the accuseds and another case was filed against them for cutting public road and when police chased them they think that the informant has called in police. For all these reason, the accuseds bear malice against them. In such a state of affair accused No. 1 and 2 demand extortion of Tk. 2,00,000/- to incur the expanses of their case putting the informant in fear of death. Consequently, the informant filed a General Diary and on 27.12.2006 at 1.00-1.30 PM, the police raided their residence to arrest them in connection with another case but in vain since they went into hiding, after departure of the police all the accused after forming unlawful assembly entered upon the brick wall tin shed house of the informant armed with deadly weapons like dao, ram dao, kiris, crow bar etc. and entered into the southern room breaking down the door and the accused No. 1 Aftabur Rahman (Now

deceased) dealt a dao blow with attempt to murder on the head of Foyez, the younger brother of the informant causing serious blood injury, The accused No. 2 Helalur Rahman likewise dealt another blow with ram dao aiming to head of Foyez who somehow resisted raising his arm hence he suffered serious blood injured on the hand. At his shouting, Rashid and Faruk moved forward to save Foyez, accused No. 2 dealt Rashid a ramdao blow on the back of his head causing serious cut injury with attempt to murder giving rise to serious cut injury. The Accused No. 5 Abdus Samad bet Foyez, Rashid and Faruk with an iron rod causing swelling injury; when the informant went forward accused No. 4 Burhanduddin struck at his head with a crow bar but missing the mark and it hits his mouth and broke a teeth. The informant beg them to spare his life, the accused No. 1 and 2 took two signature on a blank stamp paper from the informant holding dao and ram dao at his neck and at the end, the accused No. 2 took away TK. 30,000/-

from the wooden drawer and left the scene threatening them of life unless they withdraw the case hence the FIR was lodged.

The police investigated the matter and submitted charge sheet under section 143/ 449/ 323/ 324/ 326/ 307/ 385/386/387/380/34 of the Penal Code against the convict appellants.

After acceptance of the charge sheet, the case was transferred to the court of Sessions Judge, Sylhet, which was renumbered as Sessions Case No. 430 of 2007 and the same has been transferred to the court of Divisional Special Judge, Sylhet for trial.

The learned Divisional Special Judge, Sylhet charge was framed against the convict appellants under section 143/ 449/ 323/ 324/ 326/ 307/ 385/386/387/380/34 of the Penal Code and the appellants pleaded themselves innocents and demanded to be tried.

The prosecution examined as many as 11 witnesses as P.Ws and the defence examined none.

The learned Divisional Special Judge, Sylhet after hearing found the convict appellants guilty and convicted them under section 143/ 324/ 326/ 450 of the Penal Code and sentenced them to suffer rigorous imprisonment for 03 (three) months for the offence under section 143 of the Penal Code, rigorous imprisonment for 01 (one) year for the offence under section 324 of the Penal Code, rigorous imprisonment for 02 (two) years for the offence under section 326 of the Penal Code and also to pay a fine of Tk. 2000/- (two thousand) in default to suffer further term of imprisonment for 01 (one) month more and also convicted them under section 450 of the Penal Code to suffer rigorous imprisonment for 01 (one) year and also to pay a fine of Tk. 1000/- (one thousand) in default to suffer further term of imprisonment for 01 (one) month more and both the convictions will run concurrently.

The defence version is that the convict appellants are innocent and they have been implicated falsely in

the case out enmity due to have previous in respect of village politics as well as property.

Being aggrieved by and dissatisfied with the Judgment and order of conviction and sentence dated 05.11.2018 passed by the learned Divisional Special Judge, Sylhet, in Sessions Case No. 430 of 2007, arising out of Kanaighat Police Station Case No. 17 dated 27.12.2006 the accused appellants preferred appeal before this court and obtained bail and stay realization of fine.

Mr. Md. Mustaque Ahmed, along with Ms. Fatima Aktar, the learned Advocates appearing on behalf of the convict appellants submits that the learned Divisional Special Judge, Sylhet after hearing without considering the evidence on record wrongly convicted the convict appellants as mentioned above. They further submit that the FIR lodged by the informant that it does not disclose any offence against the convict appellants and the ingredient of offence as alleged under section 143/ 449/ 323/ 324/ 326/

307/ 385/ 386/ 387/ 380/ 34 of the Penal Code does not contemplated the sequence of the allegation. They further submit that the FIR it reveals that no prima facie case has been made out against the convict appellants and the deposition made by the P.Ws are full of contradictions and omissions. They further submits that the prosecution has presented a got up story of beating and threatening and implicated the convict appellants in the instant case out of previous enmity but none of the P.Ws could prove the incident and on the basis of the contradictory deposition made by the interested witnesses, the convict appellants have been convicted. They further submit that admittedly there is previous enmity between the informant family and the convict appellant's family and due to this reason the informant lodged the case to fulfill their aim to harass the convict appellants socially and financially but without considering the same the learned Divisional Special Judge convicted the convict appellants. They further submit that the

prosecution failed to prove the case beyond the shadow of doubt but without considering the same the learned Divisional Special Judge convicted the convict appellants. They further submit that upon the facts and circumstances of the evidence on record and probability of the case the trial court was wrong in not acquitting the convict appellants. Accordingly, they submit that the appeal may be allowed for ends of justice and convict appellants be acquitted from the charged leveled against them.

Mr. M. Khaled Ahmed, with Ms Most. Nasrin Sultana and along with Mr. Md. Al-Amin, the learned Advocates appearing on behalf of the respondent No. 2 submit that the learned Divisional Special Judge, Sylhet after hearing rightly convicted the convict appellants under section 143/ 324/ 326/ 450 of the Penal Code. They further submit that earlier for cutting public road when police chased the convict appellants and they think that the informant has called in police for all these reason the accused No. 1

and 2 demand extortion of Tk. 2,00,000/- to incur the expenses of their case putting the informant in fear of death. They further submit that the informant lodged General Diary on 27.12.2006 at 1.00-1.30 PM the police raided the convict appellant's residence to arrest them in connection with another case. They further submit that after departure of the police all the convict appellants after forming unlawful assembly entered upon the brick wall tin shed house of the informant armed with deadly weapons like dao, Ram dao, kiris, crow bar etc and entered into the southern room breaking down the door. They further submit that the accused No. 1 Aftabur Rahman (Now deceased) dealt a dao blow with attempt to murder on the head of Foyez, the younger brother of the informant causing serious blood injury. They further submit that the accused No. 2 Helalur Rahman likewise dealt another blow with ram dao aiming to head of Foyez who somehow resisted raising his arm hence he suffered serious blood injured on the hand.

At his shouting, Rashid and Faruk moved forward to save Foyez, accused No. 2 dealt Rashid a ram dao blow on the back of his head causing serious cut injury with attempt to murder giving rise to serious cut injury. The Accused No. 5 Abdus Samad bet Foyez, Rashid and Faruk with an iron rod causing swelling injury. They further submit that the informant went forward accused No. 4 Burhanduddin struck at his head with a crow bar but missing the mark and it hits his mouth and broke a teeth. They further submit that the informant beg them to spare his life, the accused No. 1 and 2 took two signature on a blank stamp paper from the informant holding dao and ram dao at his neck and at the end, the accused No. 2 took away TK. 30,000/- from the wooden drawer and left the scene threatening them of life unless they withdraw the case. Thereafter, lodged the FIR being Kanaighat Police Station Case No. 17 dated 27.12.2006. They further submit that the police investigated the matter and submitted charged sheet

being No. 18 dated 28.02.2007 under section 143/449/ 323/ 324/ 326/ 307/ 385/386/387/380/34 of the Penal Code. They further submit that the prosecution examined 11 witnesses as PWs to prove the case and all the PWs corroborated each others proved the prosecution case. They further submit that the learned Divisional Special Judge, Sylhet after hearing on consideration of the evidence on record rightly convicted the convict appellants as mentioned above. They further submit that the judgment and order of conviction and sentence passed by the Divisional Special Judge, Sylhet which is just and sustainable in law and the prosecution conclusively proved the case beyond reasonable doubt. Accordingly, they submit that appeal may be dismissed for ends of Justice.

Mrs. Anjuman Ara Begum and Mr. Miah Sirajul Ialam, the learned Assistant Attorney Generals appearing on behalf of the respondent-State adopted the submissions made by the learned Advocates

appearing on behalf of the complainant respondent No. 2. Accordingly, they submit that the appeal may be dismissed for ends of Justice.

In view of the submission made by the learned Advocate of the convict appellants and the Assistant Attorney Generals let us now discuss the salient feature of the evidence on record.

The P.W No. 1 in his deposition toto proved his case. The doctor Md. Abdul Quddus who issued for injury certificates (exbt. No. 3,4,5 and 6) and deposed as P.W 10 in support of the reports in cross it is not dislodge in any way.

The testimonies of the doctor apart from P.W 3 stated further that appearing at the place of occurrence with a light he saw accused No. 1 Aftabur Rahman 2. Helalur Rahman, 3. Anwar Ali, 4. Borhanuddin, 5. A. Samad, 6. Kadir coming out of the room of the place of occurrence with dao (chopper), ram dao, kris, etc.

The P.W 4 in chief that appearing at the place of occurrence with a torch light he saw 7/8 persons including accused No. 1 Anwar Ali, 2. Godai, 3. Sobuj, 4. Aftab, 5. Helalur Rahman coming out of the room of the place of occurrence with dao, ram dao kris, etc.

The P.W 8 deposed that hearing hue and cry he went near to the house of Noor Ahmed and saw accused No. 1 Aftab Rahman, 2. Helalur Rahman, 3. Anwar Ali, 4. Borhanduddin, 5. A. Samad @ Bodai coming out of the house going to the west and putting up in the house of the accused Atabur Rahman. They also told in tune that the victim narrated the entire occurrence to them.

The investigating officer namely S.I Md. Golam Mostafa Mina after proper investigating the case, visited the place of occurrence, prepared Sketch map with index, recorded the statements of the witnesses under section 161 of Cr.P.C and seized several articles in presence of the witnesses by preparing a seizure list. During investigation of the case the investigating

officer procured injury certificates of the victims from Osmani Medical College Hospital, Sylhet and verified P.C/ P.R of the accused and eventually submitted the charged sheet being No. 18 dated 28.02.2007.

In cross examination all the witnesses denial the defence suggestions that the convict appellants falsely implicated in this case out enmity of grudge. These are all about the depositions of the witnesses available in this case.

The statements of the accused appellants are that the accused appellants are neither responsible nor connected with the occurrence and they has been falsely implicated in this case out of enmity and grudge.

On critical analysis of the aforesaid evidence on record, it appears that 11 P.Ws. were examined in this case and all the witnesses are corroborated with each others and proved the case beyond reasonable doubt.

So, in all fairness, the prosecution has been able to prove the case beyond reasonable doubt. The

learned Divisional Special Judge, Sylhet, after hearing on consideration of the evidence on record and the facts of the case and applying its judicial mind rightly convicted and sentenced the accused appellants for the offence charged as mentioned above. The findings and decisions arrived by the learned Divisional Special Judge, Sylhet, upon the accused appellants under section 143/324/326/450 of the Penal Code deserves no interference by this court, which is just and sustainable in law. I do hereby agree with the findings and decisions passed by the learned Divisional Special Judge, Sylhet.

In view of decision of our Apex Court, I do hereby agree with the findings and decision passed by the learned Divisional Special Judge, Sylhet, in Sessions Case No. 430 of 2007, awarded upon the convict appellants which is just and sustainable in law.

Be the case as it may, on considering the facts and circumstances of the case, I find no substance in this appeal, hence it must failed. Therefore, the

impugned Judgment and order of conviction and sentence calls for no interference by this Court.

In the result, the Criminal Appeal No. 12006 of 2018 is hereby dismissed.

The Judgment and order of conviction and sentence dated 05.11.2018 passed by the learned Divisional Special Judge, Sylhet, in Sessions Case No. 430 of 2007, arising out of Kanaighat Police Station Case No. 17 dated 27.12.2006 convicted the convict appellants under section 143/324/326/450 of the Penal Code and sentenced them to suffer rigorous imprisonment for 03 (three) months for the offence under section 143 of the Penal Code, rigorous imprisonment for 01 (one) year for the offence under section 324 of the Penal Code, rigorous imprisonment for 02 (two) years for the offence under section 326 of the Penal Code and also to pay a fine of Tk. 2000/- (two thousand) in default to suffer further term of imprisonment for 01 (one) month more and also convicted them under section 450 of the Penal Code to

suffer rigorous imprisonment for 01 (one) year and also to pay a fine of Tk. 1000/- (one thousand) in default to suffer further term of imprisonment for 01 (one) month more is hereby affirmed.

The bail bonds furnished by the convict appellants are hereby discharged.

Let the convict 1. Helalur Rahman son of late Touhidur Rahman, 2. Anowar Ali son of late Safar Ali, 3. Abdus Samad, son of late Mokbul Ali, 4. Borhan Uddin, son of Anowar Ali be directed to surrender before the court of the Divisional Special Judge, Sylhet, was served out their remaining sentence within 30 days from the date of receipts of this Judgment, failing which the convict appellants shall suffer rigorous imprisonment for 01 (one) year for the offence under section 324 of the Penal Code, rigorous imprisonment for 02 (two) years for the offence under section 326 of the Penal Code and also to pay a fine of Tk. 2000/- (two thousand) in default to suffer further term of imprisonment for 01 (one) month more and

also convicted them under section 450 of the Penal Code to suffer rigorous imprisonment for 01 (one) year and also to pay a fine of Tk. 1000/- (one thousand) in default to suffer further term of imprisonment for 01 (one) month more and the law enforcing agency shall take the convict appellants in custody in accordance with law.

Send down the L.C. records along with a copy of this Judgment to the Court concerned immediately for information and necessary action