

In the Supreme Court of Bangladesh
High Court Division
(Criminal Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 3173 of 2017.

In the matter of:

Shamim

..... -Petitioner.

-Versus-

The State

..... Opposite party.

Mr. A.K.M. Habibur Rahman, Advocate

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G along with

Mr. S.M. Emamul Musfiqur, A.A.G

Mr. Md. Humayun Karim Siddique, A.A.G

..... For the state

Heard on: 29.10.2024 &

Judgment on: 03.11.202

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 02.05.2017 passed by the learned Additional Sessions Judge, Netrakona in Criminal Appeal No. 08 of 2015 dismissing the appeal and affirming the judgment and order of conviction dated 10.12.2012 passed by the learned Senior Judicial Magistrate, Netrokona in G.R. No. 347(2)03 corresponding to T.R. No. 2020 of 2008 arising out of Kalmakanda Police Station Case No. 03(10) 2003 convicting the petitioner under section 323 of

the Penal Code, but modifying the sentencing by reducing it to suffer simple imprisonment for 03 (three) months and also to pay a fine of Taka 100/- in default to suffer simple imprisonment for 01(one) day more from to 06 (six) months and also to pay a fine of Taka 500/- in default to suffer simple imprisonment for 07 (seven) days more should not be set aside and/or pass such other or further order or order as to this court may seem fit and proper.

The prosecution story, in short, is that P.W.1, Md. Akter Hossain as informant lodged a First Information Report with the Kalmakanda Police Station implicating 7 accused persons including the petitioner alleging, inter alia, that in the morning of 04.09.2003, while the informant went to cultivate his land, found that the accused persons were cutting the demarcation line of plots No. 1327 and 1328 (the plot of the informant and the accused) to increase the quantum of the land of the plot of the accused. The informant forbade them to do such work and returned home. On that day at about 3.00 p.m., the informant again went to the land and found that the accused doing the same thing. When the informant tried to resist the accused, accused Razzak beat him with a rod causing a fracture of one of his chest-bone. Accused Shamim dealt a lathi blow on the left

elbow of the informant causing bleeding injury. Other accused persons also beat the informant indiscriminately. Hearing the hue and cry of the informant while the neighboring people rushed to the place of occurrence, the accused persons left the place. The informant was taken to the hospital and he was admitted therein and took treatment. Hence, the informant lodged the First Information Report.

The police after holding investigation submitted a Charge under sections 143/323/325/34 of the Penal Code against all the seven accused persons.

After receipt of the case record for trial, the learned Senior Judicial Magistrate, Court No. 1, Netrakona framed charge against the accused under sections 143/323/325 of the Penal Code. The charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

During the trial, the prosecution adduced as many as 5 P.Ws to prove the charge. After the prosecution witnesses the accused were examined under section 342 of the Code of Criminal Procedure to which they again pleaded not guilty but did not adduce any defence witness.

The defence case as transpired from the trend of the cross-examination is that the accused were innocent and they were falsely been implicated in this case because of the long-standing land dispute.

The learned Senior Judicial Magistrate, Court No. 1, Netrakona after considering the evidence on record found the petitioner Abdul Rezzak guilty under section 325 of the Penal Code and sentenced him as aforesaid.

Against the said judgment and order of conviction and sentence, the petitioner preferred an appeal before the Court of Sessions Judge, Netrakona which was heard by the Additional Sessions Judge, Netrakona.

After hearing the appeal the learned Additional Sessions Judge, Netrakona by the judgment and order dated 02.05.2017 dismissed the appeal but modified the sentence in the manner stated above.

Being aggrieved thereby the petitioner moved before this Hon'ble Court and obtained the Rule.

Mr. A.K.M. Habibur Rahman, the learned Advocate appearing for the petitioner submits that the prosecution has failed to establish the charge under section 323 of the Penal Code against the petitioner beyond any reasonable doubt and

hence the petitioner is entitled to a benefit of the doubt, but the Courts below without considering the said aspect passed the impugned judgment and order of conviction and sentence which cannot be sustained and is liable to be set aside.

On the other hand, Ms. Shiuli Khanom, the learned Deputy Attorney General appearing on behalf of the state supports the impugned judgment and order of conviction and sentence and submits that the prosecution proved beyond reasonable doubt that the petitioner armed with a lathi assaulted Md. Akter Hossain, the informant of the case hence, the Courts below rightly found the petitioner guilty under section 323 of the Penal Code and rightly passed the impugned judgment and order of conviction and sentence and she prays for discharge of the Rule.

The question to be adjudicated is whether the impugned judgment and order of conviction and sentence is sustainable with the law.

P.W. 1, Akter Hosen, the informant as well as the victim of the case stated that accused Shamim beat him with a lathi causing a bleeding injury on his left elbow. P.W. 2, Alam Kha in his deposition stated that he had been plowing a plot with the

tractor, near the plot of the occurrence. Hearing the hue and cry, he stopped the tractor and rushed to the place of occurrence and found accused Shamim beating the informant with a lathi causing a bleeding injury on his left elbow. P.W. 3, Roish Meah stated that hearing the hue and cry he went to the place of occurrence and found the informant lying on the ground with injuries. He heard about the incident from the informant. P.W. 4, Shajahan deposed that he did not witness the occurrence, but soon after the occurrence he went to the place of occurrence and found the injured informant to take to the hospital. P.W. 5, Dr. Gulam Robbani deposed that on 04.09.2003 he examined victim Akter Hosen and found three injuries i.e. (1) one swelling over the left anterior chest wall about 3'' x 2'' (2) one swelling round the left elbow joint about 2'' x 2'' and (3) Multiple swelling of deferent sizes and shapes over the back, scalp, thighs, and legs. He exhibited the injury certificate and his signature therein which were marked as Exhibit Nos. 2 & 2(1) respectively.

It appears from the injury certificate (Exhibit No. 2) that on the date of occurrence, P.W.1 sustained injuries. P.W. 1 clearly stated that accused Shamim beat him with a lathi

causing a bleeding injury on his left elbow. Injury No.2 of the injury certificate corroborated with the said injury. The alleged occurrence took place in broad daylight and an open place. P.W. 2 was a tractor driver who had been plowing land beside the place of the occurrence. P.W. 2 supported the evidence of P.W.1. P.W. 3 and 4 had been working in the field and went to the place of occurrence soon after the occurrence and found the informant in injured condition. All the said witnesses are impartial and natural, hence I do not find any reason to disbelieve these natural and impartial witnesses. Therefore, I am of the view that the prosecution by adducing evidence proved the alleged occurrence beyond any reasonable doubt and the Courts below rightly passed the impugned judgment and order of conviction.

The alleged occurrence took place more than 21 years ago. The injuries of the informant were not so serious and admittedly, there was a long-standing land dispute between the parties. Considering all these aspects of the case, I am inclined to reduce the sentence of the petitioner to the period as has already undergone.

Accordingly, the Rule is discharged with the above modification in the sentence.

The petitioner is released from the bail bond.

Send down the L.C.R. along with a copy of this judgment to the concerned Courts at once for information and necessary action.

Kashem/B,O