

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 1027 of 1994

Md. Yusuf Ali alias Esu alias Lamba Yusuf

...Appellant

-Versus-

The State

...Respondent

No one appears.

...For the appellant

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G with

Mr. Md. Shaifour Rahman Siddique Saif, A.A.G

...For the State

Heard on 09.08.2023, 10.08.2023, 13.08.2023 and
30.10.2023**Judgment delivered on 31.10.2023**

This appeal under Section 410 of the Code of Criminal Procedure, 1898 is directed against the impugned judgment and order dated 09.04.1994 passed by the Additional Sessions Judge, Dinajpur in Session Case No. 17 of 1993 convicting the appellant under Section 392 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 1000(one thousand), in default, to suffer rigorous imprisonment for 6(six) months.

The prosecution case, in a nutshell, is that on 25.07.1992 at 8.30 pm the informant Sree Babu Chanda Roy along with Md. Abdul Mannan and Nurul Islam were returning from Battali hut along with bicycle No. 8925 and when they reached near the canal of the deep tube well situated to the east side of Battali hut four unknown persons armed with knife, rope and iron rod etc encircled them. Three of them beaten and tied them and one of them remained on guard. Three unknown accused persons looted the bicycle valued at Tk. 800 and snatched away Tk. 407 from the chest pocket of Abdul Mannan and Tk. 5 from the pocket of Nurul Islam. After that, two unknown accused persons fled away and one accused person guarded the victims. At that time, one Galia Barman who was returning from Battali hut after hearing the hue and cry of the informant and others

informed the matter to the locals present at Battali hut and the people who were present at the said bazaar encircled the sugarcane field wherein the dacoits took shelter and searching the sugarcane field detained two dacoits. They disclosed their name as Md. Yusuf Ali and Delwar Hussain. At the time of detaining dacoits, they were injured on different parts of the body. They confessed that they came to commit the robbery along with the motorcycle which was kept at the house of Budhuroy of village Chowpukuria. Subsequently, the locals recovered the said motorcycle from the house of Budhuroy.

P.W. 14 S.I. Md. Sanaullah took up investigation of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index and seized the alams. After completing investigation, the investigating officer found prima facie truth of the allegation made in the FIR and submitted charge sheet against three accused persons including accused Md. Yusuf Ali.

During the trial, charge was framed under Section 394/411 of the Penal Code, 1860 which was read over and explained to the accused persons and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 14(fourteen) witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons were examined under Section 342 of the Code of Criminal Procedure, 1898 and accused Md. Yusuf declined to adduce any defence witness. After concluding the trial, the trial Court by impugned judgment and order convicted the accused Md. Yusuf Ali and sentenced him as stated above against which he filed the appeal.

P.W. 1 Sree Babu Chanda Roy is the informant. He stated that on 25.07.1992 at 8.30 pm he along with Mannan and Nurul Islam were returning from Battali hut along with a bicycle. While they reached the canal of the deep tube well situated at Mouza-Chowpukuria, suddenly four dacoits armed with rod and rope encircled them and after beating tied them in the sugarcane field. The dacoits looted the cycle, Tk. 407 from the Mannan and Tk. 5 from Nurul Islam. One dacoit remained on guard

and three dacoits along with the bicycle and money started to flee away. At that time, one Galia Barman who was returning from the Bazaar sensing the occurrence informed the matter to the locals present at the Bazaar. After that, the locals coming from the Bazaar encircled the sugarcane field. The dacoits took shelter in the said sugarcane field. Searching sugarcane fields, the locals detained two dacoits. They disclosed their name as Delwar and Md. Yusuf. Thereafter, the detained dacoits were taken to the local Bazar and they were beaten. At that time, the detained dacoits confessed that they came by motorcycle which was kept at the house of Budhuroy of village Chowpukuria. Subsequently, the locals recovered the said motorcycle from the house of Budhuroy. P.W. 1 proved the FIR as exhibit 1 and his signature as exhibit 1/1. He identified the accused present in Court. During cross-examination, he stated that Battali hut is situated 400 yards away from the place of occurrence. He affirmed that Delwar was detained from the tea stall of the Esahaq and many locals were present there. Esahaq said that before the occurrence, Delwar was present there.

P.W. 2 Md. Abdul Mannan stated that on the 10th of last Shraban at 8.00/8.30 pm he along with Babu Chan and Nurul Islam were returning from Battali hut. When they reached near the canal of deep tube well situated at Chowpukuria, 3/4 dacoits attacked them and snatched away Tk. 407 from his pocket and Tk. 5 from Nurul Islam and the dacoits also snatched away the bicycle of Babu Chan. The dacoits fled away along with the bicycle and one dacoit remained on guard. At that time, hearing the hue and cry, one Galia Barman who was returning from Bazaar brought the locals from the hut. The dacoit who remained on guard entered into the sugarcane field. The locals coming to the place of occurrence recovered the victims. After that, he went to the Battali hut and found Yusuf and Delwar and detained them along with the bicycle. Delwar was detained from the hut and Yusuf was detained from the sugarcane field. Both the accused persons are present in the Court. At that time, P.W. 2 was declared hostile. During cross-examination, he stated that the house of accused Shajahan is situated at Birganj which is his

adjacent Union. Keeping the motorcycle in the house of Budhu Roy, the dacoits came to commit the dacoity. During cross-examination on behalf of the defence, he stated that he could not recognize the dacoits.

P.W. 3 Nurul Islam stated that on the 10th of last Shraban he along with Mannan and Babu Chan were returning from Battali hut and when they reached near the canal of deep tube-well, 4/5 dacoits attacked them. One Galia Barman was coming following them. Sensing the occurrence, he informed the matter to the locals presented at the local hut. The dacoits snatched away Tk. 407 from Mannan, Tk. 5 from him and the bicycle from Babu Chan. While said Galia Barman returned along with the locals, the dacoits took shelter in the sugarcane field. The locals detained Yusuf from the sugarcane field. Subsequently, on suspicion, the locals detained accused Delwar from the bazaar. Yusuf said that he kept the motorcycle in the house of Budhu Roy. Thereafter, the said motorcycle was recovered. P.W. 3 identified the accused Delwar and Yusuf in Court. During cross-examination, he stated that he did not see the Budhu Roy at the place of occurrence. He heard that the motorcycle was recovered from the house of Budhu Roy but he could not say the name of the person from whom he heard about the recovery of the motorcycle. He affirmed that he did not see the accused Delwar at the time of occurrence. About 500/600 people were present at the hut.

P.W. 4 Sree Galia Barman stated that on the 10th of last Shraban at 8.00/9.30 pm he was returning home from Battali hut. He saw that the dacoits tied the Babu Chan, Mannan and Nurul Islam and the dacoits entered into the sugarcane field. He came back to the Bazaar and informed the matter to the locals. After that, the locals encircled the sugarcane field and he went to his house. Subsequently, he heard that a motorcycle was recovered from the house of Budhu Roy. He did not see the accused who was detained. The defence declined to cross-examine P.W. 4.

P.W. 5 Sree Bhuben Chandra Roy is a Member of the V.D.P. He stated that on the 10th of Shraban, he remained on guard at Bazaar and saw that the people were beating two dacoits and he rescued them from the locals. He heard that one dacoit was detained from the sugarcane field and

another was detained from the tea stall. They stated that they kept the motorcycle in the house of Sautal Bari. Thereafter, the motorcycle was found in the house of Budhu Roy. The accused Yusuf disclosed about the motorcycle. Thereafter, the accused and the motorcycle were taken to the Thana. During cross-examination, he stated that the hut is situated a quarter mile from the Bazaar and accused Delwar was sitting in the tea stall of Isahaq before the occurrence.

P.W. 6 Budhu Roy Hemram stated that on the 10th of last Shraban at 5.00 pm two persons kept a motorcycle in his house and out of them one Shahjahan was known to him. He identified the accused Shahjahan in Court. Keeping the motorcycle in his house, they left the house. At 8.00 pm he heard the hue and cry and went to the Battali hut. He found two dacoits. He heard that one dacoit was detained from the shop and another dacoit was detained from the sugarcane field. He stated that the dacoits took the rope and sickle. P.W. 6 proved the rope and sickle as material exhibit I and II. He proved the motorcycle as material exhibit III. During cross-examination, he denied the suggestion that due to enmity he deposed falsely against the accused Shahjahan.

P.W. 7 Md. Mahiruddin stated that the investigating officer seized an iron rod, a sickle, three rods and a bag from the place of occurrence. The investigating officer seized those alamats after one day of the occurrence at 12.00 and took his signature. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. During cross-examination, he stated that at the time of the seizure, he, Manik and the investigating officer were present at the place of occurrence.

P.W. 8 Md. Mahsin stated that in his presence, the investigating officer seized the bicycle. He proved the seizure list. He proved his signature on the seizure list as exhibit 2/1. He affirmed that in his presence, the motorcycle was seized. He proved the seizure list as exhibit 3 and his signature as exhibit 3/1. During cross-examination, he stated that he signed the seizure list at Thana and he knew nothing about the occurrence.

P.W. 9 S.I. Sree Jatindra Nath stated that on 13.11.1992 he was posted at Ranisankail Thana. He verified the PCPR of the accused Yusuf. He did not find any record in the Thana. The defence declined to cross-examine P.W. 9.

P.W. 10 Md. Serajul Haque stated that the investigating officer seized a bicycle and one motorcycle in his presence and he signed the seizure list. He proved the seizure list as exhibit 4 and his signature as exhibit 4/1 and 4/2. The defence declined to cross-examine P.W. 10.

P.W. 11 Md. Manik stated that the investigating officer did not seize anything in his presence. He proved his signature on the seizure list as exhibit 2/3. At that time, he was declared hostile. During cross-examination, he stated that on the next day, he signed the seizure list at the place of occurrence. He was the owner of the place of occurrence. One iron rod, one sickle, rope and the bag were seized after one day of the occurrence. During cross-examination, he stated that the investigating officer produced the seized documents which were kept in a bag.

P.W. 12 Md. Abdur Rahim stated that he is a member of the V.D.P. On 25.07.1992 at 8.00 pm, he was on duty at Battali hut. One Galia informed him that the dacoity was committed on the road. Thereafter, he along with the locals encircled the sugarcane field and detained accused Yusuf from the sugarcane field and subsequently detained accused Delwar from the hut. The accused Yusuf disclosed that their motorcycle was kept in the house of Budhu Roy and subsequently, the said motorcycle was recovered from the house of Budhu Roy.

P.W. 13 A.T.M Zakir Hossain is the Magistrate. He stated that on 19.10.1992 he recorded the statement of witness Budhu Roy Hemram under Section 164 of the Code of Criminal Procedure, 1898. He proved the said statement as exhibit 5 and his signature as exhibit 5/1. During cross-examination, he stated that except the name of accused Shahjahan, the witness did not mention the name of any other person but he disclosed name of three persons.

P.W. 14 S.I. Md. Sanaullah stated that on 26.07.1992 he was posted at Birganj Thana. On that day at 8.30 am the informant along with

the bicycle, motorcycle and accused Yusuf and Delwar came to Thana and lodged the FIR. He filled up the FIR form. He proved the FIR form as exhibit 6 and his signature as exhibit 6/1. He seized the motorcycle and bicycle. He proved his signature as exhibits 2/3, 3/3 and 4/2 on the three seizure list. He took up the investigation of the case. During investigation, he visited the place of occurrence, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898 and prepared the sketch map and index. He proved the sketch map as exhibit 7 and his signature as exhibit 7/1. He proved the index as exhibit 8 and his signature as exhibit 8/1. He seized an iron rod, one sickle, rope and a bag. After completing the investigation, he submitted charge sheet against the accused persons. During cross-examination, he stated that the hut is situated 300/400 yards away from the place of occurrence.

No one appears on behalf of the accused.

Learned Assistant Attorney General Mr. Md. Shaifour Rahman Siddique Saif appearing on behalf of the State submits that P.Ws. 1, 2 and 3 are the victims. P.W. 1 stated that the dacoits snatched away his bicycle and Tk. 407 from P.W. 2 Md. Abdul Mannan and Tk. 5 from P.W. 3 Nurul Islam and after the occurrence, sensing about the occurrence P.W. 4 Galia Barman informed about the occurrence to the locals present at Bazar and thereafter, the locals encircled the sugarcane field wherein the accused persons took shelter and detained Delwar and Yusuf from the sugarcane field. The evidence of P.W. 1 Sree Babu Chanda Roy as regards detaining the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf is corroborated by the evidence of P.Ws. 2, 3, 4, 5 and 12. The motorcycle was recovered from the house of P.W. 6 Budhu Roy Hemram at the instance of the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf. P.W. 6 Budhu Roy Hemram also stated that the motorcycle was recovered from his house. The prosecution witnesses proved the charge against the accused beyond all reasonable doubt.

I have considered the submissions of the learned Assistant Attorney General, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On a scrutiny of the evidence of prosecution witnesses, it reveals that the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf is a resident of Ranisankail, Thakurgaon and he was not known to the prosecution witnesses who are residents of village Chowpukuria Mouza of Birganj Thana, Dinajpur. He was detained by the locals from the place of occurrence. During the trial, no explanation was given by the defence regarding his presence at the place of occurrence. P.Ws. 1, 2, 4 and 12 stated that the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf was detained from the sugarcane field. By cross-examining, the defence could not make out any contradiction in their evidence. I find those P.Ws as trustworthy, credible and reliable witness. Therefore, I am of the view that the trial Court on proper assessment of the evidence arrived at a correct conclusion as regards the guilt of the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf.

It appears that the accused Md. Yusuf Ali alias Esu alias Lamba Yusuf was arrested on 25.07.1992 and during pendency of the appeal he was granted bail on 22.08.1995 by the High Court Division.

Considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The accused Md. Yusuf Ali alias Esu alias Lamba Yusuf is found guilty of the offence under Section 392 of the Penal Code, 1860 and he is sentenced to suffer imprisonment already undergone.

In the result, the appeal is disposed of with modification of the sentence.

Send down the lower Court's records at once.