

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Revision No. 2363 of 2019**

Md. Hazrat Ali and others

.....Convict-Petitioner.

-Versus-

The State.

.....Opposite party

Mr. Sk. Rezaul Islam, Advocate

.....For the Petitioner.

Ms. Shahida Khaton, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

**Heard on 04.06.2024, 06.06.2024, 10.06.2024,**  
**30.06.2024 and Judgment on 02.07.2024.**

**Sheikh Abdul Awal, J:**

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 15.07.2019 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Narayangonj in Criminal Appeal No. 64 of 2014 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 26.05.2014 passed by the learned Chief Judicial Magistrate, Narayangonj in G.R Case No. 107 of 2010/T.R. No. 286

of 2011 corresponding to Sonargaon Police Station Case No. 25 dated 21.03.2010 convicting the petitioner Nos. 1-2 under section 326 of the Penal Code, 1860 and sentencing them thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 5000/- in default to suffer simple imprisonment for a period of 3(three) months more and also convicting the petitioner No.3 under section 307 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for a period of 5 (five) years and also to pay a fine of Tk. 5000/- in default to suffer simple imprisonment for a period of 3(three) months more 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 one, Md. Selim, S/O Md. Nur Hossain on 21.03.2010 at 18:15 hours as informant lodged an Ejahar with Sonargaon Police Station, Narayangonj against 8 accused persons and unknown 5/6 others under sections 143/307/326/324/34 of the Penal Code stating, inter-alia, that accused Nos. 1. Hazrat Ali, 2. Manik, 3. Md. Monir Hossain, 4. Md. Hanif had land dispute with the informant's father. On 20.03.2010 at about 5:00 p.m. accused Manik @ Monir in a pre-planned manner came

to the house of the informant and took his father out saying to measuring the land and at 5:15 p.m. the above accused persons and accused Nos. 5. Parosh Ali, 6. Al Amin, 7. Jahirul Islam 8. Osman and 5/6 others after being armed with Chapati, Chinese Axe, chena, Dao, Bollom, lathi attacked his father when accused Hazrat Ali dealt bollom blow on the right side of chest and back side of his father and accused Monir Hossain dealt knife blow on right side of throat and accused Manik gave cheni blow on the right side of the belly and unknown 5/6 other persons also dealt so many blows on the person of victim, Nur Hossain resulting victim sustained serious bleeding injuries and at that point of time neighbour, Adal Haque came there to rescue his father while accused Paras Ali dealt chapati blow on the back of the victim Adal Haque and on hearing hue and cry the local people came and then thinking the death of victim Nur Hossain, the accused persons left the place of occurrence and thereafter, the informant on hearing the incidence rushed to the place of occurrence and with the help of their relatives took the victim Nur Hossain, in Dhaka Medical College Hospital for treatment.

Upon the aforesaid First Information Report, Sonargaon Police Station Police Station Case No. 25 dated 21.03.2010 under sections 143/307/326/324/34 of

the Penal Code was started against 8 accused persons and unknown 5/6 others.

Police after completion of usual investigation submitted charge sheet against 6 accused persons being charge sheet No. 195 dated 24.07.2010 under sections 143/326/307/34 of the Penal Code.

Thereafter, the accused-petitioners and others were put on trial in the Court of the learned Chief Judicial Magistrate, Narayangonj to answer a charge under sections 143/326/307/34 of the Penal Code to which the accused petitioners and others were pleaded not guilty and claimed to be tried stating that they have been falsely implicated in this case.

At the trial, the prosecution side has examined as many as 11(eleven) witnesses and exhibited some documents to prove its case, while the defence examined none. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the convict-petitioners and others under section 342 of the Code of Criminal Procedure appeared to be that the convict-petitioners and others were innocent and they have been falsely implicated in the case.

The learned Chief Judicial Magistrate, Narayangonj after completion of trial by his judgment and order dated 26.05.2014 found the accused-petitioner Nos. 1. Md. Hazrat Ali and 2. Md. Parosh Ali guilty under section 326 of the Penal Code and sentenced them thereunder to suffer rigorous imprisonment for a period of 5(five) years to pay a fine of Tk. 5000/- in default to suffer simple imprisonment for a period of 3(three) months more and also found the accused-petitioner No. 3, Md. Ponir guilty under section 307 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 5(five) years to pay a fine of Tk. 5000/- in default to suffer simple imprisonment for a period of 3(three) months more.

Aggrieved petitioners then preferred Criminal Appeal No. 64 of 2014 before the learned Sessions Judge, Narayangonj, which was subsequently transmitted to the Court of the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Narayangonj for disposal, who by the impugned judgment and order dated 15.07.2019 dismissed the appeal and affirmed the judgment and order of conviction and sentence dated 26.05.2014 passed by the learned Chief Judicial Magistrate, Narayangonj.

Being aggrieved by the aforesaid impugned judgment and order dated 15.07.2019 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Narayangonj passed in Criminal Appeal No. 64 of 2014 the convict-petitioners moved before this Court and obtained the present Rule.

Mr. Sk. Rezaul Islam, the learned Advocate appearing for convict-petitioners in the course of argument takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the judgments of 2 (two) Courts below and then submits that admittedly 6 accused persons were put on trial before the learned Chief Judicial Magistrate on the similar type of allegations although the learned Chief Judicial Magistrate acquitted 2 accused from the charge levelled against them. The learned Advocate further submits that the allegations as attributed in the FIR, charge sheet and deposition of witnesses do not attract to the provisions of section 326 of the Penal Code against the accused petitioners rather the same attracts against accused Monir and Manik, who having not been sent up in the charge. The learned Advocate further submits, there is nothing on record to suggest that the victim Nur Hossain was admitted in hospital more than 1 day for his treatment, which suggests that the injuries were not

serious in nature although the trial Court below without considering all these vital aspects of the case from a correct angle mechanically held that the accused-petitioner Nos. 1&2 guilty of the offence under section 326 of the Penal Code and accused petitioner No. 3 guilty of the offence under section 307 of the Penal Code and the lower appellate Court in its turn affirmed the same, which occasioned a failure of justice. The learned Advocate further submits that in this case as per FIR version all 8 accused persons after being armed with deadly weapons attacked the victim Nur Hossain and the witnesses are all relatives with each other and they also gave similar type of evidence as stated in the FIR although the learned trial Judge most illegally held only the accused-petitioner No.3 guilty of the offence under section 307 of the Penal Code. Finally, the learned Advocate referring a decision reported in 6 BLC 310 submits that in the facts and circumstances of the case the accused petitioners are entitled to get benefit of doubt.

MS. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State, supports the impugned judgments of 2 (two) courts below which were according to her just, correct and proper. She submits in the facts and circumstances of the case it is apparent that

the accused-petitioners played the vital role in committing the crime and as such, both the Courts below committed no wrong in awarding sentence to the accused-petitioners.

Having heard the learned Advocate for the petitioners and the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused- petitioner Nos.1-2 guilty of the offence under Sections 326 and petitioner No.3 guilty of the offence under Sections 307 of the Penal Code.

On scrutiny of the record, it appears that the prosecution to prove its case examined as many as 11 witnesses out of which PW-1, Selim Mia, informant of the case stated in his deposition that accused Hazrat Ali, Monir Hossain, Hanif, Parosh Ali, Alamin @ Monir, Jahurul Islam Osman and 5/6 others took his father for measuring land on the road near about accused Hazrat Ali's house and thereafter, the accused persons started beating on his father resulting he falls to the ground and then accused Hazrat Ali dealt bollom blow on the chest of the victim and accused Manik stabbed on his father's belly resulting his nari bhuri came out while another victim Adal Haque came to rescue his father and then



accused persons dealt chapati blows on the back of Adal Haq resulting Adal Haque sustained serious bleeding injuries and thereafter the accused persons left the place of occurrence thinking informant's father victim Nur Hossain's died. This witness in his cross-examination stated that- “সিএনজি টেক্সী দিয়ে হাসপাতালে নিয়েছি। ঢাকা মেডিক্যাল কলেজের সময় আমার পিতাকে নিয়ে যাই স্মরণ নাই। ঢাকা মেডিক্যাল কলেজ আমার পিতা ০১ দিন ছিল। তাকে আইসিইউতে রাখার প্রয়োজন হওয়ায় তাকে আনোয়ার খান মর্ডন ক্লিনিকে ভর্তি করা হয়। সেখানে পিতা ১৯ দিন ছিল। এর মধ্যে ১৫ দিন আইসিইউতে ছিল। ঢাকা মেডিক্যাল কলেজ আইসিইউ খালি ছিল না।” . This witness in his cross-examination also stated that- “আমি ঘটনা দেখি নাই। আমার পিতাসহ বিভিন্ন লোকের নিকট শুনে মামলা করেছি। আমি কার নিকট হতে শুনে ঘটনাগুলো গিয়েছি তা এজাহারে লিখি নাই।” PW-2, Nur Hossain, victim of the case , PW-3, Adol Haque, also victim of the case, PW-4, Sahera, wife of victim Adal Haque, PW-5, Ziasmin Akter Rani, daughter of victim Nur Hossain, PW-6, Md. Motalib, cousin of the informant, PW-7, Fazlul Haque all these witnesses in their respective deposition gave evidence in support of the prosecution case as like as PW-1. PW-8, doctor Md. Hafizur Rahman Mia stated in his deposition that he examined the victim Nur Hossain on 20.03.2010 and made operation on him on 21.03.2010. This witness found following injuries on the person of victim, Nur Hossain:

1) Stab injury over abdomen 1" X ½" upto peritoneal cavity Exploratory laparotomy done.

Findings: (a) perforation of transverse colon.

b) Lacerated by over caecum

2) Incised looking injury 2X1.5 upto pleura. Operation chest drain insertion done finding: Moderate amount of collecting came out.

3) Penetrating injury over the rt. side of the chest upto pleural cavity.

4) Penetrating injury over the left shoulder.

5) Penetrating injury over the rt. shoulder.

6) Penetrating injury over the upper part of back of the chest.

7) Incised wound 4" X 1" X 1" upto muscle over front of the chest. Type of weapon used sharp cutting (all injury). Nature of injury:- Sl. no.1(a),(b), 2, 3 are grievous hurt in nature and rest injury- simple.

After operation pt. condition deteriorated and advised shift ICU (DMCH).

This witness in his cross-examination stated that-  
 “ভিকটিমের ২১/০৩/১০ তারিখে ছাড়পত্র দেয়া হয়েছে।” PW-9, doctor Protul Kumari Sarker, who examined the victim Adal Haque. He proved the medical certificate as “Ext.-5” and his signature thereon as “Ext.-5/1”. PW-10, S.I. Rabiul Azam partly investigated the case, who visited the place of occurrence, prepared sketch map, examined

the witnesses under section 161 of the Code of Criminal Procedure and during investigation on 15.06.2010 he was transferred and accordingly he gave up his case file to officer-in-charge. PW-11, submitted charge sheet against the accused-petitioners and others.

On an analysis of the above quoted evidence together with the F.I.R and other materials on record, it appears that the prosecution witnesses namely, PW-1-7 proved the prosecution case as to time, place and manner of occurrence. These witnesses were cross-examined by the defence but failed to find out any contradiction in the evidence of P Ws.

It is found that the trial Court below on due consideration of the evidence and materials on record came to the conclusion that the accused-petitioner Nos. 1. Md. Hazrat Ali and 2. Md. Parosh Ali found guilty under section 326 of the Penal Code and sentenced them thereunder to suffer rigorous imprisonment for a period of 5(five) years to pay a fine of Tk. 5000/- in default to suffer simple imprisonment for a period of 3(three) months more and also found the accused-petitioner No. 3. Md. Ponir guilty under section 307 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 5(five) years to pay a fine of Tk. 5000/- in default to suffer simple imprisonment

for a period of 3(three) months more while acquitted accused Osman and Jahirul Islam from the charges levelled against them.

The lower appellate Court in its turn affirmed the judgment and order of conviction and sentence passed by the trial Court holding that- “ভিকটিম পি/ডব্লিউ-২ ও ভিকটিম পি/ডব্লিউ-৩ এর দেখা সাক্ষ্যের মাধ্যমে এবং দাখিলীয় প্রদর্শনী-৩ ও প্রদর্শনী-৫ এ থাকা injury Report ও প্রদর্শনী-৪ এ থাকা সংশ্লিষ্ট মেডিক্যালের ছাড়পত্র পর্যালোচনায় বর্ণিত ঘটনার তারিখে ও সময়ে বর্ণিত ঘটনাস্থলে আসামী হযরত আলী ও পনির কর্তৃক ধারাল অস্ত্রের মাধ্য ইচ্ছাকৃতভাবে নুর হোসেনকে গুরুতর আঘাত প্রদান করে উক্ত আসামীগণ কর্তৃক The Penal Code, 1860 ধারার অপরাধ সংঘটন করবার প্রসিকিউশন পক্ষের দাবী সন্দেহাতীতভাবে প্রমাণিত হয়েছে এবং আসামী পরশ কর্তক খুন করবার উদ্দেশ্যে আদল হককে তার পিঠে চাপাতি দিয়ে কোপ মেরে গুরুতর রক্তাক্ত জখম করে The Penal Code, 1860 এর ৩০৭ ধারার অপরাধ সংঘটন করবার প্রসিকিউশন পক্ষের দাবী সন্দেহাতীতভাবে প্রমাণিত হয়েছে। উক্ত বিষয়াদি বিবেচনায় জি,আর ১০৭/১০ নং মামলায় বিজ্ঞ বিচারিক আদালত গত ২৬/০৫/১৪ ইং তারিখের প্রচারিত রায়ের মাধ্যম সঠিকভাবে আপীলকারী আসামীগকে The Penal Code, 1860 এর ৩২৬ ও ৩০৭ ধারার অপরাধে দোষী সাব্যস্ত করে তাদেরকে উক্ত আইনের উক্ত ধারায় বর্ণিত দাণ্ডাদেশ প্রদান করেছে উক্ত কারনে জি,আর ১০৭/১০ নং মামলায় বিজ্ঞ বিচারিক আদালত কর্তত পদন্ত গত ২৬/০৫/১৪ ইং তারিখের প্রচারিত রায়টি রদযোগ্য নয় এবং আপীলকারী/আসামীগন প্রার্থত মতে প্রতিকার পাবার অধিকারী নয় মর্মে সিদ্ধান্ত গৃহীত হলো।”

This finding certainly indicates that the learned Additional sessions Judge considered all aspects of the matter and thereafter, recorded the order of rejection. The reasonings given by the learned Additional Sessions

Judge appear to me to be proper and sound and I, do not find any reason to differ from it. In this case all the prosecution witness namely PWs. 1-11 proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused petitioners beyond reasonable doubts.

At the end of the day, the learned Advocate for the petitioners , however, contends that the occurrence in this case took place to the year 2010, to be precise, February 20, 2010 and a period of 14 years has already gone by. Petitioners have already suffered the agony of protracted trial, spanning over a period of one and half decades. Petitioners were 40-43 years of age at the time of occurrence and over the similar type of allegations some of the co-accused were not sent up in charge sheet and accused Bacchu Mia was discharged from the case at the time of charge framing and 2 accused namely, Osman and Jahirul Islam have been acquitted, the accused-petitioners are full brother, who have already suffered their sentence for more than 1 ( one) calendar year (pre and post trial) and as such, the sentence may kindly be reduced to the period already undergone.

Learned Deputy Attorney General has, of course, been able to defend this case on merits but practically

has nothing to say insofar as reduction of sentence imposed upon the petitioners are concerned.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that the convict petitioners have already suffered their sentence for more than 1 calendar year (pre and post trial) and faced the agony of the protracted prosecution as well as suffered mental harassment for a long period of one and half decades, I think that, the ends of justice, will be met in the facts and circumstances of the case, if the sentence of fine is maintained and the substantive sentence is reduced to the period already undergone.

In the result, therefore, the Rule is made absolute in-part with modification of sentence. The sentence of the convict petitioners is reduced to the period of sentence already undergone. The sentence of fine is, however, maintained. The accused petitioners may be discharged from their bail bond on payment of fine amounting to Taka 5,000/- (five thousand) each in accordance with law.

Send down the lower Court records at once.