

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

Present:

Mr. Justice Md. Jahangir Hossain

And

Mr. Justice Ashish Ranjan Das

Criminal Miscellaneous Case No.1521 of 1998.

Md. Abul Basher

.....Accused-Petitioner.

-Versus-

The State.

... Opposite-party.

None appears for the petitioner.

Mr. Md. Anichur Rahman, A.A.G.

.....For the State.

**Heard on 17.11.2020 and Judgment on
25.11.2020.**

Ashish Ranjan Das, J:

Rule for quashment under Section 561A of the Code of Criminal Procedure (for short the Code) was issued on 09.03.1998 at the instance of convict petitioner Md. Abul Basher in the following terms:

“Let the records be called for.

Let a Rule issue calling upon the opposite party to show cause as to why the judgment and order dated

October 20, 1997 of the Assistant Sessions Judge and Special Tribunal No.5 Noakhali in special Tribunal Case No. 20 of 1996 arising out of G.R. Case No. 57 of 1995 arising out of Begumganj P.S. case No. 34 dated 26.02.1995 should not be quashed and/or such other or further order or orders passed as to this court may seem fit and proper.”

None appeared to press the rule.

Although the matter is too old and occurring in the daily cause list with the name of the Advocate over the period.

However, the learned Assistant Attorney General raised a regulation protest against the rule.

We have perused the materials annexed to the file including the application for quashment.

Short facts relevant for the purposes are that Mr. A.K.M. Rahim Uddin, Sub-Inspector of Police attached to Begumgonj Police Station, Noakhali lodged an F.I.R. on 26.02.1995 stating inter alia that on the basis on the secret information being directed by the officer-in-charge the Sub-Inspector with his forces went to a place, a junction between Chowmohoni Minucipal Area and Durgapur Union both under Police Station-

Begumgonj. There was an information that some dacoits armed with weapons assembled there with an intent to commit dacoity. The police patrol party remained on wait there in the night following 25.02.1995 but could trace no culprit. Next in the morning at about 9.00 am on 26.02.1995 while the police party was an ambush on the police out post located on entrance of Durgapur Union area near Gopal Oil Mills they found notorious dacoits Jalal alias Dulal and 02 others proceeding. They were challenged and caught. Upon search a country made Pipe Gun with a cartridge was recovered from personal possession of Dulal Companion of Mokhlesur Rahman alias Shapown. The Pipe gun and Cartridge were seized there under a list and stating above the Sub- Inspector registered an ejahar with the Begumgonj Police Station attracting section 19A and 19 f of the Arms Act. After investigation charge sheet was submitted and cognizance was taken by the Special Tribunal. It was transferred to the Special Tribunal No.5, charge was accordingly framed and the prosecution examined 06(six) witnesses including the informant who seems to have testified that the said alamot that is the Pipe gun and the Cartridge recovered from Mokhlesur Rahman. But the learned Special

Tribunal No.5, Noakhali convicted all the 03 persons detained including the convict petitioner Md. Abul Basher and sentenced each of them suffer rigorous imprisonment for 10 year each under Section 19A and 19f of the Arms Act and ordered the sentence to run concurrently.

The prosecution case is that the Pipe gun and Cartridge were recovered from Mokhlesur Rahman. There was no case for the prosecution that those 03 persons Dulal, Mokhlesur, Abul Basher belonged to a gang and they were planning to commit dacoity in the area. In that case it remains that the incriminating articles were recovered from Mokhlesur Rahman alias Swapan only and not from this petitioner Abul Basher. The Special Tribunal while imposing the penalty did not assign any reason as to how with Mokhlesur Rahman this petitioner could also be roped with the charge while nothing was recovered from his personal possession.

Thus we see that this has been a case of no evidence so far as the petitioner Abul Basher is concerned in respect of recovery of Pipe gun and Cartridge. It has been a settled

principle a conviction may be quashed where the judgment is based on no evidence.

Thus we do not hesitate to conclude that this has been a conviction and sentence based on no legal evidence so far as the petitioner is concerned.

Accordingly the Rule is made absolute. The ad-interim order passed earlier is recalled and vacated.

Send down the lower courts record and communicate the judgment to the concerned Court below at once.

Md. Jahangir Hossain,J

I agree.