Present
Mr. Justice Sheikh Abdul Awal

Criminal Revision No. 767 of 2020

Shaheb Ali

.....Convict-Petitioner.

-Versus-

The State.

.....Opposite party.

Ms. Lucky Ahmed, Advocate

.....For the Petitioner.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

Heard on 28.02.2024, 03.03.2024 and

Judgment on 05.03.2024

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 05.08.2019 passed by the learned Sessions Judge, Chandpur in Criminal Appeal No. 129 of 2015 affirming the judgment and order of conviction and sentence dated 22.12.2015 passed by the learned Senior Judicial Magistrate, 4th Court, Chandpur in G.R No. 85 of 2008 (Matlob Uttar) corresponding to Matlob

Uttar Police Station Case No. 01 dated 05.10.2008 convicting the petitioner under section 324 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for a period of 1 (one) month 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 brief fact relevant for disposal of this Rule is that on 05.10.2008 one, Kohinur Begum, wife of Siraj Bepary as informant lodged an Ejahar with Matlob Uttar police station against the convict petitioner and 3 others under section 447/324/323/379/506 of the Penal Code stating, inter-alia, that the informant and the accused persons are the same villagers, out of previous enmity on 18.08.2008 at night 9 O'clock the accused persons being armed with deadly weapons came to the house of informant and attacked the informant's husband named Siraj Bepary while the informant tried to rescue her husband and then the accused Shaheb Ali dealt a shabol blow on left side of her forehead resulting she sustained serious bleeding injury and thereafter, other accused persons gave blows and kicks on her body and thereafter, accused Rokeya snatched away a gold chain

from her neck weighing 1 vory, valued at Taka 24,000/-. Thereafter, accused persons chased her husband to kill him while local people rescued him and thereafter, the accused persons left the place of occurrence by saying that they will set fire to the informant's house and also kill them. In this backdrop, local people took the victim in local hospital and thereafter, the informant party discussed the matter with each other and lodged the case annexing medical certificate. It has been also stated in the first information report that delay has been caused in filing the case due to the fact the local people tried to settle the dispute in a vain.

Upon the aforesaid first information report Matlob Uttar Police Station Case No. 01 dated 05.10.2008 under sections 447/324/323/379/506 of the Penal Code was started against the accused petitioner and 3 others.

Police after completion of usual investigation submitted charge sheet No. 78 dated 30.10.2008 under sections 447/324/323/379/506 of the Penal Code against the accused-petitioner and 2 others.

Ultimately, the accused persons were put on trial before the Judicial Magistrate, 4th Court, Chandpur to answer the charge under sections 447/324/323/379/506 of the Penal Code in which the accused-petitioner and

others pleaded not guilty and claimed to be tried stating that they have been falsely implicated in this case out of previous enmity with the informant party.

At the trial, the prosecution side examined as many as 7(seven) witnesses 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 accused persons under section 342 of the Code of Criminal Procedure appeared to be that the convict-petitioner and others were innocent and they have been falsely implicated in the case out of previous land dispute with the informant party.

On conclusion of trial, the learned Senior Judicial Magistrate, 4th Court, Chandpur by his judgment and order dated 22.12.2015 found the accused petitioner guilty under section 324 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for a period of 1 (one) month more while acquitting 2 other accused persons from the charges levelled against them.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated

22.12.2015 the accused-petitioner preferred Criminal Appeal No. 129 of 2015 before the learned Sessions Judge, Chandpur, who by the impugned judgment and order dated 05.08.2019 dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the learned Senior Judicial Magistrate.

Aggrieved convict petitioner then preferred this criminal revision and obtained the present rule.

Ms. Lucky Ahmed, the learned Advocate appearing for convict-petitioner in the course of argument takes me through the first information report, charge sheet, medical report, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence and then submits that medical report itself manifests that no occurrence took place as alleged in the first information report inasmuch as the informant stated in the first information report that the accused-petitioner dealt a shabol blow on her left side of forehead at about 9 p.m. on 18.08.2008 although doctor saw her on 19.08.2008 at about 1:50 p.m. and it is on record, the informant victim did not admit in hospital. The learned Advocate further submits that according to first information report the occurrence took place on 18.08.2008 at 9:00 p.m.

although the first information report was lodged long lapse of 1 month 17 days on 05.10.2008 without any reasonable or believable explanation for delay whatsoever and this inordinate delay in lodging the first information report creates a serious doubt as to truthfulness of the case but without considering all these vital aspects of the case the learned Senior Judicial Magistrate erroneously found the accused-petitioner guilty for the offence under section 324 of the Penal Code and accordingly sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment of a period of 1 (one) month more which occasioned a miscarriage of justice and as such, the judgments of 2 courts below are liable to be set-aside. The learned Advocate next submits that in this case as per first information report only one eye witness named, Siraj Bepary (husband of the informant-victim) and other close neighbours were not examined which calls for a presumption under section 114(g) of the Evidence Act to the effect that had they been examined in this case they would not have supported the prosecution case and the benefit of this defect will go to the accused appellant. Finally, the learned Advocate submits that the injury as mentioned in

the FIR does not cover to the provisions of section 324 of the Penal Code. The learned Advocate to fortify his submissions has relied on the decisions reported in 1 BLC 421, 6 MLR (AD) 166, 6 MLR 240, 10 MLR 264, 44 DLR 492.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State-opposite party, on the other hand, simply supports the judgments of 2 Courts below, which were according to her just, correct and proper. She, however, could not refute the submission of the learned Advocate for the petitioner with regard to delay in lodging the FIR as well as the informant victim produced before the doctor after an inordinate delay from the occurrence.

Having heard the learned Advocate and the learned Deputy Attorney General for the parties, perused the criminal revisional application under section 439 read with section 435 of the Code of Criminal Procedure, FIR, deposition of witnesses and other materials on record including the judgments of 2 Courts below, now the only question that calls for my consideration in this Rule is whether the Courts below committed any error in finding the petitioner guilty of the offence under section 324 of the Penal Code.

On scrutiny of the record, it appears that the informant lodged first information report against the convict petitioner and 3 others under sections 447/324/323/379/506 of the Penal Code. Police after completion of usual investigation submitted charge sheet against the accused-petitioner and 2 others under section 447/324/323/379/506 of the Penal Code being charge sheet No. 78 dated 30.10.2008. It further appears that at the trial the prosecution side examined in all 8 witnesses out of which PW-1, informant of the case stated in his deposition stated that occurrence took place on 18.08.2008 at about 9:00 p.m. while the accused persons being armed with lathi, shabol etc. came to her house to kill her husband and then the victim tried to resist them while accused Shaheb Ali dealt shabol blow on her forehead resulting she falls to the ground and at that point of time the accused persons gave blows, kicks on her body and then accused Rokeya snatched away her gold chain from her neck and thereafter the accused persons chased her husband to kill him in a vain. This witness further stated that on hearing hue and cry the witnesses came to the place of occurrence and rescued the informant and her husband from the hand of accused persons and thereafter, the witnesses brought her to local health complex and thereafter, took her to Matlab

Hospital for better treatment, wherein the doctor examined her at 9/10 a.m. This witness also stated that due to taking treatment in hospital as well as to compromise in a vain the matter the delay has been caused in filing the first information report. This witness in her cross-examination stated that- "থানায় যেতে গাড়ীতে আধা ঘন্টা সময় লাগে। এজাহার করার সময় computer operator বাচ্চুকে সাক্ষী মানি নাই। ছেঙ্গারচর থেকে অন্যত্র Refer করার কোন কাগজপত্র দাখিল করি নাই। ছেঙ্গারচর গিয়েছিলাম ভ্যান গাড়ীতে। ভ্যান গাড়ীর চালককে এজাহারে সাক্ষী মানি নাই।" This witness in her cross-examination also stated that- "আসামী ফাতেমা বেগম আমার স্বামী ও আমার বিরুদ্ধে সি.আর ৮২/০৯ মামলা দায়ের করে। সাক্ষী সুফিয়া আমার ননদ হয়। সাক্ষী শামীম আমার দেবর সম্পর্কের হয়। সাক্ষী মিরাজ বেপারী আমার স্বামী। সালাউদ্দিন আমার ভাশুর সম্পর্কের হয়। সাক্ষী মনির হোসেন পাড়া সম্পর্কে ভাশুর হয়। শামসুল হক ভাশুর সম্পর্কের হয়।" This witness in her cross-examination also stated that- "ডাক্তার সাহেবকে কত টাকা দিয়েছে আমি বলতে পারব না।" PW-2, Sufia Begum stated in her deposition that the informant is her sister-in-law, name of the accused persons being Shaheb Ali, Shukkur Ali, Fatema and Rokeya, occurrence took place on 18.08.2008. Place of occurrence informant's house, there were previous land dispute between the parties and out of the said land dispute accused Shaheb Ali being armed with shabol came to the house of the informant and then the

informant came to rescue her husband and at that point of time the accused-petitioner Shaheb Ali gave a shabol blow on the forehead of the informant victim resulting she fallen to the ground and raised hue and cry and thereafter, accused persons gave hand blows on her when accused Rokeya snatched away a gold chain from her neck and the accused persons at the time of leaving the place of occurrence threatened the informant to set fire of their house and to kill the informant's husband. Thereafter, victim was taken to hospital by the local people. This witness in her cross-examination stated that she did not bring the victim in hospital. PW-3, PW-4, PW-5 and PW-6 also gave evidence in support of the prosecution case and made similar statements like PW-2 in respect of all material particulars. PW-7, S.I. Abdul Jalil investigated the case, this witness in his deposition stated that during investigation he visited the place of occurrence, examined the witnesses under section 161 of the Code of Criminal Procedure and on completion of the investigation he found a prima facie case and accordingly submitted charge sheet against the accused petitioner and others and he produced the relevant documents as per requirement of law, which were marked as exhibits.

From the above quoted evidence of the prosecution witnesses, it appears that PW-1, PW-2, PW-3, PW-4, PW-5 and PW-6 are relatives with each other and all of them in their deposition stated that occurrence took place on 18.08.2008 at 9:00 p.m. It further appears that the prosecution witnesses in their respective evidence stated nothing as to the date of admission and the date of discharge of the informant victim from the hospital. Besides, in this case admittedly occurrence took place on 18.08.2008 at night 9:00 p.m. and F.I.R was lodged 1 month 17 days after the occurrence without any proper explanation of delay in lodging the first information report. It further appears that according to FIR and the evidence of PWs the convict -petitioner dealt a shabol blow on the forehead of the victim at 9:00 p.m. on 18.08.2008 but as per medical report it appears that she was brought before the doctor after long time on 19.08.2008 at 1:50 p.m. which was totally unusual and the same creates a reasonable doubt in the mind of the Court as truthfulness of the prosecution case.

In the Case of Abdul Latif alias Budu and 6 others Vs. The State reported in 44 DLR 492, it has been held as follows:

> "Ordinarily when a first information report is lodged soon after the occurrence leaving no scope for consultation and

> fabrication, the presumption is that it is a truthful account eliminating the possibility of substitution or false implication. On the other hand, the Courts have always viewed first information report with grave suspicion when there has been unexplained delay in giving it and under this situation it can be presumed that the delay in the of FIR was used for the purpose of manipulation of the prosecution story."

In the Case of Munsurul Hossain Vs. State reported in 1 BLC 421 it has been held that-

> "The explanation given in the First Information Report and the explanation given out in her deposition in Court are quite contradictory and, as such, the explanation for the delay cannot be accepted and these are not at all satisfactory and cannot be condoned and this sort of unusual delay without satisfactory explanation leads us to hold that the prosecution case has been made very shaky and doubtful and it is fatal for the prosecution as the longer the period of delay, the greater is the suspicion in the prosecution case."

The superior court of this subcontinent has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed first information report not only gets benefit of

the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultation, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same of the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.

I have already indicated that in this case the informant has not properly explained the delay of 1 month 17 days in lodging the first information report. The informant lodged the F.I.R in the police station after an inordinate and unexplained delay of 1 month 17 days. This type of inordinate delay in lodging the FIR corrodes the credibility of the prosecution story, if the said delay is not properly explained and the benefit of this defect should go to the accused petitioner.

Now, I want to deal with the contention raised by the learned Advocate, as regards drawing of adverse inference against the prosecution under Section 114(g) of the Evidence Act, for non-examination of the material witnesses, as according to

Ms. Lucky Ahmed, if the eye witness (husband of informant victim, Siraj Bepary) would have been examined, then probably the ocular version of the eyewitness would have stood falsified. Thus, it can be said that the entire prosecution case may be disbelieved by applying a straight jacket formula of non-examination of a material witness and drawing of adverse inference under Section 114(g) of the Evidence Act.

I have already noticed that in this case a number of charge sheeted witnesses, specially some of the close neighbours including the eye witness Siraj Bepary have not been examined by the prosecution which calls for a presumption under section 114(g) of the Evidence Act to the effect that had they been examined in this case they would not have supported the prosecution case and the benefit of this defect will go to the accused appellants

As discussed above, there are so many limps and gaps as well as doubts about the existence of the facts as well as circumstance. In that light, it creates a doubt in the case of the prosecution about the accused being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused petitioner by giving

the benefit of doubt. In that light, the judgments of the Courts are to be interfered with.

In the result, the Rule is made absolute. The impugned judgment and order dated 05.08.2019 passed by the learned Sessions Judge, Chandpur in Criminal Appeal No. 129 of 2015 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 22.12.2015 passed by the learned Senior Judicial Magistrate, 4th Court, Chandpur in G.R No. 85 of 2008 (Matlob Uttar) corresponding to Matlob Uttar Police Station Case No. 01 dated 05.10.2008 convicting the petitioner under section 324 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 5,000/- (five thousand) in default to suffer simple imprisonment for a period of 1 (one) month more is set-aside and the accused-appellant, Shaheb Ali is acquitted of the charge levelled against him.

Convict appellant, Shaheb Ali is discharged from his bail bond.

Send down the lower Court records at once.