IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 208 of 2021

Md. Abul Hashem @ Rubel
...Convict-Appellant-Petitioner
-Versus-
The State
.....Respondent-Opposite Party

Ms. Bulbul Rabeya Banu, Advocate
.....For the petitioner.

Mr. S. M. Aminul Islam Sanu, DAG with
Mr. Md. Nasimul Hasan, AAG with
Mr. Md. Golamun Nabi, AAG and
Ms. Farhana Abedin, AAG
..... For the State.

Heard on 12.01.2026, 13.01.2026 and 20.01.2026
Judgment on 28.01.2026.

This Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and order dated 04.11.2012 passed by the learned Additional Sessions Judge, 2nd Court, Chattogram in Criminal Appeal No. 79 of 2011 dismissing the appeal and

thereby affirming the judgment and order of conviction and sentence dated 14.07.2011 passed by the learned Additional Chief Judicial Magistrate, Chattogram in Druto Bichar Case No. 10 of 2009 arising out of Hathazari Police Station Case No. 03 dated 04.09.2009, corresponding to G.R. No. 209 of 2009 convicting the petitioner under Section 4(1) of the Ain Sringkhola Bighnokari Aparadh (Druto Bichar) Ain, 2002 and sentencing him there under to suffer rigorous imprisonment for 02(two) years and to pay a fine of Taka 2,000/- (two thousand), in default to suffer 01(one) month imprisonment, should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that one Shere Farhad Bhuiyan, as informant, lodged First Information Report (FIR) with Hathazari Police Station on 04.09.2009 alleging *inter alia* that on 03.09.2009 at about 11:00 p.m. the accused-persons hired a CNG auto rickshaw for Taka 300/- (three hundred) to go to Kalibari road. When

the CNG reached near the gate of Brojodham Ashram, Enayetpur, Police Station-Hathajari, the accused asked the informant to stop the vehicle. At that time, one of the accused allegedly took out a sharp knife from his waist and threatened him not to raise any alarm. One of them snatched cash amounting to Taka 700/- (seven hundred) from his pocket and demanded the key of the vehicle. Thereafter, one of them took the driver's seat, while the others took away the vehicle along with key. The informant then raised alarm shouting "*Dakat-Dakat*" and chased the vehicle. Hearing the alarm, local people came forward and managed to apprehend two of the accused red-handed while two fled away. In the meantime, police arrived at the spot and took the apprehended two accused into custody. Hence, the case.

On closure of Investigation, the Investigating Officer submitted police report No. 155 dated 12.09.2009 recommending prosecution under Section 4(1) of Ain Sringkhala Bignakari Aparad (Druta Bichar) Ain, 2002.

Eventually, the case record was transmitted to the Additional Chief Judicial Magistrate, Chattogram and was registered as Druta Bichar Case No. 10 of 2009. Thereafter, upon taking cognizance of offence, charge was framed on 13.10.2009 under Section 4(1) of Ain Sringkhala Bignakari Aparad (Druta Bichar) Ain, 2002 against the accused. Then the accused pleaded not guilty and claimed to be tried when the charge was readout and explained to him. In course of trial the prosecution examined as many as 13 witnesses to prove the indictment.

Upon conclusion of trial and hearing the parties, the learned Additional Chief Judicial Magistrate convicted the petitioner and others under Section 4(1) of Ain Sringkhala Bignakari Aparad (Druta Bichar) Ain, 2002 and sentenced them to suffer rigorous imprisonment for 02(two) years and fine of Taka 2,000/- (two thousand) in default to suffer 01(one) month rigorous imprisonment by judgment and order dated 14.07.2011.

Against the judgment and order of conviction and sentence the convict-petitioner filed Criminal Appeal No. 79 of 2011 before the learned Sessions Judge, Chattogram. On transfer, the appeal was heard by the learned Additional Sessions Judge, 2nd Court, Chattogram who dismissed the appeal by its judgment and order dated 04.11.2012 affirming the conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order the petitioner preferred this instant Criminal Revision and obtained Rule. This Court enlarged the petitioner on bail for 1(one) year on 01.02.2021.

Ms. Bulbul Rabeya Banu, learned Advocate appearing on behalf of the petitioner contends that there is no specific allegation against the petitioner in the FIR and it is not clear that from whom the alleged knife was recovered and was not identified properly as there was no scope to identify an accused by the insufficient light of Brojadam Gate at Enayetpur, Hathajari. She further contends the police forcibly took signatures from the seizure list witness on a

blank paper and thus search was not conducted in accordance with Section 103 of the Code of Criminal Procedure and as such the judgment and order of conviction and sentence is liable to be set aside. In support of her contention learned Advocate relied upon the decision passed in ***A Wahab alias Abdul Wahab Vs. The State***, reported in 60 DLR 34.

She next contends that PW2, Anisur Rahman, A.S.I. of the police stated that the knife was recovered from the joint possession of Abul Hashem alias Rubel and Hamidul Islam which creates a serious doubt regarding the prosecution case.

She finally submits that the CNG Driver, Shere Farhad Miah was the only eye witness and no other witness saw the occurrence.

Ms. Bulbul contends that the petitioner has already suffered imprisonment for about 01(one) year and 09 (nine) months out of 02(two) years and the petitioner is not habitual offender, and he has no previous criminal

antecedent, and he is extremely poor and is the sole earning member of his family.

On these grounds, learned Advocate for the petitioner prays for making the Rule absolute.

Per contra, Ms. Farhana Abedin, learned Assistant Attorney General contends that there are specific allegations against the petitioner in the FIR which was duly proved and corroborated by PW1.

She next submits that PW-1, Shere Farhad Bhuiya proved that a 10 inch length knife was recovered from the waist of the accused Abul Hasem and the trial Court upon proper appreciation of evidence, rightly convicted and sentenced the petitioner, warranting no interference by this Court.

She finally prays for discharging the Rule affirming the judgments and orders of conviction and sentence.

I have considered the submissions advanced by the learned Advocates for the respective parties and perused the

impugned judgments and orders, Annexure and other materials on records.

PW2, A.S.I., Md. Anisur Rahman, who prepared the seizure list stated in his cross-examination that "বর্ণিত জব্দ তালিকা তিনি নিজে তৈরী করেছেন। জব্দ তালিকায় জব্দকৃত ছোরাটি ধৃত দু'জন আসামী থেকে যৌথভাবে উদ্ধারের কথা লিখা আছে।" It appears from the above-mentioned evidence, it is stated that the alleged knife was recovered from joint possession of two accused persons which contradicts the prosecution version and creates serious doubt regarding the alleged recovery.

Out of three seizure list witnesses only Babu Bitu Banik and Shimul Sen were examined. However, they failed to prove preparing of the seizure list.

PW3, Babu Bitu Banik did not support the alleged recovery. He deposed in his cross-examination that "উদ্ধারকৃত ছোরাটি দূর হইতে দেখিয়াছি। পুলিশ কর্তৃক আসামী রুবেলের দেহ তল্লাশি করতে দেখিনি।" PW4, Shimul Sen, in his examination-in-chief deposed: "উপস্থিত লোকজন বলে আসামী থেকে একটি চাকু পাওয়া গেছে। এ চাকু তিনি দেখেননি। ঘটনাস্থলে পুলিশ একটি সাদা কাগজে তার দস্থখত নেন। এ

সাদা কাগজে জব্দ তালিকায় তার দস্থখত প্রদর্শনী ২/৩ হিসেবে চিহ্নিত করেন।" In cross-examination he stated: "কোন ছোরা উদ্ধার করতে দেখিনি, শুনেছি।" PW6, S.I., Md. Abdul Rashid, deposed in his cross-examination that: "তিনি রেকর্ডিং ভিন্ন এই মামলার আর কিছু জানেন না।" ..."তিনি কোন আলামত জব্দ করেননি।"

It further appears from the record that one seizure list witness was not examined without any explanation. The seizure list witnesses did not support alleged search and recovery. Thus, it is evident that search was not conducted in accordance with Section 103 of the Code of the Criminal Procedure though there was ample scope of making search complying with the mandatory provision of that section. Recovery of knife remains unproved. In this way, prosecution version becomes doubtful. Benefit of doubt must go in favour of the accused. Non-proof of knife is a fatal defect when it is an ingredient of the offence arraigned. The prosecution case hinges upon the alleged recovery and use of a knife which is claimed to be the deadly weapon employed in the commission of the alleged offence.

However, none of the seizure list witnesses supported the alleged recovery nor the seized knife has been proved in accordance with law. The Courts below without considering this vital infirmity convicted the petitioner under Section 4(1) of the Ain which clearly amounts to misreading and non-consideration of materials evidence. Such conviction therefore, cannot be sustained in law.

PW1, Shere Farhad Bhuiya, informant categorically stated that accused Hashu had snatched Taka 750/-(seven hundred fifty) and the key the of the vehicle from his pocket and handed over those to accused Fufan. PW1, informant categorically described the incident stating that "আসামীগণ গাড়ী হইতে নামিয়া ভাড়া দেওয়ার ভান করিয়া সামনে আসে এবং তাহাদের একজন হঠাৎ সংবাদদাতার গলায় ধারালো ছুরি ধরিয়া কথা বলিতে নিষেধ করে। আসামী হামিদুল ইসলাম তাহার শার্টের কলার ধরিয়া তাহাকে গাড়ী হইতে নামায় এবং আসামী কৃষ্ণ প্রকাশ ফুফন চালকের আসনে বসে। আসামী হাসু তাহার পকেট হইতে ৭৫০/- টাকা ও চাবি নিয়া আসামী ফুফানের হাতে দেয়।" It is evident from this testimony that there is no allegation of snatching of Taka 750/-(seven hundred fifty) against the petitioner-Abul

Hashem alias Rubel. The overt acts of allegations are against Hamidul, Krishna alias Fufan and Hasu.

On careful scrutiny of the impugned judgment, I find that the trial Court failed to properly consider the aforesaid material discrepancies and proceeded to convict the accused-appellants on conjectures and surmise rather than on legally admissible and reliable evidence. The findings of the trial Court thus suffer from misreading and non-consideration of material evidence on record.

The record shows that the petitioner has already suffered substantial imprisonment and he is not a habitual offender and has no previous criminal record.

In view of the facts and circumstances discussed above, I am of the considered view that prosecution has miserably failed to prove the charge against the petitioner beyond reasonable doubt and that both the Courts below committed an error of law in convicting the petitioner under Section 4(1) of the Ain Srinkhola Bignokari Aparadh (Druta Bichar) Ain, 2002 and sentencing him thereunder to suffer

rigorous imprisonment for 02(two) years and to pay fine of Taka 2,000/- (two thousand). The accused-petitioner is therefore entitled to the benefit of doubt.

In the result, the Rule is made absolute.

The judgments and orders of conviction and sentence so far as it relates to the petitioner passed by the Courts below are hereby set aside.

The petitioner is acquitted of the charge levelled against him.

Since the petitioner was enlarged on bail he may be discharged from his bail bond immediately.

Let a copy of this judgment along with lower Court's record be communicated to the concerned Court forthwith.

(*Md. Bashir Ullah, J*)