

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1211 of 2005

Syed Ahmed Mall and others

...Convict-petitioners

-Versus-

The State and another

...Opposite parties

No one appears.

...For the convict-petitioners

Ms. Sharmin Hamid, A.A.G with

Mr. Sultan Mahmood Banna, A.A.G

...For the State

Heard on 30.01.2025

**Judgment delivered on 05.02.2025**

On an application filed under Section 439 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of conviction and sentence dated 12.06.2005 passed by the Additional Sessions Judge, Bhola in Criminal Appeal No. 8(1)/02 affirming the judgment and order of conviction and sentence dated 11.06.2001 passed by the Additional District Magistrate, Bhola in G.R. Case No. 149 of 1995 arising out of Bhola P.S. Case No. 12 dated 10.05.1995 convicting the petitioners Syed Ahmed Mall, Amir Hossain, Obydul Huq Dewan and Syed Ahmed Dewan under Section 324 of the Penal Code, 1860 and sentencing them to suffer rigorous imprisonment for 1(one) year and convicting the accused Azizul Islam under Section 323 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for 1(one) year should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution case, in short, is that the convict-petitioner along with other accused persons armed with lathi, shurki, cheni and other dangerous weapons having formed an unlawful assembly entered into the land belonging to the informant and her mother and

damaged the paddy field on 10.05.1995 at 8/9 am. The informant Shamsunnahar and her son attempted to restrain the accused persons. At that time, the accused persons attacked them and they took shelter in their house. Hearing their hue and cry, the neighbour assembled at the place of occurrence and tried to resist the accused persons. At that time, the accused persons beat witnesses Nazrul Isam, Md. Hadis, Abul Kalam and Azizul Islam by shurki and lathi. The accused Azizul Islam dealt a lathi blow to the head of witness Azizul Islam which caused the bleeding injury. The accused Syed Ahmed Mall dealt a Shurki blow on the head of Nazrul Islam which caused an injury on his left thigh. The accused Amir Hossain dealt a Shurki blow to the back of witness Md. Hadis which caused bleeding injury. The accused Syed Ahmed Dewan dealt a cheney blow on the back of witness Md. Hadis. The accused Obydul Huq Dewan dealt a shurki blow on the left thigh of witness Abul Kalam which caused grievous bleeding injury. Thereafter, the accused persons attacked the house of the informant and looted away the valuable goods valued at Tk. 13,000 from her house. Hearing the hue and cry the neighbour assembled at the place of occurrence and heard the occurrence. The victims were taken to the hospital with the help of the locals. After collecting the medical certificate from the hospital, the informant lodged the FIR.

The police took up the investigation of the case. During the investigation, the Investigating Officer P.W. 9 S.I Md. Zayed Ali took up the investigation of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized the alamat and collected the medical certificate of the witnesses. After completing the investigation, he found the truth of the allegation made against the accused persons in the FIR and submitted a charge sheet on

07.08.1995 against them under Sections 147/ 148/ 447/ 448/ 326/ 324/427 and 380 of the Penal Code, 1860.

During the trial, the charge was framed against the accused persons under Sections 147/148/323/325/380/34 of the Penal Code, 1860, which was read over to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 9(nine) witnesses to prove the charge against the accused persons and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused persons were examined under Section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any D.W.

After concluding the trial, the Additional District Magistrate, Bhola by judgment and order dated 11.06.2001 convicted the accused Syed Ahmed Mall, Amir Hossain, Obydul Huq Dewan and Syed Ahmed Dewan under Section 324 of the Penal Code, 1860 and sentenced them thereunder to suffer rigorous imprisonment for 1(one) year and convicted the accused Azizul Islam under Section 323 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 1(one) year against which the accused-persons filed Criminal Appeal No. 8(1)/02 before the Sessions Judge, Bhola. After hearing the appeal, the Additional Sessions Judge, Bhola, by impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioners obtained the instant Rule.

No one appears on behalf of the convict-petitioners.

Learned Assistant Attorney General Mr. Sultan Mahmood Banna appearing on behalf of the State submits that P.Ws 1, 3, 4 and 6 are the victims of the occurrence and P.Ws 2, 5 and 7 are the hearsay witnesses of the occurrence and the evidence of the direct witnesses is corroborated by P.W. 8 Dr. Md. Abdul Goni and the medical certificate issued by him and the prosecution proved the charge against the accused-persons beyond all reasonable doubt and

both the Courts below on proper assessment and evaluation of the evidence of the prosecution witnesses arrived at a concurrent finding of fact as to the guilt of the accused-persons and legally convicted the petitioners. He prayed for discharging the Rule.

I have considered the submission of the learned Assistant Attorney General Mr. Sultan Mahmood Banna, who appeared on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it appears that P.WS 1, 3, 4, 6 and 7 are the direct witnesses of the occurrence. After the occurrence, they were taken to the local hospital and P.W. 8, Dr. Md. Abdul Goni, treated them in the hospital and issued the medical certificate (exhibit 2 to 5). The P.Ws 2, 5 and 7 are the hearsay witnesses.

P.W. 7 Afizal stated that the accused Azizul Islam dealt a lathi blow on his head, which is corroborated by the direct witnesses P.Ws 1, 3, 4 and 6. The blood-stained cloth of Azizul Islam was proved as exhibits Cha, Chha and Ja. The evidence of P.W. 7 regarding the head injury is also corroborated by the medical certificate (exhibit 2) issued P.W. 8 Dr. Md. Abdul Goni, Medical Officer, Bhola Sadar Hospital. P.W. 2 Nazrul Islam stated that the accused Syed Ahmed dealt a shurki blow on his thigh which is corroborated by the P.Ws 1, 3 and 4. The evidence of P.W. 2 as regards the injury caused by accused Syed Ahmed is also corroborated by the medical certificate (exhibit 3) issued by P.W. 8. The blood stain lungi and genji of the victim Nazrul Islam was also proved as material exhibit Ka and Kha. P.W. 6 Md. Hadis stated that the accused Amir Hossain dealt a shurki blow on his back which is corroborated by P.Ws. 1, 3 and 4. P.W. 2, 5 and 7 who assembled at the place of occurrence also corroborated the evidence of P.W. 6. The evidence of P.W. 6 regarding his injury sustained on his back is also corroborated by the medical certificate issued by P.W. 8 and his

blood stain cloth was also proved as material exhibit (Zha and Neo). P.W. 6 Md. Hadisur Rahman also stated that the accused Syed Ahmed Dewan dealt a chenai blow on his back which is also corroborated by P.Ws 1, 2, 5 and 7. The evidence of P.W. 6 regarding the injury sustained by the accused Syed Ahmed Dewan is also corroborated by the medical certificate issued by P.W. 8. P.W. 4 Abul Kalam stated that the accused Obydul Huq Dewan dealt a shurki blow on his left thigh which is corroborated by P.Ws 1, 2, 3, 6 and 7. The evidence of P.W. 4 as regards the injury sustained by the accused Obydul Huq Dewan is also corroborated by the medical certificate issued by P.W. 8. From the evidence discussed hereinabove, it appears that the prosecution proved the charge against the accused (1) Syed Ahmed Mall, (2) Amir Hossain, (3) Obydul Huq Dewan and (4) Syed Ahmed Dewan under Section 324 of the Penal Code, 1860 and against the accused (5) Azizul Islam under Section 323 of the Penal Code, 1860.

On perusal of the evidence of the prosecution witnesses, it is found that before the occurrence, criminal cases were pending between the convict-petitioners and the informant party. Considering the evidence, facts and circumstances of the case and the gravity of the offence, I am of the view that ends of justice would be best served if the sentence passed by the trial Court is modified as under;

The convict-petitioners Syed Ahmed Mall, Amir Hossain, Obydul Huq Dewan and Syed Ahmed Dewan are found guilty of the offence under Section 324 of the Penal Code, 1860, and they are sentenced thereunder to suffer imprisonment already undergone. The accused Azizul Islam is found guilty of the offence under Section 323 of the Penal Code, 1860 and he is sentenced to suffer imprisonment already undergone.

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

Send down the lower Court's records at once.