

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

Present

Mr. Justice Mamnoon Rahman

Criminal Revision No. 4351 of 2023

In the matter of:

Md. Rostam Ali and another.

..... petitioners.

-Vs-

The State

..... opposite party.

Mr. Faisal Mahmud Faizee, Senior Advocate

With

Mr. Syed Minhaj Uddin, Advocate

.....for the petitioners.

Mr. Mohammad Taifoor Kabir, D.A.G

with

Mr. Md. Lokman Hossain, A.A.G

and

Mr. Md. Hatem Ali, A.A.G.

.....for the opposite party.

Heard on:30.05.2024 And

Judgment On: 03.06.2024

In an application under section 439 read with section 435 of the Code of Criminal Procedure, rule was issued on 31.10.2023 in the following terms:

“Let a rule be issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 25.09.2023 passed by the learned Additional Sessions Judge, 1st Court,

Brahmanbaria in Criminal Appeal No. 71 of 2021 allowing the appeal in part and thereby affirming the order of conviction and sentence dated 17.02.2021 in respect of the petitioners passed by learned Chief Judicial Magistrate, Brahmanbaria in C.J.M. Case No. 406 of 2020 corresponding to G.R. No. 17 of 2020 (Ashuganj) arising out of Ashuganj Police Station Case No. 17 dated 18.01.2020 convicting the petitioner No. 1 under Section 326/114 of the Penal Code and sentencing him to suffer rigorous imprisonment for a period of 4 (four) years and also to pay a fine of Tk. 1,000/-(one thousand), in default to suffer simple imprisonment for 1(one) month more and also convicting the petitioner No. 2 under Section 323 of the Penal Code and sentencing him to suffer imprisonment for a period of 1(one) year and also to pay a fine of Tk. 500/- (five hundred) in default to suffer simple imprisonment for 15(fifteen) days more and setting aside the aforesaid judgment and order of conviction and sentence dated 17.02.2021 in respect of order 5(five) convict-appellants, 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 informant Abdur Rouf is the father of the witness NO 1 namely Mahbub Alam (injured) and grandfather of the witness NO. 2 namely Mayazi Mahbub (injured) that the informant party and the accuseds are the neighbor of the same village and few criminal cases are pending regarding Kharasar Dighi between parties that the accused party were put threat to life to the informant for purpose of the pending criminal cases and resulting the informant party lodges two GD entry in the Ashugonj Police Station being GD No. 492 dated 14.07.2019 and 705 dated 20.08.2019 that after knew about these G.D. on 17.01.2020 at 08:00 hours the accused persons were attacked the victims with pre-plan and grievous hurt the victims and the accused No.1 took a mobile set price about Tk.10,570/- from the witness No. 1 and accused No. 7 also took a apple mobile set price about Tk. 70,000/- from the witness No.1, after shouting the victims thereafter accuseds were rushed to the place of occurrence and the informant party found the victims lying as grievous hurt, bleeding injuries over their bodies and senseless, thereafter the informant took them to the Sadar Hospital of Brahmanbaria by Microbus and then the authority of the said Hospital referred to the Dhaka Medical Hospital for better treatment of the victim, hence the case.

The police registered the case as Ashuganj Police Station Case No. 17 dated 18.01.2020 and proceeded with the same. The

investigating Officer visited the place of occurrence, prepared a sketch map and also seized the Alamat. The investigating Officer also examined the witnesses under section 161 of the Code of Criminal Procedure and, thereafter, submitted a charge sheet No. 57 dated 23.04.2020. Eventually, the case was ready for trial before the Court of the Chief Judicial Magistrate, Brahmanbaria being C.J.M. Case No. 406 of 2020 corresponding to G.R. Case No. 17 (Ashuganj). The trial Court framed charges against the accused persons and proceeded with the trial. During trial, the prosecution examined as many as 06(six) witnesses. The Court below examined the accused persons under section 342 of the Code of Criminal Procedure, wherein the accused persons pleaded not guilty and tried to adduce defence witnesses. Consequently, the defence adduced 02(two) witnesses who were examined by the defence and cross-examined by the prosecution. The trial Court after hearing the parties and considering the facts and circumstances, vide the impugned judgment and order dated 17.02.2021 convicted and sentenced the accused persons including the petitioner. Thereafter, the petitioner preferred appeal before the Sessions Judge, Brahmanbaria being Criminal Appeal No. 71 of 2021, and the same was heard and disposed of by the learned Additional Sessions Judge, 1st Court, Brahmanbaria who vide the impugned judgment and order dated 25.09.2023 allowed the appeal-in-part

wherein the lower appellate Court affirmed the judgment and order of conviction and sentence passed by the trial Court, so far it relates to the present petitioners and acquitted the others from the charge leveled against them. Being aggrieved the petitioner moved before this Court by way of revision and obtained the present Rule.

Mr. Faisal Mahmud Faizee, Senior Advocate along with Mr. Syed Minhaj Uddin, the learned Advocates appearing on behalf of the petitioners submit that both the Courts below without applying their judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner passed the impugned judgment and order of conviction and sentence which requires interference by this Court. He submits that in the different cases in hand the prosecution miserably failed to prove the charge against the petitioner beyond all reasonable doubt and there are material contradictions between the evidence both oral and documentary and the petitioners are liable to get the benefit of the doubt. He submits that the prosecution case in hand failed to prove the place and manner of occurrence, as well as, that there are serious contradictions between the testimony of the prosecution witnesses. The learned counsel further submits that there are material contradictions in between the First Information Report (FIR) story and the deposition made by P.W. 1, who is the informant as many as there is no eye witness of the

occurrence except the victim and also none of the independent witnesses deposed against the present petitioners.

Mr. Md. Lokman Hossain, Assistant Attorney General with Mr. Md. Hatem Ali, Assistant Attorney General appearing on behalf of the State vehemently opposes the Rule. He submits that the Courts below on proper appreciation of the facts and circumstances, materials on record, evidence both oral and documentary passed by the impugned judgment and order which requires no interference by this court.

I have perused the impugned judgment and order of conviction and sentence passed by both the Courts below, revisional application, grounds taken thereon, paper and document annexures, as well as, the Lower Court Records. I have also heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General for the opposite party.

On perusal of the same, it transpires that the petitioner along with 06 others stood charge for the offence under section 143/341/323/325/326/307/379/506/114 of the Penal Code. During trial, the court below-framed charge and prosecution examined as many as 06(six) witnesses and the defence adduced two witnesses. The trial court on consideration of evidence both oral and documentary convicted and sentenced the present petitioners along with other

accused persons. However, on appeal the lower appellate court affirmed the judgment and order of conviction and sentenced so far it relates to the present petitioners rather than acquitting the other accused persons, who were convicted in the trial Court.

P.W. 1 in his deposition stated that the occurrence took place at about 08:00 P.M. on the date of occurrence in front of the house of Abdul Mozid Sarkar. The accused persons indiscriminately injured the victim, namely Hasan, as such, the informant petitioner Rustom Ali ordered to kill the victim and also gave a Dao blow in the head, the victim also accused Zakir, Jahir, and others including the petitioner Hasan Miah injured the victim with different sharp cutting weapons. They also took some money from his pocket as per P.W. 1. After hearing hue and cry, he went to the place of occurrence and took them to Hospital for treatment. In his cross-examination he stated that the FIR was drafted by a lawyer and the same was typed in the local Bazar. He also stated that he did not mention in the statement how he identified the accused persons and further stated that the place of occurrence was 200 yards from his house. P.W. 2 is a doctor who proves the medical certificate. P.W. 3 is an Investigating Officer, who in his deposition stated that he investigated the matter, went to the place of occurrence, prepared a seizure list, sketched a map, examined the witnesses under section 161 and ultimately submitted the charge sheet.

P. W. 4 who is the victim Mahabub in his deposition stated that while he was returning home the accused persons attacked and injured him indiscriminately. In his cross-examination he admitted about the previous enmity. He also stated that there was no light at the time of occurrence. P.W. 5 who is a local witness stated about the occurrence, however, in his cross-examination he stated that he was the nephew of the informant. P.W. 6 is the son of the victim Mahabub stated that the accused persons attacked his father. However, from the trend of examination and cross-examination of D.Ws. 1 and 2, it transpires that the petitioners were not present at the time of occurrence in any manner.

On meticulous perusal of the evidence, it transpires that though as per the informant, the occurrence took place in front of the house of Motin Sarkar who was not examined. It also clearly transpires that although the informant stated about the manner of injuries by a different person though he is not an eye witness, as per the informant he went to the place of occurrence after hearing hue and cry. It also appears that there are many discrepancies regarding the injuries as found in the medical report and evidence for which the lower appellate Court acquitted 06(six) accused persons. It further transpires that in the present case in hand no single independent witnesses were examined, though as per the informant, many people gathered immediately after

the occurrence in question. The manner of occurrence as stated by the victim P.W. 4 cannot be accepted as because a person which under attacked cannot specify the injury caused by a different person, There is a clear admission that there are serious enmities in between the parties regarding land and others aspect as many as the occurrence took place where are insufficient light and the identification of the accused persons are not proved beyond all reasonable doubt. Hence, I find substance in this Rule, Accordingly, the Rule is made absolute and the impugned judgment and order passed by the courts below, so far it relates to the present petitioners are hereby set aside and the petitioners are released from their bail bonds.

Send down the Lower Court Records with the copy of this judgment to the concerned Court below at once.

(Mamnoon Rahman, J:)

MatiarRahaman (BO)