

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

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No.230 of 2007

Md. Nurul Islam

.....Convict Petitioner

-versus-

The state

.....Opposite Party

Mr. Syed Mizanur Rahman, Advocate

.... For the convict petitioner

Mr. S.M. Golam Mostofa, DAG with

Mr. A. Mannan, AAG

...For the State

Heard on 31.01.2024, 07.02.2024

Judgment delivered on 11.02.2024.

The Rule under section 439 of the Code of Criminal Procedure, 1898 was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 14.08.2006 passed by Metropolitan Additional Sessions Judge, Court No. 2, Dhaka in Metropolitan Criminal Appeal No. 158 of 1999 affirming the judgment and order of conviction and sentenced dated 12.01.1993 passed by Metropolitan Magistrate, Dhaka in Kotwali Police Station Case No. 25(12)1990, G.R. No. 5473 of 1990 convicting the petitioner under sections 379/511 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 06 months 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 prosecution case, in short, is that the informant P.W. 2 Tofazzal Hossen is the employee of Elias Brothers at Moulvibazar, Dhaka. On 30.12.1990 at 1.30pm he went to Thathari Bazar to realize the outstanding dues from Delowar Hossen of Thathari Bazar. After realization of Tk. 50,000, he along with Abdul Khaleque keeping those money in a packet made of paper were returning from Thathari Bazar to Moulvibazar by a rickshaw. When they reached at Alo Bazarmor two unknown persons called them and stopped their rickshaw in front of the Hossen Market at Alo Bazarmor and made attempt to snatch away the money kept in his hands. At that time, he took shelter in the shop of the said market. The shopkeepers wanted to know about the occurrence. One person who was following him entered the market. Hearing hue and cry of P.W 2, the shopkeepers of the market detained that person and another person fled away. On interrogation, the detained person disclosed his identity as Constable Nurul Islam of Police and another Constable Akter Hossen of Police fled away. Both of them were serving at Rajarbag Police Line. The accused was taken to another market situated in front of Dhaka Hotel and informed the matter to the police control room at 1.30pm. After that, the police taken him to Thana.

P.W. 1 took up investigation of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. He also seized the money and prepared the seizure list. He obtained sanction for submitting the charge sheet against the accused persons and accordingly submitted charge sheet against them under sections 341/ 379 and 511 of the Penal Code, 1860. During trial, charge was framed against the accused persons under section 379 read with section 511 of the Penal Code, 1860. The charge framed against the accused persons were read over and explained to them and they pleaded not guilty to the charge and claimed to be tried in accordance with law.

The prosecution examined 8(eight) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he again pleaded not guilty to the charge and claimed to be tried in accordance with law. After concluding trial, the Metropolitan Magistrate, Dhaka by judgment and order dated 12.01.1993 convicted the petitioner under section 379 read with section 511 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 06 (six) months.

Being aggrieved by and dissatisfied with the impugned judgment and order passed by the trial court, the accused filed Criminal Appeal No. 158 of 1999 before the Metropolitan Sessions Judge, Dhaka. The appeal was heard by the Metropolitan Additional Sessions Judge, Court No. 2, Dhaka who by impugned judgment and order affirmed the judgment and order of conviction and sentence passed by the trial court against which the convict petitioner obtained the instant Rule.

P.W. 1 Chowdhury Tariqul Alam is the investigating officer. He stated that on 13.12.1990 he was posted at Matijeel Thana as Sub-Inspector. On that day, the informant P.W. 2 Md. Tafazzal Hossen lodged the FIR and Sub-Inspector Md. Jamir Uddin filled up the FIR form and his handwriting was known to him. He proved the FIR form as exhibit-1 and his signature as exhibit-1/1. During investigation, he visited the place of occurrence, prepared the sketch map and index. He proved the sketch map as exhibit-2 and his signature as exhibit-2/1. He seized the alamat. He proved the seizure list as exhibit-3 and his signature as exhibit-3/1. He seized Tk. 50,000 and handed over the money to the owner of the shop. He proved the Zimmanama(bond) as exhibit-4 and his signature as exhibit-4/1. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After investigation, he found prima facie truth of the allegation against the accused persons and submitted charge sheet on 26.02.1991 against them under sections 341/379/511 of the Penal Code,

1860. He identified the accused Constable Md. Nurul Islam in Court. During cross-examination, he stated that on 30.12.1990 he went to the place of occurrence along with force. After lodgment of the FIR at 21.45 hours, he went to the place of occurrence. He affirmed that before submission of the charge sheet, he obtained the sanction from the authority. The place of occurrence is a road in front of the Hossen Market at Alo Bazarmor. He affirmed that he did not find the address of the rickshaw puller of the victim and other rickshaw puller. He did not record the statement of Delowar Hossen. He could not say whether Delowar Hossain died. He denied the suggestion that at the time of altercation, the accused was detained and to take the revenge he was falsely implicated in this case.

P.W. 2 Tafazzal Hossain stated that on 13.12.1990 at 1.30pm the occurrence took place. On that day at 10.00 am, his employer Md. Elias send him to realize the outstanding dues from Delwar Hossen of Thatari Bazar. He received Tk. 50,000 and keeping the money in the bag made of paper was returning to Moulvibazar along with another employee A Khaleque. When they reached at Thatari Bazarmor two persons called them. They reached near Alo Bazar in front of Hossen Market. At that time two persons made attempt to snatch away the money and he took shelter in the Hossen Market and raised hue and cry. In reply to a quarry made by the shop owners, he informed that Tk. 50,000 was kept in the bag and an accused entered into the market following him. He identified the accused and the owners of the shops of the market detained him and another accused fled away. The accused was taken to the City Market situated in front of Dhaka Hotel. At that time, he disclosed his identity as police constable and the locals informed the matter to the police control room. After some times, police came to the place of occurrence. He disclosed about the occurrence to the police and the accused was handed over to police. The police officer prepared the Zimmanama(bond) and handed over the money to the custody of the owner. He went to Thana along with the police and lodged the FIR. He proved the FIR as exhibit-5 and his signature as exhibit-5/1. The detained accused is present in court. During cross examination, he stated

that he served one year as employee of Elias Brothers. He was instructed to collect Tk. 50,000 before one day of occurrence. He also collected the money from one Delwar Hossen. At the time of receiving the money, the employee of Delowar was also present there. He could not say total number of the notes of Tk. 1000. The place of occurrence is a road and at the time of occurrence, there were many rickshaw and cars in the road. There were many rickshaws in front of his rickshaw and many persons to the left and right side. He saw nothing in the hands of the accused. The Hossen Market is situated adjacent to the place of occurrence and at the time of occurrence, the said market was opened. He along with another employee of Elias Brothers entered into the market. He denied the suggestion that as a police personnel there was an altercation between the shop owners and the accused and that the shop owners misbehaved with the accused persons. He denied the suggestion that both the accused persons were present in the market and they were falsely implicated in this case.

P.W. 3 Md. Elias is the employer of P.W. 2. He stated that the occurrence took place on 13.12.1991. On the date of occurrence, he along with another employee Khaleque sent them to Thataribazar to bring money from Delowar Hossen. At noon, he got the information that while they were returning after collecting money, the accused persons made attempt to snatch away the money from them and that the accused was detained at Hossen Market. He went to the place of occurrence. The detained person disclosed his identity as police personnel. Subsequently, police came to the place of occurrence and handed over the money to him. In his presence, the money was seized and seizure list was prepared in his presence. The note of Tk. 100, Tk. 50, Tk. 20 and Tk. 10 were seized. He proved the seizure list as exhibit-3 and his signature as exhibit-3/2. He proved his signature on the Zimmanama(bond) as exhibit-4/2. The Sub-Inspector of Police took the accused to Thana. He saw the detained accused at the place of occurrence. Today he is present in court. During cross-examination, he stated that he did not see the occurrence. He heard about the occurrence from others.

P.W. 4 Mokter Hossen is the son of Delowar Hossen and a businessman. He stated that on 31.12.1990 P.W. 2 went to his shop and he paid total Tk. 50,000 to him. At about 10.00 am, he started from his shop along with the money. In the evening, he heard from the Hossen Market that someone made attempt to snatch away the money and detained accused at Hossen Market. He saw the accused and he identified the accused in court. He signed the seizure list. He proved the signature on the seizure list as exhibit-3/3. The note of Tk. 100, Tk. 50, Tk. 20 and Tk. 10 were recovered. During cross-examination, he stated that his father died long 7 years ago. He affirmed that P.W. 2 took the money from him. He denied the suggestion that on that day, he did not go to Hossen Market. He affirmed that the accused snatched away the money.

P.W. 5 Sheikh Selim is a shopkeeper. He stated that on 30.12.1990 the occurrence took place at noon. He saw the accused in the Hossen Market. He saw the bag in the hand of informant at the Hossen Market. P.W. 2 informed him that two persons made attempt to snatch away the money kept in the bag made of paper. Showing the accused, he also told that he chased P.W. 2. The accused disclosed his identity as police personnel. The accused was detained and the matter was informed to the police control room. After that, police came to the place of occurrence and took the accused. During cross-examination, he stated that the accused entered into the market and the informant identified him. He affirmed that he partly witnessed the occurrence.

P.W. 6 Md. Forhad Hossain is a shopkeeper. He stated that on 30.12.1990 the occurrence took place. Hearing hue and cry many people entered into the market. A boy was telling to save him and told that the accused persons made attempt to snatch away the money. He identified the accused and told that he made attempt to snatch away the money. He along with others jointly detained the accused and he disclosed his identity as police personnel. The matter was informed to the employer of P.W. 2 and to the police control room. Police seized the money and took the accused.

During cross-examination, he stated that after entering into the market he witnessed the occurrence. He did not see the occurrence before entered into the market. He denied the suggestion that the accused was falsely implicated in this case.

P.W. 7 Abdul Maleque is an employee of Hossen Market. He stated that on 31.12.1990 at noon he heard hue and cry. The informant entered into the market along with the bag made of paper and requested them to save him and told that the accused made attempt to snatch away the money. The informant showing the accused told that he chased him. The locals assembled at the place of occurrence and detained him. The accused disclosed his identity as police personnel. The informant informed the matter to his employer. The police came to the place of occurrence and took the accused. During cross-examination, he stated that he partly heard about the occurrence from the informant and saw that the informant entered into the market. He could not say whether the accused made attempt to snatch away the money. He denied the suggestion that an altercation took place between the businessman and the accused and he was falsely implicated in this case.

P.W. 8 Nasir Uddin stated that on 30.12.1990 at 1.00 pm a boy entered into the market and raised hue and cry and requested to save him. A man chased him. He hand over the bag made of paper and told that Tk. 50,000 is kept in the bag. On interrogation, he disclosed that he is an employee of a shop at Moulvibazar. The boy took shelter in his shop. At that time another man entered into the market. The boy showing that person told that he chased him. The owners of the shop detained the accused who disclosed that he is police personnel. During cross-examination, he stated that he heard about the occurrence but he did not witness the occurrence. The money was kept in a bag made of paper. He could not say whether on that day the accused went to Thataribazar for personal reason. He denied the suggestion that the accused was falsely implicated in this case.

The learned Advocate Mr. Syed Mizanur Rahman appearing on behalf of the convict petitioner submits that the trial court on assessment of the evidence arrived at a findings that due to non-examination of the A. Khaleque who was returning to Moulvibazar along with the informant by rickshaw from Thataribazar and that non-production of the seized money in court and that Delowar Hossen from whom P.W. 2 received Tk. 50,000 died long before 7 years creates a little bit doubt but the trial court illegally convicted the accused. He further submits that the occurrence took place in a brought day light at about 1.00pm and the place of occurrence is a road of Dhaka City and non of the witnesses present at the road was examined by the prosecution. The prosecution failed to prove the charge by adducing legal evidence against the accused person. Therefore, he prayed for setting aside the impugned judgment and order passed by the courts below.

The learned Assistant Attorney General, Mr. A. Monnan appearing on behalf of the State submits that the accused was detained from the Hossen Market as identified by the informant P.W. 2 and prosecution witnesses stated that P.W. 2 disclosed to them that the accused made attempt to snatch away the money while he was returning from Thataribazar to Moulvibazar. The prosecution proved the charge against the accused beyond all reasonable doubt. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Syed Mizanur Rahman who appeared on behalf of the convict petitioner and the learned Assistant Attorney General who appeared on behalf of the state, perused the evidence, the impugned judgments and orders passed by the courts below and the records.

On perusal of the records, it appears that the place of occurrence is a road at Alo Bazarmor situated in front of Hossen Market. At the time of occurrence P.W. 2 along with another employee Abdul Khaleque were returning from Thatari Bazar by a rickshaw. The prosecution did not examine the said Khaleque and the rickshaw puller. The occurrence took place in brought day light at about 1.00pm and none of the witnesses

present at the Alo Bazarmor at the time of occurrence was examined by the prosecution. P.W. 1 stated that his employer P.W. 2 Elias sent him to Delowar Hossen at Thatari Bazar to realize the outstanding dues and collected Tk. 50,000 from Delowar Hossain and was returning from Thataribazar at the time of occurrence. P.W. 4 Moktar Hossen, son of Delwar Hossain, was examined on 30.12.1991 and the alleged occurrence took place on 30.12.1990. P.W. 4 stated that his father died long 7 (seven) years ago.

On scrutiny of the evidence of P.W 4, it reveals that the Delowar Hossen died long 6 (six) years before the alleged date of occurrence. Therefore, it is clear as day light that the evidence of P.Ws. 2 and 3 that P.W. 2 collected Tk. 50,000 from Delowar Hossen is a lie.

The alleged occurrence took place at about 1.00pm and immediately after the occurrence the matter was informed to the police and police came to the place of occurrence and taken the accused to Thana. On perusal of the seizure list (exhibit-3) dated 30.12.1990 it appears that the seizure list was prepared at 21.45 hours and P.W. 3 Elias and P.W. 4 Mokter Hossen are the witnesses of seizure list. They were not present at the time of recovery of Tk. 50,000 from P.W. 2. The shop owners who were present at the time of alleged recovery of Tk. 50000 and detained the accused were not cited as witnesses in the seizure list. Furthermore, no explanation was given by the prosecution as to why Tk. 50000 was handed over to the custody of P.W. 3 and not produced in court.

The trial court found that A. Khaleque, an employee, of P.W. 2 accompanied him at the time of occurrence, but he was not examined in the case and the father of P.W. 4 died long 6 (six) years back and the money was not produced before the court for which a little bit doubt is created. It is hard to believe that the trial court having found a little bit doubt about the occurrence held that the prosecution proved the charge against the accused beyond all reasonable doubt. A little bit doubt is also a doubt in the eye of

law. There is no scope to find the accused guilty to the charge if the court found that there is a little bit doubt about the prosecution case.

In view of the above evidence, facts and circumstances of the case, findings, observation and the proposition, I am of the view that the appellant court below mechanically passed the impugned judgment and order without going through the judgment and order passed by the trial court. Therefore, both the judgment and order of conviction and sentence passed by the courts below are liable to be set aside.

In the result, the Rule is made absolute.

The impugned judgment and order passed by the courts below against the convict petitioner are hereby set aside.

The convict accused Md. Nurul Islam is acquitted from the charge framed against him. However, he is at liberty to file application to the authority for reinstatement in his service, if so advised.

Send down the lower Court's record at once.

