

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 753 of 2007

Md. Babul and another

...Convict-petitioners

-Versus-

The State

...Opposite party

Mr. Anabilananda Roy, Advocate

...For the convict-petitioners

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G

...For the State

Heard on 28.04.2024, 05.05.2024 and 21.05.2024

Judgment delivered on 26.05.2024

On an application under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 26.04.2007 passed by Metropolitan Additional Sessions Judge, Court No. 2, Chattogram in Criminal Appeal No. 27 of 2007 affirming the judgment and order of conviction and sentence dated 24.01.2007 so far relates to petitioner Md. Khokon and modifying sentence of the petitioner Md. Babul to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,000, in default, to suffer imprisonment for 3(three) months passed by Druta Bichar Adalat, Court No. 1, Chattogram Metropolitan, Chattogram in G.R. No. 879 of 2006 arising out of Kotwali Police Station Case No. 29(12)2006 convicting the petitioners under Section 4 of the আইন-শুধলা বিলকরী অপরোধ (দ্রুত বিচার) আইন, ২০০২ and sentencing them thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 6000, in default, to suffer rigorous imprisonment for 3(three) months 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 P.W. 1 informant FayeZullah, account-holder of Islami Bank Limited, Anderkella

Branch, Chattogram, went to the said bank at 11.00 am for TT of Tk. 3,00,000. He entered the bank and sitting on the sofa kept the money on the table for counting the notes. Suddenly a man who was sitting beside him snatched away one bundle of the note of Tk. 500, total Tk. 50,000, from the table and tried to flee away and another person who was accompanying him also started running to flee away. At that time, Guard Mohammad Shamsul Haque and he chased them. Sheikh Farid, a hawker, who was sitting on the ground floor of the bank also chased them with the help of the locals and detained both of them in front of the Office of the City Corporation. Tk. 50,000 was recovered from the pocket of the pant of one accused. On interrogation, he disclosed his name as Khokan and another accused is Md. Babul. After that, the informant along with the accused persons and recovered money went to the room of the Manager of the bank. At the time of detaining the accused persons, they were beaten by the locals. Hearing the occurrence, police rushed to the bank, detained the accused persons and seized the recovered money. Since there was an urgency, on the request of the informant and recommendation of the Manager of the bank, the recovered Tk. 50,000 was given to the custody of the P.W. 1.

P.W. 11 Zahid Hossain took up the investigation of the case. During the 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. After completing the investigation, he found prima facie truth of the allegation made against the convict-petitioners and submitted charge sheet against them under Section 4 of the আইন-শুধলা বিলকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২. After that, the case record was sent to Druta Bichar Adalat No. 1, Chattogram Metropolitan, Chattogram.

During the trial, charge was framed under Section 4 of the আইন-শুধলা বিলকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ which was read over to the accused-persons who pleaded not guilty to the charge and claimed to be

tried in accordance with the law. The prosecution examined 11(eleven) witnesses to prove the charge against the accused persons. 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 Druta Bichar Adalat, Court No. 1, Chattogram Metropolitan, Chattogram by judgment and order dated 24.01.2007 was pleased to convict the accused Md. Khokan and Md. Babul under Section 4 of the আইন-শুধলা বিলককারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentenced them thereunder to suffer rigorous imprisonment for 5(five) years and fine of Tk. 6,000, in default, to suffer rigorous imprisonment for 3(three) months against which the convict-petitioners filed Criminal Appeal No. 27 of 2007 before the Metropolitan Sessions Judge, Chattogram which was transferred to the Metropolitan Additional Sessions Judge, Court No. 2, Chattogram for disposal. The appellate Court below by impugned judgment and order dated 26.04.2007 affirmed the judgment and order of conviction and sentence passed by the trial Court so far relates to convict-petitioner Md. Khokan and modified the sentence passed by the trial Court so far relates to Md. Babul sentencing him to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,000, in default, to suffer imprisonment for 3(three) months against which the convict-petitioners obtained the instant Rule.

P.W. 1 Fayezullah is a businessman. He stated that the occurrence took place on 18.11.2006 at 11.00 am. He went to the Islami Bank Limited, Anderkella Branch to make a DD of Tk. 3,00,000. There were six bundles of notes of Tk. 500. He kept the money on the table of the bank. At that time, one person snatched away a bundle of notes and started running. At that time, he raised hue and cry. The guard of the bank and the hawker who were sitting on the ground floor of the bank and the locals chased them and detained one accused from near the City Corporation and Tk. 50,000 was recovered

from him. He identified the accused Khokan and Babul in the dock. The manager of the bank informed the matter to the local Police Station. Police came to the bank and seized the money. Police arrested the accused persons. He proved the FIR as exhibit 1 and his signature as exhibit 1/1. During cross-examination, he stated that the accused Md. Khokan was not known to him before the occurrence. He denied the suggestion that the accused persons were not involved in the occurrence. He affirmed that sitting on the sofa, he was counting the notes. One staff of the bank wrote the FIR. He could not name that person. He detained an accused. He denied the suggestion that he detained the accused Babul. The occurrence took place at 11.00 am. After 20 minutes, police came to the bank. He denied the suggestion that no occurrence took place as stated by him.

P.W. 2 Md. Ziauddin is an Officer of Islami Bank Limited, Anderkella Branch. He stated that the occurrence took place on 18.12.2006 at 11.00 am. At that time, he was discharging his duty at the bank. He heard the sound “ছিনতাইকারী, ছিনতাইকারী”। The informant Fayezeullah who is an account holder of the Bank and the Guard Shamsul Haque chased the accused. Guard Shamsul Haque detaining the accused Khokan and brought him to the bank. After some time, the informant came to the bank along with the accused Babul. The locals were also present along with him. Tk. 50,000 was recovered from the accused Khokan and the said money was handed over to the Manager of the Bank. At that time, P.W. 1 disclosed to him that the accused persons snatched away Tk. 50,000 from him. The Bank Manager informed the matter to Thana, and the police came to the place of occurrence and seized the money. Police handed over Tk. 50,000 to the Manager to keep in the vault of the bank. During cross-examination, he stated that he did not see that the accused persons were snatching away the money. He affirmed that the informant and Guard Shamsul Haque disclosed the occurrence to him. He denied the suggestion that he deposed falsely.

P.W. 3 Javed Morshed is a Senior Officer of the Islami Bank Limited, Anderkella Branch. He was tendered by the prosecution and declined by the defence.

P.W. 4 Sheikh Farid is a hawker. He stated that during the last four years, he used to sell the newspaper on the ground floor of the bank. The occurrence took place on 18.12.2006 at 11.00 am. Guard Shamsul Haque chased one person and detained him from near City Corporation. His name was Khokan. He identified the accused Khokan in the dock. Khokan was taken to the bank. After some time, the informant and the locals detaining accused Babul brought him to the bank. Tk. 50,000 was recovered from the accused Khokan. Police seized the money and prepared the seizure list. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. During cross-examination, he stated that the bank building is known as Zia Bhaban which is a market. There were many shops and business establishments in the said Bhaban. About 50/60 persons assembled at the City Corporation. There were many shops. He denied the suggestion that no money was recovered from the accused and that he deposed falsely.

P.W. 5 Md. Amirul Islam is the Vice-President of Islami Bank Limited, Anderkella Branch. He stated that the occurrence took place on 18.11.2006 at 11.00 am. On that day, the account-holder Fayezaullah of his branch came to the bank to make a T.T. for taka three lakh. He was writing the voucher of the T.T sitting on the sofa keeping the money on the table. At that time, a person snatched away one bundle (Tk.50,000) and started running to flee away. Guard Shamsul Haque and the informant chased that person. Another man also accompanied the person who snatched away the money. One accused was detained from near City Corporation. His name was Khokan. He was detained along with the money. The money was handed over to him. Police came to the place of occurrence and the accused Khokan was handed over to the police. The informant also detained a person. His name was Babul. He was also handed over to police. Police seized the recovered

money and handed it over to the custody of the bank. He identified two accused persons in the dock. During cross-examination, he stated that he did not see that the accused persons snatched away the money and that the accused was detained from near City Corporation. On that day, the informant made a T.T. for taka three lakh. The money is now lying with the vault of the bank.

P.W. 6 Md. Shamsul Haque is a Guard of the Islami Bank Limited, Anderkella Branch, Chattogram. He stated that the occurrence took place on 18.12.2006 at 11.00 am. At that time, he was discharging his duty at the bank. Fayezaullah, a customer of the bank, came to the bank to make a T.T. He was writing the voucher of T.T. sitting on the sofa keeping the money on the table. At that time, two persons snatched away one bundle of Tk. 50,000 and started running. The informant raised a hue and cry. He along with 2/3 persons chased him and detained him from in front of the City Corporation. His name was Khokan and one bundle of Tk. 50,000 was recovered from him. The informant also detained another person whose name was Babul. He identified two accused persons in the dock. The accused persons were taken to the bank and subsequently, the police came to the place of occurrence and seized the money. He identified accused persons in the dock. During cross-examination, he stated that he did not disclose to the police that the informant detained accused Babul. The recovered money is not produced in the Court today. He denied the suggestion that no money was recovered from the accused.

P.W. 7 SI Shilu Barua stated that on 18.11.2006 he was on mobile duty along with SI Ruhul Amin and Constable No. 4103 Zainul Abedin. On that day at 10 am, he received information that two persons who snatched away the money were detained in the Islami Bank Bangladesh Ltd, Anderkella Branch. At that time, they went to the said bank and saw that two injured persons were detained. He heard from the Manager that the informant Fayezaullah came to the bank along with the money and accused Khokan and Babul tried to flee away along with

one bundle of Tk. 50,000 kept on the table of informant P.W. 1. The accused Khokan was detained while he tried to flee away along with the money and money was recovered from the accused Khokan. The Sub-Inspector Ruhul Amin seized Tk. 50,000. The accused Babul was also present along with him. He went to Thana along with the accused persons and the informant. During cross-examination, he stated that he did not see the occurrence. Today, the alamat is not produced in Court. He denied the suggestion that he deposed falsely.

P.W. 8 Zainul Abedin is a Constable of the Police. He was tendered by the prosecution and declined by the defence.

P.W. 9 SI Md. Hamidul Haque of Kotwali Thana stated that on 18.12.2006 while he was discharging his duty as duty officer of Kotwali Thana, P.W. 1 informant Fayezullah lodged the FIR. He filled up the FIR form. He proved the FIR as exhibit 3 and his signature as exhibit 3/1. During cross-examination, he stated that he did not see the occurrence.

P.W. 10 SI Md. Ruhul Amin stated that on 18.12.2006, he along with Constable Zainul Abedin and Constable Shilu Barua were discharging mobile duty. On that day, at 11.30 am he obtained information that two persons were detained while they tried to flee along with the money snatched away from the Islami Bank Ltd, Anderkella Branch. After that, he along with his force went to the bank and saw that two persons were detained inside the bank. At that time, he talked to the Manager and the informant who disclosed that while he was filling up the form of T.T. sitting on the sofa, another person who was sitting beside him snatched away one bundle of Tk. 50,000 and attempted to flee away by running along with the money. At that time, the guard of the bank and the informant detained one person from in front of the City Corporation and Tk. 50,000 was recovered from him. The informant detained another person. Tk. 50,000 was seized in the presence of witnesses. He proved his signature on the seizure list as exhibit 2/3. He handed over Tk. 50,000 to the custody of the informant

P.W. 1. Two accused persons were handed over to his custody. They were Khokan and Babul. He identified the accused persons in the dock. He went to Thana along with the informant and the accused persons. During cross-examination, he stated that he did not see the occurrence. The seized money was handed over to the Manager. There was total 100 notes of Tk. 500. He did not take the permission of the Court to give the money to the custody of the informant. He denied the suggestion that he deposed falsely.

P.W. 11 Zahid Hossain is the Investigating Officer. He stated that he took up the investigation of the case. He visited the place of occurrence and detained the accused Khokan and Babul. He prepared the sketch map and index. He proved the sketch map and index as exhibits 4 and 4/1. He recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. During the investigation, he found the truth of the allegation made against the accused persons in the FIR and submitted charge sheet against them. He identified the accused persons in Court. The seized Tk. 50,000 is available in Court and the officer of the bank is also present today in Court. During cross-examination, he stated that the City Corporation is situated 50/60 yards away from the Islami Bank, Anderkella Branch. He did not prepare the sketch map where from the accused persons were detained. He did not interrogate anyone who was sitting in front of City Corporation. The bank is situated on the third floor of the Zia Bhaban. There were many shops and establishments in the said bhaban. He did not record the statements of those persons. The alamat was handed over to the officer of the bank. There was one bundle of Tk. 500. He denied the suggestion that the produced alamat is not the alamat of the instant case. In the charge sheet, it has been mentioned that the alamat is kept in the custody of the informant. The witness Sheikh Farid stated that two accused persons were detained together. He denied the suggestion that he did not investigate the case in accordance with law and that he deposed falsely.

Learned Advocate Mr Anabilananda Roy appearing on behalf of the convict-petitioners submits that the number of the notes allegedly recovered from the possession of the accused Md. Khokan was not mentioned in the seizure list and the money alleged to have been snatched away by the convict-petitioners was not proved during the trial of the case and the alleged recovered Tk. 50,000 was illegally handed over to the custody of P.W. 1 in violation of the provision made in Section 523 of the Code of Criminal Procedure, 1898. He further submits that nothing has been mentioned in the seizure list (exhibit 4) that Tk. 50,000 was recovered from the possession of the convict petitioners. He also submits that P.W. 1 did not say that at the time of snatching away Tk. 50,000 kept on the table of the bank accused Md. Babul was present. The prosecution failed to prove the charge against the accused persons beyond all reasonable doubt and both the Courts below without proper assessment and evaluation of the evidence illegally convicted the petitioners. Therefore, he prayed to make the Rule absolute.

Learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara appearing on behalf of the State submits that the convict-petitioners snatched away Tk. 50,000 from the table of the bank when P.W. 1 was filing up the T.T. form sitting on the sofa keeping the money on the table and both of them tried to flee away by running and chasing them P.Ws. 4 and 6 detained accused Khokan and P.W. 1 informant Fayezullah along with the locals detained accused Md. Babul chasing him and the bank officers P.W. 2 Md. Ziauddin and P.W. 5 Manager Md. Amirul Islam also corroborated the evidence of P.Ws. 1, 4 and 6 as regards snatching away the money and subsequent detention of the convict-petitioners. The prosecution proved the charge against the accused beyond all reasonable doubt and both the Courts below on correct assessment and evaluation of the evidence legally passed the impugned judgments and orders. Therefore, he prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Anabilananda Roy who appeared on behalf of the convict-petitioners and the learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara 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.W. 1 FayeZullah stated that on 18.11.2006 at 11.00 am, he went to Islami Bank Limited, Anderkella Branch to make a DD for Tk. 3,00,000. He kept Tk. 3,00,000 on the table of the counter. At that time, one person snatched away one bundle and he raised hue and cry. The guard of the bank chased him. Another person along with the guard also chased him. He claimed that the locals detained one person. A hawker who was sitting at the entry point of the bank on the ground floor also chased the accused. He claimed that the guard and the hawker detained the accused from in front of the City Corporation and his name is Khokan and Tk. 50,000 was also recovered from him. He claimed that he also detained one person with the help of the locals and his name is Babul. P.W. 4 Sheikh Farid is a hawker who was selling the newspaper at the entry point of the bank on the ground floor and P.W. 6 Md. Shamsul Haque is the guard of the bank. P.Ws. 4 and 6 stated that hearing hue and cry, they chased one person and detained Khokon from near City Corporation and Tk. 50,000 was recovered from him. The P.Ws. 3 and 5 are the officers of the bank. They stated that they heard that one person snatched away Tk. 50,000 while P.W. 1 was filling up the form of the T.T. From the above evidence, it transpires that the evidence of P.W. 1 as regards the snatching away of Tk. 50,000 while he was filling up the form of T.T. is corroborated by the evidence of P.Ws. 4 and 6 who detained the accused Md. Khokan along with Tk. 50,000. P.Ws. 3 and 5 heard about the occurrence from P.W. 1. P.Ws. 3 and 5 are the bank officers. They are not related to the informant. No enmity was suggested by the defence.

As regards the submission of the learned Advocate that the numbers of the notes allegedly recovered from the possession of the accused Md. Khokon was not mentioned in the seizure list, I am of the view that the snatching away of Tk. 50,000 by the accused Md. Khokan is proved by the prosecution by adducing neutral, reliable and trustworthy witnesses. The omission of mentioning the number of notes in the seizure list is an irregularity. Since the occurrence of snatching away Tk. 50,000 by accused Md. Khokan was proved by the prosecution beyond all reasonable doubt, the accused is not entitled to get an order of acquittal due to the omission of the Investigating Officer in mentioning the numbers of the notes in the seizure list.

P.W. 1 stated that while he kept the money on the table one person snatched away one bundle of Tk. 500 and started running. At that time, he raised a hue and cry and P.Ws. 4 and 6 chased that person. P.W. 1 did not say that accused Md. Babul was present at the time of snatching away Tk. 50,000 from inside the bank. He stated that he along with the locals detained accused Md. Babul from outside the bank. The prosecution did not prove any locals who detained the accused Md. Babul from outside the bank. Therefore, I am of the view that the prosecution failed to prove the charge against the accused Md. Babul beyond all reasonable doubt.

The “Words আইন-শৃঙ্খলা বিঘ্নকারী অপরাধ has been defined in Section ২(খ)(অ) of the আইন-শৃঙ্খলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২. In Section ২(খ)(অ) it has been stated that by applying illegal force if anyone extracts money from another person, he committed the offence আইন-শৃঙ্খলা বিঘ্নকারী অপরাধ. In the instant case, the accused suddenly snatched away Tk. 50,000 by applying illegal force. Therefore, the offence committed by the accused Md. Khokan attracts Section ২(খ)(অ) of the আইন-শৃঙ্খলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২.

It is also found that at the time of snatching away Tk. 50,000 from the bank, the accused Md. Khokan did not carry any arms or he

did not threaten anyone. Suddenly he snatched away the money from P.W. 1 and tried to flee by running.

In view of the above evidence, facts and circumstances of the case, findings, observation and the proposition, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below against the convict-petitioner Md. Khokon is modified as under;

The accused Md. Khokon is found guilty of the offence under Section 4 of the আইন-শুধলা বিল্লকারী অপরাধ (দ্রত বিচার) আইন, ২০০২ and he is sentenced to suffer rigorous imprisonment for 3(three) years and fine of Tk. 3,000, in default, to suffer rigorous imprisonment for 1(one) month.

The impugned judgments and orders of conviction and sentence passed by the Courts below so far relate to convict-petitioner Md. Babul is hereby set aside.

In the result, the Rule so far relates to convict petitioner Md. Khokon is disposed of with modification of the sentence. The Rule so far relates to convict petitioner Md. Babul is made absolute.

Send down the lower Court's records at once.