

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 491 of 2009

Md. Rana Hamid

... Convict-petitioner

with

Criminal Revision No. 865 of 2009

Md. Al Amin

...Convict-petitioner

-Versus-

The State

...Opposite party (In both criminal revisions)

No one appears.

...For the convict-petitioners

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

Mr. A. Monnan, A.A.G

...For the State

Heard on 28.05.2024 and 30.05.2024

Judgment delivered on 09.06.2024

On an application filed 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 judgment and order dated 04.03.2009 passed by Additional Metropolitan Sessions Judge, Court No. 4, Chattogram in Criminal Appeal No. 10 of 2009 affirming those dated 13.11.2008 passed by the Court of Druta Bichar, Chattogram Metropolitan, Chattogram in Patenga Police Station Case No. 15(9)2008 corresponding G.R. No. 424 of 2008 convicting the petitioners under Section 4(1) of the আইন-শুধলা বিলকাকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentencing them thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 2000 each, in default, to suffer imprisonment for 2(two) 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 on 26.09.2008 at about 8.05 pm the informant P.W. 1 Md. Abul Kalam along with his cousin P.W.2 Sharmin Akter were returning from Patenga sea beach

by rickshaw. When they reached in front of Madrasa gate of South Patenga 3/4 miscreants with arms stopped their rickshaw and snatched away mobile phone and Tk. 800 from his pocket. When the informant resisted the accused, he sustained a bleeding injury below his knee by the accused. The accused persons also snatched away one mobile phone and Tk. 2,500 kept in the vanity bag and tried to flee away by a CNG auto rickshaw. At that time, hearing the hue and cry of P.Ws. 1 and 2, the locals and the police detained three accused persons and the other two accused persons fled away. The accused persons disclosed their names as Rana Hamid, Al Amin and Mintu and a dagger was recovered from the place of occurrence.

P.W. 13 S.I Md. Arshed Ali Mondal took up the investigation of the case. During the investigation, he seized the alamat, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, visited the place of occurrence and prepared the sketch map and index. After completing the investigation, the Investigating Officer found the prima facie truth of the allegation made against the convict-petitioner and two others and submitted charge sheet against them under Section 4(1) of the আইন-শুধলা বিল্লকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২.

During the trial, charge was framed against the convict-petitioners under Section 4(1) of the আইন-শুধলা বিল্লকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ which was read over and explained to them and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 13(thirteen) witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons present in the Court were examined under Section 342 of the Code of Criminal Procedure, 1898 and they declined to adduce any D.W.

After concluding the trial, Druta Bichar Adalat, Chattogram Metropolitan, Chattogram by judgment and order dated 13.11.2008 convicted the petitioners under Section 4(1) of the আইন-শুধলা বিল্লকারী

অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentenced them to suffer rigorous imprisonment for 2(two) years and fine of Tk. 2,000, in default, to suffer imprisonment for 2(two) months against which the convict-petitioners filed Criminal Appeal No. 10 of 2009. The appeal was heard by Additional Metropolitan Sessions Judge, Court No. 4, Chattogram and the appellate Court below by impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioners obtained the instant Rules.

P.W. 1 Md. Abul Kalam is the informant. He stated that on 26.09.2008 at about 8.05 pm he along with his cousin P.W. 2 Sharmin Akter were returning from Patenga Sea Beach by a rickshaw. When they reached in front of the gate of Zainul Ulum Dakhil Madarasa, Patenga, 4/5 accused persons armed with daggers stopped their rickshaw and snatched away mobile phone and Tk. 800 from him. When he resisted, the accused caused bleeding injured on his knee. Other two accused persons pointing daggers at the throat of P.W. 2 Sharmin Akter snatched away her mobile phone and Tk. 2,500. The accused persons tried to flee away by a CNG Taxi. At that time, hearing hue and cry, the locals and the police came to the place of occurrence and detained accused Rana, Al Amin and Mintu. The detained accused persons disclosed their names. He identified the accused persons in the dock. He proved the FIR as exhibit 1 and his signature as exhibit 1/1. He proved the steel-made dagger as material exhibit I. During cross-examination, he stated that the accused persons stopped their rickshaw on the road. His house was situated on the south side of the river Karnophuly. He affirmed that there were shops at the place where from the accused persons were detained. He denied the suggestion that he misbehaved with his cousin and the accused persons protested against his behaviour for which they were falsely implicated in the case. He affirmed that he took treatment from Doctor Harunur Rashid.

P.W. 2 Sharmin Akter stated that on 26.09.2008 at about 8.00 pm she along with P.W. 1 informant Md. Abul Kalam was returning from the beach, the occurrence took place on the road in front of the Patenga Zainul Madrasa. The accused person pointing a dagger snatched away his mobile and money from the informant and he was injured on his left leg. The accused persons also snatched away Tk. 2,500 and a mobile phone from her. Both of them raised hue and cry. Hearing hue and cry, the locals came to the place of occurrence, detained three accused persons and recovered a dagger. The dagger which has been used in the alleged occurrence is produced before the Court. She disclosed the names of the accused persons as Al Amin, Rana and Mintu. During cross-examination, she stated that she is a garment worker. At the time of occurrence, the locals were not present there. There was a silent environment. There were no shops adjacent to the place of occurrence. The accused persons were detained about 15/20 hands away from the place of occurrence. Within 10 minutes, the accused persons were detained. While they were trying to flee away by running, there was no light. There was no shop at the place where from the accused persons were detained. She denied the suggestion that no mobile and money were snatched away and that the informant was not injured. She denied the suggestion that she was engaged in unsocial activities with the informant and that the accused persons were falsely implicated in the case.

P.W. 3 Md. Elias stated that on 26.09.2008 at 8.15 pm the occurrence took place on the road situated in front of the Zainul Madrasa gate. He along with Abdul Nur Soudagor were going through the place of occurrence by rickshaw and saw that two accused persons were sitting in the CNG and many locals assembled there. Two of them were detained for extortion. After that, the locals also detained another person. In their presence, the CNG was seized and he signed the seizure list. He proved the seizure list as exhibit 2

and his signature as exhibit 2/1. He stated that he did not witness the occurrence. He identified the accused Rana, Mintu and Al Amin in the dock. He affirmed that initially Mintu and Al Amin were detained and they were sitting in the CNG. Rana was detained from the locality. He denied the suggestion that he was falsely implicated in the case.

P.W. 4 Abdul Nur stated that he was present along with Elias in a rickshaw. At that time, he was tendered. He signed the seizure list. The defence declined to cross-examine P.W. 4.

P.W. 5 Md. Alamgir stated that on 26.9.2008 at 8.00 pm the occurrence took place on VIP road situated in front of Madrasa. He along with 5/6 other friends were gossiping. A rickshaw puller told them that a dacoity was committed in the CNG. They detained the CNG. Two persons fled away and two other persons were detained. They detained Al Amin and Mintu. Subsequently, Rana was detained. The CNG driver said that forcibly he was taken. Subsequently, police arrested the accused persons. A dagger was recovered. He denied the suggestion that no occurrence took place at the time and place of occurrence.

P.W. 6 Md. Iqbal stated that he along with Alamgir and other friends were gossiping. At that time, he was tendered. The defence declined to cross-examine P.W. 6.

P.W. 7 Md. Shah Jahan (Saju) stated that the occurrence took place on 26.09.2008 at 8.00 pm on VIP road situated in front of the gate of Zainul Ulum Madrasa. At that time, they were gossiping on the VIP road after iftar. At 8.00 pm a rickshaw puller told them that an extortion took place and the accused-persons tried to flee away by a rickshaw. Subsequently, they were handed over to the police. The police also seized the dagger. He proved the jimmanama dated 26.09.2008 as exhibit 3 and his signature as exhibit 3/1. The seized white steel-made dagger is produced before the Court. He identified the accused Rana and Mintu in Court. During cross-examination, he

stated that the place of gossiping was situated 20 feet far from the place of occurrence. At that time, there was no electricity. He could not say the name of the rickshaw puller who disclosed the occurrence to him. Hearing about the occurrence from the rickshaw puller, they detained the CNG. He denied the suggestion that the rickshaw puller did not disclose the occurrence correctly. Within 8/10 minutes of detaining the accused persons, police came to the place of occurrence. He signed the seizure list but did not read the seizure list. He read up to class eight. He denied the suggestion that the accused persons were falsely implicated in the case.

P.W. 8 Ali Nur stated that he signed the seizure list. He proved the seizure list as exhibit 3/2. The defence declined to cross-examine P.W. 8.

P.W. 9 Mostafizur Rahman stated that on 26.09.2008 at 20.45 he signed the seizure list. He proved his signature as exhibit 3/3. The defence declined to cross-examine P.W. 9.

P.W. 10 Md. Shahedul Islam stated that on 26.09.2008 at 8.00 pm he received information through radio that the extortion took place at the VIP road and at that time, he reached the place of occurrence and saw that the locals detained three persons. At that time, he arrested them. The locals handed over a knife and said that the knife was recovered from the accused persons. He seized the dagger and prepared the seizure list. He along with the accused and alamat came to the Thana. He stated that he detained accused Rana, Mintu and Al Amin. Now they are present in Court. During cross-examination, he stated that he reached at the place of occurrence at 8.10/8.15 pm. He could not disclose the names of the persons who handed over the dagger and the accused persons to them. He denied the suggestion that the accused persons were falsely implicated in the case.

P.W. 11 Constable Md. Tanvir Ahammed was tendered by the prosecution and declined by the defence.

P.W. 12 Constable No. 4250 Saiful Islam was tendered by the prosecution and declined by the defence.

P.W. 13 Md. Arshed Ali Mondal is the Investigating Officer. He stated that on 26.09.2008 at 8.45 pm he arrested the accused Rana, Al Amin and Mintu from in front of the Zainul Madrasa gate who were detained by the people. He seized a dagger, prepared the seizure list and took the signatures of the locals. He proved the seizure list and his signature on the seizure list as exhibit 3/4. He along with the dagger brought three accused at Thana. The detained accused persons are present in the Court. He took up the investigation of the case on 26.09.2008 and visited the place of occurrence twice, recorded the statement of 11 persons under Section 161 of the Code of Criminal Procedure, 1898. At 10.30 pm he seized the CNG No. A-11-4405 and took the signatures of the witnesses. He proved the seizure list and his signature as exhibit 2/3. He prepared the sketch map and index and signed the same. He proved the sketch map and index as exhibit 4 and his signature as exhibit 4/1. During the investigation, he found the truth of the allegation against the accused persons and accordingly, he submitted charge sheet against them. During cross-examination, he stated that the FIR was lodged at 10.15 pm. Two seizure lists were prepared at the place of occurrence. The CNG was seized at 22.30 pm. He could not remember whether the detained accused persons and the informant were taken to Thana by rickshaw of Monir. Subsequently, he stated that the CNG was taken by the informant to Thana which was subsequently taken to the place of occurrence and seized. The place of occurrence is situated about 8 kilometres away from Thana. He denied the suggestion that the accused Al Amin was falsely implicated in the case. He denied the suggestion that the seizure list was not read over to the witnesses. He denied the suggestion that the accused persons were falsely implicated in the case. He took up investigation of the case on 26.09.2008 at 8.15 pm. On 27.09.2008

at 10.00 am, he visited the place of occurrence as Investigating Officer and recorded the statement of witnesses after 10.40. He forwarded the accused persons on 27.09.2008. He recorded the statement of the informant and the victim under Section 161 of the Code of Criminal Procedure, 1898. The place of occurrence is situated 200 yards away from the Madrasa. The dagger was recovered from the place of occurrence. He denied the suggestion that no occurrence took place as stated by him.

No one appears on behalf of the convict petitioners.

Learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara appearing on behalf of the State along with learned Assistant Attorney General Mr. A. Monnan submits that P.Ws. 1 and 2 are the victims and they were returning from the Patenga Sea Beach and the accused persons snatched away one mobile phone and Tk. 800 from P.W. 1 and Tk. 2,500 and mobile phone from P.W. 2. P.Ws. 3, 5, 7, 10 and 13 corroborated the evidence of P.Ws. 1 and 2. He further submits that the convict petitioners were detained by the locals along with the dagger used for committing the offence and the prosecution proved the charge against the accused persons by adducing direct witnesses beyond all reasonable doubt. Therefore, he prayed for discharging the Rules.

I have considered the submission of 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 records, it appears that P.W. 1 Md. Abul Kalam and P.W. 2 Sharmin Akter are the victims of the occurrence. P.W. 1 Md. Abul Kalam stated that on 26.09.2008 at 8.05 pm he was returning from the Pagenga sea beach along with his cousin P.W. 2 Sharmin Akter and when they reached the place of occurrence situated in front of the gate of the Zainul Ulum Dakhil Madrasa, Patenga, 4/5 persons pointing dagger stopped their

rickshaw. They snatched away one mobile phone and Tk. 800 from him and caused bleeding injury below his knee and other two accused persons pointing a dagger at the throat of P.W. 2 Sharmin Akter snatched away mobile phone and Tk. 2500 from her and the accused-persons fled away. Hearing their hue and cry, the locals and the members of the police came to the place of occurrence and detained accused Rana, Al Amin and Mintu and they disclosed their name. He claimed that the accused-persons were detained along with the dagger. The evidence of P.W. 1 is corroborated by P.W. 2 who is also a direct witness of the occurrence. The evidence of P.W. 1 is also corroborated by P.Ws. 3, 5, 7, 10 and 13. By cross-examining the prosecution witnesses, the defence could not bring any contradiction in the evidence of those witnesses. The dagger used at the time of occurrence for committing the offence was also proved as material exhibit I.

Because of the above facts and circumstances of the case, evidence, findings and discussion made hereinabove, I am of the view that the prosecution proved the charge to the hilt against the convict-petitioners beyond all reasonable doubt and both the Courts below on proper assessment and evaluation of the evidence legally passed the impugned judgments and orders convicting the petitioners.

There is no merit in the Rules.

In the result, the Rules are discharged.

The trial Court is directed to do the needful.

Send down the lower Court's records at once.