

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 843 of 2009

Md. Asan alias Ashasan

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Najmul Karim, Advocate

...For the convict-petitioner

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

Mr. A. Monnan, A.A.G

...For the State

Heard on 30.06.2024

Judgment delivered on 02.07.2024

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 impugned judgment and order dated 01.03.2009 passed by Jananirapatta Bighnakari Aporadh Daman Tribunal and Special Session Judge, Court No. 2, Rajshahi affirming the judgment and order of conviction and sentence dated 14.09.2004 passed by Additional District Magistrate, Rajshahi in Durgapur P.S. Case No. 11 dated 22.02.2000 corresponding G.R. No. 65 of 2000 convicting the petitioner under Section 324 of the Penal Code, 1860 and sentencing him thereunder 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 on 16.02.2000 at 4.30 pm accused persons 1. Kajem, 2. Kasim, 3. Azi, 4. Taser, 5. Lokman, 6. Aichand and 7. Asan armed with hasua, stick etc attacked the house of the informant Md. Mostafizur Rahman and illegally detained his brother Habibur Rahman. The accused Kajem dealt hasua blows on his cheek and right elbow and tried to abduct him from the house. At that time, the informant tried to save his

brother but the accused Aziz dealt lathi blows on different parts of his body. In the meantime, the locals assembled at the place of occurrence and the accused persons fled away. At that time, Md. Meser Ali, the father of the informant, was returning home via the house of the accused-persons from Kashipur Government Primary School by bicycle. At that time, those accused persons and Sonera and Hasen beat him and snatched away the bicycle valued at Tk. 3,500. The accused Lokman snatched away Tk. 720 and the key of the school and other documents from the father of the informant and again beaten him. At that time, to save his life the father of the informant took shelter in the east bhiti hut of Satter and locked the door. Following the father of the informant, the accused persons entered the house of Satter and by breaking the door brought him out of the house and again beaten him. The accused Hasan dealt hasua blows on his forehead to kill him. The accused Tasir dealt hasua blows on the left hand. Consequently, he sustained injury on his finger. The accused Taser also dealt lathi blows on the left elbow of the father of the informant and at one point in time, the accused Asan tried to slaughter the father of the informant. The witnesses Azim, Nurul, Mridha, Sukur, Amena and Taleb assembled at the house of Satter and rescued the victim. After that, the victims were taken to Durgapur Hospital where from the father of the informant was referred to Rajshahi Medical College Hospital for treatment. The informant stated that he was busy with the treatment of the victims for which it was delayed in lodging the FIR.

The police took up investigation of the case. During the investigation, the Investigating Officer visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, seized alamt and after completing the investigation found the prima facie truth of the allegation made

against the accused-persons and submitted charge sheet against the accused-persons including the convict-petitioner.

During the trial, the charge was framed against the accused Aichand and Lokman under Sections 143/447/379 of the Penal Code, 1860 and against accused Kajem, Azim, Taser, and Most. Sonera and Hasen under Sections 143/447/23 of the Penal Code, 1860, against accused Kajem under Sections 143/447/324 and accused Asan under Sections 143/ 447/326 of the Penal Code, 1860 which was read over to the accused-persons present in Court and they pleaded not guilty to the charge and claimed to be tried following 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 Additional District Magistrate, Rajshahi by judgment and order dated 14.09.2004 convicted the accused Ahsan under Section 324 of the Penal Code, 1860 and accused Kajem under Section 323 of the Penal Code, 1860 and sentenced the accused Ahsan thereunder to suffer rigorous imprisonment for 1(one) year and accused Kajem thereunder to suffer imprisonment for 3(three) months against which the convict Md Asan and Md. Kajem filed Criminal Appeal No. 148 of 2004 before the Sessions Judge, Rajshahi. The appellate Court below by impugned judgment and order dated 01.03.2009 affirmed the judgment and order passed by the trial Court against which the convict-petitioner Md Asan alias Ahsan obtained the instant Rule.

Learned Advocate Mr. Najmul Karim appearing on behalf of the convict-petitioner submits that P.W. 4 is the victim and P.W. 7 is also the direct witness of the alleged occurrence but the evidence of P.W. 4 is contradicted by P.W. 7 and the prosecution failed to prove

the charge against the accused beyond all reasonable doubt. Therefore, he prayed to make the Rule absolute.

Learned Assistant Attorney General Mr. A. Monnan appearing on behalf of the State submits that P.W. 1 is the direct witness of the first occurrence that took place in the house of the informant and immediately after the first occurrence, another occurrence took place at the house of one Satter and the victim P.W. 4 was injured. P.W. 7 is the direct witness of the occurrence and corroborated the evidence of P.W. 4. After the occurrence P.W. 2, 3, 5 and 6 assembled at the house of Satter and found the victim P.W. 4 in injured condition. The evidence of victim P.W. 4 is also corroborated by the medical certificate (exhibit) issued by P.W. 9 and the prosecution proved the charge against the convict-petitioner beyond all reasonable doubt and the trial Court on proper assessment of the evidence of the prosecution witnesses convicted the accused which has been affirmed by the appellate Court below. There is no valid ground to interfere with the impugned judgment and order passed by the Courts below. Therefore, he prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Najmul Karim who appeared on behalf of the convict-petitioner and the learned Assistant Attorney General Mr. A. Monnan 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. 4 Meser Ali Mondal and P.W. 2 Habibur Rahman are the victims. P.W. 1 Mostafizur Rahman is the informant and P.W. 2 Md. Habibur Rahman is the brother of the informant and he is the victim of the first occurrence that took place at his house. P.W. 4 Meser Ali Mondal is the victim of the occurrence that took place at the house of Satter and the father of the informant P.W. 1. P.W. 7 Azimuddin is the direct witness of the occurrence that took place at the house of

Satter. Hearing hue and cry he went to the place of occurrence that took place at the house of A. Satter and witnessed the occurrence. Hearing hue and cry P.Ws. 3, 5, 6 and 8 assembled at the place of occurrence that took place at the house of A. Satter and found the victim Meser Ali in injured condition. P.W. 9 Dr. Md. Isahaq Ali issued the medical certificate of the victim A. Satter (exhibit 3) who discharged his duty on 18.02.2000 at Rajshahi Medical College Hospital. P.W. 10 is the Investigating Officer. P.W. 11 is the Medical Officer of Durgapur Hospital. He examined the victim P.W. 2 Habibur Rahman and issued the medical certificate (exhibit 6).

P.W. 4 Meser Ali Mondal stated that on 16.02.2000 at 4.00 pm, he was returning from school by bicycle and when he reached in front of the house of accused Asfar Ali, accused persons forcibly detained him. At that time, the accused Aichand forcibly snatched away his bicycle and Tk. 752 from his pocket and started beating. At that time to save himself, he took shelter in the house of Satter and locked the door. The accused persons by breaking the door brought him out from the said bhiti hut and again beaten him. The accused Ahsan dealt hasua blows to the back of his head and on the middle part of both eyes. The accused Aichand dealt hasua blows on the fingers of his left hand and other accused persons also beaten him. P.W. 7 stated that the accused Ahsan beaten Meser Master with a stick made of wood and he tried to save the Meser Master. At that time, the accused Kasim dealt stick blows made of bamboo on his head, consequently bleeding started.

P.Ws. 1 and 2 are the direct witnesses of the occurrence that took place at the house of P.Ws. 1. P.W.s 1, 2, 3, 5 and 6 stated that immediately after the occurrence they rushed to the place of occurrence that took place at the house of A. Satter and found the victim P.W. 4 in injured condition. The evidence of P.W. 4 as regards injury caused by accused Ahsan on the forehead is corroborated by P.W. 9 Dr Md. Isahaq Ali, Medical Officer of

Rajshahi Medical College Hospital who issued the medical certificate (exhibit 3).

It is true that the evidence of P.W. 4 as regards the instrument used for committing the offence is contradicted by P.W. 7. Fact remained that the evidence of P.W. 7 regarding the instrument used for committing the offence is not corroborated by the medical certificate (exhibit 3) issued by the P.W. 9 Dr Md. Ishaq Ali. P.W. 4 is a school teacher and is the victim of the occurrence. The evidence of P.W. 4 regarding the injury caused by hasua is corroborated by the medical certificate (exhibit 3) issued by P.W. 9. Therefore, I am of the view that evidence of P.W. 4 as regards the injury caused by the accused Ahsan by hasua is required to be accepted by this Court. The evidence of P.W. 4 is also corroborated by P.Ws. 1, 2, 3, 5 and 6.

The criminal cases are indeed pending between the accused and the informant parties. The pendency of criminal cases against a witness itself is not a ground to discard the evidence of direct witness whose evidence is corroborated by the medical certificate (exhibit 3).

Because of the above evidence, facts and circumstances of the case, findings, observation and proposition, I am of the view that the prosecution proved the charge against the accused beyond all reasonable doubt. Both the Courts below on proper assessment of the evidence of the prosecution witnesses and the defence case legally passed the impugned judgment and order convicting the petitioner.

I find no merit in the Rule.

In the result, the Rule is discharged.

However, there will be no order as to costs.

The convict-petitioner Md. Asan alias Ashasan is directed to surrender forthwith.

The trial Court is directed to do the needful.

Send down the lower Court's records at once.