

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision Case No. 886 of 2009

Ahmed Ali Sheikh

...Convict-petitioner

-Versus-

The State

...Opposite party

No one appears.

...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 02.06.2024

**Judgment delivered on 11.06.2024**

On an application filed under Section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 08.01.2006 passed by Additional Sessions Judge, Bagerhat in Criminal Appeal No. 71 of 1997 affirming the judgment and order dated 09.07.1997 passed by Magistrate, First Class, Bagerhat in Rampal P.S. Case No. 5 dated 16.11.1995, G.R. No. 122 of 1995, convicting the petitioner under Section 448/323 of the Penal Code, 1860 and sentencing him under each of the sections to suffer rigorous imprisonment for 6(six) months, total sentence of 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 the informant P.W. 1 Siddique Howlader on 24.10.1995 filed a complaint petition for beating his sister Fatima Bibi for which the accused-persons were infuriated upon him. Consequently on 15.11.1995 at 7.00 pm suddenly the accused-persons 1. Ahmmed Ali, 2. Mosammat Khuki Begum armed with dao and lathi illegally entered the house of the informant and scolded him with filthy language and attacked the house. One point of time, they entered into the bhiti hut of the

informant and hearing hue and cry of the informant, his sister Johara Bibi came to rescue the informant. At that time, at the order of accused Mosammat Khuki Begum accused Ahmed Ali Sheik dealt a lathi blow on the head of Johara and she tried to save herself and sustained injuries on wrist of her right hand. He also sustained injuries on the left side of her head and nose. Consequently, she fell on the ground and became senseless. Hearing hue and cry of the victim Johara Bibi, witnesses Aziz Sheikh, Taslima, Azmira and many locals assembled at the place of occurrence. After that, the informant with the help of the witnesses took Johara to Mongla Free-Friday Clinic and admitted there.

A.S.I Md. Idris Mahmud took up investigation of the case and during investigation, he recorded the statement of witnesses, collected the medical certificate of the victim. After completing the investigation found the prima-facie truth of the allegation made against the accused-persons and submitted charge sheet on 30.11.1995 against accused Ahmed Ali Sheikh under Sections 448/323 of the Penal Code, 1860.

During trial, charge was framed against the accused under Sections 448/323 of the Penal Code, 1860 which was read over and explained to the accused and he pleaded not guilty to the charge and claimed to be tried in accordance with law. The prosecution examined 4(four) 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 declined to adduce any D.W.

After concluding trial, the trial Court by judgment and order dated 09.07.1997 convicted the accused under Section 448/323 of the Penal Code, 1860 and sentenced him under each of the sections to suffer rigorous imprisonment for 6(six) months, total 1(one) year, against which the accused filed Criminal Appeal No. 71 of 1997 before the Sessions Judge. Bagerhat. The appeal was heard by the

Additional Sessions Judge, Bagerhat who by impugned judgment and order dismissed the appeal and affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

P.W. 1 Siddique Howlader is the informant. He stated that the occurrence took place on 15.11.95 at 7.00 pm. The accused entering into the house of informant dealt a blow on the right hand of his sister Johara Begum. Consequently her wrist has been broken. After that, he also caused bleeding injury on her head. She fell on the ground. The accused Ahmed Ali also scolded with filthy language. The victim was taken to Mongla for treatment. During cross-examination, he stated that Johara Begum is his sister and Azir Sheikh is his nephew. There was a dark at the time of occurrence. The accused Ahmed and his brother came at the place of occurrence. The accused Ahmed carried stick made of bamboo. At the time of occurrence, the accused found him at the place of occurrence but he did not cause any injury to him. The victim was admitted in a clinic for 02 days. Nur Mohammad, Hanif, Noman, Khokan, Kala and Ala reside in the adjacent houses.

P.W. 2 Johra Khatun is the victim. She stated that she could not remember the date of occurrence. The accused Ahmed beaten her. He also beaten her brother Siddique. She tried to save her brother. Consequently, the accused beaten him by stick made of bamboo on the wrist of her right hand. During cross-examination, she stated that his brother Siddique Howlader was beaten in the kitchen and she was beaten on the door of the kitchen. After the occurrence, she lost her sense. She affirmed that Nur Mohammad, Babar, Golap, Musa, Hanif, Shahadat, Khokan and Ala are her neighbours. She also affirmed that she was not admitted to hospital. She denied the suggestion that the accused was falsely implicated in the case by collecting a false medical certificate.

P.W. 3 Taslima stated that she could not remember the date of occurrence. The occurrence took place long ago. At the time of occurrence, she was feeding her son. Hearing the hue and cry of quarrel, she went to the place of occurrence. The accused scolded the informant with filthy language and dealt injury to Siddique by the stick made of bamboo. Johara tried to save Siddique and she sustained injury on the hand and head. Consequently, she lost her sense. The informant sustained injury in the kitchen. At the time of occurrence, she, Rashida was present there. Many people assembled at the place of occurrence.

P.W. 4 Rashida Begum is the maternal grandmother of victim P.W. 2 Johara Khatun. She stated that the occurrence took place on 15.11.95 at 7.00 pm. The accused Ahmed having entered her house illegally scolded them with filthy language and at that time, the victim Johara Khatun tried to resist the accused. The accused Ahmed dealt a blow by three battery torch on her head which caused bleeding injury. The accused also caused injury on the wrist of her right hand. Consequently, she fell on the ground. The mother of the accused came to the place of occurrence and she left the place of occurrence along with the accused Ahmed. During cross-examination, she stated that the accused firstly caused injury on the head and subsequently caused injury on the right hand. The victim was taken to hospital. Nur Mohammad, Babar Ali, Ala, Khokan, Golap, Musa and Hanif are the neighbours of the victim.

No one appears on behalf of the convict-petitioner.

Learned Assistant Attorney General Mr. A. Monnan appearing on behalf of the State submits that P.W. 2 Johara Khatun is the victim and P.W. 1 is the informant, P.Ws. 3 and 4 are also the eye witnesses of the occurrence. The place of occurrence is the house of the victim P.W. 2 and all the family members of the victim were present at the time of occurrence in their house. Therefore all of them witnessed the occurrence. The prosecution proved the

charge against the accused beyond all reasonable doubt. Both the Courts below on proper assessment and evaluation of the evidence passed the impugned judgments and orders convicting the accused. Therefore, he prayed for discharging the Rule.

I have considered the submission of 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 records, it appears that the P.Ws. 1 to 4 are the direct witnesses of the occurrence. P.W. 2 victim Johara Khatun and P.W. 3 Taslima could not say the date and time of occurrence. P.W. 1 stated that after the occurrence, he took the victim to doctor and she took treatment for 2 days and the victim was taken for conducting an X-Ray from the clinic. Although P.Ws. 1 and 2 claimed that the victim was taken to doctor but P.W. 2 stated that she was not admitted to hospital. P.W. 2 victim Johra Khatun stated that the accused Ahmed beaten her by stick made of bamboo. P.W. 4 Rashida Begum stated that accused Ahmed dealt a blow by a three battery torch. In the instant case neither the doctor was examined to prove the medical certificate of the victim nor the Investigating Officer was examined by the prosecution. It is found that Nur Mohammad, Hanif, Noman, Khokan, Kala, Ala, Shahadat, Musa and Golap are the neighbors of the informant P.W. 1 but none of them was examined in the case.

In the given facts and circumstances of the case, in the absence of any medical certificate, it cannot be held that the victim P.W. 2 sustained injury by the accused Ahmed Ali Sheikh. Furthermore, due to non-examination of those witnesses give rise to an adverse presumption under Section 114(g) of the Evidence Act, 1872 against the prosecution. Therefore, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the Courts below against the convict-petitioner Ahmed Ali Sheikh are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.