

**Present:**

Mr. Justice Md. Shohrowardi

Criminal Revision No. 886 of 2010

Md. Monir Hossain

...Convict-petitioners

-Versus-

The State

...Opposite party

Mr. Suruzzaman, 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 05.06.2024

**Judgment delivered on 12.06.2024**

On an application filed under Section 439 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 06.07.2010 passed by Special Sessions Judge, Court No. 1, Dhaka in Criminal Appeal No. 05 of 2010 affirming those dated 07.12.2009 passed in Shahbagh Police Station Case No. 12.04.2007, G.R. No. 174 of 2007 by Metropolitan Magistrate and Druta Bichar Adalat, Court No. 8, Dhaka convicting the petitioners under Section 4(1) of the আইন-শুধলা বিলকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentencing them thereunder to suffer rigorous imprisonment for 2(two) years and 6(six) months and fine of Tk. 5,000, in default, to suffer rigorous imprisonment for 1(one) month should not be set aside 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 on 09.04.2007 at 8.45 pm P.W. 1 Anwar Sadat, Area Manager of Unihealth Pharma on the way to Nilkhet from Dhaka Medical College Hospital when reached in front of Sir A.F. Rahman Hall of Dhaka University two miscreants stopped his rickshaw and ordered him to give all the belongings with him and due to fear of his life the informant bring

out his mobile and Tk. 800/900 kept in his money bag and the accused persons snatched away the phone and the money. At that time, the informant raised a hue and cry and the students and the people came to rescue and detained the accused persons, when they were trying to flee away by running. On interrogation, the detained two persons disclosed their names as Monir Hossain and Abdur Razzak. After that, the police came to the place of occurrence and recovered the money bag and the mobile phone.

P.W. 4 S.I Md. Suruzzaman took up the investigation of the case. During the investigation, he seized the mobile phone and the money, prepared the seizure list, took the signatures of the witnesses, and recorded the statements 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 accused persons and submitted charge sheet against them under Section 4(1) of the আইন-শুধলা বিলকরী অপরোধ (দ্রত বিচার) আইন, ২০০২.

During the trial, the charge was framed against the accused persons under Section 4(1) of the আইন-শুধলা বিলকরী অপরোধ (দ্রত 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. During the trial, the prosecution examined 4(four) 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 Metropolitan Magistrate and Druta Bichar Adalat, Court No. 8, Dhaka by judgment and order dated 07.12.2009 convicted the accused persons under Section 4(1) of the আইন-শুধলা বিলকরী অপরোধ (দ্রত বিচার) আইন, ২০০২ and sentenced them thereunder to suffer rigorous imprisonment for 2(two) years and 6(six) months and fine of Tk. 5,000, in default, to suffer rigorous

imprisonment for 1(one) month against which the convict-petitioners filed Criminal Appeal No. 05 of 2010 before the Sessions Judge, Dhaka who by impugned judgment and order dated 06.07.2010 affirmed the judgment and order of conviction and sentence passed by the trial Court against which the convict-petitioners obtained the instant Rule.

P.W. 1 Anwar Sadat is the informant. He stated that on 09.04.2007 at 8.45 pm he was going to Nilkhet by a rickshaw from Dhaka Medical College Hospital. When he reached in front of the Sir A.F. Rahman Hall accused Razzak stopped his rickshaw and threatened him to give all his belongings with him. Sensing the immediate threat to his life, he brought out the Samsung mobile phone and Tk. 800 kept in his money bag and the accused Abdur Razzak snatched away the money and mobile phone. At that time, he raised a hue and cry and a few students of Dhaka University came to rescue the informant and detained the accused Razzak and Monir. They were handed over to the police. Searching their body, the police recovered a money bag and mobile phone. He proved the FIR as exhibit 1 and his signature as exhibit 1/1. He identified the mobile phone in Court. He took custody of the mobile phone from the Investigating Officer. He proved the Jimmanama (bond) as exhibit 2 and his signature on the jimmanama as exhibit 2/1. During cross-examination, he stated that at the time of handing over the mobile phone and money bag, he raised a hue and cry. He denied the suggestion that the accused persons were businessmen and passers-by and that they did not snatch away the money bag and mobile phone.

P.W. 2 Constable No. 5533 Md. Moazzem Hossain stated that on 09.04.2007 at 9.00 pm the occurrence took place in front of Sir A.F. Rahman Hall, Dhaka University. He was on night duty at Shahbagh Thana. He was on night duty along with S.I Suruzzaman from 9 pm to 8 am on the next date. While they were passing the F.

Rahman Hall, a few people informed them that two miscreants were detained. One of them stated that his mobile phone and money was snatched away. At that time, he along with the informant and the accused and others who were on patrol duty at night went to Thana. The detained persons disclosed their names as Monir Hossain and Razzak. Searching their body recovered their mobile phone and 8 notes of Tk. 100 from Razzak. During cross-examination, he stated that he was not present at the time of occurrence and the search was conducted in the presence of the witnesses. He denied the suggestion that no alat was recovered from the possession of the accused.

P.W. 3 Md. Fariduzzaman is a witness of the seizure list and a student of A.F. Rahman Hall. He stated that on 09.04.2007 at 8.30 pm, while he was residing in room No. 501 of F. Rahman Hall, he heard the hue and cry in front of the hall and saw that two miscreants were detained at the time of extortion and the police recovered mobile phone and Tk. 800 from them. The police seized the money and the mobile and prepared the seizure list. He proved the seizure list as exhibit 3 and his signature as exhibit 3/1. He could not say whether the accused persons present in the dock were detained at the date and time of occurrence which took place  $2\frac{1}{2}$  years back for which he could not remember their face. During cross-examination, he stated that the recovery was made in his presence and he signed the seizure list. He denied the suggestion that the accused was falsely implicated in the case.

P.W. 4 S.I Md. Suruzzaman is the Investigating Officer. He stated that on 09.04.2007 he was discharging his duty with Shahbagh Thana at 22.05. The informant Anwar Sadat, accused Monir Hossain and Abdur Razzak, witnesses Juel Hawlader and Fariduzzaman came at Thana. They informed that at 8.45 pm, the accused persons snatched away a Samsung mobile phone and Tk. 800 from the informant. Hearing hue and cry, the witnesses present

there detained the accused persons. He recovered Tk. 800 and a mobile phone from the accused persons and prepared the seizure list. He proved his signature on the seizure list as exhibit 3/2. He handed over the Samsung mobile phone and Tk. 800 to the custody of the informant. During the investigation, he visited the place of occurrence, 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. After completing investigation he submitted charge sheet against the accused-persons under Section 4(1) of the আইন-শুধলা বিলকরী অপরোধ (দ্রত বিচার) আইন, ২০০২. During cross-examination, he stated that the seizure list was prepared at Thana in the presence of the informant and the witnesses. The Kha mark on the sketch map is F. Rahman Hall. He denied the suggestion that mobile phone and money was not recovered from the accused persons.

Learned Advocate Mr. Suruzzaman appearing on behalf of the convict-petitioners submits that out of two seizure list witnesses, the prosecution only examined P.W. 3 and out of total eight witnesses cited in the charge sheet, the prosecution only examined four witnesses and the convict-petitioners were the passer-by and victim of circumstances. The prosecution did not examine four other witnesses mentioned in the charge sheet and failed to prove the charge against the accused persons beyond all reasonable doubt. 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 P.W. 1 is the victim, P.W. 3 is a seizure list witness and P.Ws. 3 and 4 stated that while they were on duty, they saw that the witnesses detained the accused-persons and they recovered one Samsung phone and Tk. 800. P.Ws. 2 to 4 corroborated the evidence of P.W. 1. The accused persons were caught red-handed from the place of occurrence along with a mobile phone and money snatched away by them. The

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

I have considered the submission of the learned Advocate Mr. Suruzzaman 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 both the Courts below and the records.

On perusal of the records, it appears that P.W. 1 Anwar Sadat is the informant. He stated that on 09.04.2007 at 8.45 pm he started from Dhaka Medical College Hospital and while he reached in front of the A.F. Rahman Hall, the accused persons stopped his rickshaw and snatched away his mobile phone and Tk. 800 from his pocket and hearing hue and cry, P.W. 3 and others came to the place of occurrence and detained the convict-petitioners along with the money and the Samsung phone snatched away from him. The above evidence of P.W. 1 is corroborated by P.Ws. 2 to 4. By cross-examining PWs, the defence could not bring out any contradiction in their evidence. No enmity was suggested by the defence. Therefore, I am of the view that the prosecution witnesses proved the charge against the accused persons beyond all reasonable doubt.

However considering the gravity of the offence, I am of the view that the ends of justice would be best served if the sentence passed by the Courts below is modified as under;

The convict-petitioners Md. Monir Hossain and Abdur Razzak are found guilty of the offence under Section 4(1) of the আইন-শৃঙ্খলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and they are sentenced to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1,000 each, in default, to suffer imprisonment for 1(one) month.

In the result, the Rule is disposed of with a modification of the sentence.

The trial Court is directed to do the needful.

Send down the lower Court's records at once.