

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Revision No. 1365 of 2006**

Nasir Ahammed

.....Convict-Petitioner.

-Versus-

The State

.....Opposite parties.

Mr. Md. Ruhul Quddus, Senior  
Advocate

.....For the Convict Petitioner.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with  
Ms. Kohenoor Akter, A.A.G.

..... For the State Opposite party.

**Heard on 21.04.2024, 13.05.2024 and**

**Judgment on 20.05.2024**

**Sheikh Abdul Awal, J:**

This Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 22.10.2006 passed by the learned Sessions Judge, Rangpur in Criminal Appeal No. 60 of 2006 dismissing the appeal summarily on the ground of limitation and thereby affirming the judgment and order of conviction and sentence dated 30.06.1991 passed by the learned

Magistrate, 1<sup>st</sup> Class, Sadar Court, Rangpur in G.R Case No. 270 of 1990 arising out of Rangpur Sadar police station case No. 8 dated 08.08.1990 convicting the petitioner under section 279/304(B) of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for a period of 1+1 = 2 (two) years and to pay a fine of Taka 2500+2500 =5000/- in default to suffer imprisonment for a period of 6 (six) months more in each section with a direction that both the sentences shall run consecutively should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts of the case, in short, is that one, Md. Asaf Uddin as informant on 08.08.1990 lodged an Ejahar with Rangpur sadar police station, Rangpur against the accused-petitioner under sections 279/338-ka/427 of the Penal Code stating, inter-alia, that while Md. Ali, s/o Munsur Ali, Village- Vaurkhola, Post office Jibonnagar, Upazila- Daudkandi, District- Cumilla was coming back to office after completion of field work by a motorbike and then the accused petitioner being a driver of jeep bearing No. Chatto. Metro Cha-915 came very speedily and pushed the person of motorbike rider from back side causing serious injury of the motorbike rider and thereafter, the local people caught hold of the jeep driver

( accused) on spot, who on interrogation disclosed his name Md. Nasir Ahmed and thereafter, injured motorbike rider was shifted to Rangpur Medical College hospital for treatment.

Upon the aforesaid First Information Report, Rangpur Sadar Police Station Case No. 8 dated 08.08.1990 under sections 279/338-ka/427 of the Penal Code was started against the convict petitioner.

Police after completion of usual investigation submitted charge sheet against the convict-petitioner being charge sheet No. 202 dated 30.08.1990 under sections 279/304(kha)/427 of the Penal Code.

Ultimately, the accused-petitioner was put on trial in the Court of the learned Magistrate, 1<sup>st</sup> Class, Rangpur Sadar, Rangpur to answer a charge under sections 279/304(B) of the Penal Code to which the accused petitioner pleaded not guilty and prayed to be tried stating that he is innocent.

At the trial, the prosecution side examined in all 09(nine) witnesses to prove its case, while the defence examined none.

The defence case as it appears from the trend of cross-examination of the prosecution witnesses and examination of the accused-petitioner under section 342

of the Code of Criminal Procedure that the accused-petitioner is innocent, who has been falsely implicated in the case.

On conclusion trial, the learned Magistrate, 1<sup>st</sup> Class, Sadar, Rangpur by his judgment and order dated 30.06.1991 found the accused-petitioner guilty under section 279/304(B) of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 1+1= 2(two) years and to pay a fine of Taka 2500+2500= 5,000/- (five thousand) in default to suffer imprisonment for a period of 6 (six) months more with a direction that both the sentences shall run consecutively.

Against which the convict-petitioner preferred Criminal Appeal No. 60 of 2006 before the learned Sessions Judge, Rangpur, who by his order No.1 dated 22.10.2006 dismissed the appeal summarily on the ground of limitation in the following language :- “Hence, his prayer for admission of appeal condoning delay of 5555 days is rejected.”

Being aggrieved by the aforesaid impugned order dated 22.10.2006 passed by the learned Sessions Judge, Rangpur the convict-petitioner moved before this Court and obtained the present Rule.

Mr. Md. Ruhul Quddis, the learned Advocate appearing for convict-petitioner takes me through the FIR, charge sheet, deposition of witnesses and other materials on record and then submits that in-fact this is a case of no evidence, in this case the accused-petitioner has been made scapegoat but the learned trial Magistrate without considering the evidence on record from the correct angle found the accused-petitioner guilty under section 279/304(B) of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 1+1= 2(two) years and to pay a fine of Taka 2500+2500= 5,000/- (five thousand) in default to suffer imprisonment for a period of 6 (six) months more with a direction that both the sentences shall run consecutively and it is on record that the learned Sessions Judge, Rangpur without considering the reasons for delay of 555 days in filing the appeal dismissed the appeal summarily on the ground of limitation in a slipshod manner which occasioned a failure of justice. Finally, the learned Advocate referring to section 439 of the Code of Criminal Procedure submits that this court has ample power to consider the case on merit on the basis of the evidence and materials on record for the ends of justice.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State-opposite party,

on the other hand, supports the judgments of 2 Courts below, which were according to her just, correct and proper.

Having heard the learned Advocate and the learned Deputy Attorney General, perused the Criminal Revision under section 439 read with section 435 of the Code of Criminal Procedure, the F.I.R, charge sheet, deposition of witnesses and other materials on record including the judgments of 2 Courts below, the question that calls for my consideration in this Revision is whether the appellate court below was justified in dismissing the appeal summarily on the ground of limitation and thereby affirming the judgment and order of conviction and sentence dated 30.06.1991 passed by the learned Magistrate, 1<sup>st</sup> Class, Sadar Court, Rangpur in G.R Case No. 270 of 1990 arising out of Rangpur Sadar police station case No. 8 dated 08.08.1990.

On scrutiny of the record, it appears that the informant lodged the case against the accused-petitioner under sections 279/338-ka/427 of the Penal Code stating, inter-alia, that while Md. Ali, S/O Munsur Ali, Village-Vaurkhola, Post office Jibonnagar, Upazila- Daudkandi, District- Cumilla was coming back to his office after field work by a motorbike and then the accused petitioner being a driver of jeep bearing No. Chatto.

Metro Cha-915 came very speedily and pushed motorbike rider from back side causing serious injury on the parson of motorbike rider and thereafter, the local people caught hold of jeep driver (accused) on spot, who on interrogation disclosed his name, Md. Nasir Ahmed and thereafter, injured motorbike rider was shifted to Rangpur Medical College hospital for treatment. Police after completion of investigation submitted charge sheet against the convict-petitioner being charge sheet No. 202 dated 30.08.1990 under sections 279/304(kha)/427 of the Penal Code. It further appears that in this case prosecution side examined in all 9 witnesses out of which PW-1, Asrab Uddin deposed the prosecution case in details. The defence cross-examined PW- 1 but failed to find out any contradiction in the evidence of PW- 1. PW-2, Md. Rafiqul Islam, as seizure list witness proved the seizure list as "Ext-4" and his signature thereon as "Ext.-4/1". PW-3, Ratan Kumar proved the inquest report as "Ext.-2" and his signature thereon as "Ext.-2/2", PW-4, Md. Lokman Hossain brought the dead body of victim Mohammad Ali, PW-5, Md. Delwar Hossain as seizure list witness proved his signature as "Ext.-5/2", PW-6, Md. Nurul Islam in his evidence proved the prosecution case as to the time, place and manner of occurrence, the defence cross-

examined PW-6 but failed to find out any contradiction in the evidence of PW-6. PW-7, Abdul Momin also gave evidence in support of the prosecution and made similar statements like PW-6. PW-8, Dr. Md. Joynul Abedin issued medical certificate after examining the deceased victim. PW-9, Md. Abdus Salam investigated the case. This witness stated in his deposition that during investigation he visited the place of occurrence, prepared sketch-map, index, examined the witnesses under section 161 of the Code of Criminal Procedure, who after completion of investigation found a prima facie case and accordingly submitted charge sheet against the accused appellant under sections 279/304(kha)/427 of the Penal Code and he produced the relevant documents as per requirement of law, which were marked as exhibits.

On an analysis of the above quoted evidence together with the FIR, charge sheet and other materials on record, it appears to me that convict-petitioner due to rash drive made an accident with running motorbike resulting victim, Mohammad Ali died and all the prosecution witness namely PWs. 1-9 proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused petitioner beyond reasonable doubts. It further appears that during trial the convict-petitioner



was all along present before the trial Court but after disposal of the case he preferred criminal appeal with an application for condonation of delay of 5555 days stating the grounds in the following language-

“আসামী দরখাস্তকারী মামলার বিচার চলাকালে নিয়মিত প্রতি ধাৰ্য তালিখে মাননীয় আদালতে হাজির থাকিতেন। যথারীতি আসামীর উপস্থিতিতে বিগত ১০/০২/১৯৯১ ইং তালিখে ফৌজদারী কাৰ্যবিধির ৩৪২ ধারার বিধান মতে আসামী পরীক্ষা শেষে মামলার পরবর্তী তালিখ ৩০/০৪/১৯৯১ ইং তালিখ ধাৰ্য হয়। ধাৰ্য তালিখে আসামী তাঁর নিযুক্তীয় আইনজীবী মহোদয়ের সহিত যোগাযোগ করিলে নিযুক্তীয় আইনজীবী মহোদয় আসামীকে জানান যে, “তোমার মামলার বিচারের নির্দিষ্ট সময়সীমা ইতোমধ্যেই অতিক্রান্ত হইয়াছে। তোমাকে আর মাননীয় আদালতে উপস্থিত হইতে হইবে না।” যে কারণে আসামী পরবর্তীতে মাননীয় আদালতে উপস্থিত হন নাই। পরবর্তীতে মাননীয় আদালত আসামীর অনুপস্থিতিতে বিগত ৩০/০৬/১৯৯১ ইং তালিখে আসামীকে দোষী সাব্যস্ত করিয়া রায় ঘোষণা করেন। যাহা আসামী জানিতেন না। আসামী সরল বিশ্বাসে তাঁর নিযুক্তীয় আইনজীবী মহোদয়ের কথায় বিশ্বাস স্থাপন করিয়াছিলেন।

সাজাপ্রাপ্ত দরখাস্তকারী আসামী মাননীয় বিজ্ঞ আদালতের আদেশ অবহিত না থাকার কারণে এবং না জানার কারণে আসামীর বিরুদ্ধে গ্রেপতরী পরোয়ানার আদেশ বলে গত ১৭/০৯/২০০৬ ইং তালিখে ভারপ্রাপ্ত কর্মকর্তা, তেজগাঁও থানা,

ডি.এম.পি, ঢাকা কর্তৃক ধৃত হইয়া মুখ্য মহানগর হাকিম, ঢাকায় প্রেরিত হয়। বিজ্ঞ মহানগর হাকিম, ঢাকা দরখাস্তকারী আসামীকে সাজাভোগের জন্য জেলকারাগারে প্রেরণ করেন এবং আদেশ বলে সংশ্লিষ্ট সকলকে অবহিত করেন। বর্তমানে দরখাস্তকারী আসামী জেলকারাগারে সাজা ভোগ করিতেছেন।

আইনের বিধি বিধান মোতাবেক দরখাস্তকারী আসামী আপীল দায়ে প্রায় ৫৫৫৫ (পাঁচ হাজার পাঁচশত পঞ্চাশ) দিন তামাদী হইয়াছে। আসামীর নিযুক্তীয় আইনজীবী মহোদয়ের সঠিক দিক নির্দেশনার অভাবে এবং আসামীর সরলতার কারণে উত্তরূপ সময়সীমা তামাদী হইয়াছে। যাহা দরখাস্তকারী আসামীর একান্তই অনিচ্ছাকৃত ত্রুটিমাত্র।

এমতাবস্থায় উপরোক্ত অবস্থাদীনে ন্যায় বিচারের স্বার্থে আপীল মামলা দায়ে ৫,৫৫৫ দিন তামাদী মওকুফ করতঃ সুবিচার করিতে আপনার মর্জি হয়।”

The reasons for delay as stated in the application in the facts and circumstances of the case cannot be said that the case made out for delay is false and in that view of the matter the learned Sessions Judge ought to have considered the delay application under section 5 of the Limitation Act.

By the way it may be observed that occurrence took place on 08.08.1990 and by this time near about 34

years has been elapsed and thus at this stage, if the case is sent back on remand to the lower appellate court or trial court that will totally uncertain as to meet proper justice.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that the convict-petitioner has already been suffered his sentence to some extent and faced the agony of the protracted prosecution and also suffered mental harassment for a long period of 3 ( three) decades. Moreover, on a query from the Court the learned Advocate for the petitioner, could not say anything about his client (convict-petitioner) rather he says he does not know whether the convict-petitioner is alive or not inasmuch as recently he sent a letter to the convict-petitioner which has been returned undelivered. Keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of three decades, his sentence is reduced to the period of sentence already undergone. Sentence of fine is, however, maintained.

The Rule is, consequently, discharged with modification of sentence in the above manner. The

convict-petitioner, Nasir Ahammed may be discharged from his bail bonds, if he deposits the fine.

Send down the lower Court records at once.