Present:
Mr. Justice Md. Khairul Alam

Criminal Revision No. 290 of 2001.
Habibur Rahman and others.
.... Petitioners.
-Versus-
The State.
.... Opposite party.
No one appears.
.... For the petitioner.
Ms. Shiuli Khanom, D.A.G
.... For the State.

Heard on 29.10.2024 and
Judgment on 04.11.2024.

This rule was issued calling upon the Deputy Commissioner, Cumilla to show cause as to why the judgment and order dated 20.09.2000 passed by the learned Additional Sessions Judge, 3rd Court, Cumilla in Criminal Appeal No. 55 of 1995 dismissing the said appeal and thereby affirming the judgment and order of conviction and sentenced dated 13.06.1995 passed by the learned Additional District Magistrate, Cumilla in D.M. Case No. 190 of 1992 and G.R. Case No. 26 of 1992 convicting the petitioners under section 436 of the Penal Code and sentencing them to suffer rigorous imprisonment for 1 (one) year and also to pay a fine of Taka 500/- each in default to

suffer rigorous imprisonment for 1 (one) month more should not be set aside and or pass such other or further orders as to this Court deem fit and proper.

The prosecution story, in short, is that on 23.03.1992 at about 11-11.30 p.m., due to previous enmity, accused Habibur Rahman, Shahidullah, Harun-or-Rashid and Abdul Mannaf abused Abdul Matin with filthy language and they also threatened Abdul Matin to kill. At one stage of threat, while Abdul Matin took shelter in his west viti hut, accused Habibur Rahman brought a Cupi-Bati from the house of Harun-or-Rashid and set fire to the said dwelling hut, which burnt the hut with all belongings to ashes. Due to said incident, Abdul Matin suffered a loss of Taka 4,000-5,000/-. Hence, Abdul Matin as an informant lodged Barura Police Station Case No. 3 dated 19.05.1998 under section 436 of the Penal Code implicating the present petitoners which gave rise to D.M. Case No. 190 of 1992 corresponding G.R. Case No. 26 of 1992.

Police investigated the case and submitted Barura Police Station Charge Sheet No. 35 dated 13.08.1992 under section 436 of the Penal Code against all the FIR-named accused. The learned

Magistrate framed the charge against the accused under section 436 of the Penal Code and the charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as eight witnesses to prove the case. The defence cross-examined the prosecution witnesses but did not adduce any defence witness.

After the conclusion of the trial the learned Magistrate by the judgment and order of conviction and sentence dated 13.06.1995 found the present petitioners guilty under section 436 of the Penal Code and sentenced them as aforesaid.

Against the said judgment and order of conviction and sentence the petitioners filed Criminal Appeal No. 55 of 1995 before the Court of Sessions Judge, Cumilla which was heard by the learned Additional Sessions Judge, 3rd Court, Cumilla. The learned Additional Sessions Judge, 3rd Court, Cumilla after hearing the said appeal by the judgment and order dated 20.09.2000 dismissed the appeal and thereby affirmed the

judgment and order of conviction and sentence passed by the trial court.

Being aggrieved thereby the convict petitioners preferred this criminal revision and obtained the Rule.

No one appears in support of the Rule.

Ms. Shiuli Khanom, the learned Deputy Attorney General appearing for the state supports the impugned judgment and order and submits that the petitioners destructed the dwelling hut of the informant by fire, so the courts below rightly found the petitioners guilty under section 436 of the Penal Code and rightly awarded the sentence.

The point to be adjudicated in this Rule is whether the courts below rightly convicted the petitioners and whether the judgment and order of conviction and sentence is maintainable.

P.W.1 in his examination-in-chief stated that on the date of occurrence at about 11 p.m. accused Habibur Rahman, Shahidullah, Harun-or-Rashid, and Abdul Mannaf set fire to his dwelling hut. He identified the accused in the dock. P.W. 2 Akter Hossain the son of the informant deposed that one night, about two years ago, Habibur Rahman, Shahidullah, Harun-or-Rashid

and Abdul Mannaf set fire to their dwelling hut, which burnt the hut. He also deposed that he had seen and recognized the accused by the light of a Cupi-Bati. P.W. 3 and 4 went to the place of occurrence hearing the hue and cry, but they did not see the accused set the fire. They heard about the involvement of the accused with the occurrence from P.W. 1 i.e. none of them are eyewitnessed of the occurrence. P.W 5 is the seizure list witness. At his presence ashes were seized from the place of occurence. P.W. 6 is the first investigating officer and P.W. 8 is the last investigating officer who submitted the charge sheet. P.W. 7 filled up the form of the FIR.

This is the evidence adduced by the prosecution. From the said evidence it appears that only P.W. 1 & 2 claimed to be the eyewitnesses. It also appears that the informant and the accused are neighbors and they used to live in the same compound. Before the alleged occurrence, an altercation took place between the petitioner and the accused. P.W. 2 deposed that one night about two years ago Habibur Rahman, Shahidullah, Harun-or-Rashid and Abdul Mannaf set fire to their dwelling hut. He also deposed that he had seen and recognized the accused by the

light of a Cupi-Bati. P.W. 2 failed to mention the time of the occurrence and also failed to state the manner of the occurrence i.e. about the altercation that took place between his father and the accused before the alleged firing. This omission suggests that P.W.2 was not present in the place of occurrence at the time of occurrence. If P.W.2 remained present in the place of occurrence at the time of occurrence he might describe the means of recognition differently. So, in this case, I do not find any evidence to corroborate the evidence of P.W.1.

Admittedly, there was enmity between the parties. Therefore, it is not safe to convict anyone on the sole evidence of a witness who was inimical to the accused, without having any independent corroboration. The courts below without considering the same passed the impugned judgment and order of conviction and sentence which required to be interfered.

Hence, I find merit in the rule.

Accordantly, the rule is made absolute.

The impugned judgment and order dated 20.09.2000 passed by the learned Additional Sessions Judge, 3rd Court, Cumilla in Criminal Appeal No. 55 of 1995 dismissing the said

appeal and thereby affirming the judgment and order of conviction and sentence dated 13.06.1995 passed by the learned Additional District Magistrate, Cumilla in G.R. Case No. 26 of 1992 and D.M. Case No. 190 of 1992 convicting the petitioners under section 436 of the Penal Code and sentencing them to suffer rigorous imprisonment for 1 (one) year and to pay a fine of Taka 500/- each in default to suffer simple imprisonment for 1 (one) month more are hereby set aside.

The petitioners are released from the bail bond.

Send down the lower court's record and communicate the order at once.

Kashem/B.O