

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

**Present:**

**Mr. Justice Md. Khairul Alam**

**Criminal Revision No. 1076 of 2005**

In the matter of:

Md. Nurul Islam

..... -Petitioner.

-Versus-

The State

..... -Opposite party.

None appears

..... For the petitioner.

Mr. S.M. Emamul Musfiqur, A.A.G

..... For the state

**Heard On: 11.11.2024 &**  
**Judgment on: 20.11.2024**

**Md. Khairul Alam, J:**

This rule was issued calling upon the Deputy Commissioner, Gazipur to show cause as to why the judgment and order dated 28.02.2005 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Gazipur in Criminal Appeal No. 24 of 1991 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 30.05.1991 passed by the learned Magistrate, 1<sup>st</sup> Class, Kapashia, Gazipur in Criminal Miscellaneous Case No. 03 of 1991 arising out of T.R. No. 25 of 1991 convicting to the petitioner under section 26(1A) of the

Forest Act, 1927 and thereby sentencing him to suffer simple imprisonment for 06 (six) months and also to pay a fine of Taka 5,000/- in default to suffer simple imprisonment for 1 (one) month and 15 days more should not be set aside and or pass such other or further order or orders as to this Court deem fit and proper.

The prosecution story, in short, is that on 05.10.1990 at about 6.00 a.m., Abdul Kader Bhuyan, Forest Officer, Gosinga Bit, Gazipur along with other employees of the forest division went to the village Tarun under the mauza Tarun and found that the accused Rafiqul Islam, Chand Mia, Shofiqul Islam, Nurul Islam and Monir Hossain had been chopping wood on plot No. 33. The informant party tried to detain the said accused, but they managed to escape. The informant party seized 2 maunds of Gozari tree and also received 3 maunds of firewood from the place of occurrence. On investigation, the informant party found that on the previous night, those trees had been cut from plots Nos. 1 and 4 of Tarun Mauza and plot No. 4 of Pakiar Mauza, hence the case.

The learned Magistrate framed charge against the petitioner and 3 others under section 26(1A) of the Forest Act, 1927 and discharged co-accused Siful Islam as he was then minor.

During the trial, the prosecution examined as many as 3 witnesses to prove the charge, and the defence cross-examined the prosecution witnesses. After the prosecution witness, the accused were examined under section 342 of the Code of Criminal Procedure to which they again pleaded not guilty but did not adduce any defense witness.

After the conclusion of the trial learned Magistrate by the judgment and order of conviction of sentence dated 30.05.1999 found the petitioner and others guilty under section 26(1A) of the Forest Act, 1927, and sentenced them as aforesaid.

Against the said judgment and order of conviction and sentence the present petitioner and others preferred Criminal Appeal No. 24 of 1991 before the Court of learned Sessions Judge, Gazipur which was heard by the learned Additional Sessions Judge, 1<sup>st</sup> Court Gazipur. The learned Additional Sessions Judge, 1<sup>st</sup> Court, Gazipur after hearing the said appeal by the judgment and order dated 28.02.2005 dismissed the appeal and thereby affirmed the judgment and order of conviction and sentence passed by the trial court.

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

No one appears in support of the Rule.

Mr. S.M. Emamul Musfiqur, the learned Assistant Attorney General appearing for the state supports the impugned judgment and order and submits that the petitioner and others had removed timber from the reserved forest, hence the courts below rightly found the petitioner guilty under section 26(1A) of the Forest Act, 1927 and thereby rightly awarded the sentence.

The point to be adjudicated in this Rule is whether the judgment and order of conviction and sentence against the petitioner is maintainable or not.

P.W. 1, Abdul Kader Bhuyan, Forester of Gosinga Bit, Gazipur in his examination-in-chief stated that on 05.10.1990 at about 06.00 a.m., he along with others went to the place of occurrence and found the accused persons chopping wood. They tried to detain the accused but they managed to escape. He recovered 2 maunds of Gazari timbers and also recovered 3 maunds of firewood from the place of occurrence and recorded the same. He exhibited the report as exhibit No.1 and the seizure list as exhibit No. 2.

P.W-2 Md. Kalu Mollah, in his examination-in-chief, stated that on 05.10.1990 he went to the place of occurrence with the

Gosinga Bit Officer and heard the sound of cutting trees. They tried to detain the persons who were cutting trees, but they managed to escape. They recovered timber from the place of occurrence.

P.W. 3, Nasir Uddin in his examination-in-chief stated that on 05.10.1990, at about 06.00 a.m., he along with the Bit Officer went to inspection and found that accused Chand Miah, Rofiqul, Nurul Islam, Momin, and Shofiqul were chopping wood. They tried to detain the accused but they managed to escape.

These are the witnesses adduced by the prosecution. All the said witnesses were the employees of the forest department. Amongst the said witnesses though P.W. 1 and 3 mentioned the name of the petitioner, but P.W. 2 did not mention any name. From the said evidence it appears that none was arrested from the place of occurrence. The witnesses were the employees of the forest department, but they did not disclose how they recognized the accused. Even, the accused were not identified on the dock. Hence, a serious doubt was cast regarding the recognition of the accused. The place on which the accused persons were found to chop the wood, was private land. On a careful perusal of the prosecution witnesses, I do not find any evidence that the

petitioner removed any timber from the reserved forest; chopping wood on private land does not come within the mischief of section 26(1A) of the Forest Act, 1927. Moreover, P.W. 2 and 3 were the subordinate officers of P.W. 1 who were interested in the result of the case. The prosecution failed to adduce any impartial, independent, and natural witness from the place of occurrence to prove the case. The courts below without considering these aspects of the case, passed the impugned judgment and order of conviction and sentence which is required to interfere.

Hence, I find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and order dated 28.02.2005 passed by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Gazipur in Criminal Appeal No. 24 of 1991 affirming the judgment and order of conviction and sentence dated 30.05.1991 passed by the learned Magistrate, 1<sup>st</sup> Class, Kapashia, Gazipur in Criminal Miscellaneous Case No. 03 of 1991 arising out of T.R. No. 25 of 1991 is hereby set aside.

The petitioner is acquitted from the charge and he is released from the bail bond.

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

Kashem/B.O