

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

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 498 of 2005.

Sarbat Ali.

..... Petitioner.

-Versus-

The State.

..... Opposite party.

No one appears.

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G

..... For the State.

**Heard on 13.11.2024 and
Judgment on 19.11.2024.**

Md. Khairul Alam, J.

This Rule was issued calling upon the Deputy Commissioner, Manikgonj to show cause as to why the judgment and order of conviction and sentence dated 13.02.2005 passed by the learned Additional Sessions Judge, Manikgonj in Criminal Appeal No. 54 of 2001 dismissing the said appeal and thereby affirming the judgment and order of conviction and sentenced dated 16.08.2001 passed by the learned Additional District Magistrate, Manikgonj in G.R. Case No. 736 of 1999 convicting the petitioner under section 324 of the Penal Code and sentencing him to suffer rigorous imprisonment for 1 (one) year and also to

pay a fine of Taka 2,000/- in default to suffer rigorous imprisonment for 1 (one) month more should not be set aside and or pass such other or further order or orders as to this Court may deem fit and proper.

The prosecution story, in short, is that on 30.08.1999 the accused persons detained the informant's chickens and released them in the evening. At about 6.30 p.m., a quarrel was taking place between them about the said incident. At that time, accused Sarbat, Joynal, Shafia, Ozufa, Mukter Ali and Hatem Ali armed with various weapons such as Sanda, Dao, rod, etc. entered the house of the informant and beat him indiscriminately. Accused Sarbat Ali inflicted a Chhan dao blow on the head of the informant. When Abishker and Khairun Nessa, the wife and the mother of the informant came forward to rescue the informant, the accused persons also beat them. Hearing the hue and cry while the witnesses came to the place of occurrence the accused persons leave the place. The informant took treatment at Singair Hospital and hence filed the case.

The police after holding investigation found a prima facie case and submitted a charge sheet against the accused petitioner and others under sections 143/323/324/325 of the Penal Code.

The case being ready for trial, the case record was transmitted to the court of Additional District Magistrate, Manikganj. The learned trial court framed the charge against the accused under sections 143/326 of the Penal Code. The charge was read over and explained to the accused to which they pleaded not guilty and claimed to be tried.

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

After the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure and the accused persons again pleaded not guilty.

The defence case as it transpired from the trend of the cross-examination was that the accused persons were innocent as no such occurrence took place at all.

After the conclusion of the trial, the learned Additional District Magistrate, Manikganj by the judgment and order of conviction and sentence dated 16.08.2001 found the petitioner guilty under section 324 of the Penal Code and sentenced him as aforesaid.

Against the said judgment and order of conviction and sentence the petitioner filed Criminal Appeal No. 54 of 2001 before the Court of Sessions Judge, Manikganj which was heard by the learned Additional Sessions Judge, Manikganj. The learned Additional Sessions Judge, Manikganj after hearing the said appeal by the judgment and order dated 13.02.2005 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.

None one appears for the petitioner to support the Rule though this matter appears in the delay cause list for a number of days.

Ms. Shiuli Khanom, the learned Deputy Attorney General appearing for the state supports the impugned judgment and order and submits that the courts below rightly found the petitioner guilty under section 324 of the Penal Code and rightly awarded the sentence.

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

It appears that the informant and this petitioner are cousins and they had a long-standing dispute between them. The prosecution examined 7 witnesses to prove the charge. Amongst the said witnesses P.W. Nos. 6 and 7 were formal witnesses. P.W. 1 was the informant himself, P.W. 2 was the wife, P.W. 3 was the brother-in-law, P.W. 4 was the uncle-in-law and P.W. 5 was the mother-in-law of the informant who claimed to be the eyewitnesses. Out of these interested witnesses, P.W. 3 and P.W. 4 were not also the local witnesses, they were found at the place of occurrence by co-incidence, so they may be termed as chance witnesses. The prosecution failed to examine any neighboring people in support of the case, even the father of the informant who was present at the place of occurrence at the time of occurrence.

As per the story of the First Information Report, the alleged occurrence took place in the house of the informant, but on the dock, P.W.1, 2 and 3 mentioned the place of occurrence as the house of the father of the informant. On the other hand, P.W.4 and 5 mentioned the place occurrence as the house of the informant. Admittedly, the informant and his father used to reside in separate houses. The house of the petitioner was situated in between the house of the informant and his father. It is not the distance by

which the place of occurrence is shifted but it is the prosecution case that has been different because of shifting the place of occurrence. The First Information Report was lodged three days after the alleged occurrence without any cogent explanation. All of these create serious doubt about the prosecution story as well as the involvement of the present petitioner with the alleged occurrence. Therefore, I am of the view that the present petitioner was entitled to get a benefit of said doubt, but 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.

Accordingly, the Rule is made absolute.

The impugned judgment and order dated 13.02.2005 passed by the learned Additional Sessions Judge, Manikgonj in Criminal Appeal No. 54 of 2001 dismissing the said appeal and thereby affirming the judgment and order of conviction and sentenced dated 16.08.2001 passed by the learned Additional District Magistrate, Manikgonj in G.R. Case No. 736 of are hereby set aside.

The convict 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