

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 543 of 2011

Md. Selim

.....Convict-petitioner.

-Versus-

The State

.....Opposite party.

None appears

.....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.

Judgment on 01.02.2024.

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 17.04.2011 passed by the learned Metropolitan Additional Session Judge, 1st Court, Dhaka in Metropolitan Criminal Appeal No. 424 of 2010 affirming the judgment and order of conviction and sentence dated 18.11.2009 passed by the learned Metropolitan Magistrate, Court No. 8, Dhaka arising out of G.R. No. 99 of 2005 and T.R No. 404 of 2005

corresponding to Sutrapur Police Station case No. 42, dated 21.02.2005 convicting the accused-petitioner under Sections 279/304B of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for a period of 02(two) years + 2(two) years respectively with a direction that both the sentence shall run concurrently 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 prosecution case, in short, is that one, Md. Soyalehin Arif as informant on 21.02.2005 at about 21:45 hours lodged an Ejahar with Sutrapur Police Station, DMP, Dhaka against the accused petitioner, Md. Selim stating, inter-alia, that on 21.02.2005 while his father along with his mother and daughter were coming home by Rickshaw and then the accused driver Salim due to his rush drive of bus being No. Dhaka Metro. Ja 11-0112 hit the back side of the said rickshaw resulting informant's father, Hazi Md. Shah Alam Mollah turned down on road and died on spot and his mother and sister were seriously injured and thereafter on hearing the said news the informant rushed to Dhaka Medical College Hospital and took his father's dead body etc. and thereafter, the informant came to Sutrapur Police Station and lodged the case.

Upon the aforesaid First Information Report, Sutrapur Police Station case No. 42, dated 21.02.2005, under Sections 279/304B of the Penal Code was started against the accused petitioner.

Sub Inspector of police, Md. Azizul Haq, investigated the case, who during investigation visited the place of occurrence and examined the witnesses under section 161 of the Code of Criminal Procedure and after completion of investigation submitted charge sheet against the convict petitioner, vide charge sheet No. 251 dated 14.05.2005 under Sections 279/304B of the Penal Code.

Ultimately, the accused petitioner was put on trial before the learned Metropolitan Magistrate, Dhaka.

At the trial, the prosecution side examined in all 3(three) witnesses out of 13 charge sheeted witnesses to prove its case, while the defence examined none.

On conclusion of trial, the learned Metropolitan Magistrate, Court No. 8, Dhaka by his judgment and order dated 18.11.2009 held that the accused-petitioner guilty under Sections 279/304B of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for 2(two) years + 2 (two) years

respectively with a direction that both the sentence shall run concurrently.

Against which the accused-petitioner preferred Criminal Appeal No. 424 of 2010 before the learned Metropolitan Sessions Judge, Dhaka which was subsequently transmitted to the Court of learned Metropolitan Additional Session Judge, 1st Court, Dhaka for disposal, who by the impugned judgment and order dated 17.04.2011 dismissed the appeal and affirmed the judgment of the trial Court.

Aggrieved convict petitioner then preferred this criminal revision application and obtained the present Rule.

No one found present to press the Rule on repeated calls despite of fact that this criminal Revision has been appearing in the list for hearing with the name of the learned Advocate for the convict petitioner for a number of days.

In view of the fact that this old criminal Revision of 2011 has been dragging before this Court for more than 12 years, I am inclined to dispose of it on merit on the basis of the materials on record.

Ms. Shahida Khatoon, the learned Deputy Attorney General appearing on behalf of the State opposite party supports the impugned judgment and order of conviction and sentence dated 17.04.2011, which was according to her just, correct and proper.

Having heard the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for my consideration in this Revision is whether the Courts below committed any error in finding the accused-petitioner guilty for the offence under Sections 279/304B of the Penal Code.

On scrutiny of the record, it appears that Md. Soyalehin Arif as informant on 21.02.2005 lodged an Ejahar with Sutrapur Police Station, DMP against the accused petitioner, Md. Selim on the allegation that on 21.02.2005 while his father along with his mother and daughter were coming home by Rickshaw at about 18:00 hours the accused driver Salim due to his rush driving of bus hit the back side of Rickshaw and the Rickshaw turned down on the road resulting informant's father died on spot and other members were seriously injured. It further appears that Investigating Officer during investigation examined the witnesses under section 161 of the Code of Criminal Procedure and submitted charge sheet against the convict petitioner and during trial the

learned Metropolitan Magistrate framed charge against the accused petitioner under Sections 279/304B of the Penal Code. At the trial the prosecution side to prove its case examined in all 03 (three) witnesses out of which PW-1, Md. Soyalehin Arif as informant stated in his deposition the FIR case in toto. This witness indentified the accused petitioner on doc.

PW-2, Md. Zahidul Islam Sharif, brother of the informant, identified the accused on doc. This witness stated in his deposition that due to rush driving the accident took place resulting his father died. PW-3, Azizul Haque, S.I. who submitted charge sheet against the accused petitioner under Sections 279/304B of the Penal Code. This witness proved the seizure list as exhibit-3 and his signature thereon as exhibit-3/1 and Jimma nama as exhibit-4.

On an analysis of the impugned judgment and order of conviction and sentence together with other materials on record, it appears to me that both the Courts below on due consideration of the entire evidence and materials on record found the accused petitioner guilty under Sections 279/304B of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment 2 years + 2 years respectively with a direction that both the sentence shall run concurrently.

In the facts and circumstances of the case, the learned Deputy Attorney General rightly pointed out that the witnesses in their evidence 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 doubt.

I am satisfied that the learned Metropolitan Additional Session Judge, 1st Court, Dhaka rightly upheld the conviction for the offences in question but taking into consideration as to every aspects of the matter particularly the fact that the convict petitioner has already been faced the agony of the protected prosecution and suffered mental harassment for a long period and also having been suffered his sentence to some extent, I think, the ends of justice, will be met in the facts and circumstance of the case, if the sentence is reduced to the period already undergone.

Learned Deputy Attorney General, has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the petitioner is concerned.

The Rule is, consequently, discharged with modification of sentence. Accordingly, the sentence of petitioner for the offences under Sections 279/304B is

reduced to the period of sentence already undergone.
The convict-petitioner, Md. Selim is discharged from his
bail bond.

Send down the lower Court records at once.