

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

Present:

Mr. Justice Md. Khairul Alam

Criminal Revision No. 652 of 2001.

Surja Miah.

..... Petitioner.

-Versus-

The State.

..... Opposite party.

No one appears

..... For the petitioner.

Ms. Shiuli Khanom, D.A.G

..... For the State.

**Heard on 30.10.2024 and
Judgment on 31.10.2024.**

Md. Khairul Alam, J.

By this criminal revision, the convict petitioner challenges the legality and propriety of the judgment and order dated 23.08.2021 passed by the learned Additional Sessions Judge, 1st Court, Faridpur in Criminal Appeal No. 19 of 2000 dismissing the said appeal and thereby affirming the judgment and order of conviction dated 20.09.2000 passed by the learned Additional District Magistrate, Faridpur in G.R. No. 33 of 1995 and T.R. No. 101 of 1997 convicting and sentencing the petitioner under section 325 of the Penal Code.

The prosecution story, in short, is that on 28.02.1995 at about 3 P.M., while informant Dewan Mujibur Rahman had been returning home after visiting his paddy field, due to previous enmity, accused Daud Miah, Surja Miah, Mannaf Miah, Saifur Miah and 4-5 others unknown persons, armed with various deadly weapons such as San Dao, Iron Rod, Sabol, Lathi, etc. attacked the informant. Wahed Miah gave an order and then accused Surja Miah gave a rod blow on the right hand of the informant as a result of which his right hand was broken. Accused Daud Miah inflicted a daw blow on the head of the informant causing a fatal head injury. Other accused persons beat the informant indiscriminately. Hearing the hue and cry of the informant while the neighboring people rushed to the place of occurrence, the accused persons left the place. The informant was admitted and treated in the hospital. Hence, the informant lodged a First Information Report with the Bhangra Police Station. On the basis of said First Information Report Bhangra Police Station Case No. 15 dated 28.02.1995 under sections 323/325/326/307/114/34 of the Penal Code was started which gave rise to G.R No. 33 of 1995.

The police after holding the investigation submitted Bhangra Police Station Charge Sheet No. 51 dated 23.05.1995

under sections 307/326/325/323/114/34 of the Penal Code against the present petitioner along with others. Accordingly, the charge was framed against the petitioner under section 307 of the Penal Code. The charge was read over and explained to the petitioner to which he pleaded not guilty and claimed to be tried. The other accused persons were also charged under other sections.

During the trial, the prosecution examined as many as 8 witnesses. The defence cross-examined the prosecution witnesses and also examined 2 defence witnesses. The defense case as transpired from the trend of the cross-examination of the PWs and the deposition of D.W.s was that the accused persons were innocent and no such occurrence took place at all. The informant sustained the injury from an accident.

After the conclusion of the trial, the learned Magistrate found the present petitioner guilty under section 325 of the Penal Code and sentenced him to suffer rigorous imprisonment for 5 (five) years and also to pay a fine of Taka 5,000/- in default to suffer simple imprisonment for 1 (one) year.

Against the said conviction and sentence the petitioner preferred Criminal Appeal No. 19 of 2000 before the court of learned Sessions Judge, Faridpur which was ultimately heard by

the learned Additional Sessions Judge, 1st Court, Faridpur. The learned Additional Sessions Judge, 1st Court, Faridpur after hearing the said appeal by the judgment and order dated 23.08.2001 dismissed the appeal and thereby affirmed the judgment and order of conviction under section 325 of the Penal Code, but modified the sentence to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Taka 1,000/- in default to suffer simple imprisonment for 6 (six) months more.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence the convict petitioner 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 injury sustained by the victim comes within the mischief of section 320 of the Penal Code and hence, the courts below rightly found the petitioner guilty under section 325 of the Penal Code, as the injury was caused by the blunt weapons, and rightly awarded the sentence.

Heard the learned Deputy Attorney General and perused the revisional application and other materials on record.

In this case, the victim himself was the informant. From the injury certificate, it appears that at the date of occurrence, the informant sustained injuries. According to the injury certificate, the following injuries were present on the body of the informant:-

1. One incised injury on the head measuring $2\frac{1}{2} \times \frac{1}{2}$ bone deep. There is recurrent vomiting and Pt. is in a state of coma due to head injury. It is caused by sharp cutting weapon and grievous in nature.
2. Multiple lacerated injuries on the Rt. forearm each measuring on an average $1'' \times \frac{1}{2} \times 1''$ on X-ray investigation the Rt. Radius & Ulna fractured (#) into Multiple injury pieces. It is caused by blunt weapon & grievous in nature.
3. Multiple swelling of variable sizes and shapes present of Lt. forearm, & shoulder & on the back. These are caused by blunt weapon & simple in nature.

As per the statement of the First Information Report, injury No.1 was caused by Daud Miah, and injury No. 2 was caused by this petitioner Surja Miah. But the informant while deposed as P.W.1 in his examination-in-chief stated to the effect:-

“আসামীর বাড়ির উত্তর পাশে খালাস দেওয়ানের জমির ভিতরে উত্তর আখন্দ বাড়িয়া বা কুমার গাড়িয়ার চকে গেলে আসামীরা আমাকে ঘেরাও করে। আসামী দাদন মিয়ার হাতে থাকা ছ্যান দিয়া আমার মাথায় কোপ দিলে আমি ডান

হাত দিয়া ঠেকাইলে আমার ডান হাত ভাংগিয়া গুড়া হইয়া যায়। সূর্য মিয়ার হাতে থাকা লোহার রড দিয়া আমার মাথায় বাড়ি দিলে ডান হাত দিয়া ঠেকাইলে হাত ভাংগিয়া গুড়া হইয়া যায়। ”

From the said deposition it appears that the informant as well as the victim while deposed as P.W. 1 did not substantially support his statement which he made under section 154 of the Code of Criminal Procedure. According to the First Information Report, Dadan Miah inflicted a Chhan Da blow on the head of the victim (injury No.1) and this petitioner, Surja Miah inflicted a Rod blow on the right hand of the victim (injury No. 2). But the victim while deposed as P.W.1 stated that both Dadan Miah and this petitioner gave blows on the right hand, which is a complete departure by the victim-informant from the statement of the First Information Report and this departure destroyed the whole prosecution story. Accused Dadan Miah and this petitioner are entitled to get the benefit of the said departure equally, but the courts below without considering the same though acquitted Dadan Miah but by the impugned judgment and order convicted the petitioner which is a miscarriage of justice and is required to be interferred. Since the informant as well as the victim of the case, who was responsible for establishing his case first, failed to establish the same, therefore, I do not find any necessity to discuss the other witnesses in this case.

Considering the above facts and circumstances of the case I find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and order of conviction and sentence dated 23.08.2021 passed by the learned Additional Sessions Judge, 1st Court, Faridpur in Criminal Appeal No. 19 of 2000 dismissing the said appeal and thereby affirming the judgment and order dated 20.09.2000 passed by the learned Additional District Magistrate, Faridpur in G.R. No. 33 of 1995 is hereby set aside.

The convict-appellant-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