

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 162 of 2007

Md. Sahidur Rahman and others

...Convict-petitioners

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioners

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 08.03.2026

Judgment delivered on 09.03.2026

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 15.10.2006 passed by Additional Sessions Judge, Court No. 1, Naogaon in Criminal Appeal No. 88 of 2005 affirming the judgment and order dated 22.09.2005 passed by Magistrate, First Class, Naogaon in Manda P.S. Case No. 10 dated 06.06.2005 corresponding G.R. No. 128 of 2005 convicting the petitioners under section 4(1) of the আইন-শুধলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentencing them thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 500 each, in default, to suffer imprisonment for 1(one) month, should not be set aside and/or to pass such other or further order or orders as this Court may deem fit and proper.

The prosecution's case, in short, is that the informant P.W. 1 Kofiluddin is a driver of a van. On 06.06.2005 at 9.30 pm, he was waiting for passengers at Dhonitala Bridge, Rajshahi-Naogaon Road. At that time, the accused 1. Md. Abdus Satter, 2. Md. Mohabbat Hossain, 3. Biraj Uddin, 4. Md. Sabuj Mia, 5. Sohel, 6. Dofader and

the detained accused Shamsuddin Mondal hired his van to go to Sutihat and started there. On their way, a passenger instructed him to stop his van, and another passenger tied his neck with a rope and dragged him towards the field, and, pointing a dagger, snatched away Tk. 100 from him, and they fled away along with the van of P.W. 1. After getting free, he made hue and cry, and the locals came to the place of occurrence and detained the accused Shamsuddin while he tried to flee away. The detained Shamsuddin was taken to the house of the local Chairman. Thereafter, he, along with P.W. 1, went to the police station. In the FIR, it has been asserted that the detained accused was taken to a doctor for treatment, for which a delay occurred in lodging the FIR.

S.I Krishno Kumar Sarker was appointed as Investigating Officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, seized the alat, produced the detained accused Shamsuddin before the Magistrate, and he made a statement under section 164 of the Code of Criminal Procedure, 1898. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the prima facie truth of the allegation made against the accused Md. Shamsuddin Mondal, Abdul Quader, Md. Sahidur Rahman, Md. Shafiqul Islam, Md. Altaf and Md. Mizanur Rahman and submitted charge sheet against them under sections 4(1)/5 of the আইন-শুখলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২. Thereafter, the learned Magistrate took cognizance of the offence against the accused persons and sent the case to the Ain Shringkhola Bighnakari Aparadh (Druta Bichar) Adalat, Naogaon.

During trial, charge was framed against the accused persons under section 4(1) of the আইন-শুখলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২, which was read over and explained to the accused persons, who pleaded not guilty to the charge and claimed to be tried following the law. During the trial, the prosecution examined 8(eight) witnesses to

prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons, including the convict-petitioners, were examined under section 342 of the Code of Criminal Procedure, 1898, and they declined to adduce any D.W.

After concluding the trial, the Magistrate, First Class, Naogaon, by judgment and order dated 22.09.2005, convicted the accused persons, including the petitioners, under section 4(1) of the আইন-শুধলা বিঘ্নকারী অপরাধ (দ্রুত বিচার) আইন, ২০০২ and sentenced them thereunder to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 500 each, in default, to suffer imprisonment for 1(one) month. Against the said judgment, the convict-petitioners, along with two others, filed Criminal Appeal No. 88 of 2005 before the Sessions Judge, Naogaon. The Additional Sessions Judge, Court No. 1, Naogaon, heard the appeal and, by judgment and order dated 15.10.2006, affirmed the said judgment and order passed by the trial Court against which the convict-petitioners obtained the Rule.

P.W. 1 Kofiluddin stated that the occurrence took place on 20th Jaistha last year at 9.30 pm. Six persons hired his van at Tk. 30 from the Dhonitala Bridge, Rajshahi, Naogaon Road. A passenger of the van instructed him to stop. At one point in time, the passengers detained him and tied his hands and legs, bound his mouth with scotch tape, and snatched away Tk. 100 along with the van. The accused persons attempted to flee from the place of occurrence. At that time, opening his mouth, he raised hue and cry, and the locals detained accused Shamsuddin, and five other accused persons fled away. The detained accused Shamsuddin was taken to the Chairman of No. 5, Goneshpur Union Parishad. Thereafter, the local Choukider took the accused Shamsuddin to Thana. The detained accused Shamsuddin, disclosed the names of other accused persons. He proved the FIR as Exhibit 1 and his signature thereon as Exhibit 1/1. During cross-examination on behalf of the accused Shamsuddin, he

stated that six accused persons detained him and snatched away the money. He denied the suggestion that he had deposed in a false case.

P.W. 2 Mohabbat Hossain stated that on 06.06.2005 at 9.30 pm, the occurrence took place on the road at Dhonitala beside his house. He, along with the locals, detained the accused Shamsuddin and took him to the house of the local Chairman. During cross-examination, he stated that the accused was detained at 200 yards from the place of occurrence, but nothing was recovered from him. He denied the suggestion that he deposed falsely.

P.W. 3 Sabuj stated that on the next day of the occurrence, the Investigating Officer seized scotch tape, pliers, rope, sandal, etc. from the place of occurrence, and he signed the seizure list. He proved the seizure list as exhibit 2 and his signature on the seizure list as exhibit 2/1. During cross-examination, he affirmed that at the time of detaining accused Shamsuddin, he was present there. When the accused attempted to flee, the locals chased him and detained him.

P.W. 4 Md. Sohel stated that on 06.06.2005 at 9.00 pm, hearing hue and cry, he came out of his house and saw that the accused Shamsuddin was detained near the house of Ayis Sarder. Thereafter, he was taken to the house of the local Chairman. He heard that the accused snatched away the van. During cross-examination, he affirmed that chasing the accused, the locals detained him.

P.W. 5 Md. Dulal stated that on the next day of the occurrence, the Investigating Officer seized alat and took his signature. He proved his signature on the seizure list as Exhibit 2/2. During cross-examination, he stated that the accused Shamsuddin was detained 150 yards from the place of occurrence. During cross-examination, he affirmed that the alatats were seized from the place of occurrence.

P.W. 6 Abdul Gafur Mondal is a Dofader. He stated that on 06.06.2005 at 9 pm, the accused Shamsuddin was taken to the local

Chairman who instructed him to hand over the accused Shamsuddin to the Thana.

P.W. 7 Md. Shafiqul Islam is the Magistrate, First Class, Naogaon, who recorded the statement of the accused Md. Shamsuddin Mondal. He stated that on 07.06.2005, the accused Md. Shamsuddin Mondal was produced to him, and he made a statement under section 164 of the Code of Criminal Procedure, 1898, and accordingly, he made his statement. The recorded statement of the accused was read over to him, and he signed the statement. He proved the statement recorded under section 164 of the Code of Criminal Procedure, 1898, as exhibit 3, and his signature as exhibit 3/1. During cross-examination, he affirmed that police personnel were not present at the time of recording his statement.

P.W. 8 S.I Krishno Kumar Sarker stated that on 06.06.2005, he recorded the FIR lodged by the informant. He was appointed as the Investigating Officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and he seized the alat in the presence of witnesses. He produced the accused Shamsuddin Mondal to record his statement under section 164 of the Code of Criminal Procedure, 1898. In the statement made by the accused Shamsuddin Mondal, he named the accused Abdul Quader, Sahidur Rahman, Shafiqul Islam, Altaf Hossain, and Mizanur Rahman. He also recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the prima facie truth of the allegation against the accused persons, including the convict-petitioners. He proved the sketch map as exhibit 4 and his signature thereon as exhibit 4/1. He proved the index as exhibit 5 and his signature as exhibit 5/1. He proved his signature on the seizure list as Exhibit 2/3. During cross-examination, he stated that he seized the van produced by the accused. He admitted that the accused Shamsuddin was taken to a doctor for treatment.

No one appears on behalf of the convict-petitioners.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing on behalf of the State, along with the learned Assistant Attorney General Mr. Mir Moniruzzaman, submits that the co-accused Md. Shamsuddin Mondal was detained at the time of the occurrence when he, along with the convict-petitioners, made an attempt to flee in the van and was detained, accused Md. Shamsuddin Mondal made a statement under section 164 of the Code of Criminal Procedure, 1898, and implicated the convict-petitioners. However, he finds it difficult to support the impugned judgment and order passed by the Courts below against the convict-petitioners.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with the learned Assistant Attorney General Mr. Mir Moniruzzaman, on behalf of the State, perused the impugned judgments and orders passed by the Courts below, the evidence adduced by the parties, and the records.

On perusal of the evidence, it reveals that the co-accused Md. Shamsuddin Mondal was detained at the time of the occurrence by the locals when he attempted to flee with the van. Thereafter, he was handed over to the police who produced him to the Magistrate P.W. 7 Md. Shafiqul Islam and the detained co-accused Md. Shamsuddin Mondal made a statement under section 164 of the Code of Criminal Procedure, 1898. P.W. 7 proved the statement made by the co-accused Md. Shamsuddin Mondal under section 164 of the Code of Criminal Procedure, 1898, as exhibit 3. On perusal of the statement made by the co-accused Md. Shamsuddin Mondal (exhibit 3) reveals that the co-accused Md. Shamsuddin Mondal named the convict-petitioners in his statement recorded under section 164 of the Code of Criminal Procedure, 1898 as assailant. None of the witnesses named the convict-petitioners in their evidence.

It is a settled proposition that the statement of a co-accused recorded under section 164 of the Code of Criminal Procedure, 1898, cannot be the sole basis of conviction of the other co-accused. Therefore, I am of the view that impugned judgments and orders passed by the Courts below against the convict-petitioners, relying on the sole statement of co-accused Md. Shamsuddin Mondal recorded under section 164 of the Code of Criminal Procedure, 1898, are not sustainable in law.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the convict-petitioners 1. Md. Sahidur Rahman, 2. Md. Abdul Quader and 3. Md. Shafiqul Islam are hereby set aside.

The convict-petitioners 1. Md. Sahidur Rahman, 2. Md. Abdul Quader and 3. Md. Shafiqul Islam are acquitted from the charge framed against them.

Send down the lower Court's records at once.