Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.27 of 2007

Mufazzal alias Nesta

----Accused-Appellant-Petitioner

-Vs-

The State

---- Opposite Party

No one appears

----For the Petitioner

Mr. Md. Taherul Islam (Tawhid), D.A.G with

Mr. Mohammad Moniruzzaman, A.A.G

---- For the State

Heard on 23.02.2026, 25.02.2026 and

Judgment on 02.03.2026

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 05.09.2004 passed by the learned Special Sessions Judge Court, Jamalpur dismissing the Criminal Appeal No. 28 of 1984 and upholding the judgment and order of conviction and sentence dated 18.04.1984 passed by the learned Magistrate, 1st Class Bakshiganj, Jamalpur arising out of Bakshiganj P.S. Case No.02 dated 23.05.1983 and corresponding to G.R. No.144(2)83 should not be set aside and/ or to pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in short, is that on the night of 16.05.1983 some unknown person or persons entered into the dwelling house of the

informant, Md. Shawkat Hossain, by making a hole and committed theft of certain articles as mentioned in the First Information Report. The informant was not present at the house at the time of occurrence. After returning home from Dhaka, he came to know about the occurrence and lodged the FIR on 23.05.1983.

After investigation, the Investigating Officer submitted charge-sheet against two accused persons including the present accused-petitioner under sections 457/380/411 of the Penal Code.

The case was tried by the learned Magistrate, 1st Class, Bakshiganj, Jamalpur who, by judgment and order dated 18.04.1984, convicted the accused-petitioner under sections 457/380 of the Penal Code and sentenced him to suffer rigorous imprisonment for 1(one) year and also to pay a fine of Tk. 1,000/-, in default to suffer rigorous imprisonment for 1(one) month.

Being aggrieved, the accused-petitioner preferred Criminal Appeal No. 28 of 1984 before the learned Sessions Judge, Jamalpur. The said appeal was heard by the learned Special Sessions Judge, Jamalpur who, by judgment and order dated 05.09.2004, dismissed the appeal and upheld the judgment and order of conviction and sentence passed by the trial Court.

Thereafter, the accused-petitioner surrendered before the trial Court on 27.12.2006 and was sent to jail custody. Subsequently, the accused-petitioner filed the present revisional application and obtained the instant Rule along with bail on 16.01.2007.

No one appears on behalf of the accused-petitioner at the time of hearing.

Mr. Md. Taherul Islam (Tawhid), learned Deputy Attorney General with Mr. Mohammad Moniruzzaman, learned Assistant Attorney General appearing for the State, opposes the Rule and submits that both the Courts below, upon proper assessment of the evidence on record, found the accused-petitioner guilty and, as such, the impugned judgment and order do not call for any interference by this Court.

Heard the learned Deputy Attorney General and perused the revisional application, the impugned judgments and orders passed by the Courts below and the materials on record.

It appears that the learned trial Court convicted the accused-petitioner under sections 457 and 380 of the Penal Code.

Section 457 of the Penal Code provides punishment for lurking house-trespass or house-breaking by night in order to commit an offence punishable with imprisonment. Section 380 of the Penal Code provides punishment for theft in any building, tent or vessel used as a human dwelling or for custody of property.

In a criminal case, the burden always lies upon the prosecution to prove the charge against the accused beyond all reasonable doubt. The accused is presumed to be innocent unless his guilt is established by legal, reliable and cogent evidence. Suspicion, however strong, cannot take the place of proof. A conviction cannot be sustained on conjecture, surmise or

moral belief unless the essential ingredients of the offence are proved by admissible evidence.

On scrutiny of the evidence, it appears that PW-1, Md. Shawkat Hossain, the informant, stated that he was working at Dhaka Airport and was not present at the place of occurrence on the night of the incident. He returned home on 22.05.1983 and lodged the FIR on 23.05.1983. In cross-examination, he stated that he did not know the accused persons.

PW-2, Chan Mia, stated that upon hearing cries and shouts, he went to the place of occurrence and saw the hole made in the wall and heard from the complainant's wife that some articles had been stolen.

PW-3, Abdus Salam Mondol, uncle of the complainant, also stated that upon hearing cries of the complainant's wife, he went to the place of occurrence and saw the hole. In cross-examination, he stated that he did not know the accused persons.

PW-4, Dr. Abdul Aziz, stated that he accompanied the police officer to the house of accused Lal Mia and saw one cassette, one saree and one brass bowl in the hands of the police officer. He further stated that accused Lal Mia told him that Nesta had kept those articles with his wife 2/3 days earlier. In cross-examination, he stated that he did not make any statement to the police officer.

PW-5 stated that upon hearing cries and shouts, he went to the place of occurrence and heard that cassettes, a saree and other clothes had been stolen.

PW-6, Habibur Rahman Saudagar, stated that he went with the police officer and saw a cassette at the house of Lal Mia, but in cross-examination he clearly stated that he did not see from where the cassette was actually recovered.

PW-7 stated that he saw two holes, one big and one small, at the place of occurrence. He is also related to the complainant.

PW-8, Mst. Selina Khatun, wife of the complainant, stated that she woke up hearing a sound and, not finding the cassette in its place, raised alarm. In cross-examination, she admitted that she did not see who committed the theft.

PW-9 stated that upon hearing cries, he went to the place of occurrence and saw and heard about the incident. In cross-examination, he stated that he did not know what articles were kept in the complainant's house.

PW-10, Md. Sakhawat Hossain, the Investigating Officer, stated that he arrested accused Mofazzal alias Nesta under section 54 of the Code of Criminal Procedure and, on the basis of his statement, recovered the stolen cassette from the dwelling house of accused Lal Mia. In cross-examination, he stated that no witness was present at the place of recovery, that he did not record any statement under section 164 of the Code of Criminal Procedure, that the complainant did not explain the delay in filing the case and that he did not prepare any sketch map of the place of occurrence.

It is a settled principle of criminal jurisprudence that evidence of hearsay nature cannot be the basis of conviction unless it is corroborated by direct and reliable evidence. In the present case, most of the prosecution witnesses went to the place of occurrence after hearing cries and only saw the alleged hole. None of them saw the occurrence. None of them identified the present accused-petitioner as one of the persons involved in the offence.

It is also a settled principle of law that the statement of a co-accused is not substantive evidence against another accused. Unless such statement is made in accordance with law and is corroborated by independent evidence connecting the accused with the offence, no conviction can be based solely upon such statement. In the instant case, neither the accused-petitioner nor the co-accused Lal Mia made any confessional statement under section 164 of the Code of Criminal Procedure before a Magistrate.

The present accused-petitioner was not named in the FIR. No stolen article was recovered from his possession or custody. The alleged recovered articles were said to have been recovered from the house of co-accused Lal Mia, but the learned trial Court acquitted Lal Mia and convicted the present accused-petitioner. Such finding appears to be contradictory and unsupported by legal evidence.

In a case under sections 457 and 380 of the Penal Code, the prosecution must prove not only that house-breaking by night and theft took place, but also that the accused before the Court committed or

participated in the commission of such offence. Mere proof of theft or house-breaking is not enough to convict a particular accused unless his identity and involvement are proved beyond reasonable doubt.

The evidence on record may suggest that a theft took place in the house of the informant, but there is no reliable evidence to connect the present accused-petitioner with the alleged theft. The chain of circumstances is incomplete and does not point unerringly towards the guilt of the accused-petitioner.

It is also well settled that where two views are possible from the evidence on record, the view favourable to the accused must be accepted. Benefit of doubt is not a matter of grace; it is a legal right of the accused when the prosecution fails to prove the charge beyond reasonable doubt.

The Investigating Officer also admitted several material defects in the investigation. No independent witness was present at the time of recovery. No sketch map of the place of occurrence was prepared. The delay in lodging the FIR remained unexplained. These circumstances further weaken the prosecution case.

It further appears that the appellate Court dismissed the appeal in the absence of the appellant and without proper reassessment of the evidence on record. An appellate Court, while affirming a conviction, is required to independently consider the evidence, examine the reasoning of the trial Court and satisfy itself that the conviction is supported by legal evidence. A summary dismissal of a criminal appeal involving conviction

and sentence, without adequate discussion of material evidence, cannot be treated as proper exercise of appellate jurisdiction.

Having considered the evidence and materials on record, this Court finds that the prosecution has failed to prove the charge against the accused-petitioner beyond reasonable doubt. The conviction of the accused-petitioner appears to have been based mainly on suspicion and on the alleged statement of a co-accused, without any independent corroboration. Such conviction cannot be sustained in law.

It also appears from the record that out of the sentence of 1(one) year, the accused-petitioner has already suffered about 5(five) months imprisonment.

In view of the facts and circumstances of the case, the evidence on record and the legal principles discussed above, this Court is of the view that the judgments and orders passed by the Courts below suffer from serious illegality and misappreciation of evidence and are therefore liable to be interfered with.

Accordingly, the Rule is made absolute.

The impugned judgment and order dated 05.09.2004 passed by the learned Special Sessions Judge, Jamalpur in Criminal Appeal No. 28 of 1984 affirming the judgment and order of conviction and sentence dated 18.04.1984 passed by the learned Magistrate, 1st Class, Bakshiganj, Jamalpur in Bakshiganj P.S. Case No. 02 dated 23.05.1983 corresponding to G.R. No. 144(2)83 are hereby set aside.

The accused-petitioner is acquitted of the charge leveled against him.

The accused-petitioner is discharged from his bail bond.

Send down the lower Court records at once along with a copy of this judgment.

Mr. I.Sarwar/B.O