

Present
Mr. Justice Sheikh Abdul Awal
Criminal Revision No. 617 of 2011

Md. Jashim Choukidar

.....Convict-Petitioner.

-Versus-

The State.

.....Opposite party.

No one 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 Opposite party.

Judgment on 29.02.2024.

Sheikh Abdul Awal, J:

On an application under section 439 of the Code of Criminal Procedure, this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 23.06.2008 passed by the learned Special Sessions Judge and Jana Nirapatta Bighnakari Aparadh Daman Tribunal, Barisal in Criminal Appeal No. 17(3)05 modifying the sentence of the accused petitioner to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Tk. 3,000/-(three thousand) in default to suffer simple

imprisonment for 6 (six) months more in place of rigorous imprisonment for a period of 5(five) years and to pay a fine of Tk. 10,000/-(ten thousand) in default to suffer rigorous imprisonment for 01(one) year more under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002 passed by the learned Magistrate, 1st Class, Barisal in G.R. No. 78 of 2005 corresponding to Mehendiganj police station case No. 6 dated 09.05.2005 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 relevant facts briefly are that one Md. Khalilur Rahman as informant on 09.05.2005 at about 1:30 hours lodged an Ejahar with Mehendiganj Police Station against the accused, Md. Jashim Choukidar, Fazlu Choukidar, Alamgir Mallik, Md. Anwar, Biplab, Sanjay Sen and Alamgir stating inter-alia, that on 01.5.2005 at about 10:00 a.m. accused Jashim Choukidar, Fazlu Choukidar, Alamgir Mallik came to the house of the informant and demanded Tk. 50,000/- (fifty thousand) as ransom saying that they will come again for taking that Tk. 50,000 as ransom and accordingly, on 07.5.2005 at night 1:00 a.m. the accused petitioner and others came to the informant's house and demanded Tk. 50,000 as ransom while the informant

disclosed that he has collected only Tk. 23,000/-(twenty three thousand) and accordingly, asked them to take that money and he will pay the rest amount later on and thereafter, the accused persons became angry and entered into the house of the informant by broken door and took the key of Almirah and opened it and took away Tk. 23,900/- (twenty three thousand nine hundred) and also took a mobile phone set and thereafter, the accused persons broken trunk and took gold ornaments and charger light which valued at Tk. 1,01,900/-(one Lac, one thousand and nine hundred) and thereafter, the informant party informed the matter to local leaders named Rahim Matabbar, Shajahan Matabbar, Rashid Matabbar and thereafter, in the following morning the informant party saw some of the accused persons and caught hold of them. On a query accused persons admitted that accused petitioner Jashim Choukider hired them while local people beaten the accused persons and recovered torch light, charger light, Korat and Range etc. from them and thereafter, police came and arrested the accused persons and took them to local police station.

Upon the aforesaid First Information Report, Mehendiganj police station case No. 6 dated 09.05.2005 under Section 4 of Ain Sringkhala Bignakari Aparadh

(Druto Bichar) Ain, 2002 was started against the accused-petitioner and others.

Police after completion of usual investigation submitted charge sheet against accused-petitioner and 5 others, vide charge sheet No. 251 dated 14.05.2005 under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002.

Ultimately, the case was transmitted to the Court of the learned Magistrate, 1st Class, Barisal for trial.

At the trial, the prosecution side examined in all 19(nineteen) witnesses out of total 27 charge sheeted witnesses and exhibited some documents to prove its case, while the defence examined none.

Accused petitioner Jashim was absconding during trial.

On conclusion of trial, the learned Magistrate by his judgment and order dated 24.07.2005 found all the accused-persons guilty under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002 and sentenced the accused petitioner and 2 others thereunder to suffer rigorous imprisonment for a period of 05 (five) years and to pay a fine of Tk. 10,000/-(ten thousand) in default to suffer rigorous imprisonment for 01(one) year

more each and also sentenced another accused Biplob thereunder to suffer rigorous imprisonment for a period of 2 years and 6 months and to pay a fine of Tk. 3000/- (three thousand) in default to suffer simple imprisonment for 06 (six) months more and also sentenced another 2 accused, Anwar and Sanjay thereunder to suffer rigorous imprisonment for 3 years and to pay a fine of Tk. 5000/- (five thousand) in default to suffer simple imprisonment for a period of 06 (six) months more each.

In this backdrop the accused petitioner Jashim Uddin Choukidar voluntarily surrendered on 11.09.2005 before the trial Court, who took him into jail by his order dated 11.09.2005.

Against which the accused-petitioner and 5 others preferred 4 Criminal Appeals being Criminal appeal No. 17(3)05, Criminal appeal No. 18(3)05, Criminal appeal No. 15(3)05 and Criminal appeal No. 05(1)07 before the learned Sessions Judge, Barisal which was subsequently transmitted to the Court of the learned Special Sessions Judge and Jana Nirapatta Bighnakari Aparadh Daman Tribunal Barisal for disposal, who after hearing the appeals together by the impugned judgment and order dated 23.06.2008 dismissed the appeals modifying the

judgment and order of conviction and sentence dated 24.07.2005.

Being aggrieved by the aforesaid impugned judgment and order dated 23.06.2008 passed by the learned Special Sessions Judge and Jana Nirapatta Bighnakari Aparadh Daman Tribunal, Barisal the present convict-petitioner moved before this Court and obtained the present Rule.

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

In view of the fact that this old criminal Revision of 2011 arising out of 2 years sentence has been dragging before this Court for more than 12 years, I am inclined to dispose of the same on merit.

On scrutiny of the record, it appears that one Md. Khalilur Rahman as informant on 09.05.2005 at about 1:30 hours lodged an Ejahar with Mehendiganj Police Station against the accused Md. Jashim Choukidar, Fazlu Choukidar, Alamgir Mallik, Md. Anwar, Biplab, Sanjay Sen and Alamgir stating, inter-alia, that on 01.5.2005 at about 10:00 a.m. accused Jashim Choukidar, Fazlu

Choukidar, Alamgir Mallik came to the house of the informant and demanded Tk. 50,000/-(fifty thousand) as ransom stating that within one week they will come again for taking that ransom and accordingly, on 07.5.2005 at night 1:00 a.m. accused petitioner and others came to the informant's house and demanded ransom amounting to Tk. 50,000/-(fifty thousand) while the informant out of fear stated that he has only collected 23,000/-(twenty three thousand) and asked them to take tk. 23,000 and he will pay the rest amount later on and thereafter, the accused persons became angry and entered into the house of the informant by broken door and took key of Almirah and opened it and took Tk. 23,900/- (twenty three thousand nine hundred) and also took a mobile set and thereafter the accused broken trunk and took gold ornaments and charger light which valued Tk. 1,01,900/-(one Lac, one thousand and nine hundred) and thereafter, the informant party informed the matter to the local leaders named Rahim Matabbar, Shajahan Matabbar, Rashid Matabbar and thereafter in the following morning the informant party saw the accused persons and caught hold of them, who on a query disclosed that accused petitioner Jashim Choukider hired them while the local people beaten the accused persons and recovered torch light, charger, Charger light, Korat,

Range etc. from them. It further appears that police after completion of investigation submitted charge sheet against convict petitioner and others under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002.

At the trial the prosecution side examined in all 19 witnesses out of which PW-1 informant, Khalilur Rahman stated in his deposition that on 08.05.2005 at night Jashim Choukidar, Fazlu Choukidar, Alamgir Mallik, Anwar Sanjay, Biplob came to his house and stood near about his window and thereafter Jashim Choukidar asked the informant to bring Tk. 50,000/- as ransom while the informant told him that he could not collect Tk. 50,000/-(fifty thousand), he collected only Tk. 23,000/-(twenty three thousand) while accused Jashim asked to give gold ornaments against the said money but the informant denied it when the accused persons became angry and entered into the house by breaking door and thereafter accused persons on the face of knife and pistol took the key and opened the door of Almira and took away money from drawer of Almira and thereafter accused Anwar took Mobile set which valued at Tk. 25,000/-(twenty five thousand) and accused Fazlu took charger light and thereafter, accused Fazlu, Alamgir, Biplob, Anwar broken the trunk and

took away 5 vories of Gold ornaments, which valued totalling value at Tk. 1,01,900/-(one Lac, one thousand and nine hundred) and at the time of leaving of the informant's house the accused persons threatened him in the following language that “ডাক চিৎকার দিলে, আইনের আশ্রয় নিলে সব কুকুরের মত গুলি করে মেরে ফেলব।” Thereafter, local people came to the place of occurrence while the informant party told them as to robbery (ডাকাতি) and thereafter, they came out from the house and started searching about robbers (ডাকাত) and in the following morning they saw 3 persons standing on the road while local people called the informant to come there and to see those persons whether they are robbers (ডাকাত) or not and thereafter, the informant came and identified accused Shanjay and 3 others and on a query recovered Korat, 2 charger, etc. and the accused persons admitted that they committed robbery (ডাকাতি) and also disclosed that other accused persons took away the stolen goods. Thereafter, police came and arrested the accused persons and took them under their custody. In cross examination the defence could not able to discover anything as to the credibility of the witness on the matter to which he testifies. PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, PW-9, PW-10, PW-11, PW-12, PW-13, PW-14, PW-15, PW-16, all these prosecution witnesses corroborated

the evidence of PW-1 in respect of all material particulars. PW-17 and PW-18 were tendered. PW-19, S.I. Rafiqul Islam, who investigated the case and submitted charged sheet against the petitioner and others under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002. This witness in his deposition stated that during investigation he visited the place of occurrence, examined the witnesses under section 161 of the Code of the Criminal Procedure, prepared sketch map, seized alamots and after completion of investigation submitted charge sheet against the accused petitioner and others under section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002.

On conclusion of trial, the learned Magistrate found the accused petitioner and others guilty under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002 and accordingly sentenced them thereunder to suffer rigorous imprisonment for a period of 05 (five) years and to pay a fine of Tk. 10,000/-(ten thousand) in default to suffer rigorous imprisonment for 01(one) year more each.

On appeal, the learned Special Sessions Judge and Jana Nirapatta Bighnakari Aparadh Daman Tribunal

Barisal by the impugned judgment and order dated 23.06.2008 dismissed the appeal modifying the sentence of the accused petitioner to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Tk. 3,000/-(three thousand) in default to suffer simple imprisonment for 6 (six) months more in place of rigorous imprisonment for a period of 5(five) years and to pay a fine of Tk. 10,000/-(ten thousand) in default to suffer rigorous imprisonment for 01(one) year more under Section 4 of Ain Sringkhala Bignakari Aparadh (Druto Bichar) Ain, 2002 passed in G.R. No. 78 of 2005 corresponding to Mehendiganj police station case No. 6 dated 09.05.2005 by the learned Magistrate, 1st Class, Barisal.

On a close perusal of the evidence on record together with the F.I.R, charge sheet and other materials on record, it appears that in this case prosecution witnesses 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 and accordingly the court of appeal below dismissed the appeal with modification of sentence as stated above.

On an analyses of the impugned judgment, I find no flaw in the reasonings of the lower appellate court or

any ground to assail the same. The impugned judgment and order appears to be well founded in law and fact. No interference is called for.

In the result, the Rule is discharged. The impugned judgment and order dated 23.06.2008 passed by the learned Special Sessions Judge and Jana Nirapatta Bighnakari Aparadh Daman Tribunal Barisal in Criminal Appeal No. 17(3)05 dismissing the appeal by modifying the judgment and order of conviction and sentence dated 24.07.2005 passed by the Magistrate Court, 1st Class, Barisal arising out of G.R. No. 78 of 2005 corresponding to Mehendiganj police station case No. 6 dated 09.05.2005 against the convict petitioner is hereby affirmed.

Since the Rule is discharged, the convict petitioner, Md. Jashim Choukidar is directed to surrender his bail bond within 3 (three) months from today to suffer his sentence, failing which the Trial Court shall take necessary steps to secure arrest against him in accordance with law.

Send down the lower Court records at once.