

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

Bench:

Mr. Justice Muhammad Abdul Hafiz
and

Mr. Justice Md. Ruhul Quddus

Criminal Revision No.120 of 2005

Md. Abdur Rob Bhuiyan

... Petitioner

-Versus-

Sheikh Ahammed and others

... Opposite Parties

No one appears for the petitioner

Mr. Abu Saleh Md. Fazle Rabbi Khan,
Assistant Attorney General

... for the State

Judgment on 21.11.2013

Md. Ruhul Quddus, J:

This Rule at the instance of an informant was issued on an application under sections 435 and 439 of the Code of Criminal Procedure challenging the judgment and order dated 06.11.2004 passed by the Additional Sessions Judge, Second Court, Noakhali in Session Case No. 11 of 2002 (arising out of Sonaimuri Police Station Case No.1 dated 04.01.2001 corresponding to G.R. No. 156 of 2001) acquitting opposite parties 1-20 from the charge under sections 448, 387, 307, 325, 326 and 380 of the Penal Code.

The petitioner lodged an *ejahar* with Sonaimuri Police Station on 04.02.2001 against opposite parties 1-20 and another alleging *inter alia* that he had enmity with the said opposite parties over a land dispute. On 15.01.2001 the opposite parties 1-20 and their accomplices demanded him to pay subscription of taka 50,000/- (fifty thousand) within 15 days. As he

failed to pay the money the opposite parties attacked him on 01.02.2001 at 8.45 p.m. while he along with his son was coming back home. When they reached the door step of his house, opposite party 1 at the instance of opposite party 2 dealt a blow on his head with a stick. As he quickly shifted his position and tried to resist the stroke with his left hand, his left mid-finger was fractured. The opposite parties in the manner described in the *ejahar* seriously injured the victim-witnesses Zafor Ahamed and Jashim Uddin. They also snatched taka 4,970/= from Jashim Uddin and took away a coloured television, tape recorder, wrist watch, valuable attires and utensils from his house causing loss of total taka 51470/=. The inhabitants of the house raised hue and cry to which the neighbors and local witnesses rushed to the place of occurrence. At the same time the local police from the nearby police camp rushed to the spot and caught hold of fourteen of the offenders.

The police after investigation submitted charge sheet on 03.08.2001 under sections 143, 448, 323, 324, 326, 307, 387, 379, 380 and 427 of the Penal Code against 19 accused and submitted final report in favour of accused Semna Begum. The case after being ready for trial was sent to the Sessions Judge, Noakhali and was registered as Session Case No. 11 of 2002. The Sessions Judge by order dated 10.04.2002 framed charge against all of the accused, to which they pleaded not guilty and claimed to be tried. Then he sent the case record to the Additional Sessions Judge, Second Court, Noakhali for disposal.

The prosecution in order to prove its case examined as many as 15 witnesses out of 19 who were cited in the charge sheet. Among them P.W.1 Abdur Rab Bhuiyan was the informant, P.W.2 Jashim Uddin was an alleged victim and his relation, P.W.3 Aminul Islam was a local hearsay witness, P.W. 4 Zafar Ahamed was another victim of the alleged occurrence and brother-in-law to the informant, P.W. 5 Dr. Nikhil Chandra Dey was the Residential Medical Officer of Begumgonj Upazila Health Complex who had examined the victim Zafar Ahmmed after the occurrence took place,

P.W. 6 Md. Hanif Dafadar was a local seizure list witness, P.W.7 Shah Alam Chowkidar was also a local seizure list witness, P.W.8 Md. Ruhul Amin was a hearsay witness and relation to the informant, P.W. 9 Dr. Md. Mofizul Alam was the Residential Medical Officer of Noakhali General Hospital who treated the victim Jashim Uddin on his admission to the hospital on 3.2.2001, P.W.10 Pradip Das was a Sub-inspector of Chandpur Police Station, Sadar and the Investigating Officer, P.W.11 Firoz Alam Bhuiyan was the son of the informant, P.W.12 Setara Begum was tendered by the prosecution and the defense declined to cross-examine her, P.W.13 Amena Khatun was also tendered, but the defense cross-examined her, P.W. 14 Shajahan was also tendered and not cross-examined and P.W. 15 Md. Nijam Uddim Dipu, an eyewitness who supported the prosecution case in a slip shod manner.

After closing the evidence the trial Judge examined the accused under section 342 of the Code of Criminal Procedure to which they reiterated their innocence but did not examine any defense witness. After conclusion of trial the learned Additional Sessions Judge passed the impugned judgment and order acquitting all of the accused, challenging which the informant-petitioner moved in this Court with this revisional application and obtained the Rule.

Mr. Abu Saleh Md. Fazle Rabbi Khan, learned Assistant Attorney General appears on behalf of the State and opposes the Rule submitting that the trial Judge considered the evidence on record and rightly passed the judgment and order of acquittal.

We have considered the grounds taken in the revisional application and gone through the evidence on record as well as the impugned judgment. It appears that the learned Additional Sessions Judge did not fully rely on the informant's evidence as there were some departures from the *ejahar*. There were also inconsistency and contradictions between the other prosecution witnesses. Fourteen of the accused were arrested by the police from the spot

immediately after commission of the alleged occurrence, but the police did not lodge any *ejaher* while produced them to the police station. The vital eyewitnesses who supported the prosecution case were relations to the informant. The learned Judge of the trial Court pointed out all the defects of the prosecution case and also pointed out the enmity that was existing between the parties and thus held that prosecution failed to prove the allegation against the accused persons beyond all reasonable doubt and as a result acquitted them by the impugned judgment.

In a criminal revision the scope of reassessment of evidence is narrower than that in an appeal. It is also difficult to interfere with a judgment and order of acquittal, unless there is non-consideration or misreading of evidence, or miscarriage of justice arising out of misconception of law, gross procedural irregularities and apparent harshness of treatment. Generally an accused enjoys the presumption of innocence and an accused acquitted on trial acquires an added advantage of proven innocence. On examination of the evidence on record as well as the judgment and order of acquittal it does not appear that the trial Judge in passing the same committed any miscarriage of justice or gross illegality which can be interfered with by this Court in revisional jurisdiction. In such circumstance, we do not think it fit to interfere with the impugned judgment.

In view of the above we do not find any substance in the Rule. Accordingly, the Rule is discharged. Opposite Parties 1-20 are released from their bail bonds.

Send down the records.

Muhammad Abdul Hafiz, J:

I agree.