

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.1340 of 2005

In the matter of :

An application under section 439 of the Code of Criminal
Procedure

And

In the matter of :

- (1) Ruhul Amin
- (2) Ruhul Siddique alias Bablu, both sons of Ramjan
Ali, of Village-Sultanpur, Paschimpara, Police Station
and District- Satkhira

...Petitioners

-Versus-

The State

... Opposite Party

Mr. Abdullah-al-Baki for Mr. M. A. Muntakim,
Advocates

... for the petitioners

Mr. Md. Masud Hasan Chowdhury, Deputy Attorney
General

... for the opposite party

Judgment on 12.01.2014

Md. Ruhul Quddus, J:

This Rule at the instance of the petitioners, who were made accused in a criminal case and subsequently acquitted on trial, was issued calling in question the legality of judgment and order dated 05.07.2005 passed by the

Sessions Judge, Satkhira in Criminal Appeal No. 69 of 2004 allowing the same and sending the case for retrial on reversing the judgment and order of acquittal dated 25.09.2004 of the Additional District Magistrate, Satkhira passed in Satkhira Police Station Case No. 25 dated 29.01.2000 corresponding to G.R. No. 37 of 2000.

Facts necessary for disposal of the Rule, in brief, are that P.W.1 Mst. Sharmeen Farzana being informant lodged the case under sections 143, 323, 326, 307 and 354 of the Penal Code bringing allegations of inflicting grievous injury on the person of her mother Mst. Monowara Begum (P.W.2) and outraging her modesty against ten accused including the petitioners. The Police investigated into the allegations and submitted charge sheet being No. 224 dated 19.09.2000 under sections 324, 326 and 307 of the Penal Code against the present petitioners. During investigation the police seized materials including the blood stained apparels of the victim woman and obtained medical certificate in support of her injury. On submission of the said charge sheet, the case was sent to the Additional District Magistrate, Satkhira who framed charge under sections 324 and 307 of the Penal Code against petitioner 1 and under sections 326 and 307 against petitioner 2 to which they pleaded not guilty and claimed to be tried.

After examination of two witnesses, namely, the informant and her mother the victim woman, the trial Court closed the evidence and examined the accused under section 342 of the Code of Criminal Procedure to which they reiterated their innocence, but did not examine any witness in defense. Thereafter, the Additional District Magistrate by his judgment and order dated 25.09.2004 acquitted the accused persons mainly on the grounds that no vital witness like the Investigating Officer or the Medical Officer was

examined and that there was inadequacy of evidence. Against the said judgment and order of acquittal the State preferred Criminal Appeal No. 69 of 2004 before the Sessions Judge, Satkhira, who heard the appeal and allowed the same by judgment and order dated 05.07.2005 sending the case for retrial. Against the said judgment and order of the Sessions Judge the accused persons moved in this Court with the instant criminal revision and obtained the Rule.

Mr. Abdullah-al-Baki, learned Advocate for the petitioners submits that the learned Sessions Judge without applying his judicial mind and without considering the evidence on record and the attending facts and circumstances of the case has passed the impugned judgment and order and as such the same is liable to be set aside in the interest of justice.

Mr. Md. Masud Hasan Chowdhury, learned Deputy Attorney General appearing for the State submits that the lower appellate Court discussed the evidence, pursued the record and on assigning definite reasons allowed the appeal and sent the case for retrial within the scope of law. There is nothing wrong that can be interfered with by this Court.

We have gone through the record including the judgments of the Courts below and considered the submissions of the learned Advocates. It appears that during investigation, the Police obtained medical certificate in support of the injury of the victim woman and also seized the materials i.e. her blood stained apparels to substantiate the allegations of assault. Two seizure list witnesses, namely, Md. Shahinur Rahman and Md. Azizul were present before the trial Court to record their evidence on 08.05.2004 but the Additional District Magistrate declined to examine them on the ground that

their names were not included in the charge sheet as witnesses. The lower appellate Court did not approve it and observed that they were vital witnesses in the present case and in case of omission of their names in the charge sheet, the trial Court could have examined them under section 540 of the Code of Criminal Procedure. The appellate Court further observed that on several occasions the case was fixed for evidence but no office notes were there in the record to show that any summons or warrants were issued to ensure the presence of the witnesses. It further appears that the informant, who is the daughter of the victim and the victim herself deposed supporting the prosecution case.

Considering all the aspects, the lower appellate Court allowed the appeal on setting aside the impugned judgment and order of acquittal and sent the case for retrial. The petitioners have ample opportunity to defend themselves in such retrial. We do not find any illegality in the impugned judgment.

The Rule having no merit is thus discharged. The Chief Judicial Magistrate of Satkhira is directed to conclude the retrial expeditiously in the light of the observations made in the judgment of the Sessions Judge.

Send down the lower Courts' records.

Muhammad Abdul Hafiz, J:

I agree.