

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 2143 of 2014

Badol Roy

...Convict-petitioner

-Versus-

The State

...Opposite party

Mr. Md. Nashiruddin, Advocate

...For the convict-petitioner

Mr. Md. Akhtaruzzaman, D.A.G with

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Heard on 19.05.2025 and 20.05.2025

Judgment delivered on 21.05.2025

On an application filed under Section 439 read with Section 435 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 01.10.2014 passed by the Additional Sessions Judge, Madaripur in Criminal Appeal No. 27 of 2010 affirming the judgment and order dated 02.06 2010 passed by the Chief Judicial Magistrate, Madaripur in G.R. Case No. 41 of 2009 (Rajoir) arising out of Shibchar P.S. Case No. 9 dated 17.03.2009 convicting the petitioner under Section 380 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 3(three) years and fine of Tk. 2,000, in default, to suffer rigorous imprisonment for 2(two) months, should not be set aside and/or pass such other order or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that on 31.01.2009 from 12.00 to 2.00 am any time the convict-petitioner illegally entering into the house of the informant Krishna Das Baroi had stolen the Bluetooth silver colour mobile, i.e, model No. S 800 made in China, mobile No. 01724-965451 along with another Nokia 2100 mobile set,

mobile No. 01720-977345, and 10 anas of gold from the neck of the Mampy Baroi, daughter of informant P.W. 1 Krishna Das Baroi. The total value of the said goods was Tk. 25,000. On 17.03.2009 at 6.00 am, having received secret information, the informant found the convict-petitioner Badol Roy at the north side of the orphanage at Shimul Tola and having detained him recovered the said mobile sets from his possession. Thereafter, he was taken to the police station and the informant lodged the FIR on 17.03.2009 at 09.40.

S.I. Abdul Hannan of Rajoir Thana was appointed as Investigating Officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found the truth of the allegation made against the accused and submitted charge sheet on 26.03.2009 against him under sections 457/380/411 of the Penal Code, 1860.

During the trial, the charge was framed against the accused Badol Roy under sections 457/380/411 of the Penal Code, 1860 which was read over and explained to him and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 3(three) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he declined to adduce any D.W.

After concluding the trial, the Chief Judicial Magistrate, Madaripur by judgment and order dated 02.06 2010 convicted the accused under section 380 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 3(three) years and fine of Tk. 2,000, in default, to suffer rigorous imprisonment for 2(two) months, against which the convict-petitioner filed Criminal Appeal No. 27 of 2010 before the Sessions Judge, Madaripur. The appeal was heard by the Additional Sessions Judge, Madaripur and the appellate

Court below, by the impugned judgment and order affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the instant Rule.

Learned Advocate Mr. Md. Nashiruddin, appearing on behalf of the convict-petitioner, submits that there is no eye witness of the alleged occurrence, and the mobile set allegedly recovered from possession of the convict-petitioner was not proved in the case and the Courts below illegally passed the impugned judgments and orders finding the convict-petitioner guilty of the offence under Section 380 of the Penal Code, 1860. He prayed for setting aside the impugned judgments and orders passed by the Courts below.

Learned Assistant Attorney General Mr. Sultan Mahmood Banna, appearing on behalf of the State, submits that P.W. 1 is the informant and P.W. 2 is a local and they recovered the mobile from the pocket of the accused, which was stolen from the house of P.W. 1. He further submits that no particular number of witness is required to prove the charge against the accused. The prosecution proved the charge against the accused beyond all reasonable doubt and the Courts below, considering the evidence of the prosecution witnesses, legally passed the impugned judgment and order. He prayed for the discharge of the Rule.

I have considered the submission of the learned Advocate Mr. Md. Nashiruddin, who appeared on behalf of the convict-petitioner and the learned Assistant Attorney General Mr. Sultan Mahmood Banna, who appeared on behalf of the state, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it appears that P.W. 3, Investigating Officer S.I. Md. Abdul Hannan admitted that there was no eye witness of the occurrence that allegedly took place on 31.01.2009 anytime from 12 to 2.00 am in the house of P.W. 1. It is found that the FIR was lodged long after 1 month 17 days on

17.03.2009 without any explanation of delay. P.W. 1 stated that he detained the accused along with the mobile set (model No. S 800), but he did not disclose any date of detaining the accused. P.W. 2 Prema Nanda Sarker stated that on 17.03.2009, on the way to Obadi hut, he and P.W. 1 detained the accused and a mobile set (model No. S 800) was recovered from his possession. P.W. 1 did not say that at the time of recovery of the said mobile from possession of the accused, P.W. 2 was also present there.

P.W. 2 admitted that he is not the eyewitness to the occurrence. During cross-examination, P.W. 1 admitted that after the occurrence, he did not lodge any GD. He also admitted that at the time of the occurrence, he was sleeping. None of the prosecution witnesses stated that they witnessed the occurrence. The mobile set allegedly recovered from the possession of the accused was not proved in the case. Therefore, it cannot be said that the mobile set stolen from the house of the informant was recovered from the possession of the accused Badol Roy.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused Badol Roy beyond all reasonable doubt and both the Courts below illegally passed the impugned judgments and orders against him.

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 accused Badol Roy are hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.