

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 7148 of 2015

Sabed

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

None appears

.....For the appellants

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G.

..... For the Respondent.

Heard and Judgment on 23.04.2024

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Sabed is directed against the judgment and order of conviction and sentence dated 04.03.2009 passed by the learned Additional Sessions Judge, Rajbari in Sessions Case No. 88 of 2007 arising out of G.R. No. 59 of 2007 corresponding to Pangsha Police Station Case No. 14 dated 13.03.2007 convicting the accused-appellant under section 394 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a

fine of Taka 1000 (one thousand) in default to suffer simple imprisonment for 02(two) months more.

The prosecution case, in short, is that one, Amir Hossain as informant on 13.03.2007 at about 5.05 hours lodged an Ejahar with Pangsha Police Station, Rajbari against 3/4 unknown persons under section 394 of the Penal Code on the allegation that on 12.03.2007 at night 7.45 p.m. 3/4 unknown accused persons came and caught hold of the informant out of which one of the accused pointing a gun on the chest of the informant and then accused persons snatched away mobile phone while the informant's wife rushed there to rescue her husband and then one of the accused dealt cheni blow on the person of victim resulting she sustained serious injury on her hand and then the informant party raised hue and cry and accordingly, witnesses namely, Liakat Ali Mondal, Sweet Mondal, Shariful Islam and Ramjan Ali came there and took the informant's wife in hospital for treatment.

Upon the aforesaid First Information Report, Pangsha Police Station Case No. 14 dated 13.03.2007 under section 394 of the Penal Code was started against unknown 3/4 accused persons.

Police after completion of investigation submitted charge sheet being charge sheet No. 75 dated 24.04.2007 under section 394 of the Penal Code against the accused-appellant and 3 others.

In usual course, the case record was sent to the Court of learned Sessions Judge, Rajbari, wherein it was registered as Sessions Case No. 88 of 2007 and thereafter, case was transmitted to the Court of the learned Additional Sessions Judge, Rajbari for disposal before whom the accused-appellant and 3 others were put on trial to answer a charge under sections 394 of the Penal Code to which the accused persons pleaded not guilty and prayed to be tried stating that they have been falsely implicated in the case.

At the trial the prosecution examined as many as 12 witnesses to prove the case.

The learned Additional Sessions Judge, Rajbari after completion of trial by his judgment and order dated 04.03.2009 found the accused-appellant and another guilty under section 394 of the Penal Code and sentenced them thereunder to suffer rigorous imprisonment for a period of 2(two) years and to pay a fine of Taka 1,000/- (one thousand) in default to suffer rigorous imprisonment for a further period of 2 (two)

months more each while acquitted 2 other accused persons from the charge levelled against them.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 04.03.2009 the convict-appellant, Sabed preferred this criminal appeal.

No one found present to press the appeal on repeated calls despite of fact that this criminal appeal has been appeared in the list for hearing with the name of the learned Advocate for the appellant.

In view of the fact that this petty old criminal appeal has been dragging before this Court for more than 8 years, I, am inclined to dispose it on merit on the basis of the evidence and materials on record.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper.

Having heard the learned Deputy Attorney General, perused the record including the first information report, charge sheet, deposition of witnesses and other materials on record.

On scrutiny of the record, it appears that at the trial the prosecution examined as many as 12 witnesses to prove the case under section 394 of the Penal Code out of which PW-1, Liakat Ali stated in his deposition that “বাদীর চিৎকার শোনে আসি এবং বলে যে, আমার মোবাইল কেড়ে নিয়েছে এবং তাকে কোপায়। দেখলাম সে জখম হয়েছে। ডাক্তার আনি। চিকিৎসা করাই তারপর পাংশা হাসপাতালে ভর্তি করাই। পরে সে থানায় মামলা করে। পুলিশ আসে এবং কাঠের টুকরা ও রডের পাইপ উদ্ধার করে। সিজার লিস্ট করে। আমার সহ নেয়। সিজার লিস্ট প্রদঃ১, এই আমার সহ। প্রদঃ১/ক। রাশেদ ও সবেদ গ্রেফতার হয়। রাশেদ ডকে আছে। সবেদ পলাতক।” PW-2, Kashed Chowkidar simply stated that on hearing hue and cry he rushed to the place of occurrence and came to know accused persons snatched away Taka. 38,000/- and mobile phone. PW-3, Anjuara, wife of the informant stated in her deposition that on 12.03.2007 at night 8:00 p.m. 4 accused persons committed dacoity in their house. This witness in her cross-examination stated that- “ছবেদ আলীকে চিনিয়াছি। ডকে দাঁড়ানো আসামী রাশেদ, বিপুল, সামের আলী ডাকাতিতে ছিল না। আমরা তাঁদের নামে এজাহার দেই নাই।” PW-4, Shariful Islam stated in his deposition that occurrence took place on 12.03.2007 at night 8:00 p.m. who on hearing hue and cry went there and saw injured condition of Anjuara and also came to know that dacoits also snatched away mobile phone. This witness also stated that- “দেশী তৈরী পাইপগান রেখে যায়। পুলিশ উহা সীজ করে।

সিজার লিস্ট করে। আমার সেই নেয়। এই আমার স্বাক্ষর প্রদঃ ১/খ। আসামী ছবেদ কে চিনিয়াছি। সে কোপায়।” PW-5, Mokabbar Hossain stated in his deposition that on 12.03.2007 at 7:45 dacoity took place in the house of Amir Hossain and dacoits took away a mobile phone. PW-6, Abul Kalam Azad also gave evidence in support of the prosecution and made similar statements like P. W 5. This witness stated in his cross-examination that- “আমার বাড়ী ৫ কিঃ মিঃ দূরে। কারা ডাকাতি করে শুনি নাই।” PW-7 stated in his deposition that dacoity took place on 12.03.2007 at about 8:00 p.m., he recognized accused Sabed at the time of dacoity. PW-8 Md. Korban Ali was declared hostile. PW-9, Md. Abdur Rahman Munshi stated in his deposition that- “আমি মওরাট ইউনিয়ন পরিষদের সদস্য। ঘটনা ১ বছর আগে। রাতে বাদীর বাড়ী হইতে মোবাইল নিয়ে যায়। থানায় যাই, সবেদ গ্রেফতার হয়। সে স্বীকার করে যে, আমির হোসেনের বাড়ীর ঘটনায় ছিলাম।” This witness stated in his cross-examination that- “ঘটনা ১½ কিঃ মিঃ দূরে। সামেদ আলী জড়িত। দারোগার নিকট স্বীকার করে।” PW-10, Md. Akbar Ali Biswas stated nothing as to commission of dacoity. This witness simply stated that- “সামের আলীকে সবেদ যাইতে বলে। সামেরকে পুলিশ গ্রেফতার করে।” This witness stated in his cross-examination that- “আমি ঘটনা দেখি নাই।” PW-11, doctor Md. Nurul Islam examined the victim Anjuara Begum and issued certificate. PW-12, S.I. Azizur Rahman, who investigated the case and

submitted charge sheet against accused-appellant and others under section 394 of the Penal Code.

From the above quoted evidence of PWs together with the F.I.R, charge sheet and other materials on record it appears that trial was held against the accused-appellant in-absentia. PW-1, PW-2 and PW-3 in their respective evidence stated nothing against the accused-appellant connecting with the crime. PW-4 stated that he recognized accused Sabed but this witness in his evidence stated that- “রাত্তে ডাকাতি হয়। চিৎকার শোনে গেলাম। দেখলাম আঞ্জুরার হাত কাটা। রক্তাক্ত অবস্থা। শুনলাম মোবাইল নিয়ে যায়।” This shows that he was not an eye witness of the occurrence. PW-5, PW-6 also stated nothing against the accused-appellant connecting with the crime. PW-7 stated in his evidence that on hearing hue and cry he went there and recognized the accused Sabed. This witness also stated that- “আঞ্জুরেকে আসামীরা কোপায়। আসামী ছবেদ রাইফেল তাক করে জামাই আমিরের বুকে চেপে ধরে।” This evidence indicates that accused Sabed did not give any blow on the person of the victim Amjuara although PW-5 stated in his deposition that the accused Sabed dealt cheni blow on the person of the victim. PW-8 was declared hostile. PW-9 stated nothing against the accused-appellant. PW-10 stated in his cross-examination that- “আমি ঘটনা দেখি নাই।” This witness stated nothing against the accused-

appellant. PW-11 issued medical certificate, who proved the same as "Ext.-4". PW-12, investigated the case and submitted charge sheet against the accused-appellant and others under section 394 of the Penal Code.

On scrutiny of the above evidence as to commission of dacoity it is very difficult to hold that the prosecution has been succeeded to prove its case against the accused-appellant beyond doubts. Practically, in this case there is no specific or clean evidence as to commission of dacoity against the appellant.

As discussed above, there are so many limps and gaps as well as doubts about the existence of the facts as well as circumstances. In that light, it creates a doubt in the case of the prosecution about the accused appellant being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused by giving the benefit of doubt. In that light, the judgment of the trial Court is to be interfered with.

In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 04.03.2009 passed by the learned Additional Sessions Judge, Rajbari in Sessions Case No. 88 of 2007 arising

out of G.R. No. 59 of 2007 corresponding to Pangsha Police Station Case No. 14 dated 13.03.2007 against the appellant is set-aside and the convict appellant, Sabed is acquitted from the charge levelled against him.

Convict appellant, Sabed is discharged from his bail bond.

Send down the lower Court records at once.