

Present

Mr. Justice Sheikh Abdul Awal

Criminal Revision No. 1206 of 2006

Rafiqul Islam and another.

.....Convict-Petitioners.

-Versus-

The State.

.....Opposite party.

Mr. M.A. Muntakim, Advocate

.....For the Petitioners.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

Heard on 28.04.2024, 06.05.2024, 07.05.2024

and Judgment on 07.05.2024 and 08.05.2024.

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 22.05.2004 passed by the learned Additional Sessions Judge, 1st Court, Jashore in Criminal Appeal No. 67 of 2002 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 28.10.2002 passed by the learned Additional District Magistrate, Jashore in G.R No. 174 of 1995 corresponding to Jhikorgacha Police Station Case No. 04 dated

10.02.1995 convicting the accused-petitioners under section 148/448 of the Penal Code, 1860 and sentencing them under section 148 of the Penal Code to suffer rigorous imprisonment for a period of 1(one) year and also under section 448 of the Penal Code to suffer rigorous imprisonment for a period of 6 (six) months with a direction that the both the sentence shall run consecutively 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 prosecution case, in short, is that one Md. Abdur Razzaque as informant on 10.02.1995 lodged an Ejahar with Jhikorgacha Police Station against 7 accused persons including these 2 petitioners under section 148/149/448/323/324/325/326/380 of the Penal Code stating, inter-alia, that the accused persons after being armed with deadly weapons like lathi, Dao etc. on 10.02.1995 at 5:00 hours unlawfully trespassed into the house of the victim Lutfor Rahman and attacked him, while the wife of Lutfor Rahman came there to rescue her husband and then accused Hafiz Uddin dealt a dao blow on the head of Monwara but she resisted that dao blow by her right hand resulting she sustained serious bleeding injury on her hand. Thereafter, accused Jahur dealt 3/4 blows on the head of Monwara when her daughters Nazma and

Shamima Nasrin came there to rescue their mother and then the accused persons also dealt blows on them and thereafter accused Abdur Razzak, Ishrak, Sohrab entered into the house of the informant and took away Tk. 5000/-, gold ornaments, watch etc. by breaking almirah. Thereafter, the witnesses came there and took the victim to the local clinic of doctor Golam Faruk for treatment.

Upon the aforesaid First Information Report, Jhikorgacha Police Station Case No. 04 dated 10.02.1995 under section 148/149/448/323/324/325/326/380 of the Penal Code was started against the accused-petitioners and others.

Police after completion of investigation submitted charge sheet against the accused-petitioners and others being charge sheet No. 14 dated 05.03.1995 under sections 148/149/448/323/324/325/326/380 of the Penal Code.

Thereafter, the accused-petitioners and others were put on trial before the learned Additional District Magistrate, Jashore to answer a charge under sections 148/448/323 of the Penal Code and accused Hafiz Uddin was also put on trial under section 324, accused Jahur Ali under section 325/326 and accused Abdur Razzak, Israk alias Fatik, Sohrab under section 380 of the Penal

Code to which the accused persons pleaded not guilty and claimed to be tried stating that they have been falsely implicated in the case.

At the trial, the prosecution side has examined as many as 09(nine) witnesses to prove its case while the defence examined none. The defence case as it appears from the trend of cross-examination of the prosecution witnesses and examination of the accused-petitioners under section 342 of the Code of Criminal Procedure that the accused-petitioners and the other accused were innocent and they have been falsely implicated in the case.

On conclusion of trial the learned Additional District Magistrate, Jashore by his judgment and order dated 28.10.2002 found the accused-petitioners guilty under section 148/448 of the Penal Code, 1860 and sentenced them under section 148 of the Penal Code to suffer rigorous imprisonment for a period of 1(one) year and also under section 448 of the Penal Code to suffer rigorous imprisonment for a period of 6 (six) months more with a direction that both the sentence shall run consecutively.

Aggrieved thereby the convict-petitioners preferred Criminal Appeal No. 67 of 2002 before the learned

Sessions Judge, Jashore which was subsequently transmitted to the Court of the learned Additional Sessions Judge, 1st Court, Jashore for disposal, who by the impugned judgment and order dated 22.05.2004 dismissed the appeal and affirmed the judgment and order of the learned Additional District Magistrate, Jashore.

Aggrieved convict petitioners then preferred this criminal revision and obtained the present rule.

Mr. M. Muntakim, the learned Advocate appearing for the convict-petitioners in the course of argument takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the judgments of two courts below and then points out that practically this is a case of no evidence inasmuch as in this case the prosecution examined in all 9 witnesses out of which none of them testified any single word against the convict-petitioners connecting with the crime.

Ms. Kohenoor Akter, the learned Assistant Attorney-General appearing for the State supports judgments of two courts below, which were according to her just, correct and proper. She submits that the informant lodged the F.I.R. stating that all the accused persons after being armed with deadly weapons

trespassed into the house of the informant and attacked him and his family members and it is on record that all the witnesses corroborated the F.I.R. case in details and therefore, it cannot be said that the ingredients of section 148/448 of the Penal Code is absent against the present accused-petitioners. Finally, the learned Assistant Attorney General submits that in this case the prosecution has been succeeded to prove the case beyond all reasonable doubts and both the courts below justly convicted the accused petitioners under section 148/448 of the Penal Code and as such, the same should not be disturbed.

Having heard the learned Advocate for the petitioners and the learned Assistant Attorney General, perused the record including the first information report, charge sheet, deposition of witnesses and other materials on record, the only question that falls for my consideration in this appeal is whether the trial Court committed any error in finding the accused-appellants guilty of the offence under sections 148/448 of the Indian Penal Code.

On scrutiny of the record, it appears that the informant lodged the first information report against 6 accused persons including the accused petitioners stating that the accused persons after being armed with the

deadly weapons entered into the house of the informant and dealt blows on the person of victim Monwara Begum resulting the victim sustained serious bleeding injury and thereafter, local people came and took the victim to local clinic. It further appears that the prosecution to prove its case examined as many as 9 witnesses out of which PW-1, informant of the case stated in his deposition that accused persons after being armed with deadly weapons trespassed into his house and dealt blows on the person of victim Monwara as a result of which victim sustained serious bleeding injury and also took money from the drawer. It further appears that rest PW 2 to PW 9 gave similar type of evidence as like as PW-1 in respect of all material particulars.

It is found that the learned trial Judge on due consideration of the evidence and materials on record by his judgment and order dated 28.10.2002 found the accused-petitioners guilty under section 148/448 of the Penal Code and sentenced them thereunder as stated above.

On appeal, the learned Additional Sessions Judge, 1st Court, Jashore in his turn dismissed the appeal and affirmed the order of the trial Court.

On scrutiny of the impugned judgment, I find no flaw in the reasonings of the lower appellate court inasmuch as all the prosecution witness namely P.Ws. 1-9 proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused petitioners beyond reasonable doubt.

By the way it may be mentioned that in this case the prosecution examined in all 9 witnesses out of which none of them testified any single word against the convict-petitioners that they dealt any kind of blow to the inmates of the house.

However, considering the law, facts and circumstances as discussed above, particularly the fact that the convict petitioners have already been suffered their sentence to some extent and faced the agony of the protracted prosecution and also suffered mental harassment for a long period, I think that, the ends of justice, will be met in the facts and circumstances of the case if the substantive sentence is reduced to the period already undergone, as prayed for.

Learned Deputy Attorney General has, of course, been able to defend this case on merits but practically

has nothing to say insofar as reduction of sentence imposed upon the petitioners is concerned.

The Rule is consequently discharged and sentence of the petitioners is reduced to the period of sentence already undergone. The bail bonds of the convict petitioners, who were ordered to be released on bail, shall stand discharged.

Send down the lower Court records at once.