

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) No.43 of 2022**

Sri Suman Miah,
son of Md. Dulal Miah,
resident of village: Dharmapur, Pachapukur (Feni),
P.S. Feni, District: Feni, Bangladesh

---- **Appellant(s)**

-VERSUS-

The State of Tripura

---- **Respondent(s)**

For Appellant(s)	:	Mr. P. Majumder, Advocate
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing	:	21.11.2023
Date of delivery of Judgment & order	:	23.11.2023
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(Amarnath Goud,J.)

Heard Mr. P. Majumder, learned counsel appearing for the appellant and Mr. S. Debnath, learned Addl. P.P. appearing for the State.

02. This appeal arises out of the judgment and order of conviction and sentence dated 21.12.2018 in Case No. Sessions Trial 15 (Type-I) of 2018 passed by Sessions Judge, Belonia, South Tripura wherein the Sessions Judge had convicted the accused-appellant for the offence punishable under Section 147 IPC for 6(six) months R.I., under Section 447 IPC for 2 months RI, and 3 years and fine under Section 27(1) of Arms Act. The appellant is sentenced to suffer rigorous imprisonment for 10(ten) years for commission of offence punishable under Section 307 read with Section 149 of the IPC. Villagers handed over accused Suman Miah to BSF.

03. The case of the prosecution in brief is that on 08.03.2017 at around 8 p.m. a group of 10-12 miscreants wearing uniform of Bangladesh Police being armed with fire arms went to Muslim Para wherein eleven Indian family reside on the other side of Indo-Bangladesh Border fencing, but within Indian territory. The miscreants started ransacking and looting household articles, but the villagers showed their courage and resisted the miscreants. Consequently, the miscreants opened fire from their fire arms indiscriminately. Subsequently, Kabir Ahmed, Hanif, Selim Uddin, Layla Aktar, Abdul Mannan and Delwar Hossein sustained injuries. The miscreants fled away but one of the miscreants was caught by the villagers. His name is Suman Miah. Being informed, BSF Jawans and police party arrived at the P.O. and it was detected that the dead body of another miscreants was lying. His name is Md. Mir Nowsad Ali.

04. On the basis of the said complaint, police took up the investigation and on completion of investigation, police filed charge sheet against the accused appellant of offence punishable under Section 398 & 307 IPC and Section 27 of Arms Act and Section 3 of Passport Act, 2000.

05. During trial, the prosecution to establish the charge had adduced as many as 22 (twenty two) witnesses and also exhibited series of documents including P.M. Report (marked as Exhibit-9), Inquest Report (Exbt.1, 1/1, 1/2, 1/3, 1/4), Seizure List (Exhibit.5 and 6), Injury Report (marked as Exhibit 11-16) and Forensic Report (Exbt.10) etc. and the accused person was also examined under Section 313 of Cr.P.C. and after hearing the argument the Learned Sessions Judge, South Tripura, Belonia convicted and sentenced the appellant by the judgment dated 21.12.2018. From the date of judgment the present appellant is in custody in the KST, Bishalgarh. Hence, this appeal before this court.

06. Mr. P. Majumder, learned counsel appearing for the appellant has submitted that the evidence as adduced by the prosecution do not constitute any offence punishable under Section 147/447/307 of IPC and 27(1) of the Arms Act and prima facie charge could have been framed against the appellant and as such, the order of conviction and sentence passed by the Learned Court below is liable to be set aside. Mr. Majumder admitted that the appellant is no doubt a Bangladeshi National.

07. During the course of his submission, Mr. P. Majumder, to strengthen his points has given reliance on the PW-5, PW-8 and PW-21 and also the injury report marked as (Exbt.11). PW-5 Selim Uddin specifically stated in his cross-examination that he did not personally see the present appellant in the gang of Bangladeshi National and the PW-5 only heard from the local people that Suman Miah was apprehended by people of that area and it is further stated that PW-8 Md. Hanif in his cross-examination specifically stated that the present appellant was in civil dress and the present appellant did not have any fire arm. In this context, this court feel necessary to go through the seizure list dated 09.03.2017, the description of exhibits submitted by the TSFSL dated 30.05.2017(Exbt.10), the injury report dated 09.03.2017(Exbt.11), injury report dated 09.03.2017(Exbt.12), injury report dated 09.03.2017 (Exbt.13) and the injury report dated 09.03.2017 (Exbt.14) where it is mentioned as follows:

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Description of the Seized Articles:

1. 01 (one) 7.62x39 MM ASSAULT RIFLE, M56-BDF-06-A46827, Butt No.862
2. BDF live ammunition 7.62x39 MM- 04 Nos.
3. Empty cartridge 12 Bore CHEDDITE – 06 (six) Nos.
4. Sling – 01 (one) nos.
5. Mobile phone (Watson) – 01(one) nos. (Broken condition)
6. 01 (one) Nos Sim Card (Rubi)

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Parcel No.	No. of seals & Impression	Description of exhibits
1	11(eleven) "SDPO BELONIA"	01(One) 7.62x39mm assault rifle bearing body number "M56-BOF-06-A46827" marked as exhibit "A" 05 (five) 7.62x39 mm live cartridges marked as exhibit "B" by IO which are re-marked as B-1 to B-5 in Laboratory, 06(six) fired 12 bore cartridge cases marked as exhibit "C" by IO which are re-marked as "C-1" to "C-6" in laboratory.

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Cause of Injury or of Poisoning as stated by the Patient
Result of Examination by the Medical Officer

Case and Symptoms— H/O alleged rubber bullet injury on 08/03/2017
Approx 8.00 pm

Chest
CVS
CNS
P/A
No h/O LoC
No h/o vomiting
O/E, pt-conscious, a fertile
PR= 84 bpm
BP120/80 mmHg

Rx,
Treated conservatively & discharged after giving first aid.

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Cause of Injury or of Poisoning as stated by the Patient
Result of Examination by the Medical Officer

Case and Symptoms— H/O alleged rubber bullet injury on 08/03/2017
Approx 8.00 pm

Chest
CVS
CNS
P/A
No h/O LoC
No h/o vomiting
O/E, pt-conscious, a fertile
PR= 88 bpm

Rx,
Treated conservatively & discharged after giving first aid.

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Cause of Injury or of Poisoning as stated by the Patient
Result of Examination by the Medical Officer

Case and Symptoms— H/O alleged rubber bullet injury on 08/03/2017
Approx 8.00 pm

Chest
CVS
CNS
P/A
No h/O LoC
No h/o vomiting
O/E, pt-conscious, a fertile
PR= 72 bpm
BP130/80 mmHg

Rx,
Treated conservatively & discharged after giving first aid.

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**Cause of Injury or of Poisoning as stated by the Patient
Result of Examination by the Medical Officer**

Case and Symptoms— H/O alleged rubber bullet injury on 08/03/2017
Approx 8.00 pm
Chest
No h/O LoC
CVS
No h/o vomiting
CNS
O/E, pt-conscious, a fertile
P/A
PR= 84 bpm
BP124/84 mmHg

Rx,
Treated conservatively & discharged after giving first aid.

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**Cause of Injury or of Poisoning as stated by the Patient
Result of Examination by the Medical Officer**

Case and Symptoms— H/O alleged rubber bullet injury on 08/03/2017
Approx 8.00 pm
Chest
No h/O LoC
CVS
No h/o vomiting
CNS
O/E, pt-conscious, a fertile
P/A
PR= 80 bpm
BP110/70 mmHg

Rx,
Treated conservatively & discharged after giving first aid.

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He has further stated that PW-21, Ajitesh Pal, attached to the office of the Scientific Officer-cum-Assistant Chemical Examiner, Narsingarh, Agartala, specifically stated in his deposition as follows:

"After examination, I opined that Exbt.A was not possible to be opined whether recently any bullet was fired or not because of absence of nitrate/nitrite. The reason of non availability of nitrate/nitrite in Exbt.A was either delay in examining the rifle and in the meantime not handling the rifle properly, consequently the nitrate would be washed out from the barrel."

08. On the other hand, Mr. S. Debnath, learned Addl. P.P. has supported the findings of the learned trial court while convicting the accused. He has also submitted that if the evidences of prosecution witnesses are read conjointly, it could safely be presumed that the convict appellant had committed the alleged offence.

09. From the evidence on record of the prosecution produced before the Learned Court below, it appears that a group of 10/12 Bangladeshi miscreants wearing uniform of Bangladesh Police attacked Muslim Para situated on the other side of the Indo-Bangladesh border fencing, i.e within the Indian Territory to loot household articles and kidnap some villagers and they also entered into the hut of PW-8, Md. Hanif, PW-11 Md. Saddam Hossein and started looting household articles. Those miscreants caught the husband of Nachima Begum, PW-15. At that time PW-15 and other villagers started resisting the miscreants and managed to apprehend accused Suman Miah, one of the members of the group of miscreants and other members of the group of miscreants fled away. Later on, the dead body of one of the miscreants was found lying. There was no evidence on record how that miscreant died.

The accused being a Bangladeshi National being a member of unlawful assembly consisting of 10/12 persons committed criminal trespass by entering into the house of some of the witnesses of the prosecution particularly into the house of PWs-8, 11 and 15 with an intention to commit dacoity and kidnapping of Indian villagers. Not only that the unlawful assembly being resisted by the villagers opened fire arms and for that PWs-2 & 5 sustained bullet injury and their injury reports have been marked as Exhibit-11 and Exhibit-13. In addition to that, some other villagers namely Layla Aktar, Md. Hanif and Abdul Mannan also sustained bullet injuries and their injury reports have been marked as Exhibit-12, Exhibit-14 and Exhibit-15 before the Learned Trial Court below. The intention of the miscreants was to cause death of the villagers but fortunately the injured persons survived. From the evidence on record further it appears that the accused Suman Miah being a member of unlawful assembly of 10/12 persons shared common object and had the intention of causing death of the villagers. Thus, it

appears that the prosecution has been able to prove the charges levelled against the appellant/convict in this case.

10. However, the court below being convinced by the arguments of the learned Public Prosecutor convicted Suman Miah and is sentenced to suffer rigorous imprisonment for six months for commission of offence punishable under Section-147 of IPC. He is also sentenced to suffer rigorous imprisonment for two months for commission of offence punishable under Section 447 of IPC. The convict is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.2000/- (Rupees two thousand) only, in default, to suffer rigorous imprisonment for three months for commission of offence punishable under Section 27(1) of Arms Act. The convict is further sentenced to suffer rigorous imprisonment for ten years for commission of offence punishable under Section 307 read with Section 149 of IPC.

11. Having heard the learned counsel for the parties and scrutinized the records and evidences as well as the findings passed by the court below, this court is of the considered opinion that the accused person a Bangladeshi has not explained in 313 examination before the concerned court in his defence as to why he was present at the crime scene and also did not explained specifically to say that he is innocent.

12. Hence, this court has no hesitation to draw adverse inference against the appellant to say that he had an intention along with other persons and with a common intention to commit a crime. They have committed the crime as proved by the prosecution.

13. It is the settled principle of law that, if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of

committing of that offence, is a member of the same assembly, is guilty of that offence.

14. Thus, this court finds that there is ground to prove the case of the appellant and as such the judgment passed by the court below is affirmed and it requires no interference.

Accordingly, this appeal stands dismissed.

JUDGE

JUDGE

