

LEX/BDAD/0038/1998

Equivalent/Neutral Citation: 1998(6)BLT(AD)278, 51 DLR(AD) (1999) 120, 4MLR(AD)111

**IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)**

Criminal Petition for Leave to Appeal No. 91 of 1998

Decided On: 17.08.1998

Lutfar Rahman alias Arju and another **Vs.** State

Hon'ble Judges/Coram:

A.T.M. Afzal, C.J., Mustafa Kamal, Latifur Rahman and Mohammad Abdur Rouf, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: MA Wahab Miah, Advocate instructed by Azra Ali, Advocate-on-Record

JUDGMENT

Mustafa Kamal, J.

1. This petition for leave to appeal by the two accused-petitioners is from the judgment and order dated 18-3-98 passed by a Division Bench of the High Court Division in Criminal Appeal No. 2159 of 1995 with Jail Appeal No. 91 of 1996, dismissing the same and thereby affirming the judgment and order dated 15-10-95 passed by Special Tribunal No. 4 and Additional Sessions Judge, 3rd Court, Dhaka in Special Tribunal Case No. 433 of 1992 arising out of Demra PS Case No. 9(l)92, convicting both the accused-petitioners and one Mukim Gazi alias Matin Gazi under section 19(a) and 19(f) of the Arms Act and sentencing both of them to RI for 10 years. Briefly, the prosecution case was that, on 3-1-92 at 3-45 AM on getting a secret information a police party went to the house of one Lokman Hossain at Mutuail Uttarpara (Konapara) within PS Demra, District Dhaka and cordoned that house whereupon accused petitioners started throwing cocktails at the police party which however was able to arrest all the three accused persons and recovered one revolver and some cartridges from accused Mokim Gazi.

2. It is submitted by Mr MA Wahab Miah, learned Advocate for the accused-petitioners, that on the self-same occurrence there were two cases against the petitioners in Demra PS Case No. 8(1)92 under sections 353/323/307 of the Penal Code. The Chief Metropolitan Magistrate, Dhaka by judgment and order bearing no date as in the additional paper book, acquitted the petitioners under section 245(1) CrPC of the charges under sections 323/307/ 353/109 of the Penal Code. In Special Tribunal Case No. 432 of 1992 before Special Tribunal No. 4 and Additional Sessions Judge, 3rd Court, Dhaka the accused petitioners were acquitted of the charges under sections 3 and 4 of the Explosive Substances Act by judgment and order dated 15-10-95.

3. He submits that in view of the acquittal of the accused petitioners in the connected cases arising out of same occurrence the petitioners are entitled to a closer and deeper appreciation of the evidence on record especially with an eye to seeing as to whether any arms and ammunition were recovered from their exclusive possession or not. He submits that nothing was recovered from the possession of the accused petitioners and it is only accused Mokim Gazi from whose exclusive possession a revolver and some cartridges were recovered. The accused petitioners were innocent passersby and they

have been implicated falsely in this case.

4. The apprehension of the accused petitioners along with Mokim Gazi took place at dead of night. They were arrested not from the road but in the company of accused Mokim Gazi. Although no arms were recovered from their possession it is apparent that they were with accused Mokim Gazi when revolver shots and cocktails were thrown at the police party. The accused petitioners therefore cannot claim exemption from the ambit of possession of arms and ammunition. There may not be separate arms and ammunition in the possession of the two accused petitioners but when all of them were jointly together and the police party was receiving revolver shots and cocktails it cannot be said that the revolver and the cartridges recovered from Mokim Gazi were only in his exclusive possession. The law will ascribe joint possession in such circumstances. We therefore do not find any substance in this petition.

The petition is dismissed.

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