

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

**Present:**

Surendra Kumar Sinha, CJ  
 Md. Abdul Wahhab Miah, J  
 Syed Mahmud Hossain, J  
 Hasan Foez Siddique, J  
 Mirza Hussain Haider, J

**Date of hearing.** : 14th and 15th May, 2017.

**Date of Judgment** : 15th May, 2017.

**Result:** Dismissed

Government of Bangladesh:

(In CrI. R.P.No.03 of 2016) Petitioner.

Allama Delwar Hossain Sayedee:

(In CrI. R.P.Nos.04-05 of 2016) Petitioner.

**=VS=**

Allama Delwar Hossain Sayedee:

(In CrI.R.P.No.03 of 2016) Respondent.

The Chief Prosecution (ICT):

(In CrI.R.P.Nos.04-05 of 2016) Respondent.

**CRIMINAL REVIEW PETITION NOS.03-05 OF 2016.**

(From the judgment and order dated 17.9.2014 passed by the Appellate Division in Criminal Appeal Nos.39-40 of 2013)

**ADVOCATES WHO APPEARED IN THIS CASE:**

For the Petitioner: (In CrI. R.P.No.03 of 2016) Mr. Mahbubey Alam, Attorney General (with Mr. Murad Reza, Additional Attorney General with Mr. Momtaz Uddin Fakir, Additional Attorney General, with Mr. Biswajit Debnath, D.A.G., Mr. Md. Ekramul Huq, D.A.G, Mr. Khon. Diliruzzaman, D.A.G and Mr. Basir Ahmed A.A.G, instructed by Mr. Syed Mahbubur Rahman, Advocate-on-Record.

For the Petitioner: (In CrI.R.P.Nos.04-05/16) Mr. Khandaker Mahbub Hossain, Senior Advocate (with Mr. S. M. Shahjahan, Advocate), instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent: (In CrI. R.P.No.03 of 2016) Mr. Khandaker Mahbub Hossain, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent: (In CrI.R.P.Nos.04-05/16) N.R.

For the applicant: (For adverse remarks) Mr. A. M. Aminuddin Senior Advocate, instructed by Mrs. Shirin Afroz, Advocate-on-Record.

**HEAD NOTE:**

**The Constitution of Bangladesh, 1972**  
**Article-105**

**In a review matter cannot re-assess the evidence afresh and re-hearing-** In the judgment the charges and evidence of the witnesses both oral and documentary have been meticulously considered and after evaluation of the same this court modified the conviction and commuted the sentence by majority as above. In a review matter this court cannot re-assess the evidence afresh and re-hear the matter. This court dispose of the points so far as it is relevant for the disposal of the matter. This court has discussed the evidence thoroughly in support of the Plea and disbelieved the defence plea. All points agitated by the learned counsel on behalf of the petitioner are not relevant for disposal of the review petition. The points raised by the learned counsel are reiteration of the points agitated at the time of hearing of the appeal. There is hardly any scope of rehearing of the matter afresh as a court of appeal in a review petition. The learned counsel fails to point out any error in the judgment apparent on the face of the record. Therefore, all the review petitions merit no consideration and accordingly they are dismissed. ... (Paras-2 & 7)

**JUDGMENT****SURENDRA KUMAR SINHA, CJ:**

**01.** This review petition is directed from a judgment of this court in its appellate forum maintaining the petitioner's conviction in respect of count Nos.7, 10, 16 and 19 and part of charge No.8 with modification of conviction in respect of charge Nos.7, 8 and 10, and commutation of sentence in respect of charge Nos.8 and 10 to imprisonment for rest of the natural life of the petitioner by majority.

**02.** In the judgment the charges and evidence of the witnesses both oral and documentary have been meticulously considered and after evaluation of the same this court modified the conviction and commuted the sentence by majority as above. In a review matter this court cannot re-assess the evidence afresh and re-hear the matter. This court dispose of the points so far as it is relevant for the disposal of the matter. Learned Counsel argued on various points as if he were arguing an appeal and accordingly we are refrained from discussing those points on reassessment of the evidence.

**03.** Mr. Khandoker Mahbub Hossain has submitted a written argument. His contention is that in the majority opinion this court committed error of law in believing part of charge No.8 relying upon the evidence of P.Ws.1, 2, 6, 7, 10, 11 and 12, inasmuch as, since this court disbelieved them in respect of other part of the charge, it should not have believed them in respect of the second part of the charge. While finding the petitioner guilty of the charge, this court thoroughly assessed the evidence and acquitted him of the first part of the charge not on the ground that those witnesses are not reliable but on other ground.

Mr. Khandaker Mahbub Hossain has argued points which were considered and discussed by this court. A decision on those points require reassessment of the evidence on record and there is no scope to reassess the evidence. This court has already assessed the evidence of those witnesses, and therefore, the points raised by the learned counsel is beyond the pale of review.

**04.** In respect of charge No.10, Mr. Hossain submitted that this court has committed serious error of law in upholding the conviction relying upon the evidence of P.Ws.1, 4, 5, 9, 14 and the statements of Md. Abdul Latif Howlader and Sukha Ranjan Bali ignoring the defence materials exhibits-II and III. He further contended that the petitioner submitted series of documents but this court did not consider them while finding the petitioner guilty of the charge. He further contends that there are allegations of burning of 25 Hindu houses of Hemayetpur village and though the investigation officer has found many victims alive the prosecution has not examined them. There is no hard and fast rule to examine innumerable number of witnesses to prove a charge. The prosecution examines those witnesses whose deposition is relevant to prove a charge. This court has thoroughly assessed the evidence of the witnesses both oral and documentary and found the petitioner guilty of the charge by majority. As regards non-examination of documents, those were not at all relevant for resolving the point in controversy. Other points raised by the learned counsel have already been answered in the appeal, and therefore, there is no scope for reconsideration of those facts.

**05.** In respect of charge No.16, it is contended that this court has committed error of law relying upon P.Ws.1, 3, 4, 5 and the statement of Ajit Kumar Shil in failing to consider that the evidence of these witnesses are sufficient to show that the story of abduction, confinement and rape of the three sisters of Gauranga Saha is unbelievable. The main point raised by the learned counsel is that if the age of P.W.13 during the relevant time is about seven years, his three sisters age would be below seven years, and therefore, there was no scope on the part of military junta to commit rape upon them. P.W.13 clearly asserted on oath that his date of birth was wrongly mentioned as 08.07.1963 in the birth certificate and that his age was twenty seven years in 1971. The defence did not challenge and/or controvert the said positive assertion. This court observed that there was no standard basis for preparing birth or death registers in 1971 and therefore, this paper was collusively created. More so, even if it is assumed that the victims were aged below seven years that itself is not a legal ground to disbelieve the fact of rape of the victims, inasmuch as, for committing sexual assault to a girl the age is not a factor. Sexual assault can be perpetrated to a girl of five years old. Since the birth certificate was disbelieved by this court by majority and addressed the point on meticulous consideration of evidence, there is no scope to reconsider the said issue in a review petition.

**06.** In respect of charge No.19, it is argued that this court has committed error of law in relying upon the evidence of P.Ws.2, 3, 4, 13 and 23 and the statement of Ajit Kumar Shil. This court noticed that P.Ws.2 and 23 are victims and P.W.4 and other witnesses corroborated them on the question of compelling 20 Hindus including 100/150 others of Parerhat and other villages and compelling them to go to make prayers at Mosque and upon assessment of the evidence, this court by majority held that the prosecution examined three witnesses who are victims and they have been corroborated by other independent witnesses and that there was no reason to discard their evidence. The point raised by the learned counsel has already been answered by this court in its majority opinion.

**07.** On the question of alibi plea, this court has discussed the evidence thoroughly in support of the Plea and disbelieved the defence plea. All points agitated by the learned counsel on behalf of the petitioner are not relevant for disposal of the review petition. The points raised by the learned counsel are reiteration of the points agitated at the time of hearing of the appeal. There is hardly any scope of rehearing of the matter afresh as a court of appeal in a review petition. The learned counsel fails to point out any error in the judgment apparent on the face of the record. Therefore, all the review petitions merit no consideration and accordingly they are dismissed.

**Ed.**