Present:
Mr. Justice Md. Salim

CRIMINAL RIVISION NO.3006 OF 2019

Rubel and others
..... Convict-Petitioners.

-VERSUS-

The State
..... Opposite party.

Mr. Abul Kalam Azad with
Ms. Aklima Akter Hira, Advocate
..... For the Petitioners.

Ms. Syeda Shajia Sharmin, D.A.G. with
Mr. Md. Rejaul Islam, A.A.G.
Mr. Khan Mahfuzun Noor, A.A.G.
..... For the State.

Heard on: 03.02.2026, 17.02.2026, and 24.02.2026.

Judgment on: 10.03.2026.

This Rule at the instance of convict-petitioners was issued on a revisional application against the Judgment and order dated 10.07.2019 passed by the learned Additional Sessions Judge, 4th Couirt, Mymensingh in Criminal Appeal No.139 of 2015 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 27.10.2015 passed by the learned Additional Chief Judicial Magistrate, Mymensingh in G.R. Case No.190 of 2005

arising out of Phulpur Police Station Case No.15(08)/2005 convicted all accused petitioners under section 143 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more, further convicting them under section 447 of the Penal Code and sentencing them to suffer simple imprisonment for 3(three) months with a fine of Tk.500/- in default to suffer simple imprisonment for 15 days more, and further convicting them under section 323 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more, and additionaly, convicted the accused petitioner No. 5 under section 326 of the Penal Code and sentencing him to suffer rigorous imprisonment for 2(two) years with a fine of Tk. 3000/- in default to suffer rigorous imprisonment for 1(one) month more should not be set aside, and or pass such other, or orders as to this court may seem fit and proper.

The prosecution case, in brief, is that P.W. 1, Bazlur Rahman, as informant, lodged a First Information report on 16.08.2005 with Fulpur police station, stating inter alia that the accused persons were members of an unlawful assembly and committed various offenses, such as rioting, criminal trespass, and causing hurt, both simple and grievous. The incident took place on 09.08.2005 at 4.00 pm. According to the prosecution, the informant's goat damaged paddy seeds, and, for that, the accused persons detained the goat in a crouch. Thereby, enmity between them began. Again, the same thing happened on 09.08.2005, but on that day, the accused persons attacked the informant's son with the dao, lathi, and assaulted him. Upon hearing the screaming of his son, the informant went there, where the accused Rafiq dealt a blow with a dao on his left shoulder, causing bleeding injury. Thereafter, he was taken to the Mymansing Medical College Hospital for treatment.

The police investigated the case, and after the investigation on 30.09.2005, a charge sheet was

submitted against the accused persons under Sections 143 / 447 / 323 / 326 of the Penal Code.

Subsequently, the learned Additional Chief Judicial Magistrate, Mymensingh, framed the charge against the accused petitioners under Sections 447/323/324/326 of the Penal Code, when they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as eight (8) witnesses, while the defense examined none.

After the evidence was closed, the accused persons were examined under Section 342 of the Code of Criminal Procedure, when they pleaded their innocence.

After closure of the trial, the learned Additional Chief Judicial Magistrate, Mymensingh by the Judgment and order dated 27.10.2015 convicted all the accused petitioners under section 143 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more, further convicting them under section 447

of the Penal Code and sentencing them to suffer simple imprisonment for 3(three) months with a fine of Tk.500/- in default to suffer simple imprisonment for 15 days more and further convicting them under section 323 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more and additionaly, convicted the accused petitioner No. 5 under section 326 of the Penal Code and sentencing him to suffer rigorous imprisonment for 2(two) years with a fine of Tk. 3000/- in default to suffer rigorous imprisonment for 1(one) month more.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the accused petitioners preferred an Appeal, which has been registered as Criminal Appeal No.139 of 2015 before the Sessions Judge, Mymensingh.

Eventually, the learned Additional Sessions Judge, 4th Court, Mymensingh, by the Judgment and order dated 10.07.2019, disallowed the appeal,

affirming the Judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the above impugned Judgment and order, the accused petitioner has filed this Criminal Revision before this court and obtained the instant Rule.

Mr. Abul Kalam Azad, the learned Counsel appearing on behalf of the convict-petitioner, took us through the impugned Judgment, evidence on record, and other connected materials available on the record, and submits that this is a case of no evidence, the learned Judge of the appellate court erred in law in holding that the prosecution has proved the charge under section 326 of the penal code, as there is nothing on record to show that the victim has permanently disfegured due to the alleged injury moreover he was admitted hospital for 20 days for treatment; mere asswembly of five persons or more is not an unlawful assembly, and the appellate court avoid discusasion the evidence and concurred in the trial court's Judgment.

On the contrary, Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General for the State, opposes the contention so made by the learned Counsel for the petitioners and submits that the intention to cause grievous hurt is amply proved in the light of the evidence on record, which is reflected in the medical report, which shows that the injury was grievous in nature, since the prosecution proved the case by examining witnesses who corroborated one another, it is not important whether the Doctor is examined to prove the case. She then submits that, since both the Courts below convicted the accused petitioner, the evidence is trustworthy and the Rule may therefore be discharged.

We have considered the submissions of the learned Counsel for the convict-petitioner, then that of the learned Deputy Attorney General, and have perused the impugned Judgment, the evidence, and other materials on record.

In order to bring home the charge, the prosecution examined as many as 8 (eight) witnesses. Of them, P.W.1-Bozlur Rahman, the informant, in his

examination-in-chief, stated that the incident took place on 09.08.2005 at 4.00 pm, when a goat belonging to him damaged paddy seeds and crops, and, for that, accused Rubel and Sumon detained the goat in a crouch. Thereby, enmity between them began. Again, the same thing happened on 09.08.2005, but on that day, when his son tried to restrain the goat, the accused persons attacked his son with the dao, sticks, and seriously bit him with the sticks. Upon hearing his son's screams, he went there, where accused Rafiq dealt a blow with a dao on his left shoulder, causing bleeding injury. Upon hearing the screaming, the witnesses came forward, rescued him, and took him to Mymansing Medical College Hospital for treatment.

In the cross-examination, this witness stated that he was admitted to the hospital for 7 to 8 days.

P.W.2- Mondal Hadis, in his examination-in-chief, stated that the occurrence took place on 09.08.2005 at 4:00 pm. Hearing screams, he went to the scene and saw Rafiq give a dao blow to the victim Bazlue.

He denied the suggestion that he had presented false evidence to the investigation officer.

P.W.3-Sumon stated in his deposition that the informant is his father. The occurrence took place on 09.08.2005 at 4:00 pm. On the date of the occurrence, the accused persons assaulted him with a lathi. Upon hearing the screaming, his father, the informant, came forward to rescue him and then accused Rafiq delt a dao blow to the left shoulder of his father, causing him to be seriously injured. He took the victim to the hospital for treatment. The victim was admitted to the hospital for 1 ½ months.

He denied the suggestion that he had presented false evidence.

P.W.4-Md. Jalil stated in his deposition that the occurrence took place on 09.08.2005 at 4:00 pm. Upon hearing the hue and cry, he went to the place of occurrence and found that the accused Rafiq dealt a dao blow on the breast of Bazlue.

He denied the suggestion that he had presented false evidence.

P.W.5-Abdus Sattar stated in his deposition that the occurrence took place on 09.08.2005 at 4:00 pm. The accused Rubel, Kashem, Naser, and Kashem assaulted the son of the informant. He was at his home and, after hearing screams, came to the place of occurrence and saw that the accused Rafique dealt a blow to Bazlue's shoulder.

He denied the suggestion that the accused Rafique did not delt blue to the victim, and he made false evidence.

P.W.6-Anwar Hossain Fakir, in his examination in chief, stated that the occurrence took place on 09.08.2005 at 4:00 pm. He was sitting in the shop of the informant's son. The informant's son went to the field to chase the goats, and an altercation ensued between the informant's son and the accused. Upon hearing the screams, he went to the scene and saw that the accused Rafiq dealt a dao blow to the breast of the informant.

P.W.7-Md. Majaharul Huq, S.I., Fulpur, as the investigating officer (formal witness), in his

examination-in-chief, stated that, upon taking charge, he visited the place of occurrence and prepared a sketch map. He also recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure and, having found a prima facie case against the accused persons, he submitted the charge sheet.

P.W.8-Dr. A.S.M. Abdus Samad deposed that on 09.08.2005, he was on duty as a medical officer in the emergency department of Mymansing Medical College Hospital. He had examined the victim, Bozlur Rahman. He found three injuries on the body of Bozlur Rahman, one inside wound about 6 centimeter x 1 cm x Bone depth on the left shoulder, involving the acromion process of the left scapula, age of wound 4 hours(approximately), weapon used, sharp cutting nature of injury, grievous. The patient was admitted to the Surgery Unit – 1, Ward No. 6, MMCH, Registration No. 33737/157 on 9/8/2005. He issued the Certificate on 17.09.2005 and identified the same, as well as his signature, which were exhibited accordingly.

These are all the prosecution's witnesses to prove the case.

Analyzing the above evidence on record, and the medical Certificate found no inconsistency. However, it appears to us that the Doctor did not give any reason for considering the same injury to be grievous hurt. It further appears that the courts below did not arrived at any independent in finding as to met the injury was grievious hurt and simple hurt on which injury grievious hurt and which in simple hurt to convict the accused petitioner under Section 326 of the Penal Code, the court must come to definite finding with reference to evidence on the record that the injury caused by the accused is a grievious hurt. An injury is grievous hurt if it falls within the meaning of grievous hurt as given in Section 320 of the Penal Code.

Further, there is no corroborative evidence that the victim was discharged from the hospital after several days. In this regard, PW. 1 admitted that the victim was admitted to the hospital for 7-8 days; moreover, PW. 8, the Doctor who issued the medical

Certificate, did not mention in the Certificate the date of discharge of the victim from the hospital, nor utter any word about the discharge of the victim when he was examined before the court. Therefore, we are of the firm view that there is no evidence to show that the victim suffered severe badly-pain for a period of 20 days, and, there is no iota of evidence on record to show that the victim ever sustained permanent disfiguration from sustaining the above injury or was unable to follow his ordinary pursuits to prove the charge against the convict petitioner under section 326 of the penal code. Thus, we are unable to believe the contention of the prosecution that the injury sustained by the victim comes under the mischief of section 326 of the Penal Code.

Further, on perusal of the record, it appears that the court of appeal failed to consider that the common object of the unlawful assembly has not been specifically stated in the "Charge" against the accused petitioners, nor is there any finding in the Judgment of the trial court below to this effect. Mere assembly of five persons or more is not an unlawful

assembly; an assembly or five persons or more is an unlawful assembly if it has as it is common object any of the unlawfull acts which have been specifically described in Section 144 / 141 of the Penal Code such as, to commit any mischief or any criminal trespass or other offence to obtain possession of a property or to deprive any person of any right to property by means of criminal force or show of criminal force. And when force or violence is used by an unlawful assembly or any of its members, then the offense of 'rioting' is committed. In the "charge", the common object of the unlawful assembly has not been raised as a question before the accused persons. Moreover, analyzing the oral evidence on record, it appears that none of the prosecution witnesses uttered a word regarding the unlawful assembly by the accused petitioners. Therefore, the conviction under section 143 of the Penal Code is not sustainable.

It is the cardinal principle of the law that the omission to state the common object in the charge does not, however, vitiate a conviction if there is

evidence on record to show that the common object was all that could be gathered from the evidence.

In the instant case, the prosecution claimed that the accused petitioners entered upon the land, and the informant and his son were attacked by the accused petitioners with the dao and the lathel blow on the land of the informant. It has been sought to be shown that commission of an offense of trespass under Section 447 of the Penal Code was the common object of the alleged unlawful assembly. At this stage, it is necessary to consider whether the accused petitioners actually committed criminal trespass on the land in the informant's possession. A charge under Section 447 of the Penal Code should specifically state the intent with which the entry is made, whether the intent is to commit an offense or to intimidate, insult, or annoy the person in possession of the property. The name of the person should also be stated. This view gets support from the case of Abdul Gafur and ors v. The state, 20 DLR(1968) 428 laid—

A charge under section 447 of the Penal Code should specifically state the intent with which the "Entry" is made, whether the intent is to commit an offense or to intimidate, insult, or annoy the person in possession of the property. The name of the person should also be stated.

In the instant case, both the courts below failed to consider that the charge under Section 447 of the Penal Code does not state the alleged intent. Moreover, none of the prosecution witnesses uttered a word regarding the accused persons' entry onto the informant's land or their intention to commit the alleged offense. Therefore, the charge under Section 447 of the Penal Code of the instant case is bad in law, which vitiates the trial so far as the offense under Section 447 of the Penal Code is concerned.

Further, the prosecution claimed that the accused petitioners have bitten the son of the informant, i.e., PW.3, and to prove the charge under section 323 of the Penal Code, the prosecution examined six witnesses. Of them, PW. 3 is the victim of the alleged occurrence. PW. 1 is the informant who

went thereon after hearing PW. 3's screams. This witness was not present at the time of the alleged occurrence. P.W. 2, and P.Ws. 4-6 were not present at the time of the alleged occurrence because, according to their evidence, they went to the place of occurrence after hearing of the screams from the place of occurrence.

Considering the above evidence, facts, and circumstances of the case, it is manifest that the prosecution has failed to prove the charge against the accused petitioners under section 323 of the penal code.

Considering the evidence and materials, facts and circumstances, it appears that the prosecution, in an attempt to fasten guilt upon the convict-petitioners, only points a needle of suspicion at them, and nothing more. Suspicion, however strong, is no substitute for proof - and in Criminal Law the prosecution is to prove the guilt of the accused beyond a reasonable doubt.

It was imperative on the part of the learned Judge of the appellate court to find out whether every

incriminating circumstance in respect of implication of the convict persons in the felony has been established by credible, reliable, and clinching evidence. The prosecution left no stone unturned to rope in the convicts and went overboard by fabricating false evidence and a colored version. Therefore, the learned Judge of the appellate court committed a serious error in presuming the guilt of the convict-petitioners first and trying, thereafter, to find out the other reason to justify such a conclusion without an objective, independent, and impartial analysis or assessment of materials before recording a finding of guilt upon the convict-persons and affirm the conviction awarded by the trial court below.

The doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances suffered from serious infirmities and lacked legal credibility. So, the findings of the learned Judge of the appellate court do not deserve the merit of approval of this court, having regard to the infirmities and illegalities vitiating them and the patent errors apparent on the face of the record,

resulting in a serious and great miscarriage of Justice.

On assessing evidence, materials on record and rummaging fact and circumstances of the case and embarking a survey on the legal debate involved in the case, we are of this considered view that the prosecution failed to connect the convict-petitioners in commission of offence under section 147/323/326/447 of the Penal Code beyond any shadow of doubt and convict petitioners are required to be liberated of charges and be acquitted on the concept of Criminal Jurisprudence of Benefit of Doubt on finding them not guilty of charges staged against them. Thus, the Rule has substance, and the impugned Judgment and order are liable to be set aside.

Resultantly, the Rule is made absolute.

The conviction and sentence of the accused petitioners, as imposed by the Judgment and order dated 10.07.2019 passed by the learned Additional Sessions Judge, 4th Couirt, Mymensingh in Criminal Appeal No.139 of 2015 dismissing the appeal in

affirming the Judgment and order of conviction and sentence dated 27.10.2015 passed by the learned Additional Chief Judicial Magistrate, Mymensingh in G.R. Case No.190 of 2005 arising out of Phulpur Police Station Case No.15(08)/2005 convicted all accused petitioners under section 143 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more, further convicting them under section 447 of the Penal Code and sentencing them to suffer simple imprisonment for 3(three) months with a fine of Tk.500/- in default to suffer simple imprisonment for 15 days more, and further convicting them under section 323 of the penal code and sentencing them to suffer rigorous imprisonment for 6(six) months with a fine of taka 5,00/- in default to suffer simple imprisonment for 15 days more, and additionaly, convicted the accused petitioner No. 5 under section 326 of the Penal Code, and sentencing him to suffer rigorous imprisonment for 2(two) years with a fine of

Tk. 3000/- in default to suffer 1(one) month rigorous imprisonment, 1(one) month more is hereby set aside.

Let all the accused persons be discharged from their bail bonds.

Send down the lower court records with a copy of this Judgment.

(Md. Salim,J:)

Kabir(BO)