

In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Revisional Jurisdiction)

PRESENT:

MR. JUSTICE ABU TAHER MD. SAIFUR RAHMAN

**CRIMINAL REVISION NO. 589 of 2021**

Moslem Uddin and others

.....Convict-petitioners

-Versus-

The State and another.....Opposite parties

Mrs. Nigar Sultana, Advocate

.....For the convict-petitioners

Mr. S.M. Arif. Advocate

.....For the opposite party No. 2

Mr. Md. Anichur Rahman Khan, DAG with

Mrs. Tashrifa Sultana Jali, AAG

.....For the state

Heard on: 28.01.2026, 10.03.2026, 23.04.2026  
and 28.04.2026

**Judgment on: The 15<sup>h</sup> of June, 2026**

**ABU TAHER MD. SAIFUR RAHMAN, J.**

At the time of pronouncement of the judgment, Mrs. Nigar Sultana, the learned Advocate for the petitioners, submitted that convict petitioner No. 3 Md. Riajuddin had died

on 08.06.2026 and, in support thereof, produced a photocopy of the death certificate issued by the Chattogram Medical College Hospital. Having examined the certificate, I am satisfied as to its genuineness. The learned Deputy Attorney General raised no objection.

It appears from the judgments of the Courts below that the petitioners were convicted only under section 323 of the Penal Code and were sentenced to imprisonment without any fine. In view of the death of petitioner No. 3 and the absence of any sentence of fine, the Rule, so far as it relates to petitioner No. 3, stands abated. The Rule is, therefore, taken up for consideration on merits in respect of the remaining petitioners.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 21.01.2021 passed by the learned Judge, Jana Nirapatta Bighnakari Aparadh Daman Tribunal and Special Sessions Judge, Chattogram in Criminal Appeal No. 536 of 2017 dismissing the appeal preferred by the convict-petitioners and enhancing their sentence from 03 (three) months simple imprisonment to 06 (six) months rigorous imprisonment should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the convict-petitioners were enlarged on ad interim bail for a period of 01

(one) year. The said order was subsequently extended from time to time and remained in force until disposal of the Rule.

For disposal of the Rule, the relevant facts, in brief, are that the scheduled land belongs to the complainant and his brothers, who claim to have been in possession thereof for a long time. The accused persons, however, claimed title to the land on the basis of a B.S. Khatian recorded in the name of their predecessor and instituted several civil suits concerning the same. Although they obtained an ex parte decree, the complainant challenged the decree before the competent civil Court, which stayed its operation and execution.

The prosecution case is that, having failed to obtain possession through the pending civil proceedings, the accused persons resorted to intimidation. On 03.01.2014, pursuant to a police notice, the complainant appeared before the police authorities and produced the relevant title documents, including the order of stay passed by the civil Court. Despite the pending civil dispute and the subsisting order of stay, he was allegedly threatened and directed to vacate the land. Apprehending danger, he lodged G.D. No. 49 dated 06.01.2014.

It is further alleged that on 25.01.2014 at about 12:30 p.m., the accused persons, accompanied by some police personnel, entered the scheduled land allegedly with an

intention to take forcible possession. When the complainant's mother, sisters and other family members resisted, the accused persons allegedly assaulted them with iron rods, sticks and other weapons, causing injuries. It was also alleged that accused No. 1 snatched a gold chain from Nasima Akhtar, accused No. 3 snatched gold earrings from Parveen, and accused No. 4 snatched a gold locket from Rokeya Begum. Accused No. 2 was further alleged to have attempted to strangle the complainant's mother, Belua Khatun, causing her to become unconscious. On hearing their cries, local people arrived at the scene, whereupon the accused persons fled. The injured persons were thereafter taken to Chattogram Medical College Hospital for treatment.

The complainant alleged that, despite approaching the police after receiving medical treatment, no case was registered. Consequently, he filed the instant complaint alleging offences punishable under sections 143/ 323/ 324/ 354/ 379/ 307 and 34 of the Penal Code.

Upon inquiry, the learned Magistrate took cognizance of the offences and registered the case as C.R. Case No. 13 of 2014. During trial, the prosecution examined 07 out of 08 cited witnesses, while the defence adduced no evidence.

Upon consideration of the evidence and materials on record, the learned trial Court convicted the accused-petitioners

under section 323 of the Penal Code and sentenced each of them to suffer simple imprisonment for 03 (three) months. Being aggrieved, they preferred Criminal Appeal No. 536 of 2017. The appeal was subsequently transferred to the learned Judge, Jana Nirapatta Bighnakari Aparadh Daman Tribunal and Special Sessions Judge, Chattogram, who by the impugned judgment and order dated 21.01.2021, dismissed the appeal and enhanced the sentence from 03 (three) months simple imprisonment to 06 (six) months rigorous imprisonment. Hence, the instant Criminal Revision.

Mrs. Nigar Sultana, the learned Advocate for the accused-petitioners, submits that section 423 of the Code of Criminal Procedure does not confer jurisdiction upon an appellate Court, while hearing an appeal against conviction preferred by the accused, to enhance the sentence. Referring to section 423(1)(bb) of the Code, she contends that enhancement of sentence can only be made in an appeal preferred for enhancement and after giving the accused an opportunity of showing cause against such enhancement. Accordingly, she submits that the learned appellate Court acted without lawful authority and jurisdiction in enhancing the sentence while disposing of the accused-petitioners' appeal.

Mr. S. M. Arif, the learned Advocate for opposite party No. 2, submits that the learned trial Court, upon proper and meticulous appraisal of the evidence, rightly convicted the accused-petitioners and that the impugned judgment and order calls for no interference.

Mr. Md. Anichur Rahman Khan, the learned Deputy Attorney General, supports the submissions made by the learned Advocate for opposite party No. 2.

Heard the learned Advocates for the respective parties and perused the evidence and materials on record.

In view of the express prohibition contained in section 423(1)(b)(3) of the Code of Criminal Procedure, 1898, an appellate Court, while hearing an appeal preferred by a convicted accused under section 408 of the Code, has no jurisdiction to enhance the sentence imposed by the trial Court. The alteration of the sentence from 03 (three) months simple imprisonment to 06 (six) months rigorous imprisonment, therefore, amounts to an enhancement of both the quantum and the nature of the sentence and is clearly beyond the jurisdiction of the appellate Court. The power of enhancement can be exercised only in a proceeding legally instituted for that purpose and in accordance with the procedure prescribed by law under sections 417A and 439 of the Code of Criminal Procedure, 1898, The same view has been affirmed by the

Appellate Division in *State vs. Dafader Marfoth Ali Shah*, 68 DLR (AD) 13.

In view of the aforesaid legal position, we find that the appellate Court below, while dismissing the appeal preferred by the accused-petitioners, acted illegally in enhancing the sentence imposed by the trial Court from 03 (three) months simple imprisonment to 06 (six) months rigorous imprisonment. To that extent, the impugned judgment and order is illegal and not sustainable in law.

Now, let us examine whether the judgment and order of conviction and sentence passed by the learned trial Court are sustainable in law.

To prove the charge, the prosecution examined seven witnesses, while the defence examined none. P.W.1, the complainant, admittedly did not witness the occurrence from its inception and reached the place of occurrence after receiving information. In cross-examination, he admitted the existence of longstanding civil and criminal litigation between the parties over the disputed property and also admitted that the accused had instituted a criminal case against his side arising out of the same occurrence. He further admitted that, on three occasions, the investigation had resulted in reports finding the allegations to be untrue. He also failed to produce any documentary

evidence regarding the alleged snatching of ornaments or medical evidence in support of the alleged injuries.

P.W. 2, the elder brother of the complainant, likewise admitted the existence of several litigations between the parties and candidly stated that he had not witnessed the alleged assault upon Nasima, Parveen and Belua Khatun, but had learnt about the occurrence from others and accompanied the injured persons to the hospital. His evidence regarding the actual occurrence is, therefore, substantially hearsay.

P.W. 3, a former Member of the locality, was admittedly not an eyewitness. His evidence merely shows that the complainant informed him about the occurrence and that he advised the parties to settle the dispute amicably.

P.Ws. 4 to 7, who are close relations of the complainant, supported the prosecution case. However, they also admitted the existence of longstanding civil and criminal disputes between the parties and the pendency of several litigations concerning the disputed land. It also appears from the evidence that the accused had lodged a criminal case against the complainant's side arising out of the same occurrence. Although the evidence of related witnesses cannot be discarded merely on the ground of relationship, their testimony requires careful scrutiny, particularly where there is admitted and longstanding enmity between the parties.



It is further significant that, despite the prosecution witnesses stating that neighbours and tenants were present at or had arrived at the place of occurrence, no independent eyewitness was examined. No doctor was examined and no injury report or medical certificate was produced to corroborate the alleged injuries. The alleged X-ray examinations were also not supported by satisfactory documentary evidence. Similarly, the allegation of snatching gold ornaments remained wholly uncorroborated.

The evidence on record thus discloses longstanding land-related disputes and a cross-case instituted by the accused side arising out of the same occurrence. These circumstances lend considerable support to the defence plea that the present case was instituted as a counterblast to the existing dispute and enmity.

It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond all reasonable doubt. Suspicion, however strong, cannot take the place of proof. In the present case, the prosecution evidence suffers from material infirmities, namely: (i) the complainant was not an eyewitness to the commencement of the occurrence; (ii) P.W. 2's evidence regarding the actual assault is largely hearsay; (iii) P.W. 3 is not an eyewitness; (iv) the principal eyewitnesses are closely

related and interested witnesses; (v) no independent witness has been examined despite their admitted availability; (vi) no medical evidence has been adduced to corroborate the alleged injuries and (vii) there exists a background of intense and long-standing land litigation coupled with a cross-case filed by the accused side.

In the circumstances, I am of the view that it would be unsafe to sustain the conviction on such evidence. The cumulative effect of the evidence and surrounding circumstances gives rise to a reasonable doubt as to the prosecution case. The accused persons are, therefore, entitled to the benefit of doubt

Accordingly, I find that the prosecution has failed to prove the charge against the accused persons beyond reasonable doubt. The learned trial Court, as well as the appellate Court below, failed to properly appreciate the evidence on record and thereby arrived at an erroneous finding.

In the result, the Rule is made absolute.

The judgment and order of conviction and sentence dated 12.09.2017 passed by the learned Additional Chief Metropolitan Magistrate, Chattogram in C.R. Case No. 13 of 2014, as affirmed by the appellate Court below by judgment and order dated 21.01.2021 in Criminal Appeal No. 536 of 2017 are hereby set aside. The accused persons are acquitted of

the charges by extending to them the benefit of doubt and are discharged from their respective bail bonds.

Let the Lower Court Records be sent down at once.

Let a copy of this judgment and order be communicated to the Court below at once.