

Present:

Mr. Justice Md. Salim

**CRIMINAL RIVISION NO.1909 OF 2021**

Md. Habibur Rahman

..... Convict-Petitioner.

-VERSUS-

The State and another

..... Opposite parties.

Mr. Md. Musherraf Hossain Majumder, Advocate

..... For the Petitioner.

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: 07.01.2026 and 13.01.2026.**

**Judgment on: 15.01.2026.**

This Rule at the instance of convict-petitioner was issued on a revisional application against the Judgment and order dated 02.09.2021 passed by the learned Sessions Judge, Jamalpur in Criminal Appeal No.86 of 2019 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 14.05.2019 passed by the learned Additional Chief Judicial Magistrate, Jamalpur in C.R. No.91(1)2013 (Bokshiganj) convicting the petitioner under Sections 326 of the Penal Code and sentencing him to suffer rigorous imprisonment for 2(two) years with a fine of

taka 5,000/- in default to suffer simple imprisonment for 6(six) months more.

The prosecution case, in brief, is that one Asaduzzaman, as complainant, filed a petition of complaint before the Senior Judicial Magistrate, Jamalpur, against the petitioner, along with 7 (seven) others, with allegations, inter alia, that on 29.03.2013 at about 12:30 pm the accused Md. Habibur Rahman and his family member entered the house of the complainant with native weapons like shavol, lathi, and other sharp cutting weapons with the intention to commit the criminal offence. Hatem Ali attempted to hit the chest of the complainant with a fala, but failing, he made blows upon the complainant, and other accused persons have taken part by beating him black and blue. Habibur Rahman and other accused persons also injured the witnesses Mowlana Abdullah, Abdul Rashid, and Abida Jannat Tabassum (aged 4 years) when they came forward to save the complainant. Accused Habibur Rahman also made a blow on the upper part of the eye of the victim Tabassum, who became injured and senseless due to

a blow from a sharp, cutting shavol. Thereafter, the victim Tabassum was taken to Sherpur General Hospital and admitted therein for treatment.

The learned Senior Judicial Magistrate, Jamalpur, having received the complaint, sent the same to the Officer-in-Charge, Bakshigonj Police Station, for inquiry. After a perfunctory investigation, the police found prima facie allegations against the petitioner and submitted an investigation report against the convict-petitioner. Thereafter, the learned Magistrate took cognizance of the case under Sections 447/323/324/326/307/114 of the Penal Code against the convict-petitioner and others, and issued summons against them.

Subsequently, the learned Additional Chief Judicial Magistrate, Jamalpur, framed the charge against the accused petitioner and the other 7(seven) accused persons under Sections 447/323/324/326/307/114 of the Penal Code.

During the trial, the prosecution examined as many as 5 (five) witnesses, while the defence examined none.

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

Subsequently, after closure of the trial, the learned Additional Chief Judicial Magistrate, Jamalpur by the Judgment and order dated 14.05.2019 convicted the petitioner under Section 326 of the Penal Code and sentenced him to suffer rigorous imprisonment for 2(two) years and to pay a fine of Tk.5,000/- in default to suffer simple imprisonment for 6(six) months more while discharged all other accused persons from the charge leveled against them.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the accused petitioner preferred an Appeal, which has been registered as Criminal Appeal No. 86 of 2019 before the Sessions Judge, Jamalpur.

Eventually, the learned Sessions Judge, Jamalpur, by the Judgment and order dated 02.09.2021, 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. Md. Musherraf Hossain Majumder, the learned Counsel appearing on behalf of the convict-petitioner, took us through the impugned Judgment, evidence on record, petition of complaint, inquiry report, and other connected papers available on the record, and submits that this is a case of no evidence. He then submits that the learned judge of the appellate court erred in law to hold that the prosecution has been able to prove the charge under section 326 A of the penal code inasmuch as the allegation in no way comes under the mischief of section 326 of the penal code as there is nothing on record to show that the alleged victim suffered any injury on eyes which has permanently disfigured her. He then submits that the complainant stated in the petition of complaint that the victim was under treatment in the health

complex, and the doctor gave an injury certificate in favour of the injury, but the doctor has not been examined in order to prove the certificate given by the doctor, and that without examining the doctor, the certificate given by him will not be taken into evidence. He also submits that the convict petitioner was not examined properly under Section 342 of the Code of Criminal Procedure, which is a mandatory provision of law on which the petitioner will be prejudiced; rather, both the court below failed to consider the same, so the convict petitioner is liable to be acquitted of the charge.

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 petitioner 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. She then submits that the injury was caused by a sharp cutting weapon, and the force with which the blow was given can be seen

from the nature of the injuries, 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 5 (five) witnesses. Among them P.W.1 Md. Asaduzzaman, complainant in the instant case, in his examination-in-chief, stated that on 29.03.2013 at about 12:30 pm, the accused Md. Habibur Rahman, along with other accused persons, entered into the house of the complainant with native weapons like shavol, rod, lathi, and other sharp cutting weapons with the intention to commit a criminal offence. At the direction of Hatem Ali, the

accused Habibur Rahman, along with other accused persons, started to assault the informant party. Accused Hatem Ali dealt a fala blow to the informant. Accused Shahidulla grabbed his throat with both hands. Accused Rafiqul dealt a lathi blow on Fakhruzzaman. The accused Habibur Rahman dealt a shabol blow on the upper part of the eye of the victim Tabassum, who became injured and senseless. Accused Hasmat dealt an iron rod blow upon Abida Jannat, and Rashid assaulted Tania. Accused Noor Islam dealt a lathi blow to the body of Abdulla.

In cross-examination by the prosecution, he denied the suggestion that he had filed a false case against the accused persons.

P.W.2- Md. Arifuzzaman, in his examination-in-chief, stated that the accused Hatem Ali dealt a fala blow upon the informant and assaulted him. Accused Shahidulla grabbed his throat with both hands. Accused Rafiqul dealt a lathi blow on Fakhruzzaman. The convict-petitioner Habibur Rahman dealt a shavol blow on the upper part of the eye of the victim Tabassum, who became injured. Accused Hasmat

dealt an iron rod blow upon Tabassum, Accused Rashid and Newaj assaulted Tania.

In cross-examination, he stated that there are many houses near the house of the victim. He, Anwaruzzaman, and his father went to the Hospital on the following day. He denied the suggestion that the accused persons did not cause injury to the victim party.

P.W.3- Anoweruzzaman, in his examination-in-chief, stated that the accused, Habibur Rahman, dealt a Savol blow on the upper part of the eye of the victim Tabassum, who became injured. Thereafter, the victim was admitted to the Hospital for treatment.

In cross-examination, he stated that he did not go to the Hospital. The parents of the victim, Tabassum, were staying in the Hospital.

P.W.4- Tania Begum, in examination-in-chief, stated that while the victim Tabassum came forward to save the complainant, the accused Habibur Rahman dealt a Shavol blow on the upper part of the eye of the victim, causing bleeding injuries.

In cross-examination, she stated that they were staying for 8 days in the Hospital with the victim.

P.W.5, Tabassum, the victim of the instant case, in examination-in-chief, stated that while all the accused persons were assaulting the complainant, Md. Asaduzzaman came forward to rescue him. Then the accused Habibur Rahman dealt a Shavol blow on the upper part of her right eye, causing bleeding injuries.

In cross-examination, she stated that at the time of the occurrence, she was only 4 years old.

On perusal of the above evidence on record, we find that there is consistency in the statements of the prosecution witnesses regarding the injury caused by the convict-petitioner. It is true that all the witnesses in this case are related to each other. It has also been evidenced that the accused petitioner is also related to the complainant party. The accused and the witnesses were residing in the same residence when the occurrence took place. Naturally, the witnesses will be intimates of the same homestead and will be related to each other. The appellate court considered

the entire evidence, including the medical evidence, and found that it corroborated the oral evidence.

We have also perused the oral evidence and the medical evidence and 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 court did not arrived at any independent in finding as to metter the injury was grievous hurt and simple hurt on which injury grievous 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 grievous 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 evidence that the injury endangered the life of the victim. There was no fracture; the victim was discharged from the Hospital after several days. There is no evidence to show that the victim suffered severe badly-pain for a period of

20 days or was unable to follow his ordinary pursuits to prove the charge against the convict petitioner under section 326 of the penal code.

Further, it may not be out of place to mention here that there is no iota of evidence on record to show that the victim ever sustained permanent privation of sight of either eye, privation of hearing of either ear, privation of any member of joint destruction or permanent impairing of powers or any member of joint, permanent disfiguration of the head of face and in view of such facts and circumstances, we are unable to believe the contention of the prosecution that the injury sustained by the victim come under the mischief of section 326A or 326 of the penal code.

Notably, in a criminal case, the allegations have no legal value unless reliable and credible witnesses testify to them, and the prosecution must prove them beyond any reasonable doubt. But in the instant case, it is admitted that the doctor, who issued the certificate, though, according to the prosecution, conducted treatment of the victim, was not examined,

and no explanation was offered by the prosecution before the court as to why he was not examined. This court cannot presume the cause of injury of the victim as it cannot rely upon the Medical Certificate, as the said document was not proved in terms of the provisions of Section 45 of the Evidence Act, 1872. As the cause of the victim's injury has not been proved, in our view, the petitioner is entitled to acquittal.

The next legal question is that the object of Section 342 of the Code of Criminal Procedure is to invite the attention of the accused person to the points in the evidence against him for which he may be convicted, so that the accused is given a chance to offer his explanation as to those allegations against him. In this regard, the case of *Shahid Mia and another Vs. State*, reported in 60 D L R (HCD) 371, may be referred to, wherein it was held that:-

“It appears that while examining the accused appellants under section 342 of the Code of Criminal Procedure the trial Court failed to put the incriminating evidence against the accused appellants

for the purpose of enabling them to explain any circumstance and thereby the accused appellants have been prejudiced. Section 342 of the Code of Criminal Procedure provides that the accused of Criminal Procedure provides that the accused should be examined for the purpose of enabling him to explain any circumstance appearing in the evidence against him. But in the instant case no incriminating circumstance was put to the accused appellants. The razor allegedly used by the accused Shahid in the commission of the offence was not at all put to him while he was examined under section 342 of the Code of Criminal Procedure and thereby the accused appellant has been seriously prejudiced in conducting his defence in the trial.”

In the instant case, the examination of the convict petitioner under section 342 of the Code of Criminal Procedure is quoted as follows:-

“আপনি মোঃ হাবিবুর রহমান আপনার বিরুদ্ধে দণ্ডবিধির ৪৪৭/৩২৬/৩০৭ ধারায় অভিযোগ গঠন করা হয়েছে। ফরিয়াদীপক্ষ মামলাটি প্রমাণের জন্য মোট পাঁচ জন সাক্ষীর সাক্ষ্য প্রদান করেছেন। অত্র মামলার ঘটনার তারিখ ও সময়ে আপনি লোহার ধারালো শাবল দিয়ে সাক্ষী আবিদা জান্নাত তাবাচ্ছুমকে হত্যার উদ্দেশ্যে তার ডান চোখ বরাবর পাড় মেরে তার ডান চোখের উপরিভাগে গুরুতর জখম করেছেন মর্মে গৃহীত সকল সাক্ষীই তাদের সাক্ষ্যের জবানবন্দিতে উল্লেখ করেছেন। আপনার পক্ষের নিয়োজিত বিজ্ঞ আইনজীবী উক্ত সাক্ষীদেরকে জেরা করেছেন। আপনি উক্ত জবানবন্দি ও জেরার বক্তব্য শুনেছেন, তৎপ্রেক্ষিতে,

১। তাতে আপনার বক্তব্য কি ?

উত্তর : আমি নির্দোষ।

২। আপনি সাফাই সাক্ষী দিবেন কি ?

উত্তর : না।

৩। আপনি কোন ডকুমেন্টস বা কাগজপত্রাদি দাখিল করবেন কি ?

উত্তর : না।

৪। আপনি আরও কিছু বলবেন কি ?

উত্তর : না।”

It appears that, while examining the convict-petitioner under Section 342 of the Code of Criminal Procedure, the trial court did not put the incriminating evidence against him to offer his explanation of his guilt, which the accused petitioner has prejudiced.

From the evidence extracted above, the materials on record, the facts and circumstances of the case, and the submissions of the learned advocate for the petitioner, it appears that the prosecution failed to prove the case against the accused-petitioner beyond a reasonable doubt; therefore, we are led to

believe that the prosecution's case is a hoax, one having no ground under its legs. So, the impugned Judgment is liable to be set aside.

Resultantly, the Rule is made absolute.

The conviction and sentence of the accused petitioner, Md. Habibur Rahman, as imposed by the Judgment and order dated 02.09.2021 passed by the learned Sessions Judge, Jamalpur, in Criminal Appeal No.86 of 2019, dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 14.05.2019 passed by the learned Additional Chief Judicial Magistrate, Jamalpur, passed in C.R. No.91(1)2013 (Bokshiganj) are set aside.

The accused-petitioner is hereby declared to be acquitted of the charge leveled against him and discharged from his bail bonds.

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

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**(Md. Salim,J:)**