

**Present:**

Mr. Justice Raziuddin Ahmed

**Criminal Revision No.298 of 2007**

Abdul Hakim

----- Convict-Petitioner

**-Vs-**

The State

---- Opposite Party

No one appears

----For the Petitioner

Mr. A.S.M. Badrul Anwar D.A.G with

Mr. Md. Taherul Islam (Tawhid), D.A.G and

Mr. Mohammad Moniruzzaman, A.A.G

---- For the State

**Heard on 08.02.2026, 15.02.2026 and**

**Judgment on 26.02.2026**

On an application filed under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 21.01.2007 passed by the learned Additional Metropolitan Sessions Judge, 1<sup>st</sup> Court, Chittagong dismissing the Criminal Appeal No.179 of 2005 upholding the judgment and order of conviction and sentence dated 16.06.2005 passed by the learned Metropolitan Magistrate, Chittagong arising out of Kotwali Police Station Case No.01(01)1998 and corresponding to G.R. Case No.49/1998 should not be set aside and/ or to pass such other or further order or orders as to this court may seem fit and proper.

The prosecution case, in short, is that on 31.12.1997 Md. Nazrul Islam, Sub-Inspector of CMP, Chattogram, received secret information that a road accident had taken place at the north-west corner of Laldighi near K.C. Dey Road, in front of Sonali Bank. On receipt of such information, he proceeded to the place of occurrence along with police force and found one young man lying on the road in an injured condition. He also found a truck bearing registration No. Comilla-Ta-2472 standing there and the driver, Abdul Hakim, having been detained by local people. On query, the injured person disclosed his identity as Opu Shaha, son of Shishu Kumar Shaha, of village Mojumder Khil, Shanti Nikatan, Police Station-Rangunia, District-Chattogram. The victim stated that while he was proceeding from Laldighi towards K.C. Dey Road and reached near Sonali Bank at about 10:10 p.m., the aforesaid truck came from behind and hit him. It was alleged that the truck was being driven rashly and negligently, causing him to fall on the road and sustain serious injuries, including injuries to his feet. He was then taken to Chittagong Medical College Hospital for treatment. On the basis of the said information, the present case was filed.

After investigation, police submitted charge-sheet on 25.02.1998 under sections 279 and 338A of the Penal Code. Thereafter, the learned Metropolitan Magistrate, Chattogram, took cognizance of the offence and framed charge against the accused under sections 279 and 338A of the Penal Code, to which the accused pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 4 witnesses out of 9 charge-sheeted witnesses. The defence examined none. After examination of the

accused under section 342 of the Code of Criminal Procedure, the learned Metropolitan Magistrate, Chattogram, by judgment and order dated 16.06.2005 convicted the accused-petitioner under sections 279 and 338A of the Penal Code and sentenced him to suffer simple imprisonment for 6 (six) months and to pay a fine of Tk. 2,000/-, in default to suffer simple imprisonment for 1 (one) month more.

Challenging the judgment and order dated 16.06.2005 the petitioner preferred an appeal before the learned Metropolitan Sessions Judge, Chattogram, which was subsequently transferred to the learned Additional Sessions Judge, 1st Court, Chattogram, for hearing. The appellate Court, by judgment and order dated 21.01.2007, dismissed the appeal and affirmed the conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment of conviction and sentence dated 21.01.2007 the accused petitioner preferred this revisional application and obtained a Rule on 02.04.2007.

No one appears on behalf of the convict-petitioner when the Rule is taken up for hearing.

Mr. A.S.M. Badrul Anwar, learned Deputy Attorney General, appearing with Mr. Md. Taherul Islam (Tawhid), learned Deputy Attorney General, and Mr. Mohammad Moniruzzaman, learned Assistant Attorney General, opposes the Rule and submits that the prosecution has proved the case by adducing trustworthy evidence and both the Courts below, on proper assessment of the evidence on record, rightly convicted the petitioner. He further submits that no illegality or infirmity has been

committed by the Courts below warranting interference by this Court in revisional jurisdiction.

I have heard the learned Deputy Attorney General for the State, perused the revisional application, the judgments of the Courts below, and the materials on record.

It appears from the record that the prosecution did not examine the Investigating Officer or the doctor who treated the injured victim. It further appears that no medical certificate or injury report was exhibited before the trial Court. Nevertheless, the consistent case of the prosecution witnesses is that the accident took place at the relevant time and place, involving truck No. Comilla-Ta-2472 and that the driver namely Abdul Hakim, was apprehended by local people immediately after the occurrence. The evidence also shows that the victim sustained serious injuries and was taken to hospital for treatment.

P.W.1 Md. Nazrul Islam, the informant, stated that upon receiving information regarding the accident, he went to the place of occurrence and found the truck, the detained accused-driver, and the injured victim lying on the road. He subsequently arranged to send the victim to hospital and took the accused into custody.

P.W.2 Opu Shaha, the victim, categorically stated that on 31.12.1997 at about 10:10 p.m., while he was proceeding near Sonali Bank on K.C. Dey Road, the truck bearing No. Comilla-Ta-2472 came from behind and hit him due to rash and negligent driving by the accused. He further stated that he sustained injuries on the sole of his right foot and other

parts of his body and remained under treatment in Chittagong Medical College Hospital for about four months.

P.W.4 Aktarul Alam, an eye-witness, stated that at the material time and place he saw the truck coming from behind at high speed and running over the victim, who fell down with serious injuries and was thereafter taken to hospital by local people.

Thus, the evidence of the informant, the victim, and the eye-witness consistently proves: firstly, the occurrence of the accident; secondly, the identity of the vehicle involved; thirdly, the presence and apprehension of the accused-driver at the spot; and fourthly, the fact that the victim sustained serious injuries in the said occurrence.

Section 279 of the Penal Code provides punishment where a person drives any vehicle on a public way in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person. Section 338A of the Penal Code provides punishment where grievous hurt is caused to any person by such rash or negligent driving on a public way. Both provisions require proof of rashness or negligence in the manner of driving.

From the evidence on record especially that of P.W.2 and P.W.4, it is evident that the truck came from behind at speed and hit the victim on a public road. The accused was apprehended on the spot. There is nothing on record to suggest any false implication. The victim's evidence is direct, natural, and fully corroborated by the surrounding circumstances and the testimony of the other witnesses. In such circumstances, mere non-

examination of the Investigating Officer or the medical officer is not, by itself, fatal to the prosecution case, when the material facts of occurrence, identity of the accused, and the rash and negligent manner of driving stand otherwise proved by reliable oral evidence.

The learned Courts below, in my view, rightly held that the prosecution succeeded in proving the ingredients of the offences under sections 279 and 338A of the Penal Code. Therefore, the conviction of the petitioner calls for no interference in revisional jurisdiction under sections 435 and 439 of the Code of Criminal Procedure.

So far as the sentence is concerned, however, this Court is of the view that the same deserves reconsideration due to lapse of time.

The occurrence took place on 31.12.1997. The trial concluded on 16.06.2005, the appeal was dismissed on 21.01.2007, and the revisional proceeding has remained pending for a long period. Thus, the petitioner has faced the ordeal of criminal prosecution for a very considerable length of time. The record further does not disclose any previous criminal antecedent of the petitioner. In the facts and circumstances of the case, the ends of justice would be sufficiently met if the sentence of imprisonment is reduced to the period already undergone, while maintaining the conviction.

In the result, the Rule is discharged with modification of sentence.

The conviction of the petitioner under sections 279 and 338A of the Penal Code is hereby maintained.

However, the sentence of 6 (six) months' simple imprisonment is reduced to the period already undergone.

The sentence of fine of Tk. 2,000/- is maintained. In default of payment of fine, the petitioner shall suffer the sentence as directed by the trial Court.

The ad-interim order of bail granted earlier by this Court is hereby recalled and vacated, and the petitioner is discharged from his bail bond, subject to payment of fine, if not already paid.

Let the lower Court records be sent down at once.

L.Sarwar/B.O