

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Md. Bashir Ullah**

**Criminal Revision No. 3691 of 2022**

**In the matter of:**

An application under section 439 read with  
435 of the Code of Criminal Procedure

**-And-**

**In the matter of:**

Siraj Mia

... Convict-Appellant-Petitioner

**-Versus-**

The State, represented by the Deputy  
Commissioner, Sylhet

... Respondent-Opposite Party

Mr. Md. Muslem Uddin Bhuiya, Advocate  
with

Mr. S.M. Abdul Baten, Advocate

... For the Convict- Petitioner

Mr. Md. Shafiquil Islam, D.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Hemayth Uddin, A.A.G and

Mr. K. M. Saiful Islam, A.A.G

... For the State

**Heard on: 27.01.2026, 28.01.2026,  
19.04.2026, 21.04.2026, 29.04.2026  
and 04.05.2026**

**Judgment on: 10.05.2026**

This Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and order dated 03.04.2022 passed by the learned Additional Sessions Judge, 3<sup>rd</sup> Court, Sylhet in Criminal Appeal No. 161 of 2018 dismissing the appeal and affirming the judgment and order dated 15.01.2018 passed by the learned Senior Judicial Magistrate, 2<sup>nd</sup> Court, Sylhet in Golapgonj Model Police Station Case No. 4 dated 04.12.2015 corresponding to G.R. No. 206 of 2015, convicting the petitioner under Section 325 of the Penal Code and sentencing the petitioner to suffer rigorous imprisonment for a period of 01 (one) year with a fine of Taka 3,000/-, in default to suffer imprisonment for 01(one) month 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.

The facts relevant for disposal of the Rule, in brief, are that, one, Alim Uddin filed C.R. Case No. 231 of 2015 before the learned Senior Judicial Magistrate, 2<sup>nd</sup> Court, Sylhet. The learned Magistrate directed to send the case to the Golapgonj Model Police Station to be registered as F.I.R and accordingly FIR was lodged with Golapgonj Model Police Station on

04.12.2015 alleging *inter alia* that Suratun Nessa (the victim) is the grandmother of informant and is of advanced age. On 03.11.2015 at approximately 4.00 pm, the accused-persons attacked Suratunnessa. Abdun Noor ordered to kill his grandmother and to search out of Badrul. Thereafter, accused no. 1, Siraj (petitioner) struck the victim's leg with iron rod. When Suratunnessa fell down the other accused-persons struck her indiscriminately with bamboo sticks. The accused-persons also damaged furnitures' of the house. Upon hearing the hue and cry, neighbours arrived at the place of occurrence and removed the victim to the hospital for medical treatment. Accordingly, the case was initiated against 3 accused-persons.

Upon closure of investigation, the investigating officer submitted police report No. 49 dated 20.04.2016 against three accused-persons under Sections 448/323/325/307/427/506(2) and 34 of the Penal Code. Charges were framed under Sections 448/323/427/506(2) and 34 of the Penal Code against all accused and under Section 325 of the Penal Code against accused no. 1, Siraj Miah. The co-accused, Abdul Bari Tai and Abdun Noor pleaded not guilty and claimed to be tried when the charge was read out and explained to them.

The petitioner, Siraj Miah was absconding at the time of charge hearing.

In course of trial, 07(seven) prosecution witnesses were examined. Upon the conclusion of evidence, Abdul Bari Toi was examined under Section 342 of the Code of Criminal Procedure. Upon hearing the parties learned Senior Judicial Magistrate, 2<sup>nd</sup> Court, Sylhet convicted Siraj Miah under Section 325 of the Penal Code and sentenced him to suffer rigorous imprisonment for 01(one) year with a fine of Taka 3,000/- and acquitted Abdul Bari Tai and Abdun Noor by judgment and order dated 15.01.2018.

Challenging the judgment and order of conviction and sentence the petitioner filed Criminal Appeal No. 161 of 2018 before the learned Sessions Judge, Sylhet. Upon transfer, the learned Additional Sessions Judge, 3<sup>rd</sup> Court, Sylhet heard the appeal and dismissed the same by judgment and order dated 03.04.2022.

Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the petitioner preferred this instant Criminal revision before this Court, upon which

the Rule was issued. This Court enlarged the petitioner on bail on 24.10.2022.

Mr. Md. Muslem Uddin Bhuiya, learned Advocate along with Mr. S.M. Abdul Baten, learned Advocate appearing on behalf of the petitioner submits that all prosecution witnesses are interested witnesses and relatives of the victim.

He further submits that the doctor issued the injury certificate without properly examining the injuries and stated in his cross-examination that আমি জখমীকে পরীক্ষা করি নাই। Even the doctor failed to prove the X-ray report.

He next contends that the convict-petitioner had no intention to strike the victim as was stated by PW-2 (victim herself).

He further submits that the victim received treatment for only  $1\frac{1}{2}$  to 2 hours as proved by her cross-examination. Since the victim was not admitted to a hospital for 20 days, the prosecution failed to prove the allegation under Section 325 of the Penal Code.

He next contends that the essential ingredients of Section 325 of the Penal Code are absent in the present case.

He contends that the accused intended to strike Badrul, not the victim, Suratunnessa and there was no voluntary act of causing hurt to the victim. Therefore, Section 325 of the Penal Code cannot be invoked as there is no voluntarily causing grievous hurt.

The learned Advocate submits that the petitioner voluntarily surrendered before the trial Court on 08.12.2015 and the Court sent him in jail custody. Subsequently, he was enlarged on bail on 17.12.2015. Thereafter, he surrendered again on 12.10.2022 and enlarged on bail on 24.10.2022 by the High Court Division. Thus, he has already undergone a period of imprisonment sufficient to serve as expiation for the wrong done by the accused-petitioner and he is not a habitual offender and has no previous criminal record.

He further submits that the petitioner was employed in U.A.E earning foreign currency which he regularly remits to his family. Being a foreign currency earner, he is entitled to leniency in punishment. Finally, he prays for making the Rule absolute.

*Per contra*, Mr. Md. Shafiqul Islam, learned Deputy Attorney General appearing on behalf of the state submits that there is specific allegation against the petitioner and the victim is an elderly lady whose left leg was fractured by the petitioner. Hence, he is liable to be punished.

He further submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders and the doctor proved the nature of injury to be grievous. Finally, he prays for discharge of the Rule.

I have heard the learned Advocates for both sides and perused the materials on record.

To consider the merit of the case and analyze the facts, the Court has reviewed the evidence of prosecution witnesses.

PW-1, Alim Uddin (the informant) stated that Siraj struck Suratunnesha with an iron rod and broke her leg.

PW-2, Suratunnesha (the victim) stated that the accused and others attempted to kill Badrul and when she intervened, Siraj struck her left leg fracturing it.

PW-3, Dulu Ahmed (nephew of the victim), PW-4, Badrul Islam (nephew of the victim) and PW-5, Rahela

Begum (daughter of the victim), corroborated the evidence adduced by PW 1 and PW 2.

PW 6, Shahin Miah (the investigating officer) stated that he visited the place of occurrence, prepared an index and sketch map. He recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. Subsequently, he submitted police report being no. 49 dated 20.04.2016.

It appears that no material exhibit (alamat) was seized. PW-6 stated in his cross-examination that “আমি কোন আলামত জব্দ করি নাই।”

PW-7, Md. Masud Hossain, a doctor at Osmani Medical College, Sylhet stated that he issued the injury certificate. He observed the following injuries in the certificate:

- 1) A swelling over left leg (posterolaterlly) measuring about 5 cm X 4 cm.
- 2) X-ray of the left leg showing a fracture at left fibula (plaster cast in situ).
- 3) Weapon used- Blunt.
- 4) Nature of injury- Grievous.

5) Age of Injury-Old.

He proved the injury certificate as Exhibit-4 and his signature as Exhibit-4/1.

It appears that one Md. Masud Hossain, OSD, Department of Health was examined as PW 7 but his name was not mentioned in the police report being Charge Sheet No. 49 dated 20.04.2016. He deposed in cross-examination that “অভিযোগপত্রের সাক্ষীর কলামে আমার নাম নাই।”

It further appears that the victim was admitted to the hospital, received treatment for 2 hours and was discharged the following day. PW-2 (victim), stated in cross-examination that আমাকে ছেলে সুমন, বাদীসহ ৩/৪ জন হাসপাতালে নিয়ে যায়। প্রথম দিন দেড় দুই ঘন্টা চিকিৎসা করে বাড়িতে আসি। ওসমানী হাসপাতালে আমার ভাই সিরাজ বাদী আমাকে নিয়া যায়। পরের দিন বাড়িতে চলে আসি।”

Upon careful consideration of the evidence adduced by the prosecution and the submissions advanced by the learned Advocates for both sides, it transpires that the prosecution has been able to establish, beyond reasonable doubt, that the accused petitioner assaulted the victim and caused fracture of her left leg, thereby inflicting grievous hurt within the meaning of Section 320 of the Penal Code, 1860.

In this regard, it is to be noted that fracture of a bone squarely falls within the category of “grievous hurt” and as such, the offence punishable under section 325 of the said Penal Code is clearly attracted.

The defence, however, has strenuously contended that several inconsistencies and anomalies exist in the prosecution case, *inter alia*, that the alleged weapon of offence (the iron rod) was neither seized nor exhibited, and that the doctor who issued the injury certificate did not personally treat the victim. It has further been argued that the victim received treatment only for a short duration and, therefore, it cannot be said that she suffered severe bodily pain or was unable to follow her ordinary pursuits for twenty days.

These submissions of the defence, though not without some force, do not go to the root of the prosecution case. It is to be noted that non-seizure of the alleged weapon, which was used to cause injury to victim itself does not create any clog to rely upon the sworn testimony of the victim and the injury certificate proved by the doctor. Even there is no earthly reason to discard sole testimony of the victim, who sustained grievous injury caused by the accused-appellant. Similarly,

the fact that the issuing doctor did not personally treat the victim does not render the injury report inadmissible or unreliable, particularly when the nature of injury-being a fracture-is otherwise substantiated.

It has been argued on part of defence that the witnesses are relatives of the victim and thus they being interested witnesses cannot be relied upon. I am unable to accept this argument. The accused cannot evade liability of the wrong he committed merely on this ground as there is no reason to keep the ocular narrative of witnesses aside from consideration. Consistently corroborative version made by witnesses demonstrably leads to the conclusion that the accused knowingly committed the offence arraigned.

Moreover, in cases of fracture, proof of inability to follow ordinary pursuits for twenty days is not a *sine quo non*, as fracture per se constitutes grievous hurt under the law. Accordingly, this Court finds that the prosecution has successfully proved the charge under Section 325 of the Penal Code, 1860 against the convict-petitioner.

It is evident that the convict-petitioner has already undergone a period of incarceration in connection with the

case, which, under the facts and circumstances, may reasonably be regarded as sufficient expiation for the offence committed.

It further transpires that the convict-petitioner is not a habitual offender and there is nothing on record to suggest that he has any previous criminal antecedent.

Considering the facts and circumstances of the case, the nature of the offence, the period of custody already undergone, I am of the considered view that the ends of justice would be adequately met if the substantive sentence of imprisonment is reduced to the period already undergone.

In the result, the Rule is discharged with modification of sentence. The conviction of the petitioner under Section 325 of the Penal Code is sustained. However, the sentence of imprisonment awarded to the accused-petitioner is hereby reduced to the period already undergone. The petitioner shall pay the fine of Taka 3,000/- to the trial Court, in default of which he shall suffer simple imprisonment for a period of 01(one) month in accordance with law. The convict-petitioner is released from his bail bond.

Let the lower Court's records (LCR) be sent at once.  
Communicate the judgment and order to the Court concerned  
forthwith.

(Md. Bashir Ullah, J.)

Md. Ariful Islam Khan  
Bench Officer