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

Present:
Mr. Justice Md. Bashir Ullah

Criminal Revision No. 1098 of 2023

In the matter of:
An application under section 439 read with 435 of the Code of Criminal Procedure
-And-
In the matter of:
Md. Masud
... Convict-Appellant-Petitioner
-Versus-
The State
... Opposite Party

Mr. Mosabbir Hasan Bhuyan, Advocate
... For the Convict-Appellant-Petitioner

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G
… For the State
Mr. Anowar Hossain, Advocate
… For the informant

Heard on: 27.01.2026, 28.01.2026, 29.01.2026, 26.02.2026, 03.03.2026 and 04.03.2026
Judgment on: 08.03.2026

This Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the

judgment and order dated 17.02.2021 passed by the learned Additional Sessions Judge, 2nd Court, Dhaka in Criminal Appeal No. 128 of 2017 dismissing the appeal and thereby affirming the judgment and order of conviction and sentence dated 30.01.2017 passed by the learned Additional Chief Judicial Magistrate, Dhaka in G.R. No. 364 of 2011 arising out of Savar Police Station Case No. 63 dated 22.04.2011 convicting the petitioner under Section 326 of the Penal Code and sentencing him to suffer rigorous imprisonment for a period of 04(four) years with a fine of Taka 10,000/-, 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.

Facts relevant for disposal of the Rule, in brief, are that, on 22.04.2011 PW-1, namely Md. Hai @ Thandu as informant lodged a First Inforation Report with Savar Model Police Station, Dhaka against 04(four) accused persons including the present petitioner alleging *inter alia* that there had been a dispute between the informant and accused's family regarding the opening of windows of their respective house. On 21.04.2011 the accused burnt tyres beside the window of the informant's house causing smoke and

disturbance. The informant raised objection and protested against such activities. On the same day at 10.05 hours, the accused persons along with 4/5 miscreants attacked informant's house and grievously assaulted the informant's elder son namely Monju, younger son namely Khokon and his wife on their head, stomach and other parts of their body. Thereafter, the accused-persons-committed theft of 04(four) vori gold ornaments, broke the almirah and windows of the house of informant. On hearing the screams, the neighbours rushed to the spot and took them to nearby hospitals. The sons of informant's were admitted in ICU of Enam Medical College Hospital and the informant along with his wife was admitted to Savar Thana Health Complex. Subsequently, the informant lodged the FIR with the assistance of his brother Yunus.

On the basis of the said allegation, Savar Police Station Case No. 63 dated 22.04.2011 under Sections 143/326/307/379 and 427 of the Penal Code was commenced. During investigation, the investigating officer collected injury certificates from Enam Medical College Hospital and Savar Health Complex. On closure of investigation, the

investigating officer submitted police report on 17.05.2011 being charge sheet no. 262 under Sections 448/323/328/326/307/319/380 and 427 of the Penal Code against the accused-persons.

Subsequently, the case record was sent to the learned Chief Judicial Magistrate, Dhaka for trial. Thereafter, on 21.11.2011 the trial Court upon taking cognizance of the offence, framed charge under section 448/323 and 307 of the Penal Code against all accused-persons and in addition under section 326 of the Penal Code against accused, Md. Masud. The charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

In course of trial 09 (nine) prosecution witnesses were examined. After completion of recording evidence, the accused persons were examined under Section 342 of the Code of Criminal Procedure, wherein they again pleaded not guilty and claimed innocence.

Upon conclusion of the trial, hearing the parties and considering the evidence on record, the learned Additional Chief Judicial Magistrate, Dhaka convicted the accused

petitioner under section 326 of the Penal Code and sentenced him to suffer imprisonment for 04(four) years and acquitted the other accused persons by judgment and order dated 30.01.2017.

Challenging the judgment and order of conviction and sentence dated 30.01.2017, the convict-petitioner filed Criminal Appeal No. 128 of 2017 before the learned Sessions Judge, Dhaka and the same was transferred to the learned Additional Sessions Judge, 2nd Court, Dhaka for disposal. The learned Additional Sessions Judge, 2nd court, Dhaka dismissed the appeal by judgment and order dated 17.02.2021 affirming the judgment and order of conviction and sentence.

Being aggrieved by and dissatisfied with the judgment and order of conviction dated 17.02.2021, the convict-petitioner preferred the instant Criminal Revision and obtained Rule. The petitioner was enlarged on bail by this Court for 06 (six) months on 28.03.2023.

Mr. Mosabbir Hasan Bhuyan, the learned Advocate appearing for the petitioner submits that admittedly there was previous enmity between the parties and the allegations brought against the accused are totally false and motivated.

Moreover, the dispute between the parties has already been amicably settled out of Court.

He further contends that no knife or sharp-cutting weapon was seized as alamot and no chemical examination was conducted in respect of the blood stained wearing apparels of the victim.

He next submits that no neutral or independent witness was examined by the prosecution and the alleged eye witnesses were not included in the charge sheet.

He next argues that there are material contradictions and inconsistencies in the evidence of the prosecution witnesses.

He also argues that the injury report is forged and fabricated and prepared on the basis of hearsay evidence and the report does not mention the age of injury. According to him, the report cannot be treated as a valid injury report in the eye of law since it was not issued in Form 817. Moreover, the medical certificate does not corroborate the oral testimonies of PW-1 to PW-6.

He next submits that discharge certificate issuing doctor namely Dr. Imran was not examined and as such the discharge certificate carries no evidentiary value.

He further argues that Yunus, Rubel, Malek, Salam and Major were eye witnesses but they were not examined by the prosecution.

He finally submits that the petitioner is of tender age, is not a habitual offender and there is no previous criminal record against him and he has already suffered imprisonment for more than 6(six) months.

Accordingly, he prays for acquittal of the petitioner and for making the Rule absolute.

In support of his contention he refers to the decisions passed in the case of ***M. Shamsuddin Vs. The State***, reported in 32 BLT(2024)98; ***Abdur Rashid Vs. State***, reported in 27 DLR(AD)1; ***Abdul Mannan and others Vs. State***, reported in 44 DLR(AD)60; ***Kawsarun Nessa and another Vs. The State***, reported in 48 DLR 196 and ***Sanjoy Kumar Biswas Vs. The State***, reported in 31 ALR 115.

Per contra, Ms. Farhana Abedin, the learned Assistant Attorney General appearing on behalf of the State submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The Courts below rightly convicted and sentenced the petitioner.

She further contends that there is no material contradiction in the evidence of the prosecution witnesses and the offence under Section 326 of the Penal Code is not compoundable and the prosecution successfully proved the charge against the petitioner beyond reasonable doubt. So, the Rule is liable to be discharged for the ends of justice.

In the same vein, Mr. Anowar Hossain, the learned Advocate appearing on behalf of the informant contends that no amicable settlement has been effected between the parties and in any event the offence under Section 326 of the Penal Code being non-compoundable cannot be compromised.

He next contends that the evidence of relatives cannot be discarded merely on the ground that they are interested witnesses. In this connection he refers to the case of ***Ful***

Miah Vs. State, reported in 5 BLC(AD)41 and ***State Vs. Suzan Deb***, reported in 66 DLR 324.

He next argues that there is no contradiction in the evidence adduced by the prosecution witnesses and the prosecution has successfully proved the charges against the accused under Section 326 of the Penal Code.

He argues that there is no prescribed form regarding medical certificate and Form 817 is related to discharge certificate of patient. He finally prays for discharging the Rule.

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

It appears from the evidence on record that PW1, Md. Abdul Hai, the informant in his deposition stated that the accused Masud attacked his elder son Manjur with a sharp knife causing severe injury to his abdomen as a result of which his intestines came out. (আসামী মাসুদের হাতে থাকা ছোরা দিয়ে মাসুদ আমার বড় পুত্র মঞ্জুর এর পেটে পোঁচ মারে ফলে তার নাড়ি ভূরি বের হয়ে যায়। মঞ্জুর কে হত্যার উদ্দেশে তার মাথায় একাধিক পার মারে।)

He further deposed that when his younger son Khokan rushed to the spot, the accused Masud also assaulted him with a sharp knife causing injuries to his chest and head. His wife was also assaulted by the accused (মঞ্জুরের চিৎকারে তার মেঝ ছেলে খোকন ঘটনাস্থলে গেলে তাকে হত্যার উদ্দেশ্যে আসামী মাসুদ তার বুকের বাম পাশে ছোরা দিয়ে পার মারে। আসামী মাসুদ চাকু দিয়ে আমার মাথায় কোপ/পার মারে। অতপর আমার স্ত্রী আগাইয়া আসিলে আসামী মাসুদ আমার স্ত্রীর মাথায় চাকু দিয়ে পার মারে)।

He also deposed that আমার পুত্ররা ২২ দিন হাসপাতালে চিকিৎসাধীন ছিল।

The evidence of PW1 has been corroborated by PW2, PW3, PW4, PW5 and PW6. The evidence are as follows:

PW2, Khokon, the victim of the case. He stated that আসামী মাসুদ ধারালো ছোরা দিয়ে মঞ্জুর কে মাথায় এবং পেটে আঘাত করে এবং তার ভূরি বেরিয়ে আসে। আমি আগাইয়া আসলে ধারালো ছোরা দিয়ে মাসুদ আমার বুকে কোপ দেয়। আমাদের প্রথমে এনাম মেডিকেলে ভর্তি করা হয়। সেখানে প্রায় ২২ দিন চিকিৎসা নেই।

PW3, Md. Monzur Hossain, the victim in his deposition stated that আসামী মাসুদ তার পিতার নির্দেশে তার হাতে থাকা ধারালো ছোরা দিয়ে আমাকে আক্রমন করে এবং মাথায় আঘাত করে। আমার পেটের বাম পাশে ছোরা দিয়ে পার

মারে। আমি চিৎকার দিয়ে মাটিতে পরে যাই। আমার ছোট ভাই খোকন আগাইয়া আসলে আসামী মাসুদ তার মাথায়, কপালে ও বুকের বাম পাশে চাকু দিয়ে আঘাত করে। আসামী মাসুদ চাকু দিয়া আঘাত করে। আমি অজ্ঞান হইয়া পরি।... আমি সেখানে ২১ দিন চিকিৎসা নেই।

PW4, Baby Nasrin, mother of the victims stated that মাসুদ ছুরি হাতে আমার ছেলেকে পেটের বাম পাশে পার মারে। ছেলের পেটের ভূরি বের হয়ে আসে। ছেলে চিৎকার দিলে মাসুদ ধারালো ছুরি দিয়ে মঞ্জুরের মাথায় পার মারে। আমার ছেলে খোকন এগিয়ে আসলে মাসুদ তার হাতে থাকা ধারালো ছুরি দিয়ে ফুসফুস এর কাছে বুকের বাম পাশে পার মারে। সে গুরুতর জখম প্রাপ্ত হয়। মাসুদ খোকনকে মাথার উপতে বাম চোখের উপর পার মারে। আমার স্বামী এগিয়ে গেলে তখন মাসুদ তাকেও ছুরি দিয়ে পার মারে। মাসুদ আমাকেও পিটায় এবং গলার চেন ছিনিয়ে নেয়। আমাকেও মাসুদ ছুরিকাঘাত করে।

PW5, Aninur Islam, the brother-in-law of the informant and seizure list and eye witness of the case stated that বাদীর বাড়িতে চিল্লাচিল্লি শুনে আগাইয়া যাই। গিয়া দেখি ইউসুব রড দিয়া মঞ্জুরকে পিটাইতেছে। মাসুদ ধারালো ছুরি দিয়ে মঞ্জুরের পেটে পার মারে এবং মাথায় ছুরি দিয়ে আঘাত করে। ছোটভাই খোকন আগাইয়া আসলে মাসুদ তাকেও ছুরি দিয়া আঘাত করে চোখে ও মাথায়।

PW6, Mamun Islam, relative of informant and accused and the eye witness of the case stated that আমি রাস্তায় দাড়িয়ে

ছিলাম, চিল্লাচিল্লি শুনে এগিয়ে যাই। কিছুক্ষন পরে আসামী ধারালো ছোরা নিয়ে আসে। বাদীর বড় ছেলে মঞ্জুরের পেটে ছোরা দিয়ে ১ টি পোঁচ দেয়। ভুরি বের হয়ে আসে। তখন মাথায় ১ টি কোপ দেয়। খোকন আসলে মাসুদ তাকেও ১ টি কোপ দেয়। সে বসে পরে। তখন চোখের পাশেও কপালে ১ টি কোপ মারে। খোকনের পিতা আসলে তাকেও মাসুদ কোপ মারে। খোকনের আম্মা আসলে তাকেও কোপ মারে।

PW9, Dr. Md. Asaduzzaman proved the injury report stating that upon examination of the injured Manjur he found grievous injuries caused by a sharp-cutting weapon and that the injured remained admitted in the hospital from 21.04.2011 to 12.05.2011. He stated as follows: মঞ্জুরকে পরীক্ষা করে তার মাথার পিছনের অংশে 8cm X 01 cm X 01 cm এবং যুকের বাম পার্শে নিচের অংশে 10 cm X 3 cm injury deep পেটের ভিতর পর্যন্ত injury পাই। ... injury Sharp cutting ছিল এবং Type of Injury ছিল Grievous in Nature. রোগী ২১/০৪/২০১১ থেকে ১২/০৫/২০১১ পর্যন্ত আমার হাসপাতালে চিকিৎসাধীন ছিল।

Criminal acts of voluntarily inflicting sharp cutting knife blows done on part of the accused patently proves that he knowingly and deliberately intended to cause grievous hurt to the victims. The grievous injuries caused to victims directly resulted from the accused's deliberate criminal action which indeed

constituted the offence punishable under section 326 of the Penal Code.

Uncontroverted testimony of victims and their relatives consistently proves the event of assaulting knife blow that resulted grievous injuries. I do not find any reason to keep their sworn testimony aside from consideration.

It is now well settled proposition that merely on ground that the witnesses are relatives to victims their sworn narrative cannot be kept aside terming them interested, if the same seems to be truthful. On a cumulative evaluation of testimony of prosecution witnesses it stands proved that the accused knowing consequence inflicted sharp cutting knife blows to the victims which resulted in grievous hurt.

It is now well settled that mere relationship with the victim is not ground to disbelieve a witness if it is otherwise found to be credible and trust worthy.

In ***State Vs. Ful Mia***, reported in 5 BLC(AD)41, the Apex Court held:

> "Interested evidence by itself cannot be a ground to discard the evidence if one is

found to be a truthful witness and telling the truth."

Similarly, in ***State Vs. Sujon Deb***, reported in 66 DLR 324 this Court held:

"Evidence of close relations of the victim cannot be discarded more particularly when close relations does not impair the same. Straight forward evidence given by witness who is related to deceased cannot be rejected on sole ground that they are interested in prosecution. Ordinarily close relation will be the last person to screen real culprit and falsely implicate a person. So relationship far from being ground of criticism is often a sure guarantee of its truth."

The learned Advocate for the petitioner contends that Yunus, Rubel, Malek, Salam and Major were not examined. However, it transpires from the evidence of PW8, the investigating officer deposed in cross examination that

“ঘটনাস্থলের আশে পাশের দোকানপাটের লোকজনকে জিজ্ঞাসাবাদ করেছি। সাক্ষী দিতে রাজী হয় নাই।”

Moreover, Section 134 of the Evidence Act provides that no particular number of witnesses is required to prove a fact.

In ***Profullah Kumar Nath Vs. The State***, reported in BCR1988 HCD 13 this Court held:

> “No particular number of witnesses is to be examined by the prosecution to prove its case. The Court can base its finding on the testimony of a sole witness if it believes him.”

The record shows that the convict-petitioner is of tender age, is not a habitual offender, he is near relatives of victims’ family and has no previous criminal record and has already served imprisonment for about 5 months.

Keeping in view the facts and circumstances unveiled it would be just to give the accused an opportunity of reformation in order to bring him in social stream.

Accordingly, considering the gravity of the offence, the facts and circumstances of the case and *ratio* laid down in the above-mentioned reported cases, I am of the view that the ends of justice would be best served if the conviction of the petitioner is maintained but the sentence is reduced.

In the result, the Rule is discharged with modification of sentence. The impugned judgment and order of conviction is hereby affirmed. However, the sentence of rigorous imprisonment for 4(four) years is reduced to 09(nine) months. The sentence of fine is also reduced to Taka 1,000/- in default the petitioner shall suffer simple imprisonment for 15 days more.

The earlier order granting bail to the petitioner is hereby recalled and vacated.

The petitioner is directed to surrender before the Court concerned within 1(one) month from the date of receipt of this judgment to serve out the remaining portion of the sentence of imprisonment, failing which the Court concerned shall take necessary steps in accordance with law to secure the arrest of the petitioner.

Send down the lower Court's records (LCR) at once. Communicate the judgment and order to the Court concerned forthwith.

(Md. Bashir Ullah, J.)

Md. Ariful Islam Khan
Bench Officer