

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

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 4210 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. Akbar Ali and another

... Convict-Petitioners

-Versus-

The State

... Opposite Party

Mr. Shariful Hasan, Advocate

... For the 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 18.06.2026, 22.06.2026,

23.06.2026, 07.07.2026, 08.07.2026,

09.07.2026, 12.07.2026 and 13.07.2026

Judgment on 20.07.2026

This Rule was issued at the instance of the petitioners,
calling upon the opposite party to show cause as to why the
judgment and order dated 13.09.2023 passed by the learned
Additional Sessions Judge, 4th Court, Gazipur in Criminal
Appeal No. 215 of 2021 dismissing the appeal and affirming

the judgment and order dated 25.03.2021 passed by the learned Senior Judicial Magistrate, 3rd Court, Gazipur in Kaliakoir Police Station Case No. 32 dated 18.07.2012 corresponding to G.R. No. 285 of 2012, convicting the petitioner No. 1 under Section 325 of the Penal Code, 1860 and sentencing him to suffer rigorous imprisonment for a period of 01(one) year and 06(six) months and also to pay fine of Tk. 5,000/-(five thousand), in default, to suffer simple imprisonment for a period of 15(fifteen) days more and convicting the petitioner No. 2 under Section 325 of the Penal Code, 1860 and sentencing him to suffer simple imprisonment for a period of 1(one) year and 02(two) months and also to pay a fine of Tk. 5,000/- (five thousand), in default, to suffer simple imprisonment for a period of 15(fifteen) days more 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, Most. Zahura Akhtar instituted C.R. Case No. 226 of 2012 before the learned Senior Judicial Magistrate, Gazipur. The learned Magistrate directed the said complaint

to be sent to the Kaliakoir Police Station for registration as a First Information Report (FIR), which was accordingly registered on 18.07.2012. The FIR alleged *inter alia* that Farhad Hossain (the victim) is the husband of the informant. A long-standing enmity existed between the victim and the accused-persons. On 15.03.2012 at approximately 10:30 am, the accused-persons attacked the victim, Farhad. Accused No. 1, Md. Akbar Ali inflicted a blow on the left side of the victim's skull and accused No. 2, Shawon struck the victim's left hand with a bamboo stick. The other accused-persons assaulted him indiscriminately. Upon hearing the hue and cry, the neighbours arrived at the scene and took the victim to the hospital for medical treatment. Subsequently, on 29.04.2012 at 09:30 a.m., the accused-persons forcibly entered the residence of the informant. Accused No. 1 injured the victim on the left thigh with a javelin (বল্লম). Accused No. 2 struck the right leg with an iron rod, causing a fracture. Accused No. 10 inflicted an iron rod blow on the right leg, causing a fracture. Accused No. 7 attempted to throttle the victim. Accused No. 4 snatched a gold chain valued at Taka 50,000/- (fifty thousand) and accused No. 11 snatched a mobile set

valued at Taka 7,000/-(seven thousand). Upon hearing the hue and cry, the neighbours arrived at the informant's house and the accused-persons fled. The victim was subsequently removed to the hospital. Accordingly, the case was registered against the accused-persons.

Upon closure of investigation, the investigating officer submitted Police Report No.276 dated 25.08.2012 against five accused-persons under Sections 143/447/326/379/323/325/307/506(2) and 34 of the Penal Code. Charges were framed under Sections 324 and 325 of the Penal Code against accused No. 1, Md. Akbar Ali and under Section 325 of the Penal Code against accused No. 2, Shawon and under Section 379 of the Penal Code against Roni and Ratul on 19.01.2014. The accused-persons pleaded not guilty and claimed to be tried when the charges were read out and explained to them. Accused Imran was discharged of the charge levelled against him.

In course of trial, 07(seven) prosecution witnesses were examined. Upon the conclusion of evidence, the accused-persons were examined under Section 342 of the Code of Criminal Procedure. Upon conclusion of trial and hearing the

parties, the learned Senior Judicial Magistrate, 3rd Court, Gazipur convicted Md. Akbar Ali and Shawon under Section 325 of the Penal Code and sentenced Md. Akbar Ali to suffer rigorous imprisonment for 01(one) year and 06(six) months with a fine of Taka 5,000/- (five thousand) and sentenced Shawon to suffer imprisonment for 01(one) year and 02(two) months with a fine of Taka 5,000/-(five thousand) and acquitted Rashedul Islam Talukder Roni and Ratul of the charge levelled against them by judgment and order dated 25.03.2021.

Challenging the said judgment and order of conviction and sentence, the petitioners filed Criminal Appeal No. 215 of 2021 before the learned Sessions Judge, Gazipur. Upon transfer, the learned Additional Sessions Judge, 4th Court, Gazipur heard the appeal and dismissed the same by judgment and order dated 13.09.2023.

Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence, the petitioners preferred this instant Criminal Revision before this Court, upon which the instant Rule was issued.

Mr. Shariful Hasan, learned Advocate appearing on behalf of the petitioners submits that all prosecution witnesses are interested witnesses being relatives of the victim and thus their testimony should not be relied upon without independent corroboration.

He further submits that admittedly, there is bitter enmity between the parties, the possibility of false implication of the petitioners cannot be altogether ruled out. In this connection, learned Advocate refers to the case of *Abdul Mannan Vs. State*, reported in 44DLR (AD) 60.

He further submits that the case was lodged after a delay of 03(three) months from the first occurrence and 02(two) months and 15 days from the second occurrence. No prosecution witness has offered any explanation for this inordinate delay. The inordinate delay was used for manipulation of the prosecution story. In support of his contention, he referred to the decision passed in *Abdul Latif alias Budu Vs. The State*, reported in 44 DLR 492.

He further submits that the doctor issued the injury certificate without properly examining the X-ray report.

He further submits that the victim received treatment for 20 days, but no certificate to that effect was exhibited and nor was any medical officer examined to prove the said treatment. Consequently, the prosecution has 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.

Mr. Hasan contends that PW4, Shahida did not mention that the petitioners hurt the victim, Farhad.

He further contends that PW5, Samed Ali deposed that: “আকবর মেস্বার পকেট হতে চাকু বের করেছে, পার দিয়েছে বাম পায়ে, ৬ ইঞ্চি চাকু দেখেছি।” Whereas PW1, PW2 and PW3 stated in their testimonies that the injury was caused by a ‘বল্লম’ (javelin). Furthermore, neither the knife nor the javelin was recovered. The investigating officer admitted that he seized nothing.

He submits that only 07(seven) witnesses out of 11(eleven) charge sheeted witnesses were examined. Such non-examination of material witnesses draws an adverse inference under Section 114(g) of the Evidence Act and as such the Rule may be made absolute.

He submits that the petitioners are father and son. They have served about 03(three) months in custody and have been suffering mental agony since 18.07.2012, that is for more than 14 years, despite being falsely implicated.

Per contra, Mr. Md. Shafiqul Islam, learned Deputy Attorney General appearing on behalf of the State submits that there are specific allegations against the petitioners and the right leg of the victim was fractured by the petitioners. Hence, they are liable to be punished.

He argues that the complainant in the complaint described the causes of delay and the explanation of delay was satisfactory.

He further submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders and the doctor has categorically proved the nature of injuries 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 including the testimonies of the prosecution witnesses.

For a proper adjudication of the matter and analysis of the facts on record of the prosecution's evidence are being reviewed as follows:

PW1, Zahura Akter (the informant) deposed that accused Akbar Ali along with 06(six) others threatened her and her husband on 14.03.2012 at 10:30 a.m. Akbar Ali inflicted an iron rod blow on the head of her husband, causing a fracture on the left side of the skull. Accused No. 2, Shawon injured the left hand of her husband. Subsequently, on 29.04.2012 at 09:30 a.m. the accused-persons again attacked with a deadly weapon. Accused No. 1 injured the left thigh of her husband with a javelin. Accused No. 2, Shawon caused a fracture to the lower part of the right leg of her husband with an iron rod. Accused No. 10, Jalal inflicted a blow on the right leg with an iron rod. Accused No. 7, Suzan attempted to throttle her husband. Accused No. 4 snatched a gold chain from her person valuing Taka 50,000/-. Accused No. 11, Ratul snatched a mobile set valuing Taka 7,000/-. She took her husband to Gazipur Sadar Hospital. After 03(three) days, the victim was referred to Dhaka NITOR, where he underwent treatment for 20 days. She identified the FIR as

Exhibit 1. She denied the suggestion that she had lodged a false case and deposed falsely.

PW2, Zulfikar (brother of the victim) stated that on 29.04.2012 at 09:30 a.m. Akbar struck the left thigh. Shawon caused a fracture to the lower part of the right leg and Razu, Roni and Imran assaulted indiscriminately. The victim was first taken to Sadar Hospital and then to NITOR hospital where he underwent treatment for about 04(four) months.

PW3, Farhad Hossain (the victim), stated that on 29.04.2012 a few persons arrived. While he was talking with Yasin, Akbar stabbed and caused a fracture to his left thigh with a javelin. Shawon caused a fracture to the lower part of his right leg with an iron rod. They also tortured his wife. His brother and wife took him to Gazipur Sadar Hospital. Subsequently, he was taken to National Institute of Traumatology and Orthopaedic Rehabilitation (NITOR). The Police initially refused to register the FIR and it was only after a Court order that the FIR was registered.

PW4, Shahida deposed that the informant is her neighbour. She identified the accused-persons on the dock. They injured the victim and later he was taken to hospital.

Shawon and Akbar Ali tortured the victim with a stick. Farhad sustained an injury near his right knee.

PW5, Samed Ali (neighbour) stated that he knew the informant. He identified accused Akbar, Shawon and other accused on the dock. He saw that Akbar and Shawon were assaulting the victim, Farhad with sticks. The accused inflicted a knife blow near the right knee of the victim. They assaulted the wife of Farhad.

PW6, Kutub Uddin (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 the Police Report being No. 276 dated 25.08.2012. He proved the charge sheet as Exhibit 2 and sketch map as Exhibit 3.

He admitted in cross-examination that no material exhibit (*alamat*) was seized.

PW7, Tapan Kanti Sarkar, Medical Officer, Sadar Hospital, Gazipur stated that he issued the injury certificate. He observed the following injuries:

1. One penetrating stab wound (sharp cutting) over the left lower thigh, just above the knee, measuring approximately (1" x ½ " bone depth), x-ray showed a fracture of the distal shaft of the left femur.
2. One tender swelling over right leg measuring approximately (3" x 1"), x-ray showed a fracture.
3. One tender swelling over right forearm close to elbow joint (2" x 1").
4. One tender swelling over the right forearm close to the wrist joint (2" x 1").
5. One tender swelling over left shoulder measuring approximately (2" x 2").
6. One bruise over the right side of lower throat (½ " x ½ ") with a linear stretch mark around it, nearly 2(two) hours old.

The doctor opined that injury No. (1) was caused by a sharp cutting weapon and other injuries by blunt weapons.

The doctor also opined that injury (I) & (II) were grievous in nature and, other injuries were simple in nature. Injury No. (6) was indicative of attempted throttling.

He stated that the patient was admitted to the male surgery ward and later referred to NITOR Dhaka, urgently for proper treatment.

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

Upon a careful scrutiny of the oral and documentary evidence on record, this Court finds that the prosecution case substantially rests upon the testimony of the injured witness (PW3), which has received material corroboration from PW1, PW2, PW4, PW5 and the medical evidence of PW7.

Record shows that PW1, Zahura Aktar, the informant deposed that: “২৯.০৪.২০১২ তাং সকাল ০৯:৩০ মিনিটে আবার অস্ত্র সস্ত্র নিয়ে তার স্বামী ও তাকে এলোপাথারী মারধোর করে। ১নং আসামী বল্লম দিয়ে তার স্বামীর পেট লক্ষ্য করে আঘাত করে যা বাম পায়ে উঠতে লেগে রক্তাক্ত জখম হয়। ২নং আসামী শাওন শাবল দিয়ে তার স্বামীর ডান পায়ে হাটুর নিচে আঘাত করে হাঁড় ভেঙ্গে রক্তাক্ত জখম করে।”

Zulfikar (PW2), Farhad Hossain (PW3) and Md. Samed Ali (PW5) corroborated the evidence adduced by PW1. Dr. Tapan Kanti Sarkar (PW7) categorically proved the injuries and corroborated the testimonies adduced by PW1, PW2, PW3 and PW5 concerning the injuries. The testimonies of PW1, PW2, PW3, and PW5 are consistent, credible, and mutually corroborative regarding the occurrence on 29.04.2012. The doctor opined that injury Nos. I and II are grievous in nature. He has clearly proved that the victim sustained a fracture of the distal shaft of the left femur and a fracture of the right leg, which are classified as grievous hurt under Section 320 of the Penal Code. He also opined that the patient was admitted to the male surgery ward and later referred to the National Institute of Traumatology and Orthopaedic Rehabilitation (NITOR), Dhaka urgently for proper treatment. He stated in the injury certificate that the bone fractures were revealed by X-ray. He also stated that the injury certificate was issued by a board consisting of 03(three) doctors.

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 javelin or knife) was neither seized nor exhibited, and that the doctor who issued the injury certificate did not properly examine the X-ray report and the X-ray report itself was not exhibited. It has further been argued that the victim received treatment only for 20 days, but no certificate was exhibited in that regard.

The alleged inconsistencies regarding the nature of the weapon (javelin vs. knife) are not material to the core issue. The prosecution has established, beyond reasonable doubt, that the petitioners assaulted the victim and caused grievous injuries. The non-recovery of the weapon of offence does not undermine the prosecution's case, as the oral testimony of the eyewitnesses, corroborated by medical evidence, is sufficient to prove the guilt of the accused. Similarly, the non-examination of the X-ray report does not render the injury certificate inadmissible or unreliable, as the doctor's

testimony, based on his professional opinion, is substantive evidence.

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 the victim itself, does not create any clog to rely upon the sworn testimony of the victim and the injury certificate proved by the doctor. There is no valid reason to discard the sole testimony of the victim, who sustained grievous injury caused by the petitioners.

Moreover, in cases of fracture, failure to exhibit X-ray report is not a *sine qua 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-petitioners.

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. This Court is satisfied that the prosecution has proven the charge under Section 325 of the Penal Code

beyond a reasonable doubt against the petitioners. The conviction recorded by the trial court and affirmed by the appellate court is based on sound reasoning and evidence and does not suffer from any illegality, perversity, or jurisdictional error.

The contention regarding delay in lodging the FIR also fails to persuade this Court. The evidence on record discloses that immediately after the occurrence, the victim remained under continuous medical treatment for grievous injuries and was subsequently referred to NITOR for specialized management. PW3 has further stated that the police initially declined to register the case, compelling the informant to approach the Court by filing a complaint petition, whereupon the learned Magistrate directed registration of the FIR. The explanation furnished for the delay appears reasonable and satisfactory in the facts and circumstances of the case and does not cast any reasonable doubt upon the prosecution case.

The argument advanced by the defence that the witnesses are interested and/or related to the victim is untenable. The testimony of a related witness is not inherently unreliable; it is the quality of the evidence that matters, not

the relationship. In the instant case, the evidence of the eyewitnesses is consistent, cogent, and finds corroboration from the medical evidence. The mere fact of relationship does not detract from the evidentiary value of their testimony, especially when there is no apparent motive for them to falsely implicate the accused. The accused persons cannot evade liability for the wrong they committed merely on this ground, as there is no reason to keep the ocular narrative of witnesses aside from consideration. The consistently corroborative version made by witnesses demonstrably leads to the conclusion that the accused persons knowingly committed the offence arraigned.

The argument that the prosecution failed to examine all the charge-sheeted witnesses is not tenable. The prosecution is not obliged to examine every witness cited in the charge sheet. The court's duty is to assess the quality of the evidence adduced, not the quantity. In the instant case, the evidence of the examined witnesses is sufficient to prove the charge.

Upon an overall assessment of the entire evidence, this Court finds that the prosecution has successfully established

that petitioner No. 1 voluntarily caused grievous hurt to the victim by inflicting a sharp-cutting injury on his left thigh resulting in fracture of the femur and petitioner No. 2 voluntarily caused grievous hurt by inflicting a blow with an iron rod causing fracture of the victim's right leg. Both injuries squarely fall within the definition of "grievous hurt" under Section 320 of the Penal Code and consequently attract the penal consequences contemplated under Section 325 thereof. The concurrent findings of guilt recorded by the Courts below are founded upon a proper appreciation of the evidence and suffer from neither misreading of the evidence nor any illegality, perversity or jurisdictional infirmity warranting interference by this Court in revisional jurisdiction.

The convict-petitioners have 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-petitioners are not habitual offenders and there is nothing on record to suggest that they

have any previous criminal antecedent. It appears from the record that the occurrence took place in the year 2012. The petitioners have remained under the shadow of criminal prosecution for more than fourteen years.

Considering the facts and circumstances of the case, the nature of the offence, the age of the litigation and the period of custody already undergone, this Court is of the considered view that the ends of justice would be adequately met if the substantive sentence of imprisonment awarded by the trial Court is reduced to the period they have already undergone while maintaining the conviction.

In the result, the Rule is discharged with modification of sentence. The conviction of the petitioners under Section 325 of the Penal Code is sustained. However, the sentence of imprisonment awarded to the accused-petitioners is hereby reduced to the period they have already undergone. The petitioners are thereby directed to pay a fine of Taka 1,000/- (one thousand) each to the trial Court, in default of which they shall suffer simple imprisonment for a period of 01(one) month. The convict-petitioners are released from their bail bonds.

Let a copy of this judgment along with a lower Court's records (LCR) be communicated to the Court concerned forthwith.

(Md. Bashir Ullah, J)

Md. Sabuj Akan
Assistant Bench Officer