

**IN THE SUPREME COURT OF
BANGLADESH**

HIGH COURT DIVISION

**(CRIMINAL REVISIONAL
JURISDICTION)**

Present:

Mr. Justice Md. Shohrwardi

Criminal Revision No. 14 of 2007

Akkas Ali and another

.....Convict Petitioner

-versus-

The State and another

.....Opposite Party

Mr. Md. Ahia, Advocate with

Mr. Syed Bashir Hossain Chowdhury,

Advocate

.... For the convict petitioner

Mr. Md. Anichur Rahman, DAG with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG with

Ms. Nargis Parvin (Alija), AAG

....For the State

Heard on 19.01.2026

Judgment delivered on 27.01.2026

This application under sections 435 and 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the judgment and order

dated 05.10.2006 passed by the Sessions Judge, Meherpur in Criminal Appeal No. 13 of 2002 affirming the judgment and order of conviction and sentenced dated 15.05.2002 passed by the Additional District Magistrate, Meherpur in G.R. No. 440 of 1998 arising out of Meherpur Police Station Case No. 25 dated 22.09.1998 convicting the petitioner No. 1 Akkas Ali under section 447 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 03 months, and under section 326 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 04 (four) years and convicting him under section 307 of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 1(one) year and convicting the accused Shahidul under section 447 of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 3 (three) months and convicting him under section 323 of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 1(one) year and also sentencing him under section 147 of the Penal Code, 1860 and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and 09 (nine) months should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The prosecution's case, in short, is that on 22.09.1998 at 9 am, the accused Pocha Dakat entered into the house of Kashem and wanted to know as to why they had been catching fish from the pond of his brother-in-law. At that time said Kashem denied the said allegation, for which the accused Pocha Dakat became

infuriated with him and left the house of Kashem. After one hour, the accused persons, namely, 1. Pocha Dakat 2. Akkas Ali 3. Shahidul 4. Asadul 5. Bazlu 6. Mizarul 7. Mozaffar 8. Jalal 9. Mohinur 10. Shiraj 11. Munir 12. Siddiq and 13. Sohel, armed with ramdao, hashua, ballam, lathi, etc., under the leadership of Pocha Dakat, entered the house of Kashem. Hearing hue and cry, the witnesses Siddique, Idris, Amzad, and Hashem assembled at the place of occurrence and made a protest against the illegal activities of the accused persons. At that time, Pocha Dakat ordered others to finish them. After that, the accused Akkas dealt a hasua blow on the back of Siddique to kill him which caused injury to his abdomen. Consequently, his intestine came out of the cavity. The accused Shahidul dealt ramdao blow to Kashem, which caused grievous bleeding injury to his nose. The accused Asadul, Mozaffar, Mohinur, and Shiraj, having entered into the biti hut of Kashem, snatched away Tk. 10,000 and an earring valued at Tk. 10,000 from the neck of the Feruja Khatun, wife of Kashem. Again, hearing the hue and cry of the injured victims, witnesses Nurul, Idris, Kabir Sarder, Alhamdu, and others came to the place of occurrence. After that, the accused persons fled. The witnesses took the victim to Meherpur General Hospital, and they were admitted there. The informant Quddus was busy with the treatment of the victim, for which a delay occurred in lodging the FIR.

S.I. Mahabubur Rahman was appointed as the investigating officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the

statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After completing the investigation, he found prima facie truth of the allegation against the convict petitioners along with 11 other accused persons under sections 143/ 448/ 323/ 326/ 307/379/380/114 of the Penal Code, 1860 and submitted charge sheet.

During the trial, charges were framed against the accused Akkas under sections 447/326/307 of the Penal Code, 1860, and against the accused Shahidul under sections 147/447/323 of the Penal Code, 1860. The prosecution examined 7 witnesses to prove the charge against the accused persons, and the defence cross-examined the prosecution's witnesses. After examination of the prosecution witnesses, the convict petitioners were examined under section 342 of the Code of Criminal Procedure, 1898, and the defence declined to adduce any DW.

After concluding trial, the Additional District Magistrate, Meherpur by judgment and order dated 15.05.2002 convicted the accused Akkas under sections 447/326/307 of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 3 months and to suffer rigorous imprisonment for 4 years under section 326 of the Penal Code, 1860 and to suffer rigorous imprisonment for 1 year under section 307 of the Penal Code, 1860 and convicted the accused Shahidul under sections 147/447/ 323 of the Penal Code, 1860 and sentenced him to suffer imprisonment for 3 months under section 447 of the Penal Code, 1860, to suffer rigorous imprisonment for 1 year

under section 323 and to suffer rigorous imprisonment for 6 months under section 147 of the Penal Code, 1860 which will run consecutively.

Against the said judgment and order passed by the trial court, the accused Akkas and Shahidul filed Criminal Appeal No. 13 of 2002 before the Sessions Judge, Meherpur, who, after hearing the appeal by impugned judgment and order dated 15.10.2006, affirmed the judgment and order passed by the trial court against which the convict petitioners obtained the Rule.

P.W. 1 Abul Kuddus stated that on 22.09.1998 at 9.00 am, the accused Pocha Dakat, Shahidul, Asadul, Monirul, Bazlu, Siddique, Akkas, Mizan, Mozaffar, Moinul, Siraj, and Meher wanted to know from Kashem as to why he had been catching fish from the pond of Kashem. At that time, the accused Pocha left the place of occurrence, threatening him. After that, he, along with other accused persons armed with hasua, ramdao, dao, and ballam, etc., forcefully entered into the house of Kashem and started scolding him. The accused Pocha ordered other accused persons to kill him. At that time, the accused Siddique dealt a blow which caused injury to his abdomen; consequently, his intestine came out of the cavity. The accused Shahidul dealt a ramdao blow on the head of Hashem, which caused bleeding injury on his nose. The accused Asadul, Mozaffar, Moinul, and Siraj started searching his house and looted away Tk. 10,000 from his house. The accused Pocha Dakat snatched away gold ornament from the neck of the wife of Kashem. Hearing hue and cry, the witnesses assembled at

the place of occurrence, and the victim Siddique and Hashem were taken to the hospital. During cross-examination, he admitted that a quarrel took place between the accused Pocha and his cousin Halim. He denied the suggestion that he, along with other attacked the accused party, and at that time accused Pocha and Akkas sustained injuries. He admitted that he is an accused in the case lodged by Mintu Khan, a relation of the accused Pocha. Siddique and Hashem were also accused of that case, which is now pending in the Sessions Court. Many others, including Rupchand and Hussain, reside beside the place of occurrence. He denied the suggestion that, due to previous enmity, he filed the case.

P.W. 2 Amzad Hossain stated that on 22.09.1998 at 9 am, Pocha Dakat came to the house of his cousin Kashem and wanted to know as to why he had been catching fish from the pond. At that time, Kashem denied the allegation. After a few moments, the accused Pocha, Shahidul, Asadul, Munir, Siddique, Akkas, Mizan, Mozaffar, Mahinur, Jalal, Siraj, and Meher, armed with hashua, ramdao, and ballom, forcefully entered the house of Kashem. At that time, accused Pocha started scolding Kashem, and at one point in time, accused Akkas dealt a hasua blow to the abdomen of Siddique; consequently, his intestine came out of the cavity. The accused Shahidul dealt a ramdao blow to the head of Hashem, which caused bleeding injury on his nose. The accused Mozaffar, Mainul Seraj, and Ashadul entered into the house of Kashem and looted away Tk. 10,000. The accused Mainul, snatched away gold ornament from the neck of the wife of Kashem. The victims were taken to the hospital. During cross-examination, he stated that

after one day, the investigating officer recorded his statement. He denied the suggestion that the accused Pocha took the lease of the pond from Akkas, or that the informant party attacked the accused party, or that Pocha and Akkas were injured or that they took treatment from Kustia and Rajshahi, or that at the time of fleeing away from the place of occurrence, Siddique sustained injury.

P.W. 3 Siddique Ali stated that the occurrence took place on 22.09.1998 at 9.00 am. Hearing hue and cry, he went to the house of his cousin Kashem and saw that Pocha Dakat, Shahidul, Asadul, Bazlu, Siddique, Monir, Akkas, Mizan, Mainul, Mozaffar, Siraj, and Jalal were present there armed with ramdao, hashua, and lathi, etc., and they were scolding his cousin Kashem. At that time, he requested the accused persons not to scold him, but accused Akkas dealt a hashua blow to his abdomen (he had shown the mark of injury and the stitches to the Court). Consequently, his intestine came out of the cavity, and he lost his senses. After that, he became senseless. He stated that he sustained an injury on the left side of his abdomen. During cross-examination, he stated that the informant is his brother. After sustaining an injury, he lost his sense. He did not disclose anything to the S.I. He admitted that he was accused in the case lodged by Mintu which took place on the same day. Akkas Master filed a case regarding the abduction of his daughter Lily. His brother married the sister of Akkas Master. There are many groups in his village, and he belongs to one group. Many cases are pending between them. He denied the suggestion that on the date of occurrence, he, along with other attacked the house of the accused persons or that at the time of fleeing away,

he sustained injuries or that the accused persons did not cause any injury to him.

P.W. 4 Hashem Ali stated that on 22.09.1998 at 9.00 am, the people of Pocha Dakat attacked the house of Kashem of Jaja village. At that time, he was slipping in his house. Hearing hue and cry, he went to the house of Kashem and saw that Pocha Dakat, Shahidul, Bazlu, Monir, Siddique, Asadul(all of them are residents of Isha Khali), and Akkas, Meher, Mizan, and another of Jaja village under the leadership of Pocha Dakat were scolding Kashem. At the order of Pocha Dakat, accused Akkas dealt a hashua blow to the left side of the abdomen of Siddique, consequently, his intestine came out of the cavity. When he attempted to save Siddique, accused Shahidul dealt a ramdao blow to his head, which caused injury to his leg. Consequently, he lost his senses. He was taken to the hospital. During cross-examination, he stated that the investigating officer recorded his statement on 23.11.1998. He denied the suggestion that he, along with the informant party, attacked the house of the accused persons or that at the time of fleeing away, they sustained injuries or that he deposed falsely.

P.W. 5 Alhamdu Prodhan stated that the occurrence took place on 22.09.1998 at 10.00 am. The accused persons present in court started scolding Kashem regarding catching fish. The accused Pocha ordered to kill. At that time, the accused Akkas dealt a hashua blow to the left side of his abdomen, consequently, his intestine came out of the cavity. At that time, accused Shahidul

dealt a ramdao blow on his neck. He produced the bloodstained cloths, wearing apparel of Siddique and Hashem in court. After one day at 10.00 am, the investigating officer seized the alat. He signed the seizure list. He proved the seizure list as exhibit-II and his signature as exhibit-II/1. During cross-examination, he admitted that he is accused of Sessions Case No. 442 of 1998 lodged by Mintu, brother-in-law of Pocha. He stated to the investigating officer that accused Shahidul caused injury to Hashem. He denied the suggestion that, except disclosing the injury caused by Siddique, he did not say anything to the investigating officer. He denied the suggestion that he, along with other were forcibly taking away the fish from the pond of Akkas or that a quarrel took place regarding the catching of fish and the occurrence took place, or that at the time of fleeing away from the place of occurrence, Siddique and Kashem sustained injuries by their arms. He admitted that he put a thumb impression on the seizure list. He denied the suggestion that he deposed falsely.

P.W. 6 S.I. Mahabubur Rahman stated that the occurrence took place on 22.09.1998, while he was discharging his duty as S.I of Meherpur Thana. On that day, informant Md. Abdul Quddus lodged the FIR, and Officer-in-Charge Abul Kalam Biswas appointed him as investigating officer. The signature of Abdul Kalam is known to him. He proved the FIR as exhibit-3 and the signature of Officer-in-Charge as exhibit-3/1. He took up the investigation of the case. During the investigation, he visited the place of occurrence, prepared the sketch map, and index. He proved the sketch map as exhibit-4 and his signature as exhibit-

4/1. He proved the index as Exhibit-IV and his signature on the exhibit-IV/1. He seized the alat from the place of occurrence. He proved the seizure list as exhibit-2 and his signature as exhibit-2/2. He proved the alat as exhibits. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and collected the medical certificate. After concluding the investigation, he found the prima facie truth of the allegation made against the accused persons and submitted charge sheet against them under sections 143/447/448/323/326/307/379/380/114 of the Penal Code, 1860. He proved the charge sheet as exhibit-5 and his signature on the charge sheet as exhibit-5/1. During cross-examination, he stated that FIR was lodged at 5 pm on 22.09.1998. He visited the place of occurrence on 23.09.1998 at 9.00 am. He recorded the statement of witness Nurul Huda on 22.10.1998. He recorded the statement of witness Amzad on 23.09.1998 regarding the same occurrence. Case No. 442 of 1998 is pending between the same parties. He could not say as to whether, regarding the same occurrence, Sessions Case No. 442 of 1998 is pending. He denied the suggestion that he did not record the statement of witness Amzad. A pond is situated beside the place of occurrence. He denied the suggestion that a quarrel took place regarding snatching away the fish from the pond of the accused Pocha; consequently, the witnesses sustained injuries. He could not say as to whether Pocha and Akkas were admitted to Rajshahi Medical College Hospital. He denied the suggestion that he did not record the statement of Amzad and Nurul Huda or that he did not investigate the case properly.

P.W. 7 Dr. Abdul Salam stated that on 22.09.1998, he was discharging his duty at Meherpur General Hospital. On that day at 10.45, he examined the victim Siddique Ali and found injuries on his body, which he mentioned in the M.C. He proved the M.C as exhibit-6 and his signature as exhibit-6/1. On 22.09.1998, he examined the victim Hashem Ali, at 10.55 am, and he found an injury on his body, which he mentioned in the medical certificate. He proved the medical certificate as exhibit-7 and his signature on the medical certificate as exhibit-7/1. During cross-examination, he stated that in the medical certificate, nothing was mentioned regarding the admission of the victim to the Hospital. Nothing has been mentioned in the medical certificate regarding the time of the operation. Usually, about one and a half hour is required to conduct this type of operation. Initially, he examined victim Siddique. The time of injury was not mentioned in the medical certificate. He advised the victim Hashem, to get an X-ray, but he could not say whether the X-ray report was available. A medical certificate was issued after one month. He denied the suggestion that, under the influence of the informant party, he issued the medical certificate.

Learned Advocate Mr. Md. Ahia, appearing along with learned Advocate Mr. Syed Bashir Hossain Chowdhury on behalf of the convict petitioner, submits that nothing has been mentioned in the medical certificate exhibits-6 and 7 of the victim Siddique and Hashem, respectively, that they were admitted to the hospital and the injuries allegedly sustained by victim Md. Siddique Ali do not attract the offence under section 326 of the Penal Code, 1860.

He further submits that the allegation made against the accused Shahidul Islam regarding causing injury to the nose is not corroborated by the medical certificate (exhibit-7), and the prosecution failed to prove the charge against the convict-petitioners by adducing legal evidence, and both the courts below failed to legally assess and evaluate the prosecution witnesses and illegally convicted the accused persons. He prayed for setting aside the impugned judgment and order passed by the courts below.

The learned Deputy Attorney General Mr. Md. Anichur Rahman Khan appearing along with learned Assistant Attorney General Ms. Nargis Pervin on behalf of the state submits that the victim P.W. 3 Siddique stated that the accused Akkas dealt a hashura blow to the left side of his abdomen, consequently his intestine came out of the cavity and the medical certificate of the victim Siddique issued by P.W. 7 (exhibit-6) attracted the offence grievous hurt as defined in section 326 of the Penal Code, 1860 and the evidence of P.W. 3 regarding injuries sustained by him is corroborated by P.Ws. 1, 2, 4, 5, 7. In respect of the injury sustained by P.W. 4 Hashem, he submits that the injury caused by accused Shahidul to P.W. 4 Hashem is corroborated by P.Ws. 1, 2, 5, and 7. During the trial, the prosecution proved the charge against the accused Akkas Ali and accused Shahidul beyond all reasonable doubt, and both the courts below, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Md. Ahia who appeared along with learned Advocate Syed Bashir Hossain Chowdhury on behalf of the convict petitioners and learned Deputy Attorney General Mr. Md. Anichur Rahman Khan who appeared along with learned Assistant Attorney General Ms. Nargis Parvin on behalf of the state, perused the evidence, impugned judgments and orders passed by the courts below and the records.

On perusal of the evidence, it reveals that P.W. 3 victim Siddique Ali stated that the accused Akkas dealt a hashua blow to his abdomen, and he exposed the injury and the stitches to the court. He stated that due to injury, his intestine came out of the cavity; consequently, he lost his sense. The evidence of P.W. 3 regarding his injury caused by accused Akkas is corroborated by P.Ws. 1, 2, 4, 5, 7 and the medical certificate (exhibit-6) issued by P.W.7. In the medical certificate (exhibit-6) it has been mentioned that victim Siddique Ali sustained one cut injury at the left side of his abdominal wall, penetrating abdominal cavity and the coils of the intestine came out of the cavity. The Leparotory was done by Dr. Burhan Uddin, Consultant Radiology. The coils of the intestine (small guard) were found cut at two sides, and the large guard at one side. All are repaired accordingly. The nature of injury mentioned in the medical certificate(exhibit-6) attracts the offence 'grievous hurt' as defined in section 320 of the Penal Code, 1860. I am of the view that the prosecution proved the charge against the accused Akkas Ali under section 326 of the Penal Code, 1860, beyond all reasonable doubt.

Although P.W. 4 Hashem stated that the accused Shahidul dealt a ramdao blow to his head but it hit his neck, and he sustained injury on his nose. The above evidence of P.W. 4 is corroborated by P.Ws. 1, 2, and 5. In the medical certificate (Exhibit 7), it has been mentioned that P.W. 4 Hashem sustained injury by blunt weapons. Therefore, I am of the view that the evidence of P.W. 4 regarding the instrument used for causing his alleged injury is not corroborated by the medical certificate (exhibit-7) issued by P.W. 7, and the prosecution failed to prove the charge against the accused Shahidul by adducing evidence.

Considering the gravity of the offence, I am of the view that ends of justice would be best served if the sentence passed by the courts below against accused Akkas Ali is modified as under:

The accused Akkas Ali is found guilty of the offence under section 326 of the Penal Code, 1860, and he is sentenced thereunder to suffer rigorous imprisonment for 3 (three) years and a fine of Tk. 1,000.

In view of the above evidence, findings, observation, and the proposition, the Rule so far relates to the accused Shahidul is made absolute, and the Rule so far relates to the accused Akkas Ali is disposed of with modification of sentence.

Send down the lower Court's record at once.

