

Present:
Mr. Justice Md. Salim

CRIMINAL REVISION NO.915 OF 2025

Anowar
..... Convict-Petitioner.

-VERSUS-

The State
..... Opposite party.

Mr. Md. Mustan Uddin Bhuiyan with
Mr. S.M. Abdul Bathen, Advocate
..... For the Petitioner.

Mr. Monzurul Alam Sujan, DAG
Mr. Towhidul Islam, AAG
Mr. Syed Akhtarul Islam, AAG

..... For the State.

**Heard on: 07.05.2026, 21.06.2026 and
28.06.2026.**

Judgment on: 05.07.2026.

Bt this Rule the opposite party was called upon to show cause as to why the Judgment and order dated 06.02.2025 passed by the learned Additional Sessions Judge, 4th Court, Kishoregonj in Criminal Appeal No.355 of 2023 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 22.05.2023 passed by the learned Chief Judicial Magistrate, Kishoregonj in G.R. Case No.480(1) of 2021 and C.J.M. Case No.2635 of 2022

convicting the petitioner under Section 325 of the Penal Code and sentencing him to suffer rigorous imprisonment for two (2) year with a fine of taka 3,000/- in default to suffer simple imprisonment for one (1) month more should not be set aside.

The prosecution case, in brief, is that one Md. Menu Mia filed a petition of complaint before the Judicial Magistrate, Cognizance Court No.06, Kishoregonj, alleging inter alia that on 04.10.2021 at approximately 09:00 am, the accused persons launched an attack on the complainant on the road situated on the eastern side of the complainant's residence. Upon the abetment and command of accused Siraj Uddin, accused Towhid and Rassel Mia forcefully restrained and captured the complainant. Thereafter, accused Anwar, with the intent to commit murder, struck the complainant with an iron rod, causing a grievous fracture adjacent to the shoulder. Accused Siraj Uddin also assaulted the complainant indiscriminately all over the body with a stick, causing hematoma (decolorized swelling), a dislocated knee joint, and painful swollen injuries across various

parts of the body. Accused Siraj Uddin also dealt a forceful blow with a stick on Shamima's face, thereby instantly knocking out a tooth from her lower jaw. Concurrently, accused Towhid and Rasel Mia grabbed Shamima by the hair and tugged at her clothing, thereby outraging her modesty. Upon hearing the screams, the witnesses rescued them from the spot and escorted them to the Karimganj Upazila Health Complex; thereafter, they were referred to Syed Nazrul Islam Medical College Hospital.

Upon receipt of the petition of complaint, the learned Judicial Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance of the offense under Sections 148, 447, 323, 325, 307 and 114 of the Penal Code against the convict-petitioner.

As the case was ready for trial, it was sent to the Chief Judicial Magistrate, Kishoregonj. The learned Chief Judicial Magistrate framed the charge against the accused petitioner under Sections 325/307/323 of the Penal Code. The charge was read over and

explained to them, who then pleaded not guilty and claimed to be tried.

After the evidence was closed, the accused petitioner was examined under Section 342 of the Code of Criminal Procedure, at which point he pleaded not guilty.

During the trial, the prosecution examined as many as 8 (eight) witnesses to prove the charge against the accused person, while the defense examined none.

Subsequently, after closure of the trial, the learned Chief Judicial Magistrate, Kishoregonj, by the Judgment and order dated 22.05.2023 convicted the accused petitioner under Section 325 of the Penal Code and sentenced him to suffer rigorous imprisonment for two (2) years with a fine of Tk.3,000/- in default to suffer simple imprisonment for one (1) month more.

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the accused petitioner preferred an Appeal,

which has been registered as Criminal Appeal No.355 of 2023 before the Sessions Judge, Kishoregonj.

Eventually, the learned Additional Sessions Judge, 4th Court, Kishoregonj, by Judgment and order dated 06.02.2025, dismissed the appeal, affirming the Judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the above impugned Judgment and order, the accused petitioner has filed this Criminal Revision before this Court and obtained the instant Rule.

Mr. Md. Mustan Uddin Bhuiyan, the learned Counsel appearing on behalf of the convict-petitioner, took us through the impugned Judgment, evidence on record, petition of complaint, inquiry report, and other connected papers available on the record, and submits that this is a case of no evidence. He then submits that the learned Judge of the appellate Court erred in law in holding that the prosecution proved the charge, as nothing on record shows that the alleged victim suffered any injury; therefore, the

convict petitioner is liable to be acquitted of the charge.

On the contrary, Mr. Monzurul Alam Sujon, the learned Deputy Attorney General for the State, opposes the contention so made by the learned Counsel for the petitioner and submits that the intention to cause grievous hurt is amply proved in the light of the evidence on record, which is reflected in the medical report, which shows that the injury was grievous in nature. He then submits that since the prosecution proved the case by examining witnesses who corroborated one another, it is not necessary to examine the doctor to prove the case. He then submits that, since both the Courts below convicted the accused petitioner, the evidence is trustworthy and the Rule may therefore be discharged.

We have considered the submissions of the learned Counsel for the convict-petitioner, then that of the learned Deputy Attorney General, and have perused the impugned Judgment, the evidence, and other materials on record.

In order to bring home the charge, the prosecution examined as many as 8 (eight) witnesses.

Among them, P.W.1-Menu Mia, as informant, stated in his deposition that on 04.10.2021 at approximately 09:00 am, the accused persons attacked the complainant on the road on the eastern side of the complainant's residence. Upon the abetment and command of accused Siraj Uddin, accused Towhid and Rassel Mia forcefully restrained and captured the complainant. Thereafter, accused Anwar, with the intent to commit murder, struck the complainant with an iron rod, causing a grievous fracture adjacent to the shoulder. Accused Siraj Uddin further assaulted the complainant indiscriminately all over the body with a club, causing hematoma (decolorized swelling), a dislocated knee joint, and painful swollen injuries across various parts of the body. Accused Siraj Uddin also dealt a forceful blow with a stick on Shamima's face, thereby instantly knocking out a tooth from her lower jaw. Concurrently, accused Towhid and Rasel Mia grabbed Shamima by the hair and tugged at her clothing,

thereby outraging her modesty. Upon hearing the screams, the witnesses rescued them from the spot and escorted them to the Karimganj Upazila Health Complex.

P.W.2- Chhenu Mia, in his examination-in-chief, stated that the complainant is his brother. He further stated that on the 19th day of Ashwin, preceding the last Ashwin month, at about 9:00 am, accused Siraj, Touhid, Kamal and Anwar came to his house and gave orders. Thereupon, he came out of the house and saw that the accused persons were restraining his brother. At that time, accused Anwar assaulted his brother on the right shoulder with an iron rod, causing a fracture injury to the right shoulder. When accused Anwar attempted to strike again, the witness caught him. Thereafter, the local people came to the spot and rescued them. The witnesses then took the injured to Karimganj Hospital for treatment.

PW.3-Shamima Khatun stated in her examination-in-chief that the complainant is her brother-in-law, Russel, Touhid, Kamal, and Anwar are the accused. The incident occurred on the 19th

day of the month of Ashwin at about 09:00 am. Hearing screams, she rushed to the place of occurrence. Rusel and Touhid pinned the complainant down. Anwar struck Menu on his right shoulder with an iron rod, causing a fracture. Siraj struck her on her face. Touhid and Rusel pulled and hauled her hair. They were initially admitted to Karimganj Hospital and subsequently shifted to Syed Nazrul Isam Medical College Hospital.

PW.4-Halima Khatun states in her examination-in-chief that she knows the complainant and the accused persons, Siraj, Anwar, Kamal, Touhid, and Rusel. The incident occurred on the 19th day of the month of Ashwin at about 06:00 am. Upon the order of accused Siraj, accused Rusel and Touhid pinned down Menu. Accused Anwar struck Menu Mia on his shoulder with a rod, causing a fracture. The accused persons beat Shamima and Chenu. The injured persons were initially taken to Karimganj Hospital and subsequently taken to Syed Nazrul Medical College Hospital. An X-ray was performed on the injury of Menu.

PW.5- Habibur Rahman stated in his examination-in-chief that he knows the complainant and the accused persons Rusel, Siraj, Anwar, Kamal, and Touhid. He could not recall the exact date of the incident. The incident occurred approximately one and a half years ago. He was working at an adjacent house at the place of occurrence. The accused Rusel and Touhid pinned down Jenu. Anwar struck Jenu on his right shoulder with a rod, causing a fracturing injury, while Anwar was about to deal another blow, Chhenu intercepted and caught hold of it.

PW.6-Latifa Begum states in her examination-in-chief that the incident occurred on the 19th day of the month of Ashwin at about 09:00 am. There are 05 accused persons, including Siraj. Siraj gave the order. Rusel and Touhid pinned down Menu. Anwar struck Menu on his right shoulder with a rod, causing a fracture. When Anwar attempted to deal another blow, Chhenu caught hold of it. The accused persons beat Shamima and Chhenu.

PW.7-Dr. Asif Nur Zaman stated in his examination-in-chief that on 04/10/2021, he

examined the injured Md. Menu Mia of this case and found the following injuries:

1. Swelling present on the right shoulder region.
2. A swelling was present on the head.

The injuries were simple in nature and caused by a blunt weapon.

PW-8: Dr. Md. Mahbubul Alam in his examination-in-chief, stated that on 04/10/21 he examined the injured Menu Mia and found the following injuries:

1. Swelling present at the vertex, about 1"x1".
2. Swelling over rt (right) clavicle about 1"x1".

A blunt weapon caused both the injuries. Injury no.1 was simple, and injury no.2 was grievous in nature.

On analyzing the above evidence, it appears that P.W.7 and P.W.8 issued the medical certificate and found the injuries. But while deposing in Court, they did not state whether any of these injured persons had any "grievous hurt" as defined in Section 325 of the Penal Code. The Trial Court and the Appellate Court below, however, referred to the medical

certificate in respect of P.W-7 and P.W.8 and observed that P.W.7 stated in his medical certificate that swelling was present in the right shoulder region. The injury was simple in nature and caused by a blunt weapon. P.W.8 stated that swelling over the right clavicle was about 1"x 1". The injury was grievous in nature and caused by a blunt weapon. But the doctor did not depose in this case that the accused had any fracture of a bone in the hand. His deposition on oath is substantive evidence, and his medical certificate corroborates it. The corroborative evidence cannot be considered without the substantive evidence unless the substantive evidence is dispensed with under any provision of law, such as Section 325 of the Penal Code. The learned Judge of the trial Court as well as the appellate Court assigned the fracture as grievous hurt to the victim. But the evidence is that the accused Anowar had caused the injury to the victim by striking the complainant with an iron rod, causing a grievous fracture adjacent to the shoulder. However, the injury was caused not by a sharp cutting weapon but by a blunt weapon. Therefore, no evidence that

any injury to the shoulder resulted in a fracture, if any such fracture existed. As such, the petitioner cannot be connected with the fracture, and in the absence of any charge of grievous hurt caused in furtherance of a common intention under Section 325 of the Penal Code.

It further appears that the appellate Court did not arrive at any independent finding as to whether the injury was grievous hurt or simple hurt. On injury, grievous hurt and simple hurt to convict the accused petitioner under Section 325 of the Penal Code, the Court must come to a definite finding with reference to evidence on the record that the injury caused by the accused is a grievous hurt.

An injury is grievous hurt if it falls within the meaning of grievous hurt as given in Section 320 of the Penal Code.

It is notable that for grievous hurt there must exist an intention to cause such a hurt or knowledge that such an action would be the natural and probable consequences causing grievous hurt; otherwise, the hurt would be a simple one to cause

simple hurt only, and if the act of causing and the manner of the hurt was such that simple hurt only, and if the act of causing and the manner of the hurt was such that simple hurt could reasonably be thought likely to be ensured from it, then. However, if grievous hurt is unexpectedly caused, the accused would be convicted of simple hurt, as grievous hurt was not contemplated. In all such cases, the answer depends on the injury caused and the manner in which the blow was administered.

In the FIR, the story initially was that nothing was done further to assault, and the doctor found nothing either. And in such a case, when there is a doubt as to whether grievous hurt was intended or the accused had knowledge that it would cause grievous hurt, the benefit of doubt must be given to the accused. In such a situation, the accused petitioner's participation in the crime is doubtful, and conviction cannot be based on such a recognition.

Notably, in a criminal case, the allegations have no legal value unless reliable and credible witnesses testify to them, and the prosecution must prove them

beyond any reasonable doubt. On perusal of the judgment of the trial court it appears that the trial court failed to assess and appreciate the evidence of the prosecution witnesses in passing the judgment and order of conviction and sentence and the learned judge of the appellate court also misconstrued and on misappreciation of evidence on record and misdirected in arriving at a correct conclusion and therefore erroneously affirmed the judgment of the trial court.

From the evidence extracted above, the materials on record, the facts and circumstances of the case, and the submissions of the learned advocate for the petitioner, it appears that the prosecution failed to prove the charge against the accused-petitioner beyond a reasonable doubt. Thus, the accused petitioner is entitled to the benefit of the doubt. So, the impugned Judgment is liable to be set aside.

Resultantly, the Rule is made absolute.

The impugned Judgment and order dated dated 06.02.2025 passed by the learned Additional Sessions

Judge, 4th Court, Kishoregonj in Criminal Appeal No.355 of 2023 dismissing the appeal in affirming the Judgment and order of conviction and sentence dated 22.05.2023 passed by the learned Chief Judicial Magistrate, Kishoregonj in G.R. Case No.480(1) of 2021 and C.J.M. Case No.2635 of 2022 are set aside.

The convict-petitioner is hereby declared to be acquitted of the charge leveled against him and discharged from his bail bonds.

Send down the lower Court records with a copy of this Judgment.

(Md. Salim, J:)

Kabir(BO)