

Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No. 1291 of 2007

Joynal Sk. and another

----- Petitioners

-Vs-

The State, represented by the Deputy

Commissioner, Faridpur

-----Opposite Party

Mr. Goutam Kumar Roy, Advocate

----For the Petitioner

Mr. Md. Badrul Anwar, D.A.G

Mr. Md. Taherul Islam (Tawhid), D.A.G

---- For the State

**Heard on 01.02.2026, 08.02.2026,
22.02.2026 and Judgment on 10.03.2026**

On an application filed under section 439 of the Code of Criminal Procedure, 1898 a Rule was issued calling upon the Deputy Commissioner, Faridpur to show cause as to why the judgment and order dated 03.07.2007 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Criminal Appeal No. 08 of 2004 affirming those dated 18.12.2003 passed by the learned Additional District Magistrate, Faridpur in G.R. Case No. 201 of 2002 corresponding to Nagarkanda P. S. Case No. 07 dated 05.12.2002

should not be set aside and/or pass such other or further order or orders as this Court may deem fit and proper.

The prosecution case, in short, is that the informant's brother, Yiar Ali, had paid Tk. 20,000/- to accused Aynal Sk. in the month of Ashwin, B.S., for purchasing a power tiller. However, Aynal Sk. did not purchase the said power tiller. When Yiar Ali demanded return of the money, Aynal Sk. refused to pay the same on different pleas.

On 04.12.2002 at about 11.00 a.m., while Aynal Sk. was cultivating the land of Dalil Uddin at village Fulbaria, victim Yiar Ali again demanded return of the said amount. Over this demand, an altercation took place between them. At one stage, accused Aynal Sk., Joynal Sk., Ishaque Sk., Moku Sk., Tuku Sk., Hannan Sk., Sohrab Sk. and Sentu Sk., being armed with kodal, shabol, iron rod and lathi, attacked the victim. It was alleged that accused Aynal Sk. directed the others to kill Yiar Ali. Pursuant to such direction, convict-petitioner Joynal Sk. gave a kodal blow on the head of Yiar Ali, causing serious bleeding injury. Convict-petitioner Sohrab Sk. also gave a shabol blow on the abdomen of the victim, causing swelling injury. The other accused persons allegedly assaulted the victim indiscriminately with lathis and other weapons, causing injuries on different parts of his body.

It was further alleged that when Oliar Rahman and Murad Mollah came forward to rescue the victim, they were also assaulted by the accused persons and sustained injuries. Thereafter, local witnesses came to the place of occurrence and the accused persons left the place. The victim was taken to Nagarkanda Sadar Hospital and admitted there.

After investigation, police submitted charge sheet No. 133 dated 27.12.2002 under sections 143, 447, 323, 326 and 114 of the Penal Code against six accused persons including the present petitioners.

Charge was framed on 24.03.2003 against accused Joynal Sk. under sections 143, 447 and 326 of the Penal Code, and against accused Sohrab Sk. along with other co-accused under sections 143, 447, 323 of the Penal Code. The charge was read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried.

The prosecution examined 9 witnesses to prove its case. The defence examined none.

Upon consideration of the evidence and materials on record, the learned Additional District Magistrate, Faridpur, by judgment and order dated 18.12.2003, convicted accused Aynal Sk. under sections 326 and 114 of the Penal Code and sentenced him to suffer

rigorous imprisonment for 2½ years with a fine of Tk. 5,000/-, in default to suffer simple imprisonment for 6 months. The learned Magistrate also convicted petitioner No.1 Joynal Sk. under section 326 of the Penal Code and sentenced him to suffer rigorous imprisonment for 2½ years with a fine of Tk. 5,000/-, in default to suffer simple imprisonment for 6 months. Petitioner No.2 Sohrab Sk. was convicted under section 323 of the Penal Code and sentenced to suffer rigorous imprisonment for 6 months. The other three accused, namely Ishaque Sk., Tuku Sk. and Hannan Sk., were acquitted.

Against the said judgment and order of conviction and sentence, the convict-petitioners preferred Criminal Appeal No. 08 of 2004 before the learned Sessions Judge, Faridpur, which was subsequently transferred to the learned Additional Sessions Judge, 2nd Court, Faridpur for disposal. Upon hearing the appeal, the learned Additional Sessions Judge, by judgment and order dated 03.07.2007, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved, the convict-petitioners moved this Court in revision and obtained the present Rule and an order of bail on 04.10.2007.

Mr. Goutom Kumar Roy, the learned Advocate appearing on behalf of the convict-petitioners, submits that the prosecution failed

to prove the case against the petitioners beyond reasonable doubt. He submits that both the Courts below failed to properly consider the contradictions in the evidence of the prosecution witnesses and thereby committed an error of law resulting in miscarriage of justice.

He further submits that P.Ws. 1 to 7 are close relatives of the victim and their evidence suffers from material contradictions. According to him, in the absence of any independent neutral witness, the conviction of the petitioners on the basis of such interested testimony cannot be sustained in law.

The learned Advocate also submits that the Courts below failed to appreciate that the prosecution story was doubtful and that the accused-petitioners are entitled to benefit of doubt.

In support of his submissions, the learned Advocate refers to the case of *Reazuddin Ahmed (Md.) vs. State and another*, reported in 49 DLR (AD) 64, wherein it was held that the High Court Division may suo motu call for the records of subordinate Courts and set aside any order passed in any legal proceeding which has caused miscarriage of justice.

He also refers to the case of *Md. Musa vs. The State*, reported in 15 BLD (HCD) 169, wherein it was held that in order to succeed, the prosecution must prove its case beyond all reasonable doubt by cogent, reliable and sufficient evidence, and the accused is entitled

to benefit of doubt until the prosecution succeeds in proving the case convincingly.

On the other hand, Mr. Md. A.S.M. Badrul Anwar, the learned Deputy Attorney General appearing for the State, opposes the Rule and submits that the prosecution has been able to prove the case against the convict-petitioners beyond reasonable doubt. He submits that both the Courts below, upon proper appreciation of the evidence on record, rightly convicted and sentenced the petitioners. According to him, there is no illegality, misreading or non-reading of evidence in the judgments of the Courts below warranting interference by this Court in its revisional jurisdiction.

I have heard the learned Advocates of both sides, perused the revisional application, the judgments of the Courts below and the evidence and materials on record.

Before entering into the merit of the case, it may be noted that the revisional jurisdiction of this Court under section 439 of the Code of Criminal Procedure, 1898 is not intended to operate as a regular appellate jurisdiction. In revision, this Court does not normally reassess the entire evidence merely to substitute its own view for that of the Courts below. Interference is justified only where there is illegality, material irregularity, non-consideration or

misreading of evidence, perversity in finding, or where the judgment has occasioned failure of justice.

It is also a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. However, reasonable doubt does not mean fanciful or imaginary doubt. Where the evidence of witnesses is consistent on material particulars and is corroborated by medical evidence, minor inconsistencies or variations do not necessarily destroy the prosecution case.

It is equally well settled that the evidence of a related witness cannot be discarded merely on the ground of relationship. The Court is required to scrutinize such evidence with care and caution. If, upon such scrutiny, the evidence appears to be natural, consistent and trustworthy, conviction can safely be based on such evidence. Non-examination of independent witnesses is also not always fatal, particularly where the evidence adduced by the prosecution inspires confidence and receives corroboration from medical and other surrounding circumstances.

In the present case, P.W.1 Abdur Razzaque Mollah, the informant, supported the prosecution case as stated in the First Information Report. He deposed regarding the transaction of Tk. 20,000/- between the victim Yiar Ali and accused Aynal Sk., the

subsequent demand for return of the money, the altercation and the assault upon the victim.

P.W.2 Abdur Nur Mollah stated that on the date of occurrence, when Yiar Ali demanded return of the money from Aynal Sk., an altercation took place. At the instruction of Aynal Sk., petitioner Joynal Sk. gave a kodal blow on the head of the victim and petitioner Sohrab Sk. gave a shabol blow on his abdomen. He also stated that the other accused persons assaulted the victim with lathi, rod and other weapons.

P.W.3 Azizur Rahman Mollah also supported the prosecution case and stated that petitioner Joynal Sk. dealt a kodal blow on the head of the victim and petitioner Sohrab Sk. gave a shabol blow on his abdomen.

P.W.4 Yiar Ali Mollah, the victim himself, deposed that he had paid Tk. 20,000/- to Aynal Sk. for purchasing a power tiller. As the power tiller was not purchased, he demanded return of the money. At that time, an altercation took place and, at the instruction of Aynal Sk., petitioner Joynal Sk. struck him on the head with a kodal and petitioner Sohrab Sk. struck him on the abdomen with a shabol. His evidence directly implicates the petitioners in the commission of the offence.

P.W.5 Mobin Molla and P.W.6 Osman Mollah also corroborated the material part of the prosecution case. P.W.6 stated that after hearing hue and cry, he went to the place of occurrence and saw that Yiar Ali had sustained injury on his head and abdomen. He also stated that Joynal Sk. dealt a kodal blow on the head of the victim and Sohrab Sk. dealt a shabol blow on his abdomen.

P.W.7 Md. Jhilu Munshi stated that after hearing about the occurrence, he went to Nagarkanda Hospital and saw the victim lying there with injuries.

P.W.8 Md. Bashirul Hoque, the Investigating Officer, stated that after receiving information about the occurrence, he took up investigation, visited the place of occurrence, prepared the sketch map, collected relevant materials including the medical certificate and, upon completion of investigation, submitted charge sheet against the accused persons under sections 143, 447, 323, 326 and 114 of the Penal Code.

P.W.9 Dr. Sajjad Hossen, who examined the victim at Nagarkanda Hospital on 04.12.2002, stated that injury No. 1 was caused by a sharp weapon and was serious in nature. He further stated that injury No. 2 was caused by a local weapon and was simple in nature.

From the evidence on record, it appears that the prosecution witnesses are consistent on the material point that petitioner Joynal Sk. caused injury on the head of the victim by a kodal. The medical evidence of P.W.9 also supports the ocular evidence, inasmuch as injury No. 1 was found to have been caused by a sharp weapon and was serious in nature. Therefore, the conviction of petitioner Joynal Sk. under section 326 of the Penal Code is supported by both ocular and medical evidence.

Similarly, the evidence of P.Ws. 1 to 7 regarding the role of petitioner No.2 Sohrab Sk. in causing injury on the abdomen of the victim by a shabol is also corroborated by the medical evidence, which shows the existence of injury No. 2, though simple in nature. Therefore, the conviction of petitioner No.2 Sohrab Sk. under section 323 of the Penal Code was also supported by the evidence on record.

The defence has tried to argue that the prosecution witnesses are related to the victim and, therefore, their evidence should not be relied upon. I am unable to accept this submission. Relationship by itself is not a ground to reject the testimony of a witness. In rural occurrences of this nature, it is often natural that persons related to or known to the victim would be present or would come forward first. What is important is whether their evidence is credible,

consistent and supported by other materials. In the present case, the evidence of the prosecution witnesses, particularly the victim himself, is substantially consistent and is corroborated by the medical evidence.

The defence has also pointed out some discrepancies regarding time and other minor details. In my view, such discrepancies are minor and do not go to the root of the prosecution case. The core prosecution case, namely that petitioner Joynal Sk. caused serious injury on the head of Yiar Ali by a kodal and petitioner Sohrab Sk. caused simple injury on his abdomen by a shabol, has remained intact.

Upon independent examination of the evidence and materials on record, I find no misreading or non-reading of evidence by the Courts below. The findings arrived at by the trial Court and affirmed by the appellate Court are based on evidence and do not suffer from any legal infirmity warranting interference by this Court in revision.

Accordingly, I am of the view that the prosecution has been able to prove the case against the convict-petitioners beyond reasonable doubt and both the Courts below rightly found them guilty.

Now comes the question of sentence.

It appears from the record that accused Aynal Sk., who was convicted under sections 326 and 114 of the Penal Code, died on 10.11.2006 and his death certificate has been annexed with the revisional application as Annexure-C.

It further appears from the application filed by the learned Advocate for the petitioners on 16.02.2026 that petitioner No. 2 Sohrab Mollah died on 19.10.2016 and his death certificate has been annexed with the said application as Annexure-E. Therefore, the Rule, so far as it relates to petitioner No. 2 Sohrab Mollah, has become infructuous by reason of his death.

So far as petitioner No. 1 Joynal Sk. is concerned, it appears that the occurrence took place on 04.12.2002 and the First Information Report was lodged on 05.12.2002. Thus, about 24 years have elapsed since the institution of the case. It also appears that during this long process, petitioner Joynal Sk. has suffered in custody for more than 4 months. It has been submitted that he is now about 60 years of age, is a poor farmer and has been suffering from old-age complications.

While the conviction under section 326 of the Penal Code is maintained, sentence is always a matter of judicial discretion to be exercised upon consideration of the nature of the offence, the manner of commission, the age and condition of the convict, the

period already undergone, the long pendency of the proceeding and the ends of justice.

Considering the facts and circumstances of the case, the long lapse of time since the occurrence, the period of custody already suffered by petitioner Joynal Sk., his age and social condition, I am of the view that the ends of justice would be met if the sentence of imprisonment awarded to petitioner No. 1 Joynal Sk. is reduced to the period already undergone.

The sentence of fine of Tk.5000 is maintained. In default of payment of fine, the petitioner shall suffer the sentence as directed by the trial court.

In the result, the Rule is discharged with modification.

The judgment and order of conviction passed against petitioner No. 1 Joynal Sk. under section 326 of the Penal Code is maintained. However, the sentence of imprisonment awarded to him is reduced to the period already undergone.

The Rule, so far as it relates to petitioner No. 2 Sohrab Mollah, stands disposed of as infructuous in view of his death.

The order of bail granted earlier in favour of petitioner No. 1 Joynal Sk. stands discharged, and he is released from his bail bond.

Send down the lower Court records at once.

Communicate the judgment and order immediately.

S.Naher/ABO