

Present:

Mr. Justice Raziuddin Ahmed

Criminal Revision No.1126 of 2007

Abdul Khaleque

----- Petitioner

-Vs-

The State

---- Opposite Party

Mr. Mohammad Jahangir Alam, Advocate

----For the Petitioner

Mr. Md. Asad Uddin, D.A.G with

Mr. Md. Habibur Rahman Sarker, A.A.G and

Mr. Kazi Mohammad Moniruzzaman, A.A.G

---- For the State

Heard on 15.02.2026, 19.04.2026,

04.05.2026, 17.05.2026, 20.05.2026 and

Judgment on 21.05.2026

On an application filed under section 439 read with section 435 the Code of Criminal Procedure, 1898 Rule was issued calling the upon the Deputy Commissioner, Netrokona to show cause as to why the judgment and order dated 15.05.2007 passed by the learned Additional Sessions Judge, Netrokona in Criminal Appeal No. 59 of 1998 dismissing the appeal and affirming the judgment and order dated 29.09.1998 passed by the learned Additional District Magistrate, 1st Court, Netrokona in T.R. Case No. 36 of 1995 arising out of Purbadhala P. S. Case No. 05(9)94 corresponding to G.R. No. 95(2)94 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 on 03.09.1994, at about 7.30 a.m., when the informant's party went to their field for cultivation, the accused persons, being armed with deadly weapons, surrounded them and asked them to stop ploughing the land. When the informant's party refused, an altercation took place. It is alleged that the present petitioner Abdul Khaleque dealt a katra blow on the head of Abdul Gafur, brother of the informant, causing bleeding injury. It is further alleged that accused Ashraf Ali dealt a stick blow on the head of the victim and accused Majid also assaulted him with a stick on different parts of his body. When Salam, son of the informant, the wife of the informant and the wife of his brother came to the place of occurrence, they were also assaulted. On hearing hue and cry, witnesses came forward, whereupon the accused persons fled away. The injured Abdul Gafur was first taken to Purbadhala Health Complex and thereafter to Mymensingh Medical College Hospital. Subsequently, the case was lodged.

After investigation the police submitted a charge sheet being charge sheet No. 71 dated 27.10.1994 under section 143/447/323/324 and 326 of the Penal Code.

The learned Additional District Magistrate, first Court, Netrokona framed charge against the accused petitioner under section 447/326 the code of criminal procedure. The charge was read over and explained to the accused petitioner, who pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined 8(eight) witnesses, of whom P.Ws.1 to 5 are witnesses of fact and P.Ws.6 to 8 are police witnesses. The defence examined none. The defence case, as it appears from the trend of cross-examination, is one of innocence and false implication due to previous enmity over land.

Upon consideration of the evidence and materials on record, the learned Additional District Magistrate, 1st Court, Netrokona, by judgment and order dated 29.09.1998, convicted the petitioner under section 324 of the Penal Code and sentenced him to suffer rigorous imprisonment for 2(two) years.

Against the judgment and order dated 29.09.1998, the convict-petitioner preferred Criminal Appeal No. 59 of 1998 before the learned Sessions Judge, Netrokona. The appeal was subsequently heard by the learned Additional Sessions Judge, Netrokona, who, by judgment and order dated 15.05.2007, dismissed the appeal and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and order dated 15.05.2007 the accused petitioner filed this revisional application and obtained the present Rule on 02.09.2007.

Mr. Mohammad Jahangir Alam, the learned Advocate appearing for the convict-petitioner, submits that the prosecution failed to prove the charge against the petitioner beyond reasonable doubt and that both the Courts below failed to consider material contradictions in the evidence of the prosecution witnesses, resulting in miscarriage of justice.

He next submits that the alleged occurrence took place on 03.09.1994 but the First Information Report was lodged on 08.09.1994, and no satisfactory explanation has been given for such delay. According to him, the delay in lodging the FIR casts serious doubt upon the genuineness of the prosecution case. He further submits that an information relating to a cognizable offence given to the police first in point of time is the FIR within the meaning of section 154 of the Code of Criminal Procedure, and all subsequent statements fall within the purview of section 161 of the Code. In support of this submission, he refers to the case of *Muslim Uddin vs. The State*, reported in 38 DLR (AD) 311.

The learned Advocate further submits that from the evidence of P.Ws.4 and 5 it appears that they went to Purbadhala Police Station on the very date of occurrence, i.e. 03.09.1994, and that P.W.4 was taken to Purbadhala Health Complex for treatment. He also submits that the police interrogated P.W.4 at Purbadhala Health Complex on that day. Referring to the evidence of P.W.8, the Investigating Officer, he submits that P.W.8 admitted in cross-examination that he visited the place of occurrence on 03.09.1994 and again on 08.09.1994. Therefore, according to the learned Advocate, the police station had knowledge of the occurrence on 03.09.1994 and the FIR lodged on 08.09.1994 is not the real FIR, but a subsequent statement hit by section 161 of the Code of Criminal Procedure.

He further submits that there was long-standing enmity between the informant's party and the accused persons over land, which has been admitted by P.Ws.1, 2, 4 and 5. He argues that where bitter enmity exists

between the parties, evidence of interested witnesses requires independent corroboration. In the present case, all material witnesses are members of the same family and highly interested, and there is no independent corroboration.

The learned Advocate also submits that the doctor who allegedly examined the victim and issued the injury certificate was not examined before the Court. The injury certificate was also not duly proved by the doctor and marked as an exhibit in accordance with law. He contends that the learned trial Court wrongly took the injury certificate into consideration while convicting the petitioner. In this regard, he refers to *Hussain alias Foran Miah vs. The State*, reported in BCR (2004) AD 64.

Lastly, he submits that during examination of the accused under section 342 of the Code of Criminal Procedure, the incriminating evidence and circumstances appearing against him were not properly put to him and, as such, serious prejudice was caused to the defence.

On the other hand, Mr. Md. Asad Uddin, 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-petitioner beyond reasonable doubt. He submits that both the Courts below upon proper appreciation of the evidence on record, rightly convicted and sentenced the petitioner.

He further submits that there is no material contradiction among the prosecution witnesses regarding the date, time, place and manner of occurrence. P.Ws.2, 4 and 5 consistently stated that the present petitioner Abdul Khaleque dealt a katra blow on the head of victim Abdul Gafur. He

submits that the delay in lodging the FIR has been sufficiently explained by the prosecution, as the injured victim had to be taken for treatment first. He further submits that non-examination of the doctor is not fatal in the facts and circumstances of the case, particularly when the ocular evidence is clear, consistent and trustworthy. In this connection, he refers the decision of *Md. Mofazzel Hossain and another vs. The State*, reported in 1987 BLD 406, wherein it was held that,

“ It is settled principle that the positive evidence in a case is that of a eye witness who had seen and narrated the occurrence. The evidence of a medical man or an expert is merely an opinion which only lends corroboration to the direct evidence.”

I have heard the learned Advocates for both sides, perused the impugned judgments and orders passed by the Courts below, and examined the evidence and materials on record.

Before entering into the merit of the case, it is necessary to state the limited scope of revisional jurisdiction. The revisional jurisdiction of this Court under section 439 of the Code of Criminal Procedure is not intended to operate as a regular appellate jurisdiction. In revision, this Court does not ordinarily reassess the entire evidence merely to substitute its own view for that of the Courts below. Interference is justified only when there is illegality, material irregularity, misreading or non-reading of evidence, perversity in the findings, 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. At the same

time, reasonable doubt does not mean fanciful, speculative or imaginary doubt. Minor discrepancies or variations which do not touch the core of the prosecution case cannot by themselves be a ground for discarding otherwise reliable evidence.

P.W.1 Abdul Hamid, the informant, stated that the occurrence took place on Saturday, the 17th day of Bhadra, at about 7.00 a.m. According to him, there was a land dispute between the parties. On the date of occurrence, when his son was cultivating the land, the accused came to the land and restrained them. He stated that accused Abdul Khaleque dealt a blow on the head of his brother Abdul Gafur and accused Ashraf Ali also dealt a stick blow on the head of the victim, causing bleeding injury. Accused Majid also assaulted the victim with a stick. The victim was taken to Purbadhala Hospital and thereafter to Mymensingh Medical College Hospital. He further stated that after returning from hospital, the FIR was lodged. In cross-examination, however, he stated that he was in his house at the time of occurrence and did not see the actual assault. Therefore, his evidence is relevant mainly as to the surrounding circumstances, previous dispute, post-occurrence conducts and lodging of the case, but not as direct ocular evidence of the assault.

P.W.2 Abdus Salam stated that on the date of occurrence, at about 7.00 to 7.30 a.m., he was cultivating the land of his father. At that time Nurjahan came and cut the rope of the bull. When he raised alarm, the accused persons came forward and assaulted him. He specifically stated that accused Khaleque dealt a katra blow on the head of his uncle Abdul Gafur and accused Ashraf Ali also assaulted his uncle with a stick. In

cross-examination, he stated that all the accused came together and, for that reason, he could not specifically say which accused was carrying which weapon.

P.W.3 Jammal Ali stated that he knew both parties and heard about the occurrence while he was sitting in the bazar. He did not claim to have seen the occurrence. His evidence is, therefore, hearsay.

P.W.4 Abdul Gafur, the injured victim, stated that the occurrence took place on 03.09.1994, Saturday, at about 7.30 a.m. He stated that on the date of occurrence his nephew was cultivating their land when Nurjahan came and cut the rope of the bull. An altercation started between Nurjahan and Salam. At that time, the accused persons entered into the land and began assaulting Salam. When he came forward to resist, accused Ashraf Ali dealt a blow on his head with a bamboo stick and accused Abdul Khaleque dealt a katra blow on his head. Accused Majid also assaulted him with a stick, on different parts of his body. He further stated that when his wife came to save him, she was also assaulted. He was first taken to Purbadhala Hospital and thereafter to Mymensingh Medical College Hospital, where he remained under treatment. In cross-examination, he stated that he became unconscious and could not state the exact time of his admission in the hospitals.

The evidence of P.W.4 is of considerable importance because he is the injured witness. Ordinarily, the testimony of an injured witness carries special evidentiary value, because his presence at the place of occurrence is naturally established unless effectively shaken in cross-examination. In

the present case, the defence could not discredit his evidence on material particulars.

P.W.5 Jobeda Khatun, wife of the victim, stated that on the date of occurrence Nurjahan first came to the land and cut the rope of the bull. When an altercation took place between Nurjahan and Salam, other accused persons came forward. She stated that Ashraf Ali dealt a stick blow on the head of her husband and Abdul Khaleque dealt a katra blow on his head, causing bleeding injury. She also stated that the accused persons assaulted her and her husband. She took her husband to Purbadhala Hospital and thereafter to Mymensingh Medical College Hospital. In cross-examination, she stated that her husband was first taken to Purbadhala Hospital at about 10.00 to 11.00 a.m. and then taken to Mymensingh Medical College Hospital. She also stated that she was examined by police on the date of occurrence.

P.Ws.6, 7 and 8 are police witnesses. P.W.6 S.I. Jasimuddin recorded the FIR on receiving verbal information from the informant. P.W.8 Billal Hossain initially took up investigation, visited the place of occurrence, prepared the sketch map and recorded statements of witnesses. P.W.7 Ajit Kumar subsequently took up investigation and submitted charge sheet.

It appears from the evidence on record that the occurrence took place on 03.09.1994 and the FIR was lodged on 08.09.1994. The defence has strongly argued that the delay in lodging the FIR is fatal. Delay in lodging FIR is undoubtedly a circumstance which requires careful scrutiny. However, delay by itself is not always fatal, if it is reasonably

explained and if the evidence adduced by the prosecution is otherwise credible and trustworthy. In the present case, the injured victim was first taken to Purbadhala Health Complex and thereafter to Mymensingh Medical College Hospital for treatment. The prosecution case is that after returning from hospital, the FIR was lodged. Considering the nature of the occurrence and the treatment of the injured victim, the delay, though present, does not by itself demolish the prosecution case.

As regards the submission that the police had information about the occurrence on 03.09.1994 and, therefore, the FIR dated 08.09.1994 should be treated as a statement under section 161 of the Code of Criminal Procedure, I find that no earlier written information has been brought on record to show that a formal FIR had in fact been lodged or recorded on 03.09.1994. The mere fact that police had some information about the occurrence or visited the place of occurrence before the formal lodging of the FIR may be a matter for scrutiny, but in the facts of the present case it is not sufficient to discard the prosecution case, particularly when the injured witness and other material witnesses consistently supported the essential prosecution case.

The next contention of the defence is that the witnesses are related and interested. It is true that there was a land dispute between the parties and the material witnesses are related to the victim. But it is equally well settled that evidence of a related witness cannot be rejected merely on the ground of relationship. The Court is required to scrutinize such evidence with caution. If, upon such scrutiny, the evidence appears to be natural, consistent and trustworthy, conviction can safely be based on such

evidence. In rural occurrences arising out of land disputes, it is not unusual that family members or persons connected with the land would be present at the place of occurrence. In the present case, the evidence of P.Ws.2, 4 and 5, particularly that of injured P.W.4, remains substantially consistent on the material point that the present petitioner Abdul Khaleque dealt a katra blow on the head of Abdul Gafur.

Regarding the medical evidence, it appears that Dr. Ismail Hossain examined the victim on 03.09.1994 at about 3.45 p.m. and issued a medical certificate. The certificate records injuries on the head and abrasions on different parts of the body, and the doctor opined that one of the injuries was grievous and caused by a heavy sharp-cutting weapon, while the other injuries were simple and caused by blunt weapon. It further appears from the record that processes were issued repeatedly to secure the attendance of the doctor, but he could not be produced due to lack of information regarding his present position.

Strictly speaking, a medical certificate should ordinarily be proved by examining the doctor who issued it, unless its proof is otherwise admitted or legally dispensed with. Therefore, the Court must be cautious in placing reliance on a medical certificate not formally proved by the doctor. However, non-examination of the doctor is not invariably fatal in every criminal case. Where the ocular evidence, particularly the evidence of an injured witness, is clear, credible and trustworthy, and where the defence could not shake such evidence on material particulars, non-examination of the doctor does not necessarily destroy the prosecution case. In the present case, even without placing decisive reliance on the

medical certificate, the direct evidence of P.W.4, supported by P.Ws.2 and 5, proves that the petitioner caused hurt to Abdul Gafur by means of a katra. The medical materials available on record, though not proved in the ideal manner, are broadly consistent with the ocular version and lend assurance to the prosecution case.

The learned Advocate for the petitioner has also argued that the accused was not properly examined under section 342 of the Code of Criminal Procedure. The object of examination under section 342 is to enable the accused to explain the incriminating circumstances appearing against him. The record shows that the accused was examined and he denied the prosecution case. No specific prejudice has been shown to have been caused to the accused by reason of any alleged defect in such examination. In the facts and circumstances of the case, this contention does not warrant interference in revision.

It is true that the petitioner was charged under sections 447 and 326 of the Penal Code, but the learned trial Court convicted him under section 324 of the Penal Code. As per section 238(2) of the Code of Criminal Procedure when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 324 of the Penal Code, being an offence relating to voluntarily causing hurt by dangerous weapon or means, is legally maintainable on the facts proved, even though the charge included section 326 of the Penal Code. No prejudice appears to have been caused to the petitioner by such conviction.

Upon independent assessment of the evidence and materials on record, I find that the prosecution has been able to prove that the present petitioner Abdul Khaleque voluntarily caused hurt to victim Abdul Gafur by means of a katra. The evidence of the injured witness P.W.4 is natural and trustworthy and is supported by P.Ws.2 and 5. The defence could not bring out any material contradiction sufficient to discard their testimony. I also 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 illegality or material irregularity warranting interference by this Court in revision. Accordingly, the conviction of the petitioner Abdul Khaleque under section 324 of the Penal Code calls for no interference.

Now comes the question of sentence.

The occurrence took place on 03.09.1994. The trial Court delivered its judgment on 29.09.1998. The appellate Court dismissed the appeal on 15.05.2007. Thus, about three decades have elapsed since the institution of the case. It also appears from the record that the petitioner faced the ordeal of criminal proceedings for a long period and has already suffered custody for some time. Considering the facts and circumstances of the case, the nature of the offence, the long lapse of time, and the ends of justice, I am of the view that the sentence of imprisonment awarded to the petitioner should be reduced to the period already undergone.

In the result, the Rule is disposed of with modification of sentence.

The judgment and order of conviction passed against the convict-petitioner Abdul Khaleque under section 324 of the Penal Code is

maintained. However, the sentence of rigorous imprisonment for 2(two) years is reduced to the period already undergone.

The convict-petitioner is discharged from his bail bond, if any, subject to the condition that he is not wanted in connection with any other case.

Let the lower Court records be sent down at once.

Communicate this judgment and order to the Court concerned immediately.