

**Present:**

Mr. Justice Raziuddin Ahmed

**Criminal Revision No.95 of 2007**

Bacchu Miah and another

----- Petitioners

**-Vs-**

The State, represented by the Deputy  
Commissioner, Habigonj.

---- Opposite Party

Mrs. Joya Bhattacharjee, 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 19.02.2026, 20.04.2026, 30.04.  
2026, 17.05.2026, and Judgment on  
19.05.2026**

On an application filed under section 439 read with 435 of the Code of Criminal Procedure,1898 a Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 27.06.2002 passed by the learned Sessions Judge, Habiganj dismissing the Criminal Appeal No. 8(2)94 analogously with Criminal Appeal No. 40(2)94 upholding the judgment and order of conviction and sentence dated 06.04.1994 passed by the learned Additional District Magistrate, Habiganj arising out of G.R. Case No. 03 of 1986 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 10.01.1986 the informant came to know that a gang of dacoits had assembled in the house of one Bhingraj and were making preparation to commit dacoity at Shujadpur Bazar under Baniachong Police Station. Upon receiving such information, the informant along with his force went to the house of Bhingraj and encircled the same. Sensing the presence of the police, some of the accused persons managed to flee away. However, with the assistance of the local villagers, accused Nos. 1 to 7 were apprehended from the place of occurrence. Thereafter, on the basis of information furnished by accused Bacchu Miah and Dhalai Miah, one kata rifle and 7(seven) rounds of bullets were recovered. Hence the case was started.

After investigation, police submitted Charge Sheet No. 10 dated 10.04.1986 under sections 399/402 of the Penal Code. Thereafter, the case being transferred, the learned Additional District Magistrate, Habiganj framed charge against the accused persons under sections 399/402 of the Penal Code. The charge was read over and explained to the accused persons, who pleaded not guilty and claimed to be tried.

At the trial, the prosecution examined as many as 13(thirteen) witnesses, while the defence examined none.

Upon consideration of the evidence and materials on record, the learned trial Court on 06.04.1994 convicted the present petitioners under section 399 of the Penal Code and sentenced each of them to suffer

rigorous imprisonment for 3(three) years and also to pay a fine of Tk. 2,000/-, in default to suffer rigorous imprisonment for 6(six) months more.

Being aggrieved by the judgment and order of conviction and sentence dated 06.04.1994, the accused-petitioners preferred Criminal Appeal No. 40(2) of 1994 before the learned Sessions Judge, Habiganj. Other accused persons also preferred Criminal Appeal No. 8(2) of 1994. Both the appeals were heard analogously and dismissed by the learned Sessions Judge, Habiganj by judgment and order dated 27.06.2002.

Being aggrieved by and dissatisfied with the said judgment and order of the appellate Court dated 27.06.2002, the accused-petitioners filed the instant revisional application and obtained the present Rule on 31.01.2007 along with an order of bail.

Mrs. Joya Bhattacharjee, learned Advocate appearing on behalf of the accused-petitioners, submits that there was no reliable eye-witness to the alleged preparation for dacoity and that no independent witness supported the prosecution case in a manner sufficient to sustain the conviction. She further submits that nothing was recovered from the direct possession of the present petitioners and, as such, the judgment and order passed by both the Courts below are liable to be set aside.

The learned Advocate further submits that co-accused Abru Miah was discharged by this Court in Criminal Miscellaneous Case No. 227 of 2004 and, therefore, the present petitioners are also entitled to similar benefit.

The learned Advocate finally submits that petitioner No. 1, Bacchu Miah, was first arrested on 14.01.1986 and, after remaining in custody for more than 3(three) years, was released on bail on 11.04.1989. Thereafter, during trial and after judgment, he was again taken into custody on several occasions. Lastly, he was sent to jail on 27.08.2005 after pronouncement of judgment and was released on bail by this Court on 31.01.2007. She submits that petitioner No. 1 has already served out more than the substantive sentence awarded to him.

She also submits that petitioner No. 2, Dhalai Miah, was first arrested on 14.01.1986 and was released on bail on 22.11.1986, after remaining in custody for about 10(ten) months. Subsequently, he was also taken into custody on different dates during the trial proceeding. Lastly, petitioner No. 2 was sent to jail on 20.02.2005 and was released on bail on 31.01.2007, thereby remaining in custody for about 2(two) years on that occasion alone. She therefore submits that, in any view of the matter, the petitioners have already undergone the sentence awarded to them and the sentence of imprisonment may be reduced to the period already undergone.

Mr. Md. Habibur Rahman Sarker, learned Assistant Attorney General appearing on behalf of the State, opposes the Rule and submits that both the Courts below, upon proper assessment of the evidence and materials on record, rightly found the accused-petitioners guilty under section 399 of the Penal Code. He further submits that there is no misreading, non-consideration of evidence, or legal infirmity in the

impugned judgments and orders warranting interference by this Court in its revisional jurisdiction. He therefore prays for discharge of the Rule.

Heard the learned Advocate for the petitioners and the learned Assistant Attorney General for the State, perused the revisional application, the impugned judgments and orders passed by the Courts below, and examined the evidence and materials on record.

It appears from the record that the accused-petitioners, along with others, were apprehended from the house of Bhingraj, which was the alleged place of occurrence, at the time when they had assembled there and were making preparation for committing dacoity at Shujadpur Bazar under Baniachong Police Station.

It further appears that, on the basis of information furnished by accused Bacchu Miah and Dhalai Miah, one kata rifle and 7(seven) rounds of bullets were recovered. It also appears that the said accused persons made confessional statements before the Magistrate under section 164 of the Code of Criminal Procedure regarding the preparation for committing dacoity and their involvement in the matter.

The record further shows that at an earlier stage the learned trial Court convicted the accused persons under sections 399/402 of the Penal Code. Against that judgment, the accused persons preferred appeal, and by judgment dated 12.02.1991 the appellate Court set aside the earlier judgment and sent the case on remand for re-hearing with a direction to afford proper opportunity to the accused persons to cross-examine the prosecution witnesses.

Thereafter, the prosecution witnesses were recalled for cross-examination. However, only P.W. Nos. 1, 3, 4, 6, 8 and 11 appeared before the Court. The accused persons cross-examined P.W. Nos. 1 and 4 and expressed their unwillingness to cross-examine P.W. Nos. 3, 6, 8 and 11. Therefore, it appears that proper opportunity of cross-examination was afforded to the defence after remand.

P.W. 1 stated in his deposition that on 10.01.1986 at about 4:00-4:30 p.m. the police surrounded the house of Bhingraj. Bhingraj managed to flee away, but the police apprehended Dhalai Miah, Abdur Rashid, Abru Miah, Mostafa, Joynal Abedin, Abdul Hamid and Bacchu Miah from the place of occurrence. He further stated that the accused persons admitted that they had assembled in the house of Bhingraj for the purpose of committing dacoity at Shujadpur Bazar. He also stated that one kata rifle and 7(seven) rounds of bullets were recovered in connection with accused Bacchu Miah and Dhalai Miah.

P.W. Nos. 2 to 7 substantially supported and corroborated the evidence of P.W. 1 on material particulars. They are local witnesses and their evidence lends support to the prosecution case regarding the assembly of the accused persons at the place of occurrence and the preparation for committing dacoity. P.W. Nos. 8 to 12 are formal witnesses and their evidence also supports the prosecution case in respect of the investigation and connected formal steps.

On assessment of the evidence on record, it appears that the prosecution has been able to prove that the accused-petitioners, along

with others, had assembled at the house of Bhingraj and had made preparation for committing dacoity. The recovery of the firearm and ammunition pursuant to the information furnished by the accused persons further strengthens the prosecution case. The confessional statements recorded under section 164 of the Code of Criminal Procedure also support the prosecution case, and no material legal infirmity has been shown before this Court to discard the same.

The submission that there was no independent witness is not borne out by the record, inasmuch as the prosecution examined local witnesses who supported the material version of the prosecution case. The further submission that co-accused Abru Miah was discharged in another proceeding does not by itself entitle the present petitioners to an order of discharge or acquittal, particularly when the evidence and circumstances against the present petitioners stand on their own footing.

In revisional jurisdiction, this Court does not ordinarily interfere with concurrent findings of fact unless there is gross illegality, misreading or non-consideration of material evidence, perversity, or miscarriage of justice. In the present case, both the Courts below, upon consideration of the evidence and materials on record, arrived at a concurrent finding of guilt against the present petitioners under section 399 of the Penal Code. I do not find any such illegality, infirmity, or perversity in the impugned judgments warranting interference with the order of conviction.

Accordingly, the conviction of the accused-petitioners under section 399 of the Penal Code is maintained.

Now, as to the sentence, it appears from the record that the occurrence took place as far back as on 10.01.1986. The petitioners faced the agony of criminal proceedings for a long period. It further appears that petitioner No. 1, Bacchu Miah, remained in custody for a substantial period and, according to the materials placed before this Court, has already undergone custody exceeding the substantive sentence of imprisonment awarded to him. Petitioner No. 2, Dhalai Miah, also remained in custody for a considerable period, including the period from 20.02.2005 to 31.01.2007, apart from his earlier custody.

Having regard to the facts and circumstances of the case, the long lapse of time, the period of custody already undergone by the petitioners, and the principle embodied in section 35A of the Code of Criminal Procedure, I am of the view that the ends of justice would be met if the sentence of imprisonment awarded to the petitioners is reduced to the period already undergone by them.

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

The judgment and order of conviction dated 06.04.1994 passed by the learned Additional District Magistrate, Habiganj, as affirmed by the judgment and order dated 27.06.2002 passed by the learned Sessions Judge, Habiganj in Criminal Appeal No. 40(2) of 1994, heard

analogously with Criminal Appeal No. 8(2) of 1994, is hereby maintained.

However, the sentence of rigorous imprisonment for 3(three) years awarded to each of the petitioners is reduced to the period already undergone by them.

The sentence of fine of Tk. 2,000/- imposed by the learned trial Court, in default to suffer rigorous imprisonment for 6(six) months more, shall remain unchanged.

The accused-petitioners are discharged from their bail bonds, subject to payment or realization of the fine, if not already paid.

Send down the lower Court records at once along with a copy of this judgment.

S.Naher/ABO