

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Bashir Ullah

Criminal Revision No. 3023 of 2019

In the matter of:

An application under section 439 read with section 435 of the Code of Criminal Procedure

And

In the matter of:

Md. Mohiuddin @ Babul

... Convict-Petitioner

-Versus-

The State

... Opposite Party

Mr. Mohammad Saiful Alam with
Mr. Murad Al Hasan Chowdhury and
Mr. Akmal Hossain Hamel, Advocate
... For the Petitioner

Mr. S.M. Aminul Islam Sanu, D.A.G with
Mr. Md. Nasimul Hasan, A.A.G with
Mr. Md. Golamun Nabi, A.A.G and
Ms. Farhana Abedin, A.A.G and
... For the State

Heard on: 07.01.2026 and 08.01.2026

Judgment on: 12.01.2026

Md. Bashiu Ullah, j.

This Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and order dated 25.03.2019 passed by the learned Additional Metropolitan Sessions Judge, 4th Court, Dhaka in Metro Criminal Appeal No. 1733 of 2017 dismissing the appeal and affirming the judgment and order dated 23.08.2017 passed by the learned Metropolitan Magistrate, Trial Court No. 14, Dhaka in Rampura Police Station Case No. 09, dated 14.12.2011 corresponding to G.R No. 530 of 2011, convicting the petitioner under Sections 279 and 338A of the Penal Code and sentencing him to suffer imprisonment for a period of 01 (one) year and to pay a fine of Taka 2,000/- (two thousand), in default, to suffer imprisonment for a period of 01(one) month should not be set aside and/or such order or orders be passed as to this Court may seem fit and proper.

The prosecution case, in brief, is that one Md. Zakir Hossain Bhuiyan lodged an FIR with Rampura Police Station on 14.12.2011 alleging *inter alia* that his younger brother Anower Hossain was hit from behind by a leguna bearing Registration No. Dhaka-Metro-Cha-14-1280 driven by the petitioner on Banashree Road. As a result of the impact, the victim fell down on the road and the driver allegedly drove the vehicle over him and fled away towards Mothertek. Consequently, the victim sustained serious injuries on different parts of his body and right hand elbow was seriously damaged. He was initially taken to nearest Asia Hospital by an unknown person and subsequently, due to deterioration of his physical condition, he was sent to I.C.U of Rasmono Hospital, Mogbazar. Subsequently he was shifted to the Trauma Centre, Shyamoly where he received further treatment. According to Dr. Kamruzzaman, about 30% damage was caused to the elbow. Hence, the case.

On closure of investigation, the investigating officer submitted police report no. 54, dated 24.02.2012 against the petitioner recommending prosecution under Sections 279 and 338A of the Penal Code. Subsequently, the case was transferred to the Court of Metropolitan Magistrate, Trial Court No. 14, Dhaka where on taking cognizance of offence alleged charge was framed against the petitioner under Sections 279 and 338A of the Penal Code on 17.05.2019 and thus trial commenced.

During trial, the prosecution examined 3 (three) witnesses to prove the prosecution case, while the defence examined none. The petitioner could not be examined under Section 342 of the Code of Criminal Procedure as he remained absconding.

Upon consideration of the evidence, the trial Court found the petitioner guilty under section 279 and 338A of the Penal Code and sentenced him to suffer imprisonment for a period of 01(one) year and pay a fine of Taka 2,000/-

in default to suffer imprisonment for one month by judgment and order dated 23.08.2017.

Challenging the conviction and sentence the petitioner as appellant filed Metro Criminal Appeal No. 1733 of 2017 before the Court of Metropolitan Sessions Judge, Dhaka and which was subsequently transferred to the Court of Additional Metropolitan Sessions Judge, 4th Court, Dhaka. After hearing the parties the learned Additional Metropolitan Sessions Judge dismissed the appeal affirming the conviction and sentence by judgment and order dated 25.03.2019.

Being aggrieved by and dissatisfied with the judgment and order dated 25.03.2019, the petitioner preferred this instant revisional application and obtained Rule.

Mr. Mr. Mohammad Saiful Alam along with Mr. Murad Al Hasan Chowdhury, the learned Advocates appearing on behalf of the petitioner submits that the prosecution witnesses failed to establish that the appellant

was driving the vehicle in a rash or negligent manner which was the cause of the accident resulting in serious injury to the victim.

He next submits that the Investigating Officer was not examined nor the doctor who gave treatment has been examined and no medical or injury certificate was produced or exhibited by the prosecution, thereby causing serious prejudice to the defence.

He further contends that the road was extremely busy and congested at the time of alleged event happened as admitted by the prosecution witnesses themselves, and therefore alleged rash driving was improbable.

He next contends that the occurrence took place due to the fault of the victim who was crossing the road without using the Zebra Crossing or following the traffic signals.

He further submits that the petitioner is not a habitual offender, has no previous criminal antecedent, is extremely poor and is the sole earning member of his family. In

support of his contention the learned Advocate referred to the case of ***Ram Shankar Rai Vs. The State of Bihar***, reported in 1975 CRI. L. J. 1402. With those submissions the learned Advocate for the petitioner prays for making the Rule absolute.

Per contra, Mr. Nasimul Hasan, learned Assistant Attorney General appearing on behalf of the State opposes the Rule and submits that the petitioner was driving the vehicle in a negligent manner causing grievous injury to the victim.

He further submits that there is no illegality, impropriety or infirmity in the impugned judgments and orders. The trial Court very rightly appreciated the evidence on record and convicted and sentenced the petitioner. Finally, he prays for discharging the Rule.

I have heard the learned Advocates for both sides and perused the materials on records.

Record shows that neither the investigating officer nor the treating doctor was examined and no medical or injury report was produced before the trial Court. Nevertheless, the witnesses proved the injury to the victim and the occurrence.

PW-1 Mahbub Alam Chowdhury, an eye witness deposed that at the time of accident the road was busy and there was limited scope for rash driving.

PW-2 Md. Anwar Hossain, the victim deposed that the road was busy. He deposed, “আমি অফিস থেকে বাসায় ফেরার পথে গলিতে ঢুকতে ছিলাম। তখন ১টি গাড়ী আমাকে পেছন থেকে ধাক্কা দিয়ে মাটিতে ফেলে দেয়। ০৮/১২/২০১১ ইং তারিখে রাত ১০.০০ সময় ঘটনা ঘটে। গাড়ীর ড্রাইভার আমাকে উদ্ধার না করে আমার হাতের উপর দিয়ে গাড়ী চালাইয়া যায়। আমার হাত ভেঙ্গে মাঝখানে যাবার কারনে accident হয়।”

PW-3, Md. Zakir Hossain Bhuiyan, brother of the victim corroborated the occurrence and deposed that, “আমার ভাই গাড়ীর সামনে পড়ে গেলে কোন সাড়া না পেয়ে ড্রাইভার পালানোর উদ্দেশ্যে

আমার ভাইয়ের শরীরের উপর দিয়ে গাড়ী চালিয়ে চলে যায়। আমার ভাই গুরুতর
রক্তাক্ত জখম হয় এবং তার বাম হাতের কনুই ভেঙ্গে চুরমার হয়ে যায়।”

A cautious appraisal of the evidence on record, coupled with the facts unveiled leads to the conclusion that although the prosecution could not conclusively establish rashness, it has been patently revealed that the negligent driving of the vehicle by the accused resulted in the causation of grievous injuries to the victim travelling on the road. Such negligent act indubitably constituted the offence punishable under sections 279 and 338A of the Penal Code.

Accordingly, the conviction of the petitioner under section 279 and 338 A of the Penal Code is well founded and calls for no interference by this Court.

However, with regard to the sentence, it appears from the record that the petitioner is not a habitual offender and has no previous criminal record, he is a poor person and the sole bread-earner of his family and the occurrence took place due to negligence rather than deliberate or reckless conduct.

In view of the above mitigating circumstances, this Court is of the view that the sentence of 1(one) year imprisonment is excessive and deserves to be reduced in the interest of justice, while maintaining the conviction.

In the result, The Rule is discharged with modification of the sentence awarded against the petitioner by reducing the sentence from 01(one) year to 01(one) month, while the fine of Taka 2,000/- is maintained failing which he shall suffer the default sentence as awarded by the trial Court.

The conviction of the petitioner under sections 279 and 338 A of the Penal Code is hereby maintained.

The petitioner is allowed to get the benefit of section 35A of the Code of Criminal Procedure, if applicable.

The interim order of bail granted by this Court earlier is hereby recalled and vacated, the bail bond be withdrawn thereof.

Let a copy of this judgment and order along with the Lower Court's Record (LCR) be communicated to the Court concerned forthwith.

Md. Ariful Islam Khan
Bench Officer