

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1024 of 2007

Abdul Aziz

...Convict-petitioner

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioner

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 11.01.2026 and 24.02.2026

Judgment delivered on 02.03.2026

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 21.05.2007, passed by the Additional Sessions Judge, Moulvibazar, in Criminal Appeal. No. 01 of 2001 affirming those dated 21.12.2000 passed by Magistrate, First Class, Moulvibazar in Moulvibazar P.S. Case No. 14 dated 20.02.1997 corresponding Moulvibazar G.R. No. 89 of 1997 convicting the petitioner under section 304(Kha) of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 3(three) years and fine of Tk. 1000 in default to suffer imprisonment for 3(three) months, and also convicting him under section 427of the Penal Code, 1860, and sentencing him thereunder to suffer rigorous imprisonment for 2(two) years and fine of Tk. 1000 in default to suffer imprisonment for 3(three) months should not be set aside, and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution's case, in short, is that Md. Abdur Rashid, a shopkeeper of Munshi Bazar, under Komalganj Thana of Moulvibazar District, having closed his shop, was returning to his house by a taxi

being No. Sylhet-Tha-02-0679. When he reached at Maizpara Shomsher Nagar at about 9.15 am, a truck being number Moulvibazar Ta-02-0032, which was coming from Moulvibazar stroke the taxi. Consequently, an accident took place and Md. Abdur Rashid, Rabu Miah, and Bijan Shaha, passengers of said taxi, were injured. The locals sent Abdur Rashid to Moulvibazar Hospital, where he succumbed to his injuries on the same date. Hearing about the occurrence, the informant, Md. Abdun Nur, brother of the victim Abdur Rashid, went to the hospital and heard about the occurrence from his brother. At the time of the occurrence, both the drivers of the taxi and the truck fled away.

Police took up the investigation of the case, and during investigation, police visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and seized alamat. After completing the investigation, he found the prima facie truth of the allegation made against the accused Abdul Aziz under sections 279/338(a)/304(b)/427 of the Penal Code, 1860. During trial, the Magistrate, First Class, Moulvibazar framed charge against the accused under sections 304(b)/427 of the Penal Code, 1860. The prosecution examined four (4) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused Abdul Aziz was examined under section 342 of the Code of Criminal Procedure, 1898, and he declined to adduce any D.W.

After concluding the trial, the trial Court by judgment and order dated 21.12.2000 convicted the accused under section 304(b) of the Penal Code, 1860 and sentenced him thereunder to suffer rigorous imprisonment for 3(three) years and a fine of Tk. 1,000, in default, to suffer imprisonment for 3(three) months, and under section 427 of the Penal Code, 1860 to suffer rigorous imprisonment for 2(two) years and a fine of Tk. 1,000, in default, to suffer imprisonment for 3(three) months, against which the accused Abdul Aziz filed Criminal Appeal

No. 01 of 2001 before the Sessions Judge, Moulvibazar. The Additional Sessions Judge, Moulvibazar, heard the appeal, and by impugned judgment and order dated 21.05.2007, affirmed the judgment and order passed by the trial Court against which the convict-petitioner Abdul Aziz obtained the instant Rule.

No one appears on behalf of the convict-petitioner.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, submits that the accused Abdul Aziz is the driver of the truck which struck the taxi, and victim Abdur Rashid and two other passengers of taxi were injured, and hearing about the occurrence, the informant Md. Abdun Nur lodged the FIR. The prosecution witnesses proved the charge against the accused beyond all reasonable doubt, and the Courts below, on correct assessment and evaluation of the evidence of the prosecution witnesses, legally passed the impugned judgment and order of conviction and sentence. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below, and the records.

On perusal of the evidence, it reveals that P.W. 1 Md. Abdun Nur is the informant and brother of the victim Abdur Rashid, who died on 19.02.1997 in an accident that took place at Maizpara and subsequently died at the hospital. P.W. 2 Bizan Sinha is a passenger of the baby taxi who was returning along with victim Abdur Rashid, Rabu Miah, and others. P.W. 2 is an injured witness. P.W. 3 Saleh Ahmad is a local. He stated that on 19.02.1997, the occurrence took place in front of his house, and the truck number Moulvibazar Ta-02-0032 is responsible for the accident. At the time of the occurrence, the

driver of the truck fled away keeping the truck at the place of occurrence. P.W. 4 Uttam Kumar Barua is the Investigating Officer. After the investigation, he submitted the charge sheet against the accused.

On perusal of the evidence, it further reveals that the victim Abdur Rashid died in hospital due to an accident that took place on 19.02.1997 at 8.30 pm between a truck being No. Moulvibazar Ta-02-0032 and the baby taxi being number Sylhet-Tha-02-0679 in front of the house of P.W. 3 Saleh Ahmad, P.W. 1 heard about the occurrence from the victim, Abdur Rashid. P.W. 3 admitted that after the occurrence, the driver fled away. None of the prosecution witnesses detained the driver, and no TI parade was held to identify the driver. None of the witnesses identified that the convict-petitioner was the driver of the truck with the registration number Moulvibazar Ta-02-0032. It is found that the driver is not known to the prosecution witnesses. Therefore, it was not possible to identify the driver. The prosecution failed to prove that convict-petitioner Abdul Aziz is the driver of the said truck.

In view of the above evidence, I am of the view that the prosecution failed to prove the charge against the accused Abdul Aziz beyond all reasonable doubt, and the Courts below failed to correctly assess the evidence of the prosecution witnesses in their true perspective and illegally passed the impugned judgment and order convicting the petitioner Abdul Aziz.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the convict-petitioner Abdul Aziz are hereby set aside,

Send down the lower Court's records at once.