

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1043 of 2007

Abul Hossain and others

...Convict-petitioners

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioners

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 01.02.2026 and 02.02.2026

Judgment delivered on 09.02.2026

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 the Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 29.05.2007 passed by the Additional Sessions Judge, Court No. 2, Chuadanga in Criminal Appeal No. 19 of 2002 affirming the judgment and order dated 03.03.2002 passed by the Magistrate, First Class, Chuadanga in Damurhuda P.S. Case No. 14 dated 16.09.1998 corresponding G.R. No. 243 of 1998 convicting the petitioners under section 324 of the Penal Code, 1860 and sentencing them thereunder to suffer rigorous 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 on 11.09.1998 at 5.30 am, the accused persons 1. Abbas Dhoni, 2. Abul Hossain, 3. Abdur Rahman, 4. Abu Bakkar, 5. Kaser and 6. Akkas were damaging the date palm cultivated beside the pond of the informant Md. Ali Hossain and started digging soil from the said land. At that time, the father of the informant came to the place of occurrence and raised a protest against the accused persons. At that time, at the order of

accused Abbas Dhoni, accused Abul Hossain dealt a shabol blow on the left hand of his father. Hearing hue and cry, Haque Saheb, the younger brother of the informant Md. Ali Hossain, walked up and went to the place of occurrence. At that time, accused Abdur Rahman dealt a ramda blow to the head of Haque Saheb, which caused grievous bleeding injury. The accused Abu Bakkar dealt a chipda blow to kill Haque Saheb, which caused double injuries on his head. Consequently, he sustained grievous bleeding injury. Hearing the hue and cry of the victims, the elder brother, Md. Abdul Jalil went to the place of occurrence. At that time, accused Abdur Rahman dealt a ramda blow to the head of Md. Abdul Jalil, which caused grievous bleeding injury. Other accused persons also caused swelling injuries to his father and brothers. Hearing the hue and cry of the victims, the informant also rushed to the place of occurrence. At that time, the accused Abbas dealt a shabol blow on his back. The neighbours, Alfaz, Neyamot, and Hemayet, also went to the place of occurrence and, with the help of the other neighbours, took the victims to Damurhuda Thana Health Complex, and they were admitted to the said hospital.

S.I Md. Atiar Rahman of Damurhuda Thana took up the investigation of the case. During investigation, the Investigating Officer visited the place of occurrence, prepared the sketch map and index and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and after completing the investigation, he found the prima-facie truth of the allegation made against the accused persons and submitted charge sheet against the convict-petitioner and three others under sections 143/148/323/324/325 of the Penal Code, 1860.

During trial, the charge was framed against the accused Abbas Dhoni under section 323 of the Penal Code, 1860 and against the accused Abul Hossain, Abdur Rahman and Abu Bakkar under section 324 of the Penal Code, 1860, which was read over and explained to

them and they pleaded not guilty to the charge and claimed to be tried following law and discharged the accused Abdul Kader and Akkas. The prosecution examined 8(eight) witnesses to prove the charge against the accused persons, and after examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898, and they declined to adduce any D.W.

After concluding the trial, the Magistrate, First Class, Chuadanga, by judgment and order dated 03.03.2002, convicted the accused Abul Hossain, Abdur Rahman, Abu Bakkar under section 324 of the Penal Code, 1860, and sentenced them to suffer rigorous imprisonment for 3(three) months, and acquitted the accused Abbas Dhoni. The convict-petitioners filed Criminal Appeal No. 19 of 2002 against the said judgment and order passed by the trial Court before the Sessions Judge, Chuadanga. The Additional Sessions Judge, Court No. 2, Chuadanga, heard the appeal and, by impugned judgment and order, affirmed the judgment and order passed by the trial Court against which the convict-petitioners obtained the Rule.

P.W. 1 Ali Hossain is the informant. He stated that on 11.09.1998 at 5.30 am, the accused persons were cutting the date palm from the land belonging to his father. At that time, Doyal Biswas, father of the informant, raised a protest, and the accused Abul Hossain dealt a shabol blow to his head, and he resisted with his hand. Consequently, he sustained an injury on his hand. At that time, he raised hue and cry, and Abdul Haque, the younger brother of the informant, went to the place of occurrence. The accused Abdur Rahman dealt 4/5 ramda blows on the head of Haque Saheb. The accused Abu Bakkar dealt a chipda blow on the head of his elder brother Jalil. The accused Akkas dealt a hasua blow, subsequently stated, dealt a lathi blow to the back of the victims. He proved the FIR as exhibit 1 and his signature on the FIR as exhibit 1/1. During cross-examination, he stated that he could not remember who wrote the

FIR. During cross-examination, he affirmed that in the FIR, he mentioned that the accused Abdur Rahman dealt 4/5 blows on the head of Abdul Haque. He admitted that the pond is khas land and the accused Abbas Dhoni took the settlement of the pond from the government.

P.W. 2 Alfaz stated that the occurrence took place on 11.09.1998 at 5.30 am on the bank of the pond. The informant and the accused persons are brothers. Hearing the hue and cry, he went to the place of occurrence. Abul Hossain caused injury to Doyal Biswas by shabol. At that time, Haque Saheb came to the place of occurrence and Abdur Rahman dealt a ramda blow to the head of Abdul Haque. Jalil also came to the place of occurrence. The accused Abu Bakkar, by a sharp cutting chipda, dealt a blow on the head of Abdul Jalil. Kader and Akkas dealt lathi blows to the informant. Thereafter, the accused persons fled away. The victims were taken to the hospital.

P.W. 3 Abdul Jalil stated that the occurrence took place on 11.09.1998 at 5.30 am on the bank of the pond. The accused Abdur Rahman, Abu Bakkar, Kader, and Akkas were cutting the date palm. At that time, the accused Abul Hossain dealt a shabol blow to Doyal Biswas, which caused injury to his hand, and he raised hue and cry. At that time, Haque Saheb came to the place of occurrence, and the accused Abdur Rahman dealt a chipda blow to his head. He dealt five blows. He went to the place of occurrence, but the accused Abu Bakkar dealt a chipda blow to his head. Thereafter, they were taken to the hospital.

P.W. 4 Doyal Biswas stated that the occurrence took place on 11.09.1998 at 5.30 am. The accused Abbas Dhoni cut down the small date palm. At that time, he protested. The accused Abbas Dhoni ordered Abul Hossain to kill him. After that, Abdur Rahman dealt a shabol blow to his hand. Hearing hue and cry, his younger son, Haque Saheb came to the place of occurrence. The accused Abul Hossain dealt ramda blow to the head of Haque Saheb. Hearing the hue and

cry, Jalil also came to the place of occurrence. Abu Bakkar dealt a chipda blow to the head of Jalil. Akkas and Kader also dealt lathi blows to them. They were taken to the hospital. During cross-examination, he admitted that after the quarrel, 20/50 accused persons assembled at the place of occurrence.

P.W. 5 Haque Saheb stated that the occurrence took place on 11.09.1998 at 5.30 am. When the accused persons were cutting the date palm, his father, Doyal Biswas, protested. The accused Abbas Dhoni wanted to kill his father. The accused Abul Hossain dealt a shabol blow to his father. The accused Abdur Rahman dealt five ramda blows to his head. The accused Abu Bakkar dealt a chipda blow to his brother Jalil. His brother Ali Hossain subsequently came to the place of occurrence. Thereafter, the accused persons fled away. Alfaz came to the place of occurrence at the time of the quarrel. He witnessed the occurrence standing behind the house. After the occurrence, people came to the place of occurrence.

P.W. 6 Neyamat Ali stated that the occurrence took place on 09.11.1998 at 5.30 am beside the house of Ali Hossain at the bank of the pond. The accused Abbas Dhoni and Doyal are brothers. He could not say the name of the accused persons who inflicted the injury on the witnesses. Haque was taken to the hospital for treatment. During cross-examination, he stated that he did not make any statement to the Investigating Officer. He denied the suggestion that he deposed falsely.

P.W. 7 Doctor Golam Sarwar is the Medical Officer. He stated that on 15.09.1998, he examined Md. Abdul Haque at the hospital and issued the M/C. He also examined Doyal Biswas and issued the M/C. He examined Abdul Jalil and issued the M/C. He issued three M/C. He proved his signature on the M/C as exhibits 1/1, 1/2, and 1/3. During cross-examination, he stated that nothing had been written on the M/C as to the date and time of examination of the victims. He

denied the suggestion that he did not examine the victims or that he issued a false certificate.

P.W. 8 Golam Mostafa stated that the victims were admitted to the hospital on 15.08.1998. Out of six injuries, injury Nos. 2, 3, and 4 were caused by sharp cutting weapon, and injury No. 5 was caused by a blunt weapon; injury No. 6 is grievous in nature. During cross-examination, he stated that he did not examine the victims and he had no personal knowledge. He issued the M/C on 15.09.1998, and on that day, he also examined the victims.

No one appears on behalf of the convict-petitioners.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing on behalf of the State, submits that the accused Abul Hossain dealt a shabol blow to the hand of P.W. 4 Doyal Biswas, and accused Abdur Rahman dealt 4/5 ramda blows to the head of P.W. 5 Haque Shaheb, and accused Abu Bakkar dealt chipda blow to the head of P.W. 3 Abdul Jalil. The evidence of P.W. 5 regarding the injuries sustained by the victims is corroborated by P.Ws 1 to 4 and the Doctors P.Ws 7 and 8. During the trial, the prosecution proved the charge against the convict-petitioners beyond all reasonable doubt, and the Courts below, considering both the oral and the medical evidence, legally passed the impugned judgment and order convicting the petitioners under section 324 of the Penal Code, 1860. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, who appeared 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, reveals that the occurrence took place on 11.09.1998 at 5.30 am and the FIR was lodged on 16.09.1998 at 20.05 pm, but no explanation has been given by the informant regarding the delay of 5 days in lodging the FIR. In the FIR, it has been alleged that the victims were admitted to Damurhuda

Health Complex, but P.Ws 7 and 8, examined the victims, P.W. 3 Abdul Jalil, P.W. 4 Doyal Biswas, and P.W. 5 Hoque Saheb on 15.09.1998. No explanation is given by the prosecution as to why P.Ws 3, 4 and 5 were not examined by P.Ws 7 and 8 on 11.09.1998. There is no evidence that P.Ws 3, 4 and 5 were admitted to hospital on 11.09.1998.

During cross-examination, P.W. 7, Doctor Golam Sarwar, stated that in the MC, nothing has been mentioned as to the date and time of examination of the victims. Nothing has been stated in the medical certificate issued by the P.Ws 7 and 8 that the victims were admitted to Damurhuda Hospital. No explanation has been given by P.Ws 3, 4, and 5 as to why they went to the hospital on 15.09.1998, although they sustained alleged injuries on 11.09.1998 at 5.30 am. Although the signature of Doctor Golam Mostafa on the medical certificate was proved as exhibits 1/1, 1/2, and 1/3, the medical certificates of the victims were not proved in the case. Furthermore, the evidence of P.Ws 1 to 5 regarding injuries caused by the convict-petitioners is contradicted by them. The Investigating Officer of the case is not examined, and the sketch map and index prepared by the Investigating Officer were not proved in the case to prove the place of occurrence.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the convict-petitioners beyond all reasonable doubt, and the Courts below failed to assess the evidence of the prosecution witnesses in accordance with the law and arrived at a wrong decision as to the guilt of the convict-petitioners.

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 Nos. 1. Abul Hossain, 2. Abdur Rahman and 3. Abu Bakkar is hereby set aside.

Send down the lower Court's records at once.