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

CRIMINAL APPEAL NO. 1660 of 2016.

IN THE MATTER OF:
An appeal under section 28 of Nari-O-Shishu Nirjatan Daman Ain, 2000.

-AND-

IN THE MATTER OF :

Uthpal Kumar Roy and three others.
...Accused-Appellants.

-Versus-

Meghnad Shaha and another.

...Respondents.

Mr. Md. Abdur Rashid, Advocate
... For the appellants.

Mr. Rehan Hossain, Advocate
…For respondent No. 1.

Dr. Md. Bashir Ullah DAG with
Mr. MMG Sarwar AAG and
Ms. Farzana Shampa AAG
. .....For the State

Heard on: 20.08.2020, 27.08.2020, 03.09.2020
Judgment on: 10.09.2020.

Present:
Mr. Justice Jahangir Hossain
And
Mr. Justice Md. Badruzzaman

Md. Badruzzaman, J.

This appeal is directed against an order dated 31.01.2016 passed by learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.2, Chapainawabgonj in Nari-O-Shishu Case No. 34 of 2015 corresponding to G.R No. 258 of 2014 (Shib) arising out of Shibgonj Police Station Case No. 4 dated 1.8.2014 framing charge against the appellants under sections 11(Ga)/30 of Nari-O-Shishu Nirjatan Daman Ain 2000, now pending before the said Tribunal.

At the time of admission of appeal, this Court vide ad-interim order dated 29.03.2016 stayed operation of the impugned order for a period of three months which, upon extension, is still continuing .

The prosecution story, in short, is that on 01.08.2014 respondent No.1 (Father of the victim), lodged First Informant Report with Shibgonj Police Station, Chapainawabgonj against the accused-appellants alleging, *inter alia*, that on 07.03.2011 marriage between his daughter, Dr. Tapashi Shanda (the alleged victim) and accused No. 01 (appellant No.1) was held as per Hindu Law and some furniture, ornaments, TV etc. were gifted to her daughter at the time of marriage and after marriage, while his daughter was living at Dhaka, accused No.1 demanded one flat, cash taka and ornaments as dowry at the instance of other accused (respondents No. 2-4) from his daughter. Upon her refusal, they physically and mentally tortured her and lastly on 27.07.2014 his daughter came to the house of accused No. 1. On 28.07.2014 at 14:00 hours the accused persons again demanded one flat, cash taka and ornaments as dowry from her and on her refusal, accused No. 1 beat her indiscriminately with lathi, iron rod etc. at the instance of other accused. She fell down on the floor and other accused kicked her causing serious bleeding injury. Hearing hue and cry, some neighbors came to the place of occurrence and all accused left the place. After getting the information, the informant went to the house of accused No. 1 and took the victim to Rajshahi where she was treated in a local private hospital. The case was registered as Shibgonj Police Station Case No. 4 dated 01.08.2014 under sections 11(Ga)/30 of Nari-O-Shishu Nirjaton Daman Ain, 2000 (herein after referred to as the Ain 2000).

After investigation, the police submitted charge sheet against the accused-appellants being charge sheet No. 373 dated 30.11.2014 under sections 11(Ga)/30 of the Ain 2000. The appellants obtained bail on different dates.

Being ready, the case was transferred to Nari-O-Shishu Nirjaton Daman Tribunal No. 2, Chapainawabgonj for trial and registered as Nari-O-Shishu Case No. 34 of 2015. Learned Judge then fixed the case for charge hearing. The accused appellants filed an application under section 265C of the Code of Criminal Procedure for discharge on the ground that the prosecution has failed to establish a *prima facie* case to frame charge against them. Their contention was that they were not at all involved with the occurrence as alleged in the FIR; that the informant's daughter (victim) was a unruly and uncontrollable; that she had suicidal tendency and that earlier she attempted to commit suicide on several occasions for which accused-appellant No.1 was constrained to divorce her on 22.7.2014; and after receiving the divorce letter, the informant filed the instant case with concocted story; that though as per F.I.R, the victim was undertaking medical treatment after the alleged date of occurrence in a private clinic at Rajshahi, but no medical certificate has been submitted supporting the allegation of simple hurt which is the main ingredient under section 11(Ga) of the Ain 2000 and the investigation officer also failed to mention the name of the clinic where the victim was treated and failed to examine any doctor as witness to prove the allegation of causing simple hurt which is mandatory under section 32(1) of the Ain, 2000.

The Tribunal without considering the contentions of the appellants framed charge against them under sections 11(Ga)/30 of the Ain, 2000 upon rejecting their application for discharge vide the impugned order dated 31.01.2016.

Respondent No.1 has filed affidavit-in-reply and supplementary affidavit to oppose the appeal stating, inter alia, that the victim wife, after occurrence, was admitted to CDM Hospital, Rajshahi for treatment on 28.07.2014 and after receiving treatment, she was released on 30.07.2014 and a Discharge Certificate was issued on 30.07.2014 to that effect; that a Medical Officer of CDM Hospital, Rajshahi issued Injury

Certificate which was sent through a forwarding letter to Shibgonj Police Station on 16.10.2014 as per the request of the police. But unfortunately, police did not mention those facts in the charge sheet; that CDM Hospital is a private hospital having trade license and registration from the Government.

Mr. Md. Abdur Rashid, learned Advocate appearing for the appellants submits that though as per F.I.R the victim received medical treatment after the alleged date of occurrence i.e. on 28.07.2014 in private clinic at Rajshahi but no medical certificate has been submitted before the tribunal to establish the allegation of simple hurt. Learned Advocate further submits that as per section 32(1) of the Ain 2000, the victim under the Ain shall be medically examined in Government Hospital or in any Hospital authorized by the Government for this purpose; but in the instant case, the victim was not taken to any Government or private Hospital authorized by the Government for that purpose and this vital issue should have been considered by the Court below at the time of framing charge and ought to have discharged the accused appellants. To support this contention he relied upon the case of Md. Alamgir Matubbar vs. The State reported in 38 BLD (2018) 422.

Learned Advocate further submits that since the FIR has been lodged after divorce, the case is not maintainable. Learned Advocate further submits that admittedly, the prosecution has failed to produce any medical certificate in support of the injury of the alleged victim before the IO or the trial Court before framing charge. Learned Advocate further submits that discharge certificate dated 30.07.2014, injury certificate dated 16.10.2014, trade license dated 29.09.2019 and other documents which have been filed in this appeal are procured subsequently for the purpose of filling up the *lacuna* of the prosecution case which should not be considered at this stage.

On the other hand, Mr. Rehan Hossain, learned advocate appearing for respondent No.1 by supporting the impugned order

submits that non-disclosure of vital evidence was the exclusive fault of the police who submitted the charge sheet for which the informant as well as the victim should not suffer. Learned Advocate further submits that, if permitted by this Court, there is scope to produce those medical documents for proving the prosecution case of causing simple injury to the victim and there is also scope on the part of the accused to raise objection regarding their genuineness during trial.

Learned Advocate further submits that apart from medical documents, there is specific allegation of assault upon the victim wife by the accused appellants for dowry in the FIR which has been supported by statements of the witnesses recorded under section 161 of the Cr.P.C which has been reflected in the charge sheet from which tribunal was of the opinion that there was ground for presuming that the accused have committed the offence and accordingly, framed charge against them. As such, the tribunal committed no illegality.

We have heard the learned Advocates and perused the records. The main issue before us is whether in a case under section 11(Ga) of Nari O Shishu Nirjatan Daman Ain, 2000 charge can be framed against an accused for causing **simple hurt** to the wife by the husband or his relations for demand of dowry without any injury certificate upon medical examination of the victim wife under section 32 of the Ain, 2000.

The Nari-O-Shishu Nirjatan Daman Ain, 2000 is a special law enacted to provide stringent provision for prevention of offences of oppression to women and children and to provide for adequate measure for effective punishment. As per section 3 of the Ain, this law has overriding effect over all other laws for the time being in force. Though at the relevant time there was provision for punishment for the offence of demanding dowry in the Dowry Prohibition Act 1980 but section 11(Ga) has been inserted in the Ain for causing “simple hurt” to the wife for demand of dowry. For better understanding section 11 of the Ain is quoted verbatim below:

> ‘‘১১। যৌতুকের জন্য মৃত্যু ঘটানো, ইত্যাদির শাস্ড়ি। -যদি কোন নারীর স্বামী অথবা স্বামীর পিতা, মাতা, অভিভাবক, আত্মীয় বা স্বামীর পক্ষে অন্য কোন ব্যক্তি যৌতুকের জন্য উক্ত নারীর মৃত্যু ঘটান বা মৃত্যু ঘটানোর চেষ্টা করেন, কিংবা উক্ত নারীকে মারাত্মক জখম (grievous hurt) করেন বা সাধারণ জখম (simple hurt) করেন তাহা হইলে উক্ত স্বামী, স্বামীর পিতা, মাতা, অভিভাবক, আত্মীয় বা ব্যক্তি-
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> (ক) মৃত্যু ঘটানোর জন্য মৃত্যুদন্ডে বা মৃত্যু ঘটানোর চেষ্টার জন্য যাবজ্জীবন কারাদন্ডে দন্ডনীয় হইবেন এবং উভয় ক্ষেত্রে উক্ত দন্ডের অতিরিক্ত অর্থদন্ডেও দন্ডনীয় হইবেন;
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> (খ) মারাত্মক জখম (grievous hurt) করার জন্য যাবজ্জীবন সশ্রম কারাদন্ডে অথবা অনধিক বার বৎসর কিন্তু অন্যূন পাঁচ বৎসর কারাদন্ডে দন্ডনীয় হইবেন এবং উক্ত দন্ডের অতিরিক্ত অর্থদন্ডেও দন্ডনীয় হইবেন;
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> (গ) সাধারণ জখম (simple hurt) করার জন্য অনধিক তিন বৎসর কিন্তু অন্যূন এক বৎসর সশ্রম কারাদন্ডে দন্ডনীয় হইবেন এবং উক্ত দন্ডের অতিরিক্ত অর্থদন্ডেও দন্ডনীয় হইবেন।’’

A plain reading of section 11 of the Ain, 2000 as a whole clearly suggests that causing *simple hurt* to the wife for demand of dowry by the husband or his father, mother, guardian, any relative or other person on his behalf is one of the main ingredients for constituting an offence under sub-section (Ga) of section 11 of the Ain. To establish a case against the accused under section 11(Ga), the prosecution must prove two facts i.e the accused (a) demanded dowry to the wife and (b) caused simple hurt to the wife on failure of such demand. If the prosecution fails to establish a *prima facie* case against the accused to fulfill any of the two conditions, cognizance cannot be taken or charge cannot be framed against him under section 11(Ga) of the Ain 2000. Likewise, after framing of charge under section 11(Ga), upon a prima facie case, if the prosecution fails to prove one of the said two conditions by adducing evidence an accused cannot be punished under section 11(Ga) of the Ain, 2000. Because, if the offence of demand of dowry is proved but the offence of causing ‘simple hurt’ for such demand is not proved, the

offence will fall under section 3 of Joutuk Nirodh Ain, 2018. Likewise, if only offence of causing 'simple hurt' to the wife by the husband or any person stated in section 11(Ga) of the Ain 2000 is proved and demand of dowry is not proved, the offence must fall under the provision of Penal Code.

Now question arises as to how a *prima facie* case against the accused can be established for taking cognizance or framing charge against the accused under section 11(Ga) of the Ain 2000 ? In other words, what criteria should be followed by the tribunal during taking cognizance of the offence or framing charge against an accused in such a case?

It is settled principle that if the prosecution upon gathering prosecution materials, oral or documentary, can establish a prima facie case against the accused before the Court that there is ground to presume that the accused has committed an offence, the Court shall frame charge against the accused. To establish *a prima facie* case of the offence of demand of dowry by the accused to the wife may be established by making specific allegation in the petition of complaint or FIR, as the case may be, supported by oral testimony of the witnesses before the inquiry officer or the investigating officer. But question arises as to how a *prima facie* case of causing 'simple hurt' for demand of dowry can be established?

The term 'simple hurt' is used nowhere in Nari-O-Shishu Nirjatan Ain Ain, 2000 or in the Penal Code. Only in sections 319, 321 and 323 of the Penal Code the word 'hurt' has been used. Likewise, in some other sections of the Penal Code the term 'grievous hurt' has been used. By now it has been settled by judicial pronouncements that the term 'hurt' as defined in section 319 of the Penal Code is synonymous to the term 'simple hurt'. According to section 319 of the Penal Code, whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The expression 'bodily pain' means that the pain must be physical

as opposed to any mental pain. So, emotionally or mentally hurting somebody will not be hurt within the meaning of section 319. 'Causing disease' means communicating a disease to another person. 'Infirmity' means inability of an organ of the body to perform its normal function which may either be temporary or permanent. Punishments for voluntarily causing hurt in different situation have been described in sections 321 and 323 of the Penal Code. To differentiate ordinary hurt covered by sections 319, 321 and 323, from that of grievous hurt, the expression 'simple hurt' has come into popular use.

In the cases involving manslaughter or causing hurt (simple or grievous) to the human body, usually doctors are invited to ascertain the cause of death or the cause of injuries, the effect of injuries, the probable weapon used and the nature of injuries. Their opinions are called opinions of experts (section 45 of the Evidence Act). Medical evidence proves that the injuries could have been caused in the manner alleged and the grievous or simple hurt, as the case may be, have been caused by such injuries. Under section 23 of the Ain, 2000 even medical examination report can be admitted into evidence during trial without any oral testimony of the concern Doctor who has prepared the same. The expert report is an important piece of evidence and, when corroborated by other evidence, can be the basis of conviction. These are considered useful evidence by the courts as it is accepted that documentation of facts during the course of treatment of a patient is genuine and unbiased, but subject to proof. Only a physician or surgeon can give opinion as to the nature and effect of the injuries on body, manner or instrument by which such injuries were caused or whether the injury or wounds are simple, grievous or fatal in nature. An ordinary man should not allow to ascertain whether the injury caused is 'simple' or 'grievous' in nature inasmuch as general opinion perception may quite differ from legal meaning. It is wrong to say that the medical evidence is only opinion evidence, it is often direct evidence of the facts found upon

the victim's person (Smt. Majindra Bala Mehra vs. Sulil Chandra, AIR 1960 SC 706). Though medical evidence is not always direct evidence as to how an injury in question was done, but it denotes on how that, in all probabilities, was caused. The allegation as to who has caused the injury to the victim can be proved by oral evidence but the nature of such injury i.e whether the same is grievous or simple, can be proved by medical evidence.

In MM Ishak vs State and another (56 DLR, 2004 page 516) a complaint case was filed by the wife against her husband and another under section 11(Kka)/30 of the Ain, 2000 on the allegation that her husband and other accused on different dates demanded dowry from her, which she paid. The accused husband used to mentally and physically torture her for dowry and lastly on the date of occurrence the husband demanded dowry of Tk. three lac and as she expressed her inability to meet such demand, the husband continued torture on her as before. The wife was not examined by any doctor. Upon entrusted with investigation, the police submitted final report but the tribunal, upon examination of the materials on records took cognizance against the accused under the aforesaid sections of law. The accused challenged the proceeding under section 561A of the Cr.P.C. The High Court Division quashed the proceeding by observing as follows:

> "There is vague and unspecific allegation of torture. Mental or physical torture and causing hurt or injury are not the same act. The allegation of torture does not mean causing hurt. Thus the vague and unspecific allegation of torture made in the First Information Report does not attract an offence under section 11(Kha) of the Ain. So, the allegations made in the first information report, even if are taken as true, do not constitute an offence punishable under section 11(Kha) or 11(Kha)/30 of the Ain. "

In Umme Kulsum @ Zinat Ara vs Shahidul Islam and others [19 BLC (2014) 17] the wife lodged FIR with police station against her husband and others under sections 11(Kha)/30 of the Ain, 2000 on the allegation that the accused persons for demand of dowry caused her bodily hurt. The police, after investigation, submitted final report. The informant filed Naraji Petition and the tribunal, accepted the final report and rejected the Naraji Petition which has been challenged in appeal before the High Court Division. The High Court Division expressed the same view as has been taken by their Lordships in the case reported in 56 DLR 516.

In Md. Alamgir Matubbar vs. The State reported in 38 BLD 2018 page 422, the victim wife filed a case under section 11(Ga) of Nari-O-Shaishu Nirjatan Daman Ain against the husband and others on the allegation of torture her physically and mentally for demand of dowry who took treatment in Rajoir Hospital and during investigation, the police could not procure any injury certificate because she did not take treatment from government hospital. Police filed final report but the tribunal took cognizance against the husband and others under sections 11(Ga)/30 of the Ain, 2000. The husband challenged the order before this Division in appeal and a Division Bench of this Court set aside the order of the tribunal observing as follows:

> "we find no reason to disbelieve or ignore the final report in the absence of any medical document or any kind of reliable evidence in support of the alleged beating for demand of dowry. The process of law must not be used as an engine of harassment".

The above decisions and discussion suggest that, if the wife is allowed to proceed a case under sections 11(Ga)/30 of the Ain 2000 against the husband and his relations for the allegation of causing her **simple hurt** for dowry on the basis of only oral statements made in the

petition of complaint or FIR, as the case may be, supported by oral statements of the witnesses before the inquiry officer or investigation officer, without having at least a medical examination certificate in support of the alleged simple hurt that would give the wife an opportunity to use the special law, under which all offences are non-compoundable, non-bailable and cognizable, as a sword of unnecessary harassment to husband and his relations. It would not be out of context to say that, if the victim wife is unable to be examined by doctor, in any way, in support of her injury for demand of dowry and cannot file a case under section 11(Ga) of the Ain 2000 for want of injury certificate she would not be remedy less because of the fact that in such situation, she would be at liberty to lodge petition of complaint in the Court or an FIR before the police station, as the case may be, against the accused for the offence of demand of dowry under section 3 of Joutuk Nirodh Ain, 2018 (Act No. XXXIX of 2018) without having a medical examination certificate. It is to be mentioned here that an offence under section 3 is also a cognizable and non-bailable offence under section 7 of the said Ain, 2018 containing the provision of maximum punishment of five years under section 3 thereof whereas, the maximum punishment under section 11(Ga) of the Ain 2000 is three years only.

Now another question arises in which hospital the medical examination of the victim wife shall be done and from where a certificate of such medical examination shall be obtained ?

The answer has been laid down in section 32 of the Ain, 2000 which is quoted below:

> '' ৩২। অপরাধের শিকার ব্যক্তির মেডিক্যাল পরীক্ষা।
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> (১) এই আইনের অধীন সংঘটিত অপরাধের শিকার ব্যক্তির মেডিক্যাল পরীক্ষা সরকারী হাসপাতালে কিংবা সরকার কর্তৃক এতদুদ্দেশ্যে স্বীকৃত কোন বেসরকারী হাসপাতালে সম্পন্ন করা যাইবে।
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> (২) উপ-ধারা (১) এ উলেখিত কোন হাসপাতালে এই আইনের অধীন সংঘটিত অপরাধের শিকার ব্যক্তির চিকিৎসার জন্য উপস্থিত করা হইলে, উক্ত হাসপাতালের

কর্তব্যরত চিকিৎসক তাহার মেডিক্যাল পরীক্ষা অতিদ্রুত সম্পন্ন করিবে এবং উক্ত মেডিক্যাল পরীক্ষা সংক্রান্ড় একটি সার্টিফিকেট সংশিণ্টষ্ট ব্যক্তিকে প্রদান করিবে এবং এইরূপ অপরাধ সংঘটনের বিষয়টি স্থানীয় থানাকে অবহিত করিবে।

(৩) এই ধারার অধীন যুক্তিসঙ্গত সময়ের মধ্যে কোন মেডিক্যাল পরীক্ষা সম্পন্ন না করার ক্ষেত্রে, তৎসম্পর্কে ব্যাখ্যা সম্বলিত প্রতিবেদন পর্যালোচনার পর নিয়ন্ত্রণকারী কর্মকর্তা কিংবা, ক্ষেত্রমত, মেডিক্যাল পরীক্ষার আদেশ প্রদানকারী কর্তৃপক্ষ বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত কর্মকর্তা, ম্যাজিস্ট্রেট, ট্রাইব্যুনাল বা সংশিণ্টষ্ট অন্য কোন কর্তৃপক্ষ যদি এই সিদ্ধান্ড় উপনীত হন যে, যুক্তিসঙ্গত সময়ের মধ্যে মেডিক্যাল পরীক্ষা সম্পন্ন না হওয়ার জন্য সংশিণ্টষ্ট চিকিৎসকই দায়ী, তাহা হইলে উহা দায়ী ব্যক্তির অদক্ষতা বা অসদাচরণ বলিয়া বিবেচিত হইবে এবং এই অদক্ষতা ও অসদাচরণ তাহার বার্ষিক গোপনীয় প্রতিবেদনে লিপিবদ্ধ করা হইবে এবং উপযুক্ত ক্ষেত্রে চাকুরী বিধিমালা অনুযায়ী তাহার বিরুদ্ধে ব্যবস্থা গ্রহণ করা যাইবে, এবং সংশিষ্ট চিকিৎসকের বিরুদ্ধে কর্তব্যে অবহেলার জন্য তাহার নিয়োগকারী কর্তৃপক্ষ বা ক্ষেত্রমত, যথাযথ কর্তৃপক্ষ কর্তৃক ব্যবস্থা গ্রহণের জন্য ট্রাইব্যুনাল নির্দেশ দিতে পারিবে।"

The provisions under section 32 of Nari-O-Shishu Nirjatan Daman Ain, 2000 are clear and unambiguous. This section provides that the medical examination of the victim of the commission of offence under the Ain shall be done in the Government hospital or any other private hospital recognized by the Government for the purpose. The section also provides for quick medical examination of the victims and for providing medical examination certificate to the person concerned and for informing the local police station about the commission of offence. It also provides for punitive action against the medical officer or doctor guilty of negligence in doing medical examination within reasonable time. In a case under section 11 of the Ain , the wife is, obviously the victim of the offence under the Ain, 2000. Accordingly, she must take treatment for the injury allegedly caused by the accused from the hospital specified in section 32 of the Ain for *prima facie* proving the nature of such injury i.e whether the same is simple or grievous hurt. Since the Ain is a special law, there is no scope on the part of the victim of the offence covered by the Ain to receive any treatment from any

hospital other than the hospital specified in section 32 or use the medical examination certificate procured there from to prove the nature of injury.

Our considered view is that during taking cognizance or framing charge of an offence against an accused under section 11 (Ga) or 11(Ga)/30 of Nari-O-Shishu Nirjatan Daman Ain, 2000, apart from considering other prosecution materials, the tribunal must satisfy itself that the prosecution has fulfilled two criteria to establish it's case against the accused; Firstly, the victim wife, as per section 32 of the Ain, has been medically examined in the Government Hospital or in any private Hospital, recognized by the Government for that purpose regarding the injury caused by the accused and; Secondly, in support of such examination there is a medical examination certificate before the tribunal issued by the Medical officer on duty in the particular hospital showing therein that the victim wife has sign of **simple hurt** in her person. The tribunal shall not take cognizance or frame charge of an offence punishable under section 11 (Ga) or 11(Ga)/30 of the Ain, 2000 against an accused without having a medical examination certificate from Government Hospital or any private Hospital, recognized by the Government for that purpose in view of the provision under section 32 of the said Ain in supportof **simple hurt** of the victim wife.

Now, coming back to the instant case. Admittedly, the FIR has been lodged by the father of the alleged victim wife under sections 11(Ga)/30 of Nari-O-Shishu Nirjatan Daman Ain, 2000 against the husband (appellant No.1) and his three full brothers (appellants No. 2-4) on the allegation that on the date of occurrence the accused indiscriminately caused injury on different parts of the body of the victim wife with lathi and iron rod having failed to fulfill their demand of dowry and she had been treated in different clinics of Rajshahi. During investigation, the statements of five witnesses including the victim wife have been recorded by police under section 161 of the Cr.P.C. Except the

victim, the others are not eye witnesses of the occurrence but they heard about the incident from the victim. Three witnesses including the victim stated that she had been treated by local doctor. The police without procuring any certificate of medical examination of the victim or without examining any doctor submitted charge sheet against the appellants under sections 11(Ga)/30 of the Ain, 2000 on the basis of the oral statements of the witnesses. It appears that the appellants in their discharge application, amongst other defense plea, categorically stated that they caused no injury to the victim for demand of dowry and the victim had not been examined in any Government Hospital or any private Hospital recognized by the Government for the alleged injury and prayed for their discharge. Admittedly, during framing charge, there was no medical certificate before the tribunal in support of injury or treatment of the victim.

On perusal of the impugned order it appears that the tribunal without addressing the issue regarding medical examination of the victim under section 32 of the Ain, mechanically framed charge against the appellants under sections 11(Ga)/30 of the Ain. It appears that the prosecution could not establish a prima facie case against the accused appellants under the said sections of law from which it can be presumed that the accused appellants committed offence under sections 11(Ga)/30 of the Ain, 2000 so that the charge under the said section can be framed against them. In the facts and circumstances of the case, the tribunal ought to have held that, without examination of the victim wife in the Government hospital or any private hospital, recognized by the Government for that purpose, charge against the appellants could not be framed under sections 11)Ga)/30 of the Ain 2000 and accordingly, should have discharged the appellants. The tribunal without considering such aspect of the case most illegally framed charge against the appellants under sections 11(Ga)/30 of the Ain 2000. As such, the same is not sustainable under law.

During hearing of this appeal, learned Advocate for respondent No.1, informant produced some photostat copies of medical documents showing that the victim wife admitted into CDM Hospital, Rajshahi on 28.7.2014 and after receiving treatment, she was discharged from there on 30.7.2014 and the hospital authority issued discharge certificate and injury certificate and forwarded those to the concern police station. Learned Advocate submits that the IO, for the reasons best known to him, did not mention those facts in the charge sheet and accordingly, an opportunity should be given to the informant so that he could produce those medical documents to the trial Court for taking additional evidence. We have carefully perused the medical documents. Admittedly, those medical documents were issued by a private hospital having trade license issued by the city corporation and license for running private hospital issued by the Director General of Health Services. On perusal of those documents it appears that those are general licenses for running private hospital but are not the recognition of the Government for the purpose of medical examination of the victim of the commission of an offence under the Ain in view of the provision under section 32(1) of the Ain 2000. Those medical documents, being not obtained in accordance with law, would not help the prosecution to improve it's case. Accordingly, we are unable to accept the contention of the learned Advocate for respondent.

For the reasons stated above, we find merit in this appeal which should be allowed.

In the result, the appeal is allowed. The impugned order dated 31.1.2016 is set aside. The accused appellants are discharged from the allegation and released from their bail bonds.

As prayed, the learned Advocate for respondent No.1 is permitted to take back the original copy of Discharge Certificate (Annexure X-4 to the supplementary affidavit) by furnishing Photostat copy thereof.

Communicate a copy of this judgment to the Court concerned at once.

Jahangir Hossain, J.

I agree