

In The Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)

**PRESENT:**  
**MR. JUSTICE MD. SHOHROWARDI**

**CRIMINAL APPEAL NO. 12650 OF 2017.**

Md. Erfan Hossain Chowdhury  
..... Appellant.

-Versus-

The State and another  
..... Respondent.

Mr. M.A. Awal, Advocate, Advocate  
.....For the Appellant.

Mr. Md. Anichur Rahman Khan, D.A.G with  
Mr. Sultan Mahmood Banna, AAG with  
Mr. Mir Moniruzzaman, AAG with  
....for the State

**Heard on 25.06.2025 and 30.07.2025**

**Judgment on: 06.08.2025**

**MD. Shohrowardi, J.**

This appeal under section 28 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) is directed challenging the legality and propriety of the impugned judgment and order of conviction and sentence dated 27.08.2017 passed by Nari-O-Shishu Nirjatan Daman Tribunal-1, Chattogram in Nari-O-Shishu Case No. 496 of 2014 convicting the accused Md. Erfan Hossain Chowdhury under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentencing him thereunder to suffer rigorous imprisonment for 2 (two) years and fine of Tk. 10,000.

The prosecution's case, in short, is that the complainant Most. Fahmida Akter is the wife of the accused Md. Erfan Hossain Chowdhury. Their marriage was solemnized on 05.08.2010. At the time of marriage, the brother of the complainant gifted furniture of Tk. 450,000, gold, fridge, colour TV, and other materials to the accused and spend about Tk. 15,00,000. The accused Md. Nuru Mia is the father of the accused Md. Erfan Hossain Chowdhury and a retired peon of the postal department. The accused Erfan Hossain Chowdhury, is a salesman of a local shop. Her husband used to tell her to bring Tk. 1000,000 from her brother, who is residing in the UK. On 05.07.2012, she gave birth to a daughter, and her father paid the medical costs. Thereafter, the accused persons started torturing her and she informed the matter to her parents. Her father again paid Tk. 7,50,000 to the accused, and on 17.02.2013, he sold her gold ornaments. After that, he again requested her to bring Tk. 10,00,000 from her brother. On 29.11.2013, the accused told her to bring Tk. 10,00,000 from her brother Md. Foisal Chowdhury. When she refused to pay the said amount, the accused started an altercation and scolded her with filthy language, and having physically assaulted her, drove her out of his house. On the next day, she went to Chattogram Central Point Hospital for treatment.

After filing the complaint petition, the Nari-O-Shishu Nirjatan Daman Tribunal, Chattogram, passed an order for judicial inquiry. After completing the inquiry, the learned Magistrate found the truth of the allegation made against the

accused Md. Erfan Hossain Chowdhury and the learned tribunal took cognizance of the offence against him under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, and discharged co-accused Md. Noor Mia Chowdhury and Hosneara, who are the parents of the accused Md. Erfan Hossain Chowdhury.

During the trial, charge was framed against the accused under section 11( ga) of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), which was read over and explained to the accused, and he pleaded not guilty to the charge and claimed to be tried following the law. Prosecution examined 4 witnesses to prove the charge against the accused, and the defence cross-examined the prosecution witnesses. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and he submitted the documents and declined to adduce any DW. After concluding the trial, the trial court, by impugned judgment and order, convicted the accused and sentenced him as stated above, against which he filed the instant appeal.

P.W. 1 Fahmida Akhter Sonia is the complainant. She stated that the accused Md. Erfan Hossain Chowdhury is her husband, and their marriage was solemnized on 05.08.2010. Her family spends Tk. 15,00,000. The accused demanded dowry, and she paid Tk. 10,00,000 to the accused. On 05.07.2012, she gave birth to a daughter. After that, the accused persons again demanded dowry of Tk. 7,50,000. On 17.02.2013, he sold her gold ornaments. On 29.11.2013 at

9.00 pm, he again demanded dowry of Tk. 10,00,000. When she refused to pay the dowry, the accused physically assaulted her. After that, her mother-in-law also beat her. Her husband, having beaten her, had driven her out of his house. After that, she went to Chattogram Central Point Hospital for treatment. The local police station refused to register the FIR. A shalish took place. Thereafter, she filed complaint petition. He proved the complaint petition as exhibit-1 and her signature on the complaint petition as exhibit-1/1.

During cross-examination, she stated that the accused was a Dakhil examinee and she read up to class-X. The house of the accused is situated 01 kilometer away from the house of her parents. In 2013, the father of the accused performed the hajj. After 4/5 months of the occurrence, she filed the case. She could not remember the date when she went to the Thana. She did not submit copy of the complaint made to the police station. She filed the case on 24.04.2014. She admitted that there are many houses around the place of occurrence. Her father, uncle, sister, and the local dafader are the witnesses of the case. There is a hospital at Shakpura. Boyalkhali Health Complex is situated near her house. She admitted that on 29.11.2013, she did not go to the doctor. The doctor of Chattogram Central Point Hospital is a friend of her father. The doctor was not known to her before the occurrence. She denied the suggestion that the accused did not beat her for refusal to pay the dowry or that she did not take any treatment.

P.W. 2 Farid Ahmed is the father of the victim Hahmida Akhter Sonia. He stated that after marriage, he paid Tk. 10,00,000 as dowry to the accused. The accused used to torture his daughter. He is a patient with heart disease. On 29.11.2010 at 9/10 pm, the accused drove her daughter out of his house for refusing to pay the dowry. His daughter received treatment. The local police refused to register the case. The accused persons sold the gold ornaments of the complainant. During cross-examination, he stated that the house of the accused is situated 1 km away from his house. After 4/5 months, the case was filed. He denied the suggestion that Tk. 10,00,000 was not paid to the accused. He affirmed that he paid the money through a cheque, and if necessary, he would be able to show the proof. He denied the suggestion that he deposed falsely or that no occurrence took place as stated by him.

P.W. 3 Noor Box is the neighbour of the victim P.W. 1. He stated that the occurrence took place on 29.11.2013 at 9/12 pm in the house of the accused. At the time of the occurrence, the accused demanded Tk. 10,00,000 for business. On the next day in the morning, the father of the victim called him to their house and informed the matter. He witnessed the marks of injuries on the body of the victim. He is a local Dafader. During cross-examination, he admitted that he was not present at the time of the occurrence. His house is situated one and a half kilometers from the house of the accused. There are many houses around the house of the accused. His house is situated 200 yards from the house of

the victim. The local UP Member and Chairman are not the witnesses of the occurrence. He is not aware of the fact that the complainant divorced her husband. He did not make any statement to the Magistrate. He had a good relationship with the father of the victim since his boyhood. He denied the suggestion that on the date of the occurrence, the accused demanded Tk. 10,00,000, or that the accused inflicted injuries, is false.

P.W. 4 Abul Kalam stated that the occurrence took place on 29.11.2013 at 9/10 pm. At the time of the occurrence, the victim Fahmida Akhter Sonia was residing in the house of her husband. She informed that the accused demanded dowry of Tk. 10,00,000, and when she refused to pay the dowry, the accused beat her and drove her out of his house. During cross-examination, he admitted that the father of the accused is his cousin. He deposed to the Magistrate, but he could not remember the date. After about one and a half months, he made statement. He denied the suggestion that on 29.11.2013, the accused did not demand Tk. 10,00,000 as dowry, or that the victim was not beaten, or that he deposed falsely.

The learned Advocate Mr. M.A. Awal appearing on behalf of the appellant submits that the alleged occurrence took place on 29.11.2013 at 9/10 pm in the house of the accused and the complaint petition was filed on 24.04.2014 after about 5 months from the date of occurrence and no medical certificate as provided in section 32 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as mended in 2003) is

proved in the case. He further submits that although P.W. 1 stated that after the occurrence, she took treatment from the doctor of the Central Point Hospital, Chattogram but the said doctor was not examined in the case and the victim herself divorced the accused on 20.04.2016 and prosecution failed to prove the charge under section 11 (ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 ( as amended in 2003) by adducing legal evidence and the trial court without any medical evidence illegally convicted the accused. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned DAG Mr. Md. Anichur Rahman Khan, appearing on behalf of the state, submits that during the conjugal life of the accused and the complainant P.W.1, the accused received dowry amounting to Tk. 10,00,000 from the complainant, and on the date and time of the occurrence, the accused again demanded dowry of Tk. 10,00,000, and when she refused to pay the dowry, the accused, having beaten her, drove her out of his house. P.Ws 2 to 4 corroborated the evidence of P.W. 1 regarding the demand of dowry and the injuries caused by the accused. However, he conceded that the prosecution could not prove the MC of the victim.

I have considered the submission of the learned Advocate who appeared on behalf of the appellant and the learned DAG, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it reveals that no medical certificate of P.W. 1 Fahmida Akhter Sonia was proved in the case. To prove an offence under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), the medical certificate from a government hospital or any private recognized by the government for the purpose is required to be proved by the prosecution. In the instant case, the victim was not treated by any doctor of government hospital or any private hospital recognized by the government for this purpose. Although P.W. 1 stated that she went to the local Central Point Hospital for treatment, but admitted that the doctor of the Central Point Hospital is a close friend of her father. Furthermore, the medical certificate issued by the doctor of the Central Point Hospital was also not proved in the case.

In the absence of any medical certificate issued by the doctor of a government hospital or any private hospital recognized by the government for the purpose, it cannot be said that the prosecution proved the charge against the accused under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003). To prove an offence under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, the medical certificate issued by the doctor of a government hospital or any private hospital recognized by the government for the purpose is sine qua non. The prosecution failed to prove the charge against the accused under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, by adducing any medical certificate as required

under section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003).

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial court against the accused Md. Erfan Hossain Chowdhury is hereby set aside.

However, there will be no order as to costs.

Send down the lower court's record at once.