

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO.6653 OF 2019

Muslim Mollah

..... Appellant.

-Versus-

The State and another

..... Respondent.

Mr. M.A Shahid Chowdhury with

Mr. A.H.M. Kamruzzaman, Advocate

.....For the Appellant.

Ms. Syeda Shajia Sharmin, D.A.G. with

Mr. Md. Rejaul Islam, A.A.G.

Mr. Khan Mahfuzun Noor, A.A.G.

..... For the State.

**Heard on 07.01.2026, 19.01.2026 and
25.01.2026.**

Judgment on 26.01.2026.

This appeal is directed against the Judgment and order of conviction and sentence dated 29.05.2019, passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Brahmanbaria, in Nari-O-Shishu Nirjatan Daman Case No.180 of 2018, convicting the accused-appellant under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amendment in 2003) and sentencing him to suffer rigorous imprisonment for

2(two) years and to pay a fine of Tk.1,00,000/- in default to suffer simple imprisonment for 3(three) months more.

Prosecution case, in brief, is that the respondent No.2, being a complainant, filed a petition of complaint before the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Brahmanbaria, against the convict appellant, contending inter alia that on 12.03.2010, marriage between the complainant and accused appellant was solemnized according to Muslim Sharia and registered by the kabinnama. During their wedlock, they were blessed with one son and one daughter. On 21.05.2017, the appellant and all family members shifted to the U.S. On 06.12.2017, they returned home and began living in the appellant's village home with his family. Meanwhile, the convict appellant demanded Tk.60,00,000/- as dowry by selling the land of the complainant. The same being refused, the convict appellant and other accused persons started torturing and assaulting, causing injuries to her, and took her signature on a blank stamp paper and retaining her ornament and document, and trying to drive her, along with her children, out of the door. At the same time,

receiving information, some witnesses arrived at the place of the incident, rescued her, and took her to the hospital. The learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal No.1, Brahmanbaria, on perusal of the complaint, directed the District Female Affairs Officer to investigate the matter. Upon receipt of the report, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal No.1, Brahmanbaria, examining the complainant under Section 200 of the Code of Criminal Procedure, took cognizance of the offence against the appellant and others. Thus, the case was registered as Nari-O-Shishu Nirjatan Daman Case No. 180 of 2018.

The charge was framed against the appellant and others under Section 11(ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000, which was read over and explained to them; when they pleaded not guilty and claimed to be tried.

In the course of the trial, the prosecution examined five (5) witnesses while the defence examined none.

After the evidence was closed, the appellant was examined under Section 342 of the Code of Criminal Procedure, to which he again pleaded his innocence.

Subsequently, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Brahmanbaria, by the Judgment and order dated 29.05.2019, convicted the appellant under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced him to suffer rigorous imprisonment for 2(two) years and to pay a fine of Tk.1,00,000/- in default to suffer simple imprisonment for 3(three) months more..

Being aggrieved by and dissatisfied with the above Judgment and order of conviction and sentence, the accused appellant preferred the instant appeal.

Mr. M.A Shahid Chowdhury, the learned counsel appearing on behalf of the accused-appellant taking us through the impugned Judgment, evidences and other materials on record firmly submits that the learned Judge of the Tribunal did not consider the defence case at all, overlooking the facts of the case, the prosecution failed to produce medical report/injury report to prove the cause of injury to the victim and there is also scope

on the part of the accused to raise objection regarding genuineness of incident.

On the contrary, Mr. Khan Mahfuzun Noor, the learned Assistant Attorney General for the State, opposes the contention so made by the learned advocate for the accused-appellant and submits that the prosecution successfully proved the charge against the appellant by adducing and producing the oral and documentary evidence, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal was perfectly justified in convicting and sentencing the appellant based on the most cogent and reliable evidence.

We have carefully considered the submissions advanced by both parties and perused the impugned Judgment, evidence, and other materials on record.

In order to prove the charge, the prosecution examined as many as 5(five) witnesses. Of them, P.W.1-complainant-Safa Begum, in his examination-in-chief, deposed that she got married to the accused Muslim Molla in 2010. The occurrence took place on 06.01.2018 at 4:00 p.m. The accused demanded Tk.60,00,000/- as dowry from her, and on her refusal, the accused

appellant beat her indiscriminately and caused serious injuries. Upon hearing the information, the witnesses arrived at the place of the incident and rescued her and took her to the Brahmanbaria Sadar Hospital for treatment.

In the cross-examination by the defence, she denied the suggestion that the accused Muslim Mulla did not beat her for dowry.

P.W.2-Mohib Molla, a minor boy of the complainant and the appellant, deposed that his father is Muslim and his mother is Safa Begum. He could not remember the date of the occurrence. The accused, who is his father, beat his mother.

During cross-examination, this witness stated that his mother, who is the victim in the instant case, did not approach him to disclose the facts as he stated.

P.W.3-Billal Mia deposed that the informant victim is his daughter and that the accused Muslim is his son-in-law. The occurrence took place at the accused's house on 06.01.2018. The complainant told him over the telephone that the accused beat her for the dowry of Tk .60,000/-. Thereafter, he, along with one Zahir, went to

the accused's house. Then the accused demanded dowry and if the demanded dowry was not paid, he could not maintain the marriage. Thereafter, the victim was taken to a doctor for treatment.

During cross-examination, this witness denied the suggestion that he had not visited the accused's house.

P.W.4, Akter Hossain Rakib, deposed that the complainant is her sister. The incident occurred on 06.01.2018 at 4:00 p.m. He went to the accused's house when he came to know. The accused-appellant demanded Tk.60,00,000/- as dowry. When the complainant refused to pay the dowry, the accused, along with others, beat the victim. After the rescue, the victim was taken to the hospital for treatment.

During cross-examination, this witness denied the suggestion that the complainant instituted the instant case, although the accused appellant did not beat her for demanding dowry.

P.W.5-Zahir Mia deposed that he is the maternal uncle of the complainant. The occurrence took place at the house of the accused on 06.01.2018 at 4:00 p.m. After hearing about the incident, he went to the place of

the incident. In his presence, the accused assaulted the victim when she refused to pay the dowry. They rescued the victim. Thereafter, the victim was taken to the hospital for treatment.

In cross-examination, he denied the suggestion that the complainant and her father misappropriated Tk.40,00,000/-, and that the complainant instituted the instant case with untrue facts to avoid the said allegation.

These are all the pieces of evidence available on record.

On careful analysis of the above evidence on record, we find that there is consistency in the statements of the prosecution witnesses regarding the demand for dower and simple hurt caused by the appellant when the complainant refused to pay it. But, although the complainant claimed she was injured by the convict-appellant and received treatment in the hospital, no such injury report has been produced before the court or no physician/doctor came forward to the court to depose about the injury report, therefore, the main issue before us is whether in a case under Section 11(ga) of the Nari-

O-Shishu Nirjatan Daman Ain, 2000, the charge can be proved against the accused for causing simple hurt to the wife by her husband for demanding dowry and whether can be convicted thereunder without any injury certificate upon medical examination of the victim as per proviso so enumerated in section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 provides that any act of simple hurt to the wife by the husband or his parent, guardian, or any relative, or any other person on his behalf, is one of the main ingredients for constituting an offence 11(ga) of the Ain, 2000. In order to prove a charge against any accused under Section 11(ga) of the Ain, the prosecution must prove two ingredients, i.e., the accused (a) demanded dowry from the wife and (b) caused simple hurt to the wife on failure of such demand. If the prosecution fails to prove one of the said two ingredients by adducing evidence, an accused should be discharged from the charge under section 11(ga) of the Ain, 2000.

In this regard, the case of Md. Alamgir Matubbar vs the State, reported in 38 (BLD) 422, the victim-wife

instituted a case under section 11(ga) of Nari-O-Shaishu Nirjatan Daman Ain against the husband and others on the allegation of torturing her physically and mentally for the demand of dowry, who took treatment in Rajoir Hospital, and during the investigation, the investigating officer could not procure any injury certificate because the victim did not take treatment from a government hospital. The police submitted a 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 of taking cognizance before this Division in appeal, and a Division Bench of this Court set aside the order of the Tribunal, observing that:-

"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 the demand of dowry. The process of law must not be used as an engine of harassment".

Similarly, in the case of MM Ishak vs. State and another, reported in 56 DLR(HCD) 516, a complaint case

was instituted by the wife against her husband and another under section 11(ka)/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 the occurrence, the husband demanded dowry of Tk.3,00,000/-, and as she expressed her inability to meet such a demand, the husband continued to torture her as before. The wife was not examined by the doctor. Upon being entrusted with the investigation, the police submitted a final report, but the learned Judge of the Nari-o-shishu Nirjatan Daman Tribunal, upon examination of the materials on record, took cognizance of the offence against the accused under the aforesaid sections of the Ain, 2000. The accused challenged the proceedings under Section 561A of the Cr. P.C., and a Division Bench of this Division quashed the proceedings by observing that:-

"There is a 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 they are taken as true, do not constitute an offence punishable under section 11(kha) or 11(kha)/30 of the Ain."

Considering the above facts and circumstances, decisions and discussion it transpired that, if the wife is allowed to proceed a case under sections 11(ga)/30 of the Ain 2000 against her husband and his relations for the allegation of causing her simple hurt for dowry based on only oral statements made in the petition of complaint or First Information Report, 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 allow the wife 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 a doctor, in any way, due to the demand for dowry, a case under section 11(ga) of the Ain 2000 is not maintainable.

Further, Section 32 of Nari-O-Shishu Nirjatan Daman Ain, 2000 confers that medical examination of a victim of the commission of an offence under the Nari-O-Shishunirjatan Daman Ain, 2000 shall be done in the Government hospital or any other private hospital recognized by the Government for the purpose. The Section also provides for a quick medical examination of the victims, for issuing a medical examination certificate to the concerned person, and for informing the local police station of the commission of the offence. It also provides for punitive action against a medical officer or doctor guilty of negligence in conducting a medical examination within a 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 undergo treatment for the injury allegedly caused by the accused at the hospital specified in section 32 of the Ain,

for prima facie proving the nature of such injury, i.e., whether it 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 therefrom to prove the nature of the injury.

In the instant case, the complainant claimed that her husband-appellant demanded dowry of Tk.60,00,000/- and while she refused to pay it, her husband, i.e., the appellant, tortured and assaulted her, causing injuries to her. The prosecution, to prove the charge, examined as many as 5 witnesses without any injury certificate or doctor's report. On the contrary, on perusal of the record, it appears that the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal No.1 without addressing the issue regarding medical examination of the victim under Section 32 of the Ain, 2000, mechanically framed the charge against the appellants under Section 11(ga) of the Ain and convicted, the appellant thereunder, which is not supported by law. So, the findings of the learned Trial Judge do not deserve

the merit of approval of this court, having regard to the infirmities and illegalities vitiating them and the patent errors apparent on the face of the record, resulting in a serious and great miscarriage of Justice in convicting the appellant.

On assessing evidence, materials on record and rummaging fact and circumstances of the case and embarking a survey on the legal debate involved in the case, we are of this considered view that the prosecution failed to connect the convict-appellant in commission of offence under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 beyond any shadow of doubt and convict appellant is required to be liberated of the charge and be acquitted on the concept of Criminal Jurisprudence on finding him not guilty of the charge staged against him. Thus, the appeal has substance, and the impugned Judgment and order are liable to be set aside.

Resultantly, the appeal is allowed.

The impugned Judgment and order of conviction and sentence dated 29.05.2019, passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1,

Brahmanbaria, in Nari-O-Shishu Nirjatan Daman Case No.180 of 2018 arising out of Nari-O-Shishu Petition Case No.70 of 2018, is hereby affirmed.

Let the appellant be released from the bail bond furnished by him and send down the lower court records at once, along with a copy of the Judgment.

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(Md. Salim, J).