

**IN THE SUPREME COURT OF  
BANGLADESH  
HIGH COURT DIVISION  
(Criminal Appellate Jurisdiction)**

**PRESENT:**

**MR. JUSTICE MD. SHOHROWARDI  
CRIMINAL APPEAL NO. 8323 OF 2020.**

Md. Rezaul Karim

..... Appellant.

-Versus-

The State

..... Respondent.

Ms. Jannatul Ferdushi(Rupa), Advocate with

Mr. Md. Asadur Rahman, Advocate with

Ms. Yeshita Parvin, Advocate with

Mr. Muhammad Nurul Kabir, Advocate

.....For the Appellant.

Mr. Md. Akhtaruzzaman, D.A.G. with

Mr. Sultan Mahmood Banna, AAG with

Mr. Mir Moniruzzaman, AAG

....for the State

Heard on 05.02.2025, 30.04.2025, 08.05.2025

**Judgment delivered on 14.05.2025**

**MD. Shohrowardi, J.**

This appeal under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) is directed against the impugned judgment and order of conviction and sentenced dated 02.11.2020 passed by Sessions Judge and Nari-O-Shishu Nirjatan Daman Tribunal No. 2, Sirajganj in Nari-O-Shishu Case No. 755

of 2018 arising out of Petition Case No. 632 of 2016 convicting the accused 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 3(three) years and fine of Tk. 20,000, in default, to suffer rigorous imprisonment for 01(one) month more.

The prosecution's case, in short, is that the complainant Most. Rokeya Khatun is the wife of the accused Md Rezaul Karim and P.W. 2 Nusrat Jahan Asha and P.W. 3 Most. Lubna Jahan Mithila are the daughters of the complainant and the accused. Both the complainant and the accused were teachers of the Government Primary School before their marriage. The accused No. 2 Md. Sohel Rana is the brother of the accused No. 1 and accused No. 3 Most. Anwara Beoa is the mother of the accused No. 1 Md. Rezaul Karim. After marriage, they demanded dowry on different pretexts. The father of the complainant, on different occasions, satisfied the demands of the accused persons. On the last date of occurrence on 26.05.2016 on the ill advice of the accused Nos. 2 and 3, the accused Md. Rezaul Karim demanded Tk. 500,000(five lac) as dowry. When she refused to pay the dowry, the accused persons became infuriated with her and having beaten drove her out of the house along with her daughters. After that, she took shelter in the house of her father along with her daughters and disclosed the matter to her parents and witnesses. Due to injuries sustained by her at the time of the occurrence, she took treatment in Sirajganj Hospital and went to the concerned police station to lodge the FIR, but the police refused to register the FIR. Consequently, she filed the complaint petition on 16.07.2016.

After filing the complaint petition, the Nari-O-Shishu Nirjatan Daman Tribunal, Sirajganj sent the complaint petition to Md. Mainul Hasan, Upazila Education Officer, Kazipur, Sirajganj for inquiry and after inquiry, he submitted a report on 20.06.2016 stating that no occurrence took place as stated by the complainant. After that, the complainant filed a naraji on 16.07.2016 and considering the naraji and the said inquiry report, the tribunal by order dated 16.07.2016 took cognizance of the offence against the accused Md. Rezaul Karim and discharged the accused Nos. 2 and 3.

During the trial, charge was framed against the accused under section 11(ga) of Nari-O-Shishu Nirjatan Daman Ain, 2000 which was read over and explained to the accused present in court and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 6 witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898 and he examined 1 D.W. After concluding the trial, the trial court by impugned judgment and order convicted the accused under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced him thereunder as stated above against which he filed the instant appeal.

P.W. 1 Most. Rokeya Khatun is the complainant. She stated that the occurrence took place on 26.05.2016 at 9.00 am in the house of the accused. The accused Md. Rezaul Karim is her husband. During their conjugal life, she gave birth to two daughters. On the date of occurrence, the accused having beaten her for dowry driven her out of his house along with her daughters. Thereafter, she came back to the house of her father

along with her daughters and informed about the occurrence to the witnesses and she went to Sirajganj for treatment. She went to Thana to lodge the FIR, but the police did not record the FIR. Consequently, she filed the case in the Tribunal. She proved the complaint petition as Exhibit-1 and her signatures as exhibits-1/1, 1(Ka)/1. On 26.05.2016 was holiday for which she went to her husband. She took treatment from outdoor of the Hospital. She was beaten at 9.00 am. During cross-examination, she stated that after the occurrence, she stayed 5/10 minutes in the house of her husband. The house of her husband is situated 3 km away from the house of her father. She came back to the house of her father by an auto rickshaw, but there was no passenger in the auto. Khokon and many other people are neighbours of her father. The health complex is situated 2/1 km away from the house of her father. From the house of her father, she went to Sirajganj at 2 pm. She did not go to Upazilla Hospital. She admitted that in the medical certificate, there is no name or seal of any Hospital. The outdoor ticket was kept in the Hospital. She also filed a case under sections 5/6 of the Muslim Family Law Ordinance. In the complaint petition, it has not been mentioned that the accused beat her for dowry. The date of occurrence of both cases is 26.05.2016. She is not aware of the inquiry report submitted by the Upazila Education Officer. She admitted that at the time of the occurrence, she discharged her duty in the UP Election. She did not inform about the occurrence to the presiding officer. The election took place on 28.05.2016 and in the evening, she went to the election center. She also admitted that she did not inform about the occurrence to the neighbours of the accused. Witness Khokon Mia is her cousin, Shathi Khatun is the wife of her brother, Shah Alam is her nephew and Aleya is also the wife of

her brother. The lady doctor examined her. She is not aware whether before the occurrence, the accused divorced her. She denied the suggestion that before the occurrence, the accused divorced her, or on the date of the occurrence, she was not present in the house of her husband. Before the occurrence, the accused remarried her. She denied the suggestion that to divorce the second wife of the accused, she filed the case. She denied the suggestion that the accused did not beat her due to dowry. She heard that on 04.3.2015, the accused divorced her. She is not aware whether the accused filed GD Nos. 472 and 500 on 15.1.2010 and 15.05.2015 respectively. She admitted that her father Rustom Ali is alive, but he was not cited as a witness in the case. She denied the suggestion that on 20.06.2016, she was not present at the house of her husband or that she deposed falsely.

P.W. 2 Most. Nusrat Jahan Asha is the daughter of the complainant and the accused. She stated that on 26.05.2016 at 9.00 am the occurrence took place in the house of her father. She and Lubnba Jahan Mithila are the daughters of the accused and the complainant. The accused used to torture her mother for dowry. On the date of occurrence, the accused having beaten her mother driven her out of their house and they took shelter in the house of their maternal grandfather. Her mother disclosed about the occurrence to the witnesses. She received treatment at Sadar Hospital. During cross-examination, she admitted that her mother and father are the teachers of the Government Primary School. Her mother used to live in the house of her father and sometimes she used to go to the house of her grandfather. She along with her sister used to reside in the house of her father and maternal grandfather. The house of her maternal grandfather is situated at Kazipur Pourashava and she is a student of Kazipur Rani

Dinomani Bahumukhi High School situated in the said Pourashava. Her sister was also a student of the School situated in Kazipur Pourashava. She denied the suggestion that after marriage, her mother used to live in the house of her maternal grandfather and occasionally she visited the house of her father. On the date of the occurrence, she did not go to her school. She is not aware whether her mother took leave on the date of the occurrence. Before the occurrence, she participated in the HSC examination for which she did not go to school. There is a government hospital and a private clinic beside the house of her maternal grandfather. She denied the suggestion that after their birth, due to misunderstanding between her father and mother, her mother used to live in the house of her maternal grandfather, or that she and her mother did not reside in the house of her father or that before the occurrence, her father divorced her mother for which her mother filed a false case or that she deposed falsely against her father. In reply to a question by the court, she affirmed that on the date and time of occurrence, she along with her sister was present at the place of occurrence and in their presence her father beat her mother for dowry. On recall, she stated that except the occurrence, her father also used to torture her mother but no case was filed regarding those occurrences. She admitted that during her childhood, her father used to come to the house of her maternal grandfather. The house of her father is situated 3km away from the house of her maternal grandfather.

P.W. 3 Most. Lubna Jahan Mithila is the daughter of the complainant and the accused. She stated that the occurrence took place on 26.05.2016 at 9.00 am in the house of the accused No. 1. She and her sister Nusrat Jahan are the daughters of the accused and the complainant. The accused Md. Rezaul Karim used to

torture her mother for dowry. On the date and time of occurrence, the accused Reaul Karim having beaten her mother for dowry driven her out from his house along with them. Her mother came back to the house of her grandfather and disclosed the matter to the witnesses. Her mother received treatment from Sadar Hospital. She did not say to the I.O. that her father had beaten her mother for dowry. Before one day of the occurrence, she along with her mother and sister went to the house of her father. Before 2/3 days of the occurrence, they went to the house of her maternal grandfather. She used to stay in the house of her father and occasionally she used to visit the house of their maternal grandfather. Her school was located at the same distance from the houses of her father and maternal grandfather. She denied the suggestion that her school was situated 6 miles away from the house of her father and house of her maternal grandfather is situated  $\frac{1}{4}$  km from the house of her father. Her parents are the teachers of the Primary School. The house of her maternal grandfather is situated at Kazipur Pourashava and she is a student of Kazipur Moon Light Kindergarten and High School situated in the Pourashava. On the date of occurrence, she did not go to school. She denied the suggestion that after the marriage of their parents, she used to stay in the house of her maternal grandfather. On the date of the occurrence, her mother did not go to the school. She is not aware whether on the date of occurrence, her mother took leave from the school. She admitted that the Government Hospital and other private clinics are situated beside the house of her maternal grandfather. Before the day of the occurrence, she along with her mother and sister went to the house of her father. She denied the suggestion that her mother used to live with them in the house of her maternal grandfather or before the occurrence,

her father divorced her mother for which she filed a false case. She also denied the suggestion that since she resides along with her mother in the house of her maternal grandfather, she deposed falsely. In reply to a question by the court, she stated that on the date and time of the occurrence she along with her sister was present in the house of her father and in her presence her father beat her mother for dowry. She admitted that the house of her father is situated 3 km away from the house of her maternal grandfather. She refused to stay with her father. She affirmed that her father had beaten her mother many times, but she could not say the date of the beating. She denied the suggestion that on the date and time of the occurrence, she and her mother were not present in the house of her father or that on the date of the occurrence, she was present at her school.

P.W. 4 Bithi Khatun stated that she is the wife of the brother of the complainant. The occurrence took place on 26.05.2016 in the house of the accused Md. Rezaul Karim who is the husband of the complainant. During their marital life, the accused used to torture for dowry and the complainant came back to the house of her father and informed about the occurrence. The complainant received treatment. During cross-examination, she stated that the house of the accused is situated one and a half km away from the house of her father. She denied the suggestion that before the occurrence, the complainant used to reside in the house of her father. She admitted that the Hospital is situated adjacent to their house, but the complainant did not go to that Hospital. She heard that the complainant received treatment from Sirajganj. She affirmed that she heard that the accused divorced the complainant, but she could not say the date. She replied that she is not aware of the date of the divorce. She denied the suggestion that at the time



of the occurrence, the complainant was not residing at the house of her father, or that the accused did not beat the complainant for dowry.

P.W. 5 Md. Khokon Mia stated that the complainant is her cousin. The occurrence took place on 26.05.2016 in the house of accused Rezaul Karim. On the date of occurrence, he was present in the house of the father of the complainant. On that day, the complainant came back to the house of her father at 10.00 am and started crying. She disclosed that her husband had driven her out of his house for dowry. During cross-examination, he stated that on the date of the occurrence, he repaired the building of the father of the complainant. Three workers were repairing the building. He, Moazzam, and Aminul were the workers. His house was situated 3 km away from the house of the accused. The school of the complainant was situated 5/6 km away from the house of her father. He denied the suggestion that many days before the occurrence, the accused had divorced the complainant and she lodged a false case against the accused, or that the accused did not cause any injury to the complainant for dowry.

P.W. 6 Md. Shah Alam stated that he is the nephew of the complainant. The occurrence took place on 26.05.2016 in the house of the accused. On that day at 10.00 am, the complainant called him and informed him that her husband had beaten her for dowry. He heard that the victim received treatment from Sirajganj. During cross-examination, he stated that the house of her grandfather is situated at Dhunot, Bogura, but he has no house at Dhunot, Bogura. He is residing at the present address at Beripotal Charpara, Kazipur. He denied the suggestion that he resides in his house at Dhunot, or that the Hospital is situated beside the house of the father of the complainant, or that the

accused divorced the complainant for which she filed a false case against the accused. He also denied the suggestion that at the time of the occurrence, the complainant did not reside in the house of the accused.

D.W. 1 Md. Mainul Hasan is the Upazila Education Officer, Singra, Natore. He stated that while he was posted at Kazipur, Sirajganj as Upazila Education Officer, he conducted an inquiry following the order of the Tribunal. After the inquiry, he submitted a report on 20.06.2016. He proved the inquiry report as exhibit-Ka and his signature on the report as exhibit-Ka/1. During cross-examination, he affirmed that the complainant and the accused are teachers of the Government Primary School. The complainant filed the case for demanding dowry and causing injury and the tribunal directed him to conduct an inquiry. Following the order of the Tribunal, he conducted the inquiry and submitted a report.

The learned Advocate Mr. Md. Asadur Rahman appearing on behalf of the appellant Md. Rezaul Karim along with learned Advocate Mr. Muhammad Nurul Kabir submits that the complainant was the wife of the accused Md. Rezaul Karim and before the date of occurrence, the accused divorced her on 04.03.2016 and at the time of occurrence on 26.05.2016 the complainant was residing in the house of her father at Kazipur Pourashava situated 3 km away from the house of the accused and no medical certificate mentioned in section 32 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) was proved by the prosecution. He further submits that the alleged occurrence took place in the house of the accused but none of the neighbours of the accused was examined in the case and the workers Moazzem and Aminul who were working to repair the house of

the father of the complainant on the alleged date of the occurrence were not examined in the case. He also submits that at the relevant time, P.Ws. 2 and 3 were residing along with the complainant in the house of her father and due to undue influence and coercion of P.W. 1 upon P.Ws. 2 and 3, they deposed falsely against the accused. He lastly submits that the prosecution only examined the interested and inimical witnesses and withheld the neutral witnesses for which an adverse presumption should be drawn against prosecution under section 114(g) of the Evidence Act for non-examination of the neutral, independent and credible witnesses. Having drawn the attention of this court to the inquiry report conducted by the D.W. 1, Upazila Education Officer, Kazipur he submits that during the inquiry, D.W. 1 found that no occurrence stated by P.W. 1 took place and the trial court without considering the inquiry report (exhibit-Ka) passed the impugned judgment and order illegally convicting the accused. He prayed for setting aside the impugned judgment and order passed by the trial court.

The learned Deputy Attorney General Mr. Md. Aktaruzzaman appearing on behalf of the state submits that the evidence of P.W. 1 is corroborated by P.Ws. 2 and 3 who are also daughters of the accused and P.Ws. 4 to 6 heard about the occurrence from P.W. 1. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial court on correct assessment and evaluation of the evidence passed the impugned judgment. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Asadur Rahman who appeared on behalf of the appellant and the learned Deputy Attorney General Mr. Md. Akhtaruzzaman who appeared on behalf of the state, perused the

evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it appears that the complainant P.W. 1 Rokeya Khatun was the wife of the accused Md. Rezaul Karim. P.W. 2 Most. Nusrat Jahan Asha and P.W. 3 Lubna Jahan Mithila are the daughters of accused Md Rezaul Karim and complainant Rukeya Khatun. D.W. 1. Md. Mainul Hasan, Upazila Education Officer, Kazipur stated that both the accused Md. Rezaul Karim and the complainant Rukeya Khatun are the teachers of Government Primary School.

It appears that after filing the complaint petition, the Nari-O-Shishu Nirjatan Daman Tribunal, Sirajganj by order dated 30.05.2016 sent the case to Md. Mainul Hasan, Upazila Education Officer, Kazipur for inquiry and after inquiry, he submitted a report on 20.06.2016 (exhibit-Ka) stating that no occurrence took place as stated in the complaint petition. The prosecution did not examine him. The defence examined him as DW. 1. The prosecution also did not cross-examine D.W.1 regarding the inquiry report (Exhibit Ka) submitted by him. P.W. 1 stated that after the occurrence she came back to the house of her father and disclosed the occurrence to her father Md Rustom Ali, but he was not cited as a witness in the complaint petition.

The Medical Officer, General Hospital, Sirajganj is cited as a witness in the complaint petition, but the name of the doctor was not mentioned in the complaint petition. No doctor was examined by the prosecution to prove that the victim received treatment from the government hospital or any private hospital recognized by the government. At the time of enactment of the Nari-O-Shishu Nirjatan Daman Ain, 2000 no provision was made regarding the treatment of the victim from any government

hospital or any private hospital recognized by the government for that purpose. To prevent the abuse of law, the legislature inserted section 32 in the Nari-O-Shishu Nirjatan Daman Ain, 2000 by substituting former section 32 in the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) by Act No. XXX of 2003. The Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) is a special law. Therefore, the compliance with the provision made in section 32 of the said Act is sine qua non. The prosecution neither proved any medical certificate nor examined any doctor of the government hospital or a private hospital recognized by the government for that purpose. Therefore, the prosecution failed to prove that the accused caused injury to P.W. 1 for dowry or for refusal to pay the dowry.

P.Ws. 2 and 3 are the daughters of the complainant and the accused. They admitted that the house of their maternal grandfather is situated within Kazipur Pourashava, Sirajganj and their school is also situated within the Kazipur Pourashava. Admittedly, the house of the accused Md. Rezaul Karim was situated 3 km away from the house of the father of the complainant. P.Ws 2 and 3 stated that one day before the occurrence, they went to the house of the accused along with their mother which is not corroborated by P.W. 1. During cross-examination, P.W. 1 stated that 26.05.2016 was government holiday. P.W. 5 Khokon Mia, cousin of the complainant, stated that on 26.05.2016 was Thursday. On scrutiny of the evidence of P.Ws 1, 2, and 3, it appears that they used to reside in the house of the father of P.W.1. Nothing has been stated by P.W. 1 that one day before the occurrence, she went to the house of the accused. During cross-examination, P.W. 1 admitted that she heard that on 04.03.2015, the accused divorced her. Be that as it may, the

presence of P.W. 1 on 26.05.2015 in the house of the accused after her divorce is doubtful.

A suggestion was given to P.W. 1 that the accused lodged GD Nos. 472 and 500 on 15.01.2010 and 15.05.2015 respectively against her which is not denied by P.W. 1. The evidence discussed hereinabove reveals that there was a bitter relationship between the accused and the complainant before the divorce took place on 04.03.2015. It is admitted by P.Ws 2 and 3 that they used to reside along with P.W.1 Rukeya Khatun. At the time of the occurrence, there was no marital relation between the accused and the complainant. Therefore, the statement made by P.Ws 2 and 3 that one day before the occurrence, they went along with P.W.1 to the house of the accused is doubtful.

On perusal of the evidence of the prosecution witnesses, it further reveals that there is a government hospital near the house of the father of the complainant, but no treatment was taken by the victim from that hospital. P.Ws. 2 and 3 stated that their school is situated 3 km away from the house of their father which indicates that P.Ws. 2 and 3 used to reside in the house of their maternal grandfather for convenience of going to their school situated in Kazipur Pourashava near the house of their maternal grandfather. The alleged occurrence took place on 26.05.2016 at 9.00 am in the house of the accused situated at village Borungi but none of the neighbours of the accused were examined in the case. Md. Mainul Hasan, Upazila Education Officer, Kazipur who conducted enquiry by the order of court, two workers Moazzem and Aminul who were admittedly present at the house of the father of the complainant were not examined by the prosecution. I am of the view that the prosecution only examined the interested witnesses who were close to the complainant P.W. 1 and withheld

Md. Mainul Hasan, workers Moazzam and Aminul. Without corroboration of the independent, reliable, and trustworthy witness the evidence of interested witnesses cannot be relied on by the court to find the accused guilty of the offence. In the absence of any medical certificate issued by a doctor of a government hospital or any private hospital recognized by the government for that purpose as mentioned in section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003), it cannot be said that the prosecution proved the charge under section 11(ga) of the said Act.

Because of the above evidence, findings, observation and the proposition, I am of the view that the trial court failed to consider the provision made in section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) and in the absence of medical certificate of the victim issued by a government hospital or any private hospital recognized by the government for that purpose illegally convicted the accused under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003). The prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial court against the accused Md. Rezaul Karim is hereby set aside.

However, there will be no order as to costs.

Send down the lower court's record at once.

AB.O Hasan  
4503