

**Present:**

Mr. Justice Md. Salim

**CRIMINAL APPEAL NO.7167 OF 2022**

Md. Jakirul Kayes @ Soeb  
.....Appellant.

-Versus-  
The State

.....Respondent.

Mr. M.A Mannan Khan with  
Mr. Md. Delowar Hossain Khan, 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 02.02.2026, 02.03.2026,  
03.03.2026 and 12.03.2026.**

**Judgment on: 12.03.2026.**

This appeal is directed against the Judgment and order of conviction and sentence dated 04.07.2022 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.2, Kishoreganj, in Nari-O-Shishu Nirjatan Case No.62 of 2008, arising out of G.R. No.13(2) of 2008, corresponding to Pakundia Police Station Case No.01, dated 06.01.2008 convicting the appellant under section 11(ga) of Nari-o-Shishu Nirjatan Daman Ain,

2000, and sentencing him to suffer rigorous imprisonment for 1(one) year with a fine of Tk. 5,000/-.

The prosecution case, in brief, is that P.W.1, Nurjahan Begum, as complainant, brought a complaint before the Nari-O-Shishu Nirjatan Daman Tribunal, Kishoreganj, against the convict-appellant, contending, inter alia, that on 02.11.2007, her daughter, named Mahmuda Amatullah @ Farhana, married the accused Md. Jakerul Kayes @ Soeb. After marriage, her daughter, Mahmuda Amatullah @ Farhana, was living at the accused, Jakirul Kayes @ Soeb's house. On 11.12.2007 at about 10:00 pm, the accused Jakerul Kayes demanded Tk.5,00,000/- and asked her daughter to fetch the amount from her mother as dower, and the same being refused by her daughter, the accused Munni Begum grabbed the victim by her hair and threw her to the ground, and the accused Jakerul Kayes beat the victim with his feet and hands, and held her throat with his foot, causing injury. On the evening of 12.12.2007, she came to know about the incident from witness Jakirul Islam. Then she went to the house of the accused appellant and, after rescuing the victim, took her to the

hospital and admitted her for treatment, and the victim was under treatment till 20.12.2007.

Upon receiving the complaint, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No. 2, Kishoreganj, examined the complainant under Section 200 of the Code of Criminal Procedure and directed the Officer-in-Charge, Pakundia, Kishoreganj, to investigate the same, and subsequently the complainant was registered as Pakundia Police Station Case No. 1 dated 06.01.2008

The Police investigated the case and, after investigation, submitted the charge sheet under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, and against the charge sheet, the informant filed a Naraji Petition with a prayer for taking cognizance of the case under section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain. Subsequently, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal allowed the Naraji Petition and took cognizance of the case under section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain against the appellant and others.

The learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Kishoreganj, framed the charge against the appellant under Section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, which was read over and explained to him, who then pleaded not guilty and claimed to be tried.

In the course of the trial, the prosecution examined 12(twelve) witnesses while the defense examined none.

After the evidence was closed, this 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.2, Kishoreganj, by the Judgment and order dated 04.07.2022, found the appellant guilty under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, and convicted him thereunder and sentenced him to suffer rigorous imprisonment for 1 (one) year with a fine of Tk.5,000/-.

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 Mannan Khan, the learned Counsel appearing on behalf of the appellant, taking us through the impugned Judgment, evidence, and other materials on record, submits that the learned Judge of the Tribunal did not consider the defense case at all, overlooking the fact that the witnesses have not corroborated the allegation against the appellant, the prosecution failed to prove the cause of the victim's injury by adducing a valid injury certificate, the doctor having issued the incorrect injury certificate committed professional misconduct as a public servant. The learned Judge of the Tribunal has failed to consider that, save and except the P.W.2-victim, all the witnesses are hearsay witnesses who have contradicted each other. Therefore, the appellant is liable to be discharged from the charge levelled against him.

On the contrary, Ms. Syeda Shajia Sharmin, the learned Deputy Attorney General for the State, opposes the contention so made by the learned advocate for the appellant and submits that the prosecution successfully proved the charge against the appellant by adducing and producing the oral and material evidence. She then

submits that the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal has perfectly and justifiedly convicted and sentenced the appellant based on the most cogent and reliable evidence.

We have heard the learned advocate for the appellant and the learned Deputy Attorney General for the state, and have gone through the impugned Judgment, the evidence, and other materials on record.

In order to prove the charge, the prosecution examined as many as 12(twelve) witnesses. Of them, P.W.1-informant-Nur Jahan Begum, in her examination-in-chief, stated that the occurrence took place on 30.12.2007 at 10:00pm. The accused Jakerul demanded Tk.5,00,000/- and asked her daughter to fetch the amount from her mother as dower, and the same being refused by her daughter, the accused Munni Begum grabbed the victim by her hair and threw her to the ground, and the accused Jakerul beat the victim with his feet and hands, and held her throat with his foot, causing injury. On the evening of 12.12.2007, she came to know about the incident from witness Jakirul Islam. Then she went to the house of the accused appellant

and, after rescuing the victim, took her to the hospital and admitted her for treatment, and she was under treatment till 20.12.2007.

In the cross-examination, this witness stated she did not know that the accused divorced the victim on 06.12.2007. She denied the suggestion that the accused did not demand the dowry.

P.W.2- Mahmuda Farjana, the victim of the instant case, deposed that the informant is her mother. The occurrence took place on 11.12.2007 at 10:00 pm. The accused Jakerul demanded Tk.5,00,000/- as dower, and the same being refused by her, the accused Munni Begum grabbed her by her hair and threw her to the ground, and the accused Jakerul beat her with his feet and hands, and held her throat with his foot, causing injury. On the evening of 12.12.2007, the informant came to know of the incident from witness Jakirul Islam. Then she came to the house of the accused Jakerul and, after rescuing her, took her to the hospital and admitted her for treatment, and she was under treatment till 20.12.2007.

In the cross-examination, she denied the suggestion that she had never gone to her husband's house. She does not know that her Talaq has been held.

P.W.3- Sirajul Islam deposed that the informant is his sister. He came to know from the informant that the accused Jakerul tortured her daughter for dowry, and for this reason, the victim was taken to the hospital for treatment.

In cross-examination, this witness stated that he did not give any statements to the investigating officer.

P.W.4- Md. Abdul Awlad deposed that the occurrence took place on 30.12.2007 at 10:00 pm. The day after the occurrence, he came to know about it from Jakirul Islam. Thereafter, he went to the victim's house and saw that the victim was very sick. Upon asking, the victim told him that the accused Jakerul assaulted her for the dowry of Tk.5,00,000/-.

In cross-examination, this witness stated that he did not give any statements to the investigating officer.

P.W.5-Kazi Halima Kawser, sister of the informant, deposed that the occurrence took place on 30.12.2007 at 10:00 pm. She came to know that the accused, Jakerul,

demanded a dowry of Tk.5,00,000/- to the victim, and on refusal of payment of the dowery by her, the accused Jakerul beat the victim with his feet, hands, and held the victim's throat with his foot, causing injury.

In cross-examination, this witness stated that she did not see the occurrence.

P.W.6 - Rabeya Khatun, sister of the informant, deposed that the occurrence took place on 30.12.2007 at 10:00 pm. The accused, Jakerul, demanded a dowry of Tk.5,00,000/- to the victim, and on refusal of payment of the dowery, the accused Jakerul beat the victim. Thereafter, the victim was taken to the hospital for treatment.

In cross-examination, this witness stated that she did not see the occurrence.

P.W.7- S.M. Khadimuzzaman deposed that the occurrence took place on 11.12.2007 in the evening. On the date of occurrence, the accused Jakerul Kayes held the victim's throat with his foot, then accused Munni Begum grabbed the victim by her hair, and accused Nurunnahar gave her a blow with a stick. Accused persons beat the victim for the dowry of TK.5,00,000/-.

In cross-examination, this witness stated that he did not see the occurrence.

P.W.8- Md. Gias Uddin deposed that the occurrence took place on 30.12.2007 at 10:00 pm. On the day after the occurrence, he came to know that the victim was assaulted by the accused for refusing to pay the dower money.

In cross-examination, this witness stated that he did not see the occurrence.

P.W.9- Md. Mohsin deposed that the informant is his sister. The occurrence took place on 30.12.2007 at 11:00/11:30 pm. He came to know from the informant that the victim was assaulted by the accused for refusing to pay the dower money.

In cross-examination, this witness denied the suggestion that he had made false statements.

P.W.10-Jakir Hossain deposed that the occurrence took place on 30.12.2007 at 10:00 pm. The day after the incident, the informant went to his house. Thereafter, the informant, along with him, went to the accused Jakerul's house. Thereafter, the victim was taken to the hospital.

During cross-examination, this witness admitted that his house is three kilometres away from the accused's house.

P.W.11- Mojibur Rahman, Investigating Officer of the instant case, a formal witness, deposed that, in the course of the investigation, he visited the place of occurrence and prepared a sketch map with an index. He identified the sketch map marked as exhibit-2/1, the index marked as exhibit, and his signature thereof marked as exhibit-3/1.

P.W.12- Doctor Md. Shafiul Alam deposed that on 12.12.2007 at 9:30 pm, he gave treatment to the victim and found the following injuries:-

(1) Multiple blunt trauma to different parts of the body measuring about  $\frac{1}{2}$  X  $\frac{1}{2}$  inch.

(2) Bruise mark over both sides of the neck measuring about  $\frac{1}{2}$  X  $\frac{1}{2}$  inch.

(3) Blunt trauma at the scalp measuring about  $\frac{1}{2}$  X  $\frac{1}{2}$  inch.

The nature of the injury is simple. Type of weapon: blunt.

During cross-examination, this witness admitted that he issued the certificate on blank paper; that he did not enter the name of the person who identified the patient; he did not mention the ward number and bed number; he did not enter the patient's registration number on the certificate and that he wrote in the discharge certificate that the victim was admitted to a "Male Ward"; the victim was not admitted to the female ward. This witness then admitted that the victim was not in a condition to be admitted to the hospital for treatment. This witness denied the suggestion that the Injury Certificate was issued without examining the victim.

Analyzing the above evidence on record, it appears that none of the witnesses supported the prosecution case, save and except P.W. 2, the victim in the instant case, because P.W. 1 and P.W. 3 to P.W. 10 are hearsay witnesses who did not see the occurrence. P.W. 11 is the formal witness who serves as the Investigating Officer. On the contrary, PW. 12 is the doctor who examined the victim and issued the injury certificate. This witness, in cross-examination, admitted that he did not mention the

patient's identifier name or registration number in the injury report. Moreover, this witness also admitted that he wrote in the report that the victim was admitted to a "Male Ward" in the hospital. Further, he admitted that the victim's health condition was not necessary for hospital admission.

In view of the above facts and circumstances, we are of the firm view that the injury report issued by the doctor, PW.12, has lost its credibility/authenticity and has no evidential value under Section 45 of the Evidence Act. Notably, a doctor must strictly observe the rules of medical ethics and jurisprudence, as well as have regard to the law of the country, in discharging professional duties.

In view of the above, it appears that the alleged allegation brought by the prosecution against the appellant under section 11(ga) of the Nari-O-shishu-Nirjatan Daman Ain, 2000, does not support the injury certificate issued by the doctor or the doctor's evidence regarding the victim's injuries. Since the prosecution has failed to prove that the victim received treatment at a hospital specified in the Ain, the charge under section

11(ga) of the Ain against the appellant is barred by the proviso so enumerated in section 32 of the Nari-O-Shisho Nirjatan Daman Ain, 2000.

In view of the above facts and circumstances, it appears that the learned Judge of the Tribunal has failed to consider that it was imperative on the part of the learned Trial Judge to find out whether each and every incriminating circumstance in respect of implication of the convict-appellant in the felony has been established by credible, reliable, and clinching evidence. Prosecution left no stone unturned to rope in the convict-appellant and had overdone its job by fabricating false evidence and a coloured version. Therefore, the learned Trial Judge committed a serious error in presuming the guilt of the convict-appellant first and, thereafter, attempting to find another reason to justify such a conclusion without an objective, independent, and impartial analysis of the materials before recording a finding of guilt against the convict-appellant. The doubtful and suspect nature of the evidence sought to be relied upon to substantiate the circumstances suffered from serious infirmities and lacked legal credibility. So, the findings of the learned

Judge of the trial court 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. Therefore, we are led to believe that the prosecution case is a hoax one, having no ground under its legs. So, the impugned Judgment is liable to be set aside.

Resultantly, the appeal is allowed.

The Judgment and order of conviction and sentence dated 04.07.2022 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.2, Kishoreganj, in Nari-O-Shishu Nirjatan Case No.62 of 2008, arising out of G.R. No.13(2) of 2008, corresponding to Pakundia Police Station Case No.01, dated 06.01.2008, is hereby set aside.

The accused-appellant is acquitted of the charge leveled against him and discharged from his bail bonds.

Send down the lower Court records with a copy of this Judgment.

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(Md. Salim, J).

Kabir(BO)