

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

**Present:**

**Mr. Justice Md. Shohrowardi**

**Criminal Appeal No. 8147 of 2022.**

Mohammad Shamsudduha  
..... appellant

-Versus-

The State and another  
..... Respondent

Mr. Azizur Rahman Dulu, Advocate  
...for the appellant

Mr. Md. Golam Mostofa Tara, DAG with  
Mr. A. Mannan, AAG with  
....for the State

**Heard on: 22.08.2023, 23.08.2023,  
27.08.2023 and 28.08.2023,**

**Judgment delivered on: 29.08.2023**

This appeal under section 28 of the 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 16.08.2022 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, Faridpur in Nari-O-Shishu Case No. 119 of 2022 arising out of Kutwali Police Station Case No. 23 dated 09.02.2022 corresponding G.R. No. 127 of 2022 convicting the appellant 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 06 (six) months and to pay a fine of Tk. 20,000 as compensation.

The prosecution case, in short, is that the complainant P.W. 1 Farhana Khondakar Tuli is legally married wife of accused

Mohammad Shamsuduha. They got married on 07.08.2015 by registered Kabinnama. After marriage, the accused involved himself with various immoral acts for which the victim advised him to correct himself but the accused used to mentally torture his wife and demanded dowry of Tk. 40,00,000 on different dates. On 02.12.2020 the accused came to the house of the father of the victim and received Tk. 15,00,000 as dowry. Subsequently, he put pressure on his wife to pay unpaid dowry amounting to Tk. 15,00,000. Since the father of the complainant could not pay the dowry again on 12.12.2021 at 4 pm he came to the house of his father-in-law and on 13.12.2021 at 10 am demanded dowry of Tk. 15,000,00. When she refused to pay the said dowry, the accused struck on different parts of the body of the victim with a stick of cot and caused bleeding injury. Thereafter, the victim took treatment under Dr. Afroza Akther and subsequently, she took treatment on 04.02.2022 at noon at Faridpur General Hospital.

P.W. 9 Police Inspector Abul Khair Sheikh took up investigation of the case and during investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898, collected the medical certificate of the victim and also collected the report as regards the presence of the accused at his place of posting at Chuadanga. He seized the alams and after completing investigation found the prima facie truth of the allegation against the accused and submitted charge sheet against him.

Thereafter, the case record was sent to the Nari-O-Shishu Nirjatan Daman Tribunal, Faridpur. During the trial, the charge was framed under section 11 (ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 which was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 10 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 made statement under Section 342 of the Code of Criminal Procedure, 1898 and also submitted documents. The defense also examined 1 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 Farzana Khondaker Tuli is the wife of the accused. She stated that the occurrence took place on 13.12.2021 at 10.00 am in the house of her father. On 07.08.2015, she got married to the accused by registered Kabinnama and in 2018 the accused rented a house at Jashore to enjoy their conjugal life. The accused used to take narcotics each night and also beat her. While the victim conceived, the accused sent her to the house of her father. She gave birth to a child at her father's house. On 02.12.2000, the accused took dowry of Tk. 1500,000. Subsequently, on 12.12.2021 at 4 pm, the accused came to the house of her father and on 13.12.2021 at 10 am he again demanded dowry of Tk. 1500,000. When the victim refused to pay the dowry, the accused beat her with the stick of a cot and caused bleeding injury. When the witnesses tried to save the victim, the accused scolded them and left the house. Initially, she was admitted to Shamaritan Hospital, Faridpur and subsequently Faridpur General Hospital. She was under treatment at Shamarita Hospital, Faridpur for 01 month 22 days and she was admitted to Faridpur General Hospital on 04.2.2022. The accused lastly demanded dowry of Tk. 1500,000 on 22.01.2022 over mobile phone. She claimed that after the occurrence, she made an attempt to compromise between them but failed. Consequently, she filed the FIR. She was recalled by the prosecution. She stated that during the investigation, police seized the stick of the cot and the pen drive. She produced the stick of the

cot and the pen drive in the Court. During cross-examination, she affirmed that witnesses Soleman Sheikh and Shahin are her uncle, Faruque Ahmed is her father and Khondker Tushar Ahmed is her brother, Khondker Ruma is her mother, Sheikh Kader is her uncle, Firuzul Alam is her maternal uncle, Motiar Rahman is her uncle and Kamrul Hasan is also her brother. The House of Kamrul Hasan is situated 3km away from her house situated in village Habei Gopalpur and house of Firozul Alam is situated at Jhawtala. She admitted that the house of her father is situated in a densely populated area. On 05.02.2022 she applied to the S.P, Chuadanga. She also affirmed that she could not say whether in the said application dated 05.12.2020, she mentioned that on 02.12.2020 the accused took dowry of Tk. 15,00,000. She could not remember whether it has been mentioned in the application filed to the S.P. Chuadanga that the accused came on 12.12.2021 to her father's house and on 13.12.2021 he claimed dowry of Tk. 15,00,000. On 17.02.2022 she lodged a GD entry at Kutwali Thana stating that the date of occurrence mentioned in the FIR i.e. "02.12.2020" has been wrongly mentioned but the occurrence took place 'any time from 05.12.2020 to 07.12.2020'. She could not say whether the accused had divorced her on 26.01.2022. She denied the suggestion that the accused issued the notice of divorce on 27.01.2022. She denied the suggestion that on 01.02.2022, 02.02.2022, 03.02.2022, 30.01.2022 and 31.01.2022 she refused to receive the notice of divorce. She admitted that before the occurrence, the accused might have served at Chuadanga. She also stated that the accused is a Police Inspector and her father-in-law was also a Police Inspector. She denied the suggestion that the accused did not receive dowry amounting to Tk. 15,00,000. She also denied the suggestion that the accused did not come to her father's house on 12.12.2021 and did not demand dowry on 13.12.2021. She denied the suggestion that she was not admitted to Shamarita Hospital, Faridpur.

P.W. 2 Kamrul Hasan Entaz is a paternal cousin of the victim. He stated that the occurrence took place on 13.12.2021 at 10 am in the house of the father of the victim at village Goalchamat. He is the Manager of Ms. Khandaker Shahin Ahmed's construction firm. On that day, at the time of occurrence, he went to the house under construction situated beside the house of the place of occurrence to supervise the construction work and suddenly heard the hue and cry of the victim. He came to the house of the father of the victim and saw that the accused was beating the victim with a stick of cot. When he tried to rescue the victim, the accused scolded him. Hearing the hue and cry of the victim, the witnesses came to the place of occurrence and the accused fled away. On the quarry, the victim informed that the earlier accused received Tk. 1500,000 as dowry and beaten her for further payment of Tk. 1500,000 as dowry. The victim was taken to Shamarita Hospital. He made statement to the Investigating Officer on 07.03.2022. During cross-examination, he stated that he saw 8/9 persons at the place of occurrence and the house of the father of the victim is situated in a densely populated area. While he was supervising the building, many labourers were present there. When he entered the house, none of the outsiders was present in the house of the victim and he saw none of the neighbouring people at the place of occurrence. He denied the suggestion that the victim was not treated at Shamarita Hospital.

P.W. 3 Khandakar Firuzul Alam is the maternal uncle of the victim. He stated that the occurrence took place on 13.12.2021 at 10 am at the house of the father of the victim at village Goalchamat. On that day, her mother was staying at the house of the father of the victim and since his mother was sick, he went there to see his mother. When he entered the house, he saw that the victim was lying in an injured condition. The victim informed that earlier the accused also took Tk. 1500,000 as dowry and on the

date of occurrence, he also demanded dowry of Tk. 1500,000 and when she refused to pay the dowry, the accused beat her with the stick of cot. At that time, many other people assembled at the place of occurrence. The victim was taken to Shamarita Hospital for treatment. He denied the suggestion that the accused had beaten the victim for dowry is not correct. He also denied the suggestion that the victim was not taken to Shamarita Hospital.

P.W. 4 Soleman Sheikh is the owner of a medicine shop situated 100 feet far from the house of the father of the victim. He stated that the occurrence took place on 13.12.2021 at 10 am at the house of the father of the victim at Goalchamat. At the time of occurrence, he was cleaning his shop i.e. soleman pharmacy. Hearing the hue and cry of the victim, he went to the house of the father of the victim along with the witness Kader, Atiar and the Manager of the father of the victim. He saw that victim Tuli was lying in front of her house in an injured condition. He saw the stick in the hand of the accused. While they raised hue and cry, the accused fled away. The victim informed him that the accused earlier took dowry of Tk. 1500,000 and on the date of occurrence, he again demanded dowry of Tk. 1500,000. When she refused to pay the dowry, the accused had beaten her with the stick of the cot. Police seized the stick of the cot and pen drive on 09.02.2022. He proved the seizure list as exhibit-2 and his signature as exhibit-2/1. He proved the stick of the cot and pen drive as material exhibit-I. During cross-examination, he stated that the father of the victim is a contractor of electricity and there is a shop between the house of the father of the informant and his shop and Shafiq is the owner of that shop. There is a shop of Chandan and Jahangir on the opposite side. He affirmed that there is a three-storied building to the west of the house of the father of the victim and the said house is used as an office. He affirmed that the house of the father of the victim is a tin shed building. He made statement to the police when he

was examined at the house of the father of the victim. Driver Iqbal of Shahin called him. He affirmed that at the time of occurrence, the accused was serving at Chuadanga. He denied the suggestion that the accused did not demand dowry of Tk. 1500000.

P.W. 5 Sheikh Kader stated that while he was going to his shop hearing hue and cry he entered the house of the father of the victim. The occurrence took place on 13.12.2021 at 10 am. He saw that the victim was crying and he saw injuries on her leg and back. The victim informed that the accused earlier took Tk. 1500,000 as dowry and he subsequently demand dowry of Tk. 1500,000. Due to nonpayment of the dowry the accused had beaten her. The police seized the stick of the cot and the pen drive. He proved his signature on the seizure list as exhibit-2/2. During cross-examination, he stated that his shop is situated 100 feet far from the house of the informant. He along with another shopkeeper Atiar entered into the house of the father of the victim. He affirmed that he made the statement to the police at the house of the father of the victim and the father of the victim called him to his house. He denied the suggestion that the accused received Tk. 1500,000 and again demanded Tk. 1500,000 are false.

P.W. 6 Atiar Rahman stated that he is the owner of a rickshaw garage situated in front of the house of the father of the victim. The occurrence took place on 13.12.2021 from 10 to 10.30 am. On the date of occurrence, he was going to his garage through the house of the father of the victim. While he reached in front of the house of the father of the victim, he heard the hue and cry and entered into the house. He saw that the accused was beating the victim. At the time, the father of the victim informed him that earlier the accused had taken Tk. 15 lakh as dowry. He again demanded dowry of Tk. 15 lakh and due to nonpayment of the dowry, the accused had beaten the victim. After that, the father and the uncle of the victim took her to the Hospital. During cross-

examination, he stated that he saw the witnesses in front of the house of the father of the victim. He saw 7/8 persons at the place of occurrence. He denied the suggestion that he did not go to the garage through the road of the father of the victim. He affirmed that the father of the victim is his neighbouring brother.

P.W. 7 Khandaker Shahin Ahmad is the paternal uncle of the victim. He stated that the occurrence took place on 13.12.2021 at 10 am at the house of the father of the victim. After marriage, the victim enjoyed their conjugal life for about one and a half months. Subsequently, she used to live in the house of her father. In 2018, the accused rented a house in Jashore to enjoy their conjugal life. While they were living in Jashore, the accused demanded Tk. 40 lac as dowry. The accused used to torture the victim. When the victim conceived, the accused sent her to the house of her father and on 23.09.2019 she gave birth to a son. From 05.12.2020 to 07.12.2020 accused came to the house of his father-in-law. At that time, he paid Tk.10,00,000 to the father of the victim and the father of the victim paid total Tk. 1500,000 to the accused as dowry. On 12.12.2021 at 4 pm accused came to the house of his father-in-law and stayed there till 13.12.2021 at 10 am. He along with his manager Kamrul Hasan was discussing about businesses sitting in his drawing room. He heard a hue and cry. He came down and went to the house of the father of the victim and saw that the accused was beating the victim with the stick of the cot on the legs and different parts of the body of the victim. At that time, the accused demanded Tk. 15 lakh as dowry failing which he would marry elsewhere. At that time, Sheikh Solaiman, Sheikh Kader, Atiar, Manager Entaz and many others were present there. Sensing the presence of the witnesses, the accused technically left the place of occurrence. He along with the father of the victim took her to Shamarita Hospital and was admitted there under Dr Sadia Afrin. She was admitted there for 01



months 22 days. On 03.02.2022, the victim was released from Shamarita Hospital and thereafter she was admitted to Faridpur General Hospital. After the occurrence to till the lodgment of the FIR, they requested the accused to take the victim but he refused. Consequently, the FIR was lodged on 09.02.2022. On that day, the Investigating Officer visited the place of occurrence and seized the pen drive and the stick of cot. He proved his signature on the seizure list as exhibit-2/3. During cross-examination, he stated that the house of the father of the victim is situated in a densely populated area. His house is a four storied building and there is a boundary wall beside his house. He affirmed that no occurrence took place on 02.12.2020. From 05.12.2020 to 07.12.2020 at any time the occurrence might have taken place. He paid Tk. 10,00,000 as dowry to the father of the victim. He denied the suggestion that from 12.12.2021 to 15.12.2021 he resided at Dhaka. He also denied the suggestion that from 12.12.2021 to 15.12.2021 he was not residing at Faridpur. He affirmed that he did not resist the accused and he also did not try to catch the accused. He affirmed that initially accused was posted at Jashore and subsequently at Damorhuda Thana, Chuadanga. He denied the suggestion that the accused sent money till 03 days before the alleged occurrence for the maintenance of his child and the victim. He denied the suggestion that at the time of delivery of the child, the accused sent money through the account of the mother of the victim. He denied the suggestion that he did not say to the investigation officer that on 03.02.2022, the victim was released from Shamarita Hospital. He denied the suggestion that he did not say to the investigation officer that on 04.02.2022 the victim was admitted to Sadar Hospital.

P.W. 8 Khandaker Faruq Ahmed is the father of the victim. He stated that the occurrence took place on 13.12.2021 at 10 am at his house. On 7.8.2015 the accused and the victim got married and

in 2018 the accused rented a house at Jashore to enjoy their conjugal life. The accused put pressure on the victim for payment of Tk. 40,00,000 as dowry. While the victim conceived, the accused sent her to the house of her father. From 05.07.2020 to 07.12.2020 at any time, he paid Tk. 1500,000 to accused as dowry. On 12.12.2021 the accused came to his house and stayed there. On 12.12.2021 at 4pm the accused came to his house. On 13.12.2021 at 10am he heard the hue and cry of his daughter and went there along with witnesses. He saw that the accused caused injuries by the stick of cot and again demanded dowry of Tk. 1500,000. Subsequently, he told that he paid Tk. 1500,000 earlier and he claimed the remaining dowry of Tk. 4000,000. Since her daughter refused to pay, the accused beat her. The accused caused injuries on the back, knee, legs, and west of the victim. The victim was admitted to Shamarita Hospital and after 01 months and 22 days, she was released on 03.02.2022 from Samarita Hospital. On 04.02.2022, the victim was admitted to Sadar Hospital and lodged the FIR on 09.02.2022. On 12.02.2022, he made a statement to the Investigating Officer. During cross-examination, he stated that he could not say on which date the accused first demanded Tk. 4000,000 as dowry. From 05.12.2020 to 07.12.2020 Tk. 1500,000 was paid as dowry, it could be also 06.12.2020. On 02.12.2020, the accused did not demand any dowry. On 02.12.2020 possibly accused was present at his place of posting. The accused closed the door and beat the victim. He claimed that he was physically sick. After opening the door, he saw the victim in injured condition. He found blood on the cloth of the victim. He did not hand over those to the investigation officer. He denied the suggestion that from 05.12.2020 to 07.12.2020 accused did not receive Tk. 1500,000 as dowry. He denied the suggestion that no occurrence took place as stated by him.

P.W. 9 Abul Khayer Sheikh is the Investigating Officer. He stated that on 09.02.2022 he took up the investigation of the case, visited the place occurrence, prepared sketch map and index, recorded the statement of witnesses, seized the alamat, collected the medical certificate from the victim and the report from the S.P, Chuadanga. He produced the stick of the cot and the pen drive. He proved his signature on the seizure list as exhibit-2/4. He proved the sketch map as exhibit-3 and his signature as exhibit-3/1. He proved the index as exhibit-4 and his signature as exhibit-4/1. During cross-examination, he affirmed that the occurrence took place on 13.12.2021 at 10 am and the FIR was lodged on 09.02.2022. The place of occurrence is situated 3 km far from the Thana. In the FIR, it has been mentioned that on 02.12.2020 accused received Tk. 15 lakh. The informant applied on 17.2.2022 to the officer in charge for correction of the date of occurrence 'any time from 05.12.2020 to 07.012.2022' in place of '02.12.2020'. A GD entry was lodged based on the said application. He could not say under which provision the FIR was corrected. On 02.12.2020, the accused was serving at Damurhuda Thana and there is a report to that effect. Nothing has been mentioned in the FIR that the victim took treatment from Shamorita Hospital. After 01 months and 22 days, the victim went to the General Hospital. The 'P' mentioned in the sketch map is the house of the Afzal Master and the office of the ADC is situated therein and none of the said office is a witness of the case. The 'N' mentioned in the sketch map is the house of Jahangir and none of the said houses is a witness in the said case. During the investigation, he did not find anyone in that house. None handed over the blood-stained wearing of the victim and the soil to him. He recorded the statement of the witnesses on 09.02.2020, 12.02.2022, 14.02.2022, 22.02.2022 and 07.3.2022. The witnesses stated that the accused received Tk. 1500,000 from 05.012.2020 to 07.12.2020 as dowry. He denied the suggestion that he did not visit

the place of occurrence and he also did not investigate the case following the law.

P.W. 10 Dr. Israt Jahan is the medical officer at Faridpur Sadar Hospital. She stated that on 04.02.2022 she was posted at that Hospital and she was on duty on 04.02.2022. At that time, she was posted at the School Health Center, Faridpur. On that day at 12, she examined the victim Khandkar Farjana Tuli and issued an injury certificate on 07.02.2022. In the medical certificate, she stated that physical assault 1 month 22 days back. Pt. still now complains body ache, waist pain & difficulty in standing up. Type of weapon is blunt and nature of injury is simple. She proved the injury certificate as exhibit-5 and her signature as exhibit-5/1. Earlier the victim was admitted to a private Hospital. She advised the victim to conduct the x-ray pelvis and x-ray L/S Spin, B/V and after said tests, she found that there was no fracture of the bone and the type of weapon was blunt. During cross-examination, she stated that she did not mention in the injury certificate that earlier victim was under treatment at a private hospital. She affirmed that she did not find any injury on the body of the victim and as per the statement of the victim, she issued the medical certificate and she was not admitted to the Hospital. She issued the medical certificate on 07.12.2022 and at that time, victim was present at the Hospital. The brother master (ward boy) handed over the certificate. She denied the suggestion that at the time of occurrence, she was not on duty at Sadar Hospital. She denied that the injury certificate was forged and she deposed falsely.

D.W. 1 Zakir Hossain is the Manager of the Sonali Bank Limited, Goalchamat Branch, Faridpur. He stated that on 05.09.2019 Tk. 100,000, on 12.05.2020 Tk. 20,000, on 3.06.2020 Tk. 40,000, on 21.07.2020 Tk. 100,00, on 05.01.2021 Tk. 15,000, on 15.02.2021 Tk. 15,000, on 08.03.2021 Tk. 15,000, on 12.04.201 Tk. 15000, on 5.05.2021 Tk. 25,000, on 20.06.2021 Tk. 15000, on

18.07.2021 Tk. 20,000, on 16.09.2021 Tk. 15000, on 19.10.2021 Tk. 10,000, on 07.11.2021 Tk. 15,000, on 10.01.2022 Tk. 15000 and on 06.02.2022 Tk. 15000 was deposited in Account No. 01006274 maintained with Sonali Bank Limited, Goalchammat Branch in the name of Ruma Khandaker from different branches through online banking. Only on 05.09.2019 one Mahmud Hasan Masud deposit the money and the other money was deposited by Kazi Yeasir Arafat. During cross-examination, he stated that he has no relation with the depositors of the said amounts.

The learned Advocate Mr. Azizur Rahman appearing on behalf of the accused Mohammad Shamsudduha submits that the alleged occurrence took place on 13.12.2021 at 10 am at the house of the father of the victim and the FIR was lodged on 9.2.2022 after one month twenty-seven days and the prosecution could not prove any medical certificate of the victim. He further submits that when the informant came to know that on 02.12.2020 the accused was present at his place of posting at Chuadanga, she filed an application on 17.02.2022 to correct the first date of occurrence '02.12.2020' mentioned in the FIR inserting a new date 'any time from 05.12.2020 to 7.12.2020' and no occurrence took place on 02.12.2020 as stated in the FIR. The subsequent date of occurrence 'any time from 05.12.2020 to 07.12.2020' is an afterthought. He also submits that the parents of the accused are old and sick and due to their old age and sickness, the victim refused to stay along with the parents of the accused and she voluntarily left the house of the accused and at the time of birth of the son of the victim, accused sent Tk. 100,000 through account of her mother and also paid maintenance. Since the victim refused to stay along with the old and sick parents of the accused, he divorced the victim on 26.01.2022 and issued a notice of divorce through registered post on 27.01.2022. When the victim came to know about the divorce dated 26.01.2022, she made an afterthought story of causing hurt

for dowry and filed a false case on 9.2.2022. He lastly submits that the witnesses examined by the prosecution are close relatives of the victim and the neighbouring people who reside beside the house of the father of the victim were not examined by the prosecution. Having drawn the attention to the circular dated 10.10.1995, he submits that the Directorate of Health issued a circular on 10.10.1995 directing all concerned to issue the medical certificate constituting a three-member medical board. P.W. 10 only signed the medical certificate (exhibit-5) and other two doctors whose names have been mentioned in the medical certificate (exhibit-5), did not sign the medical certificate. Therefore, exhibit-5 is not a medical certificate in the eye of the law and the trial court most illegally relied on exhibit-5 and wrongly passed the impugned judgment and order. The prosecution failed to prove the charge against the accused beyond all reasonable doubt. Therefore, he prayed for the acquittal of the accused.

The learned Deputy Attorney General Mr. S.M. Golam Mostofa submits that P.Ws. 1 and 8 are the direct witnesses of the occurrence and hearing hue and cry of the victim, P.Ws. 2 to 7 came to the place of occurrence and heard about the occurrence from victim P.W. 1 and saw the mark of injuries on her body and after the occurrence, the victim was taken to Shamarita Hospital, Faridpur. Subsequently, she was admitted to General Hospital, Faridpur and the doctor who examined the victim at General Hospital, Faridpur also issued the medical certificate (exhibit-5). The prosecution witnesses proved the charge to the hilt against the accused beyond all reasonable doubt. Therefore, he prayed for the dismissal of the appeal.

On perusal of the records, it appears that the alleged occurrence took place on 13.12.2021 at 10 am at the house of the father of the victim at Goalchamot, Faridpur and in the FIR it has

been alleged that earlier the accused received Tk. 15,00,000 on 02.12.2020 as dowry. The accused Mohammad Shamsudduha is a police officer. P.W. 1 stated that while she was residing at her father's house in village Goalchamat, the accused received Tk. 1500,000 as dowry. The investigation officer P.W 9 stated that there is a report that the accused was present at Damurhuda Thana, Chuadanga on 02.12.2020. The informant by filing an application on 17.02.2022 lodged GD entry No. 1046 and corrected the date of occurrence inserting a new date 'any time from 05.12.2020 to 07.12.2020' in place of '02.12.2020'. There is no provision in any law to correct the date of occurrence stated in the FIR. Therefore, the statement made by the victim that the accused received Tk. 15 lakh on 02.12.2020 as dowry from the father of victim P.W.1 is untrue.

The prosecution case is that after the occurrence when the health condition of the victim PW 1 was deteriorating, she was taken to General Hospital, Faridpur on 04.02.2022 at noon. The registration number of the victim is 2024/5 dated 04.02.2022. P.Ws. 1, 2, 3, 7 and 8 stated that after the occurrence, the victim was admitted to Shamarita Hospital, Fairdpur. P.W. 7 stated that Doctor Sadia Afrin treated the victim and she was admitted to Shamarita Hospital for 1 Month 22 days from 13.12.2021 to 03.02.2022. The alleged occurrence took place on 13.12.2021 at 10 am and the FIR was lodged on 9.2.2022 after 01 month and 27 days. Nothing has been stated in the FIR that after the occurrence the victim was admitted to Shamarita Hospital, Faridpur on 13.12.2021 and admitted there till 03.02.2022. No medical certificate was issued from the Shamarita Hospital, Faridpur. In the absence of any medical certificate and discharge certificate from the Samarita Hospital, Faridpur it cannot be held that the victim was admitted to Samarita Hospital, Faridpur from 13.12.2021 to 03.03.2022. The prosecution failed to give any explanation as

regards the long delay of one month and twenty-seven days in lodging the FIR.

On perusal of the medical certificate dated 07.02.2022 (exhibit-5) issued under the signature of P.W. 10 Dr. Israt Jahan Ela, it reveals that the doctor of the General Hospital, Faridpur examined the victim on 04.02.2022 at noon. During cross-examination, P.W. 10 who issued the medical certificate on 07.02.2022 (exhibit-5) admitted that at the time of examination of the victim, there was no injury on her body and she issued the medical certificate as per the statement of the victim and the victim was not admitted to General Hospital, Faridpur. Because of the above evidence, I am of the view that the victim P.W. 1 Farzana Khondakar Tuli was not admitted to Shamarita Hospital, Faridpur from 13.12.2021 to 03.02.2021 and while the victim went to General Hospital, Faridpur on 04.02.2022 for treatment there was no mark of injury on her body and the prosecution failed to prove any injury of P.W. 1 allegedly caused by the accused.

D.W. 1 Zakir Hossain is the Manager of the Sonali Bank Limited, Goalchamat Branch, Faridpur. He stated that on 5.9.2019 Tk. 100000 was credited through online banking in Account No. 01006274 maintained in the name of Roma Khandakar with Sonali Bank Limited, Goalchamat Branch. In the statement made under section 342 of the Code of Criminal Procedure, 1898, the accused stated that his wife gave birth son on 23.09.2019 and before the birth of his son, through his relative Mahmud, he deposited Tk. 100,000 in the account of his mother-in-law Ruma Khandakar and on different dates from 12.05.2020 to 06.02.2022 he also deposited Tk. 2,60,000 through another relative in the account of the mother of the victim which is also corroborated by D.W.1. The evidence of D.W. 1 regarding said deposits was not denied by the prosecution. Therefore, I am of the view that before the alleged occurrence, the accused paid the maintenance of his wife and son.



Prosecution witnesses did not say that before the alleged occurrence on 12.12.2021 the accused came to the house of the father of P.W.1 along with his mother and sister. Therefore, the statement made by the informant in the FIR to the effect that the accused along with her mother and sister fled away from the place of occurrence on 13.12.2021 is an afterthought.

P.W. 2 Kamrul Hasan Entaz is the Manager of P.W. 7 Khondakar Shahin Ahmed who is the uncle of the victim. P.W. 2 stated that at the time of occurrence, he went to a building situated beside the place of occurrence to supervise the construction work of the house and hearing hue and cry, he went to the place of occurrence and saw the victim. P.W.7 Khandaker Shahin Ahmed stated that on 13.12.2021 at 10 am he along with Manager P.W. 2 Kamrul Hasan Entaz sitting in his drawing room was discussing regarding business and hearing a hue and cry, he went to the place of occurrence. Therefore, the evidence of P.Ws 2 and 7 about hearing the hue and cry and their subsequent presence at the house of the father of the victim is untrue.

Except P.Ws. 9 and 10, all other witnesses examined by the prosecution are closely related to the victim. It is found that the place of occurrence is situated in a densely populated area and on the west of the place of occurrence a three-storied building was situated. There was an office and many houses beside the place of occurrence and none of them were examined by the prosecution. P.W. 1 Farzana Khondaker Tuli is the victim, P.W. 2 Kamrul Hasan Entaz is the paternal cousin of victim and Manager of P.W.7. P.W. 3 Khondaker Ferozul Alam is the maternal uncle of the victim P.W. 4. Soleman Sheikh, P.W.7 Khondaker Shahin Ahmed and P.W. 5 Sheikh Kader are the paternal uncle of the victim, P.W.8 Khondaker Faruque Ahmed is the father of the victim. P.W.6 Atiar Rahman is closely related with the victim family and he is a tutored and chance witness of the alleged occurrence.

When the prosecution applied pick and chose theory in examining the witnesses closely related to the victim, the evidence of those witnesses cannot be relied on by this court without corroboration of independent, reliable, neutral and trustworthy witnesses. Furthermore, P.W. 10 admitted that when she examined the victim P.W.1 on 04.02.2022 at General Hospital, Faridpur there was no mark of injury on her body and P.W. 10 issued the medical certificate (exhibit-5) as per the statement of the victim. The prosecution also did not examined Dr. Saida Afrine who treated the victim at Shamarita Hospital, Faridpur after the alleged occurrence. Furthermore, medical certificate (exhibit-5) was not signed by two other doctors. In the absence of a reliable medical certificate of the victim, it cannot be held that the prosecution proved the charge under section 11 (ga) of the Nari-o-Shishu Nirjatan Dhaman Ain, 2000 (as amended in 2003).

The Directorate of Health issued a circular on 10.10.1995 directing all concerned to issue medical certificates of any victim through a medical board constituted by three doctors. The medical certificate (exhibit-5) dated 07.02.2022 was issued by P.W. 10 and the names of two other doctors have been mentioned in the said medical certificate but they did not sign the medical certificate (exhibit-5). Therefore, there is doubt about the treatment taken by P.W. 1 on 04.02.2022 and the medical certificate dated 07.02.2022 (exhibit-5). Because of the above evidence, I am of the view that the accused divorced his wife on 26.01.2022 and after that, the victim P.W 1 made out an afterthought story regarding causing hurt for payment of dowry and managed a medical certificate(exhibit-5) on 07.02.2022 showing her false treatment on 04.2.2022 at General Hospital, Faridpur.

Because of the above facts and circumstances of the case, evidence, finding, observation and proposition, I am of the view that the prosecution made out an afterthought case of causing hurt

for dowry under Section 11(ga) of the Nari-o-Shishu Nirjatan Dhaman Ain, 2000 (as amended in 2003) and 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 passed by the trial court is hereby set aside.

Send down the lower Court's record at once.

(Md. Shohrwardi, J)