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ক্রমিক নং	তারিখ	নোট ও আদেশ
		<p style="text-align: center;">বাংলাদেশ সুপ্রীম কোর্ট হাইকোর্ট বিভাগ (ফৌজদারী আপীল অধিক্ষেত্র)</p> <p style="text-align: center;">উপস্থিতঃ বিচারপতি জনাব মোঃ আশরাফুল কামাল</p> <p style="text-align: center;">ফৌজদারী আপীল নং ১৩০১/১৯৯০</p> <p>আবুল কালাম ও অন্যান্য</p> <p style="text-align: right;">-----সাজাপ্রাপ্ত-আপীলকারী।</p> <p style="text-align: center;">-বনাম-</p> <p>রাষ্ট্র</p> <p style="text-align: right;">-----প্রতিপক্ষদ্বয়।</p> <p>এ্যাডভোকেট উপস্থিত নাই</p> <p style="text-align: right;">-----সাজাপ্রাপ্ত-আপীলকারী পক্ষে।</p> <p>এ্যাডভোকেট মোঃ আশেক মোমিন, ডেপুটি এ্যাটর্নী জেনারেল সংগে এ্যাডভোকেট লাকী আক্তার, সহকার এ্যাটর্নী জেনারেল এ্যাডভোকেট ফেরদৌসী আক্তার, সহকারী এ্যাটর্নী জেনারেল</p> <p style="text-align: right;">-----রাষ্ট্র-প্রতিপক্ষ পক্ষে।</p> <p style="text-align: center;">শুনানী তারিখঃ ১৮.০১.২০২৩ এবং রায় প্রদানের তারিখঃ ১৯.০১.২০২৩।</p> <p>বিচারপতি জনাব মোঃ আশরাফুল কামালঃ</p> <p>বিজ্ঞ দায়রা ও বিশেষ ট্রাইব্যুনাল জজ, পাবনা কর্তৃক বিশেষ ট্রাইব্যুনাল মোকদ্দমা নং ১০/১৯৯০-এ প্রদত্ত বিগত ইংরেজী ২৯.১১.১৯৯০ তারিখের রায় ও দন্ডদেশের বিরুদ্ধে অত্র ফৌজদারী আপীল।</p> <p>আপীলকারীগণ পক্ষে বিজ্ঞ এ্যাডভোকেট অনুপস্থিত। অপরদিকে রাষ্ট্রপক্ষের বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এ্যাডভোকেট মোঃ আশেক মোমিন বিস্তারিতভাবে যুক্তিতর্ক উপস্থাপন করেন।</p> <p>অত্র আপীলের দরখাস্ত এবং নথি পর্যালোচনা করা হল। রাষ্ট্রপক্ষের বিজ্ঞ ডেপুটি এ্যাটর্নী জেনারেল এ্যাডভোকেট মোঃ আশেক মোমিন এর বিস্তারিতভাবে যুক্তিতর্ক শ্রবণ করা হল।</p> <p>গুরুত্বপূর্ণ বিধায় বিজ্ঞ দায়রা ও বিশেষ ট্রাইব্যুনাল কর্তৃক বিশেষ ট্রাইব্যুনাল মোকদ্দমা নং ১০/১৯৯০-এ প্রদত্ত বিগত ইংরেজী ২৯.১১.১৯৯০ তারিখের রায় নিয়ে অবিকল অনুলিখন হলঃ-</p> <p style="text-align: center;"><i>“Prosecution case in brief, is this that, at 10 A.M. on 23.12.1988 when informant Mozahar Ali came back home from his relations house his elder brothers wife Razeka Khatun gave news to him that accused Abul Kalam came and</i></p>

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		<p><i>entered into the ghor of complainant and after searching here and there took away something from inside 'kola' and at that time REzeka Begum stood on the door of the 'ghor' and resisted and opposed Abul Kalam who abused Razeka Begum and thereatened to finish her and thereafter went away Razeka Begum cried out about the occurrence. Informant Mazahar Ali then went in side the ghor and found that taka 1,310/- wrapped up with pieces of cloth insitde a 'kola' had been missing. He then reported this matter to chairman and village prodhans and sought for action. Hearing such news Abul Kalam and his brothers became agitated and with accused persons came at 8 P.M. (night) on 24.12.88 being armed with lathi, iron rod, etc. and forcibly took away complainants married bhatiji Rina khatun who came to her fathers house some days ago. Inspite of search at night here and there Rina Khatun could not be recovered and thus informed Mazaher Ali filed written information to O.C. Santhia on 25.12.88 and O.C. Santhia having received this written FIR stated Santhia P.S. Case 8 dated 25.12.88 and entrusted S.I. Kazi Anowerul Islam for investigation of the case. Kazi Anowarul Islam thereafter went to the locality for investigation of the case and during investigation Rina Khatun was recovered from the house of accused Abul Kalam. Thereafter, Rina Khatun was sent to the Court of Upazila Magistrate, Santhia where in Rina Khatun made statement u/s 164 Cr.P.C. which was recorded by Upazila Magistrate Mr. Abdul Mannan on 29.12.88. Earlier Rina Khatun was also sent to Doctor for physical examination and report. Rina Khatun was accordingly examined and medical certificate was obtained. During investigation S.I. Kazi Anowarul Islam seized nika register as alamot by seizure list in presence of witnesses and during investigation Kazi Anowarul Islam as I.O. of the case prepared map with index of the P.O. and examined witnesses and recorded their statements u/s 161 Cr.P.C.. Thereafter Kazi Anowarul Islam was transferred from the station and then O.C. Zia Rahman took up investigation of the case and subsequently having completed investigation O.C. Zia Rahman submitted charge sheet against all accused persons u/s 448/366/498/379/1034 B.P.C.. But subsequently further investigation was directed and after further investigation S.I. Younus Ali submitted</i></p>

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		<p><i>charge sheet along with earlier sections of B.P.C. read with section 4Kha(ga) of Cruelty to women Ordinance, 1983 read with special Powers Act, 1974. After preparation of the case record it was sent to the court of session and special Tribunal for hearing and disposal and accordingly it was registered as Special Tribunal No. 10/90.</i></p> <p><i>Having heard both sides charge u/s 4-Kha of Cruelty to Women Ordinance, 1983 read with schedule 4-Kha of Special Powers Act, 1974 was framed against accused Abul Kalam and charge u/s 4-Kha/9 of Cruelty to Women Ordinance, 1983 with schedule 4-Kha/6 of the Special Powers Act, 1974 was framed against other accused persons namely Babar Ali, Shomser Ali, Shahid Ali, Abdur Rahman and Afsar Ali having found materials to proceed against them. All accused persons named above pleaded not guilty and claimed to be tried when the charges were read out and explained to them. Hence the trial.</i></p> <p><i>During trial prosecution examined in this case as many as 8 witnesses, P.W.1 is Doctor Habibur Rahman the then Deputy Civil Sargaon, Pabna. He stated that on 27.12.88 at 3.30 P.M. he with his Assistant Shantona Rani Dass examined victim Rina Khatun and got X-ray for determination of age and submitted report Ext.1 with opinion Ext.1/1 is his signature and Ext. 1/2 is signature of his Assistant Shantona Rani Das. This witness stated that he attested photo of victim Rina Khatun (Ext.2) Ext.2/1 is signatures of this witness. P.W.1 was cross-examined by defence at length.</i></p> <p><i>P.W.2 is Shantona Rani Das who stated that as Assistant to P.W.-1 Doctor Habibur Rahman, Deputy Civil surgeon, Pabna he was with P.W.1 who examined victim Rina Khatun and thereafter issued certificate Ext.1. She proved her signature Ext.1/2. She also cross examined by defence.</i></p> <p><i>P.W. 3 is informant Mazahar Ali. He was declared hostile by prosecution and during cross by prosecution it was suggestion to him that he was suppressing fact and deposing falsely at the instance of defence being influenced and gained over the other side. P.W.3 denied that suggestion. He was cross examined by defence.</i></p> <p><i>P.W.4 is victim Rina Khatun. She was declared hostile by prosecution and during cross-examination by prosecution it</i></p>

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		<p>was suggested to her that being influenced by accused she was also suppressing fact and deposing falsely. She denied that suggestion. She was also cross-examined by defence.</p> <p>P/W.5 is Abdul Mannan the then Upazila Magistrate, Santhia who stated that on 29.12.88 victim Rina Khatun was forwarded and sent to Upazila Magistrate Court, Santhia where in after observing formalities and procedural requirements he as Upazila Magistrate, Santhia recored the statement of victim Rina Khatun u/s 164 Cr. P.C. He stated that he read out and explained the same to victim Rina Khatun after it was recorded and thereafter Rina Khatrun put her L.T.I. on the same. This witness proved that statement Ext.3 and proved his two signature is on the same market Ext.3/1, 3/2 and also proved the signature of one Kobad Hossain office peon of Santhia Upazila Magistrate Court who wrote the name of Rina Khatun after L.T.I. was taken on the statement.</p> <p>P.W.5 was cross examined at length by defence.</p> <p>P.W.6 is I.O. Kazi Anowarul Islam. He stated that on 25.12.88 he was engaged in Santhia P.S. and on 25.12.88 Mr. Zia Rahman, O.C. Santhia P.S. received written FIR Ext.4 from informant Mozaher Ali vide endorsement Ext.5 and started Santhia P.S. case No. 8 dated 25.12.88 and O.C. Zia Rahman filled up FIR form Ext.6. This witness proved signature of O.C. Zia Rahman and accordingly it was marked Ext. 5/1, 6/1, 6/2. This witness stated that he was endorsed with investigation of the case and then he visited place of occurrence and during investigation he seized nika registered material Ext. 1 by seizure list Ext. 7 in presence of witnesses. He proved his signature Ext. 7/1 and signature of two the witnesses Ext. 7/2, 7/3 accordingly. He also stated that during investigation he prepared map with index marked Ext.8 and 9. He proved his signature marked Ext. 8/1, 9/1. He stated that during investigation he examined witnesses and recorded their statement 161 Cr.P.C.. He also stated that subsequently charge sheet was submitted u/s 448, 366, 498, 376/34 B.P.C.. He was cross examined at length by defence.</p> <p>P.W. 7 is last I.O. S.I. Younus ali. He stated that he was endorsed with further investigation of the case and accordingly he held further investigation during which he visited place of occurrence and finally he submitted charge</p>

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		<p><i>sheet u/s 448,366, 498/34/109 B.P.C. read with section 4-kha(ga) of Cruelty to Women Ordinance, 1983 read with Special Powers Act against all accused persons. He was cross-examined at length by defenced.</i></p> <p><i>P.W.8 is Nika Registrar Kazi Abdus Sukur. He stated that he registered nikanama of marriage of Rina khatun and accused Abul Kalam on 24.12.88 at page 13 of Nika registrar material Ext. I market Ext. 10 and he proved his signature. His two signatures market Ext. 10/1, 10/2 and signatures of Abul Kalam marked Ext. 10/3 and he proved other signatures of accused Shahid Ali, Afsar Ali, Shomsher Ali, Abdur Rahman on the nikanama and accordingly marked Ext. 10/4-10/8. He was cross-examined at length by defence.</i></p> <p><i>Prosecution did not examine any other witness. It may be mentioned that out of 14 C.S. witnesses prosecution simply produced C.S. witness No. 2 Razeka khatun. P.W.4 Mazibor Rahman, P.W.-5 Akbare Ali and P.W.-6 Tomser Ali on the ground that they had been gained over by accused persons and besides them prosecution by special petition cited more 6 persons as witness in this case as evident from order No. 11 dated 31.07.90. But prosecution did not examine those cited witnesses also during trial of the case and no explanation has been given. Accordingly prosecution evidence was closed. Accused persons were examined u/s 342 Cr.P.C. and their statements were duly recorded. Accused persons were also called upon to inter upon defence and to examine any D.W. if so desire but no D.W. was examined nor any written statement joint or separate was filed on behalf of defence evidence was closed. Argument were heard from both sides.</i></p> <p style="text-align: center;"><u>Points for decision:</u></p> <p><i>Did accused Abul Kalam on the stated time date, place and in the manner forcibly abducted victim Rina Khatun from her fathers house and forcibly rape on her and get her married with him against her will by solemnising fake marriage and also creat nikanama for the purpose in collusion with other accused persons and is accused Abul Kalam liable for offences u/s 4-kha Cruelty to Women Ordinance, 1980 read with schedule 4-kha of special Powers Act, 1974 and is he liable for punishment thereunder?</i></p> <p><i>Did accused babor Ali, Shomsher Ali, Shahid Ali,</i></p>

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		<p><i>Abdur Razzaque and Afsar Ali on the stated time, date, place and in the manner collaborated and abet accused Abul Kalam in forcibly abducting victim Rina khatun un raping on her and getting her marriage without her will with accused Abul Kalam creating nikanama for the purpose and are they liable for offence u/s 4-kha/9 of Cruelty to Women Ordinance, 1980 read with schedule 4-Kha/6 of Special Powers Act, 1974 and are they liable for punishment thereunder.</i></p> <p style="text-align: center;"><u>Decisions:</u></p> <p><i>Points 1 and 2 are taken up together for conveniences of discussion and disposal. It is the prosecution which has to prove charge brought against accused persons beyond all reasonable doubts by satisfactory evidence. We shall see and consider how for prosecution in this case discharged that responsibility. Out of 14 C.S. witnesses prosecution examined 8 witnesses. Prosecution produce 4 C.S. witnesses (C.S. witness No.2, 4,5 and 8) on the plea and ground that they were gained over by defence and it ultimately appears that prosecution could not examine C.S. witness No. 6 and 13 without any explanation. We shall issues later on whether non-examination of those 2 C.S. witnesses will have any reaction on the prosecution case. It appears that during trial prosecution cited by special petition 6 persons as witnesses to be examined in the case and from order No. 11 dated 31.07.90. It appears that such a prayer of prosecution was allowed and witness process were issued on those cited 6 witnesses but prosecution did not examine any of those cited 6 witnesses. We shall also consider lateron whether this will have any reaction or effect on the prosecution case and story.</i></p> <p><i>Out of 8 witnesses P.W.1, 2,5,6 and 7 are official witnesses. Besides them P.W.3, 4, and 8 are public witnesses. Of them P.W. 3 is Mazahar Ali informant of the case and P.W.4 is the victim woman namely Rina khatun. Prosecution declared hostile both P.W.3 and 4 and thereafter during cross examination prosecution put question to P.W.3 and 4 that they were both suppressaing fact and deposing falsely being gained over the influenced by or being afraid of accused persons. They of course denied such suggestion. We shall discuse in due course whether suggestion of prosecution will have any meaning in the facts and circumstances of the case.</i></p>

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		<p><i>In this case some facts are admitted and not denied by either side. It is an admitted fact that victim woman Rina khatun was a married women in as such as in the evidence it was disclosed that one Azibor Rahman is the husband. Prosecution allegation is that victim woman Rina Khatun and others and she was raped and later on she was made to go to the office of nika registrar and solemnized forcibly without connect and will of said woman Rina Khatun her marriage with accused Abul Kalam. In that regard vital witness is P.W. 8 Nika Registrar Kari Sukur Ali. P.S.8 stated and proved that on 24.12.88 victim women Rina khatun accused Abul Kalam and other came to the nika registrar office and therein marriage Abul Kalam was solemnized with Rina khatun and Nikanama was accordingly registered and prepared at page 13 of Nika register material Ext. I. P.W.8 proved that Nikanama Ext. 10 and in that nikanama Ext. 10 he proved his own signature Ext. 10/1, 10/2, 10/4, P.W..8 also proved signature of accused Abul Kalam Ext. 10/3 and he also proved the signatures on Ext. 10 of other accused persons namely Shahid Ali, Afsar Ali, Shomsher Ali, Abdur Rahman marked Ext. 10/5, 10/6, 10/7 and 10/8. From evidence of P.W.s and also from Ext. 10 and from Ext.10/1-10/8 it clearly appears that on 24.12.88 victim women Rina khatun was given marriage with accused Abul Kalam and it is written in Ext. 10 in column 5 “ তলাকী ও বালেগা” such as disvorsed and adult. So, it appears that by statement and mis-representation Rina khatun was shown as disvorsed women. Although in evidence nothing is found anywhere that Rina khatun was ever divorces by her husband Azibor nor P.W.4 Rina khatun herself even stated in her deposition that after marriage she was divorced her husband Azibor. In this case it clearly appears that during subsistence or continuation of the marriage with her husband Azibor she was falsely stated and shown as divorced woman in column 5 of Ext. 10 and by that name Rina khatun was given marriage with accused Abul Kalam and in that means Rina Khatun was given marriage with accused Abul Kalam and in that deed other accused persons actively stated and collaborated with accused Abul Kalam for that fake marriage with Rina Khatun who was not at all a divorced woman. It is of course true that we got no proof about any rape committed</i></p>

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		<p><i>on Rina khatun by any of the accused persons. But in view of Ext. 10 and also in view of evidence of P.W.8 it becomes clear that during existence of the marriage of Rina khatun with her husband Azibor Rahman accused Abul Kalam married her against her consent vide Ext. 10 Nikanama as evidencet in at page 13 of Nika register material Ext. I Undboubtedly during continuation of marriage when Rina Khatun was marriage by Abul Kalam with the abetment and collaboration of other accused persons vide Ext. 10 then it is Cruelty of gross type forced on Rina khatun by accused persons. It may be mentioned that all accused persons including Abul Kalam during their examination U/S 342 Cr. P.C. they all simply denied allegation but they including Abul Kalam did not say a single word about Ext. 10 and also about evidence of P.W. 8. It is suggested by defence lawyer that P.W.8 Nika Registrar Abdus Sukur falsely created Ext. 10 Nikanama of marriage of Abul Kalam with Rina Khatun. It is probably to much to believe that a Nika registrar (P.W.8) would unnecessarily create any false Nikanama without any reason. Moreover, nothing is disclosed in evidences about any enmity or any grudge with accused persons for which P.W.s Nika Registrar might such an set to implicate falsely accused persons in this case. Therefore, it is difficult to believe that Ext. 10 was created by P.W.8 to be used against accused persons. Rather we can believe that accused persons with common intention and consorted effect came to P.W. 8 with Rina Khatun who was given mis-understanding and there they got herself married with accused Abul Kalam by showing her as divorced woman. Although earlier marriage of Rina Khatun with her husband Azibor Rahman was not severed by any divorce. We have nothing disbelieve P.W.8 are worthy to be believed and relied. We have nothing disbelieve P.W.8 and Ext.10.</i></p> <p><i>We shall now consider evidence of other witnesses, P.W.1 is Doctor Habibur Rahman, Deputy Civil Surgeon, Pabna and P.W.2 is Shantona Rani Das Assistant of P.W.1 in Civil surgeon office, Pabna both of them proved Ext. 1 a medical certificate to the effect that P.W.1 and 2 examined victim woman Rina khatun and gave their opinion as to her age to be between 17 to 18. P.W.1 and 2 during examination did not find any sign of rape committed on P.W.4 Rina khatun.</i></p>

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		<p><i>We already stated earlier that although prosecution brought allegation about rape against accused persons but that charge could not be proved in as much as sign of rape committed on Rina khatun was not found and detected during examination by P.W.1 and 2 who proved their signature on Ext.1 and accordingly marked Ext-1/1,1/2. So, Ext-1 and evidence of pw-1 and 2 proved this much that Rina khatun was a adult women. We found earlier and admitted fact in this case that Rina khatun was married with Azibor Rahman and there was issue out of their wedlock. Therefore, Rina khatun was not a vergin woman. Evidence of P.W.1 and 2 will not have vital role in this case in as much as they did not find any sign of rape committed on Rina khatun and therefore, we see that charge of rape could not be proved by the prosecution.</i></p> <p><i>But main charge of prosecution against accused persons u/s 4-kha of Cruelty to Women Ordinance, 1983 read with schedule 4-kha of Speical Powers Act, 1984 for the reason that accused persons forcibly took Rina khatun and compelled her to marry accused Abul Kalam at the time of discussing evidence of P.W.8 and also scrutinizing Ext.10 in material Ext.I i.e., Nikanama of the marriage between Abul Kalam and Rina khatun, we found and discussed this fact that accused persons in collusion with such other got kabinnama of the marriage of Rina khatun with Abul Kalam prepared and registered in the office of P.W.8 as Nika registrar. We already pointed out earlier that such fact as evident from Ext. 18 in material Ext. I. supported the charge brought against accused persons u/s 4-kha of Cruelty to Womens Ordinance, 1983 read with Speical Powers Act.</i></p> <p><i>Now we shall discuss evidence of P.W.2 and 3 i.e. informant Mazahar Ali and victim women Rina khatun. It may be stated that both P.W.2 and 4 were declared hostile by prosecution and thereafter prosecution cross-examined both of them and put suggestion to the effect that they both were suppressing fact and deposing falsely being gained over and influenced by accused persons. P.W.3 is informant Mazahar ali. He stated in his deposition that he is informant and he filed the case (lodged FIR) but he does not remember date of occurrence. He stated that it might be in one Poush and thereafter one Poush passed. He stated that he does not</i></p>

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		<p><i>remember exact the day it was but later on he stated that it was Wednesday. He stated that he came home and heard occurrence from Razeka Begum to the effect that there was theft in the house but he can not say what things were stolen away and at this stage prosecution declared him hostile. During cross-examination by prosecution he admitted that his Bhatiji Rina khatun was married woman and she was married with Aziz @ Azibor Rahman. During cross-examination by prosecution this witness also stated that Rina khatun was confined in the house of Abul Kalam. He stated that it is not a fact that Rina khatun was raped. He also stated that it is not a fact that accused persons paid him money and it was not a fact that he suppressed truth and deposed falsely being gained ever by defence. In cross-examination by defence this witness stated that one Aftabuddin went to the thana. He stated that he told Aftabuddin that his bhatiji (Rina khatun) was missing. In answer to another question by defence he stated that he put L.T.I. on asking by Aftabuddin and daroga. He also stated that he did not read what was written in the paper (FIR). He stated that it was not read out to him what was written in the paper. In answer to another question from defence he stated that as per his knowledge accused persons including Abul Kalam are good man. He also admitted in cross-examination by both prosecution and defence that he is poor. Therefore, it appears that practically informant P.W. Mazahar ali P.W.3 did not support and corroborate the contents of FIR Ext.4. On behalf of defence it is argued that FIR Ext.4 will have no value in the eye of law when it scribe Aftab Hossain s/o Afser ali was not examined by prosecution. Although prosecution cited that Aftab Hossain as witness by special petition. Learned defence lawyer also argued that O.C. Zia Rahman who received written FIR Ext. 4 was also not examined as witness and above all learned defence lawyer argued further that P.W.3 informant himself did not support the contents of FIR Ext.4 and as such learned defence lawyer contended that FIR Ext.4 will have no evidentiary value in this case and as such the case will fail due to not proving Ext.4 according to law. It is true that scribe of FIR Ext.4 Aftab Hossain was cited witness by special prayer by the prosecution but that Aftab Hossain as scribe of FIR Ext.4 was not brought before this court to be</i></p>

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		<p><i>examined by the prosecution without any explanation and it is also true that O.C. Zia Rahman who received FIR Ext.4 and started P. S. case also not examined as witness in this case and it is also true that during examination informant Mojahar Ali as P. W. 3 did not corroborate and support contents of FIR Ext- 4 but it should be noted that prosecution very promptly declared P.W.3 informant of the case hostile and thereafter prosecution put suggestion then and then to the effect that being gained over and influenced by the accused persons he was deposing falsely and suppressing truth. We find from scrutiny that although P.W.3 did not corroborate and support contents of Ext. 4 FIR but during cross-examination by prosecution after having declared hostile P.W.3 informant disclosed some facts which ultimately supported the prosecution case. P.W.3 admitted that his Bhatiji Rina khatun was married and her husband is Aziz @ Azibor and P.W.3 also admitted that Rina khatun was confined and detained in the house of accused Abul Kalam. P.W.3 also stated during cross-examination by prosecution to the effect that he heard that accused Abul Kalam, Babul and others fled away at night with his bhatiji Rani khatun. Therefore, it appears that by such statements as above P.W.3 supported the prosecution case although he stated that he did not know what was written in the FIR but he admitted further in cross-examination by defence even that he went to thana with Aftab Hossain and told Aftab Hossain that his bhatiji Rina khatun was missing but he stated that on asking by Aftab Hossain and daroga he simply put LTI on the FIR Ext.4. He also stated that what was written in the FIR was not read out to him. If we scrutinize the entire evidence of P.W.3 we can come to this conclusion that in fact he has supported and corroborated the contents of FIR Ext.4 and he himself admitted that he went to them with Aftab Hossain and lodged FIR Ext.4. It is suggested from prosecution to P.W.3 by declaring him hostile that he was suppressing fact and deposing falsely being gained over and influenced by defence. Considering facts and circumstances it clearly appears to this court that suggestion of the prosecution will be meaningful and we may presume that being influenced and gained over by the accused persons P.W.3 denied to support and corroborate his FIR Ext.4. Therefore, Ext.4 can</i></p>

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		<p><i>not loser its value only because informant P.W.3 did not clearly support its contents. Regarding non-examination of O.C. Zia Rahman we may say this much that in the evidence of P.W.7 S.I. Younus Ali while examined further on recall by prosecution P.W.7 stated that O.C. Zia Rahman had been under going treatment in Dhaka Suharwardy Hospital for acute kidney trouble and as such P.W.6 and 7 S.I. Kazi Anowarul Islam and S.I. Younus Ali stated on behalf of O.C. Zia Rahman and P.W.6 Kazi Anowarul Islam proved the fact that he knew personally O.C. Zia Rahman and his writings and signature which he proved and accordingly marked Ext. in this case. Therefore, non-examination of O. C. Zia Rahman can not pouse to he fatal in this case. It is of course true that scribe of FIR Ext. 4 Aftab Hossain ought to have been examined by the prosecution as it already cited Aftab Hossain as witness in the case by special petition. In view of facts explained above we can hold that non-examination of scribe Aftab Hossain can not also be fatal when we are convinced that P.W.3 informant Mozahar Ali himself admitted some facts about the case even inspite of being hostile towards case of the prosecution. Therefore, we hold that there will be no fatal reaction in the case due to non-examination of Aftab Hossain scribe of FIR Ext.4.</i></p> <p><i>PW-4 is victim woman Rina Khatun herself. P.W.4 stated in her deposition before the court that she is 20 years old and name of her husband is Azibor. Further she stated that a child was born out of that wedlock but she denied the occurrence and stated that she does not know Abul Kalam and also stated further that she was not taken away by any one. And at this stage prosecution declared her hostile and prosecution cross-examined her. She stated in answer to question put by prosecution that it is not a fact that accused persons took her to Nika Registrar and it is not a fact that against her will her signature was taken on the Nika Registrar about her marriage with Abul Kalam. In answer to another question she stated that it is not a fact that being influenced by accused persons she was suppressing truth and deposing falsely. He also stated that it is not a fact that she made any statement on 29.12.88 to any Magistrate and she stated further that it is not fact that she was examined by daroga. On behalf</i></p>

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		<p><i>of prosecution it was suggested to her that being influenced and gained over by defence she was suppressing fact and deposing falsely she denied that suggestion. During cross-examination by defence she stated that she was not taken to Magistrate and she did not make any statement to Magistrate whom she did not know. In answer to another question from defence she stated that her husbands came to Azibor and she was married 5 years ago and had been leaving peacefully with her husband. She stated that she does not know accused persons and she was not taken to Nika Registrar no her marriage was solemnized by the Nika Registrar. It therefore, appears that P.W.4 Rina Khatun totally denied any such occurrence but we find from the evidence of P.W.3 uncle of P.W.4 that P.W.3 even admitted in his deposition that his bhatiji Rina khatun was missing and Rina khatun was confined and detained in the house of accused Abul Kalam but Rina khatun surprisingly denied the occurrence altogether. It appears that P.W.4 intentionally stated all these facts in her deposition denying the occurrence altogether. Evidence of P.W.8 and Ext.10 in material Ext.I will disprove the statement of P.W.4. We found earlier that Rina khatun was taken by accused persons to P.W.8 who describing Rina khatun as divorced woman registered Nikanama Ext. 10 in material Ext.I regarding marriage of Rina khatun with accused Abul Kalam. We therefore, can say that P.W.4 Rina Khatun deposed falsely suppressing the fact and truth. In this connection we can mention that as per facts available from the record Rina khatun was recovered on 27.12.88 and thereafter she was sent to Deputy Civil Surgeon on that date for physical examination and report as his evident from Ext.1. It also appears that she was forwarded to the Court on 29.12.88 and she made statement u/s 164 Cr.P.C. before Upazila Magistrate. Santhia who recorded the statement Ext. 3 on 29.12.88 and on that date as evident from order sheet of lower Court record P.W.4 was released in the Zimma of her husband Azibor Rahman from the Court. Thereafter for reason not known and disclosed P.W.4 Rina khatun was taken to the court of Upazila Magistrate, Bera where in as it appears from the record Rina khatun aware an affidavit where in she was indentified by one Abdur Rouf, Advocate who was engaged for the accused and</i></p>

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		<p><i>in the affidavit as is kept in the record. It appears that Rina khatun denied the occurrence and such fact regarding affidavit was mentioned in the petition for bail for accused Abul Kalam who surrendered before the Upazila Magistrate, Santhia on 17.01.89 but his prayer for bail was rejected. It therefore, appears that subsequently P.W.4 Rina khatun was influenced gained over and taken to the camp of accused persons for whom affidavit was sworn on 16.1.89 by P.W.4 Rina khatun who herself denied altogether occurrence in that affidavit. These are the circumstances which conclusively point out that P.W.4 Rina Khatun was gained over by the other side and for this reason P.W.4 Rina khatun while deposing before this court denied the occurrence and did not support the prosecution case and story. This court is of the view that prosecution very rightly declared her hostile and put suggestion to her that being influenced and gained over by accused persons she was suppressing truth and deposing falsely in order to save accused persons from the case. This Court is further of the view that due to circumstances discussed above suggestion of the prosecution will be meaningful. We shall now discuss the evidence of P.W.5 Magistrate Abdul Mannan. He stated that on 29.12.88 he was Upazila Magistrate, Santhia on that date victim Rina Khatun was brought to his Court by Santhia thana plice and he recorded statement of Rina Khatun u/s 164 Cr.P.C. by observing legal formalities after it was recorded victim Rina Khatun willingly and freely put her L.T.I. on the said statement Ext.3. This witness proved his two signatures therein marked Ext. 3/1, 3/2 and Ejlash Peon of that Court namely Kobad Hossain wrote the name of Rina Khatun after taking L.T.I. on the statement and wrote his own name. This witness proved the signature of Kobad Hossain marked Ext. 3/3. During cross examination this witness admitted that he did not personally know Rina Khatun from before nor he noted as to who identified Rina Khatun to him. He stated that he made no endorsement separately that after it was recorded statement was read out those Rina Khatun nor it was written that Rina Khatun put her L.T.I. admitting truth of the statement nor he stated anything therein that he observed the formalities. These are formal things and by showing all these to the Court</i></p>

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		<p><i>learned defence lawyer argued that since necessary requirements and formalities were not expressly observed by P.W. 5 Magistrate Abdul Mannan, Ext. 3 statement of Rina Khatun u/s 164 Cr. P.C. will have no evidentiary value. From scrutiny it appears that some necessary certificates were not given on Ext. 3 but we should remember that it was a statement of Rina Khatun was a witness not as an accused and as such all necessary requirements for statement u/s 164 Cr.P.C. of an accused can not be expected for observance very strictly by the recording officer at the time of recording the statement of an witness. In the present case we find that P.W. 5 Magistrate Abdul Mannan recorded the statement of Rina Khatun is quite normal procedure as per statement that she was forcibly taken by accused persons and thereafter taking to Nika Registrar wherein her marriage with Abul Kalam was registered in the office of Nika Registrar and such fact as stated in Ext. 3 are duly corroborated by P.W. 6 Nika Registrar and supported by Nikanama Ext. 10 in material Ext. I. We therefore, can not disbelieved Ext. 3 as statement of victim Rina Khatun nor we can disbelieve the evidence of P.W.5 Magistrate Abdul Mannan who stated that as per statements of Rina Khatun, he recorded Ext. 3 and accordingly to his Ext. 3 was made freely, independently and willingly by Rina Khatun herself. We do not see any reason to discard Ext. 3 and disbelieve evidence of P.W. 5. This Court is of the view that P.W. 5 can be reliable and Ext. 3 will also get evidentiary value.</i></p> <p><i>We shall now discuss evidence of P.W. 6 and 7 S.I. Kazi Anowarul Islam and S.I. Younus Ali, P.W. 6 Kazi Anowarul Islam stated and proved that O.C. Zia Rahman received written F.I.R. Ext. 4 on 25.12.88 by endorsement Ext. 5, filled up F.I.R. from Ext. 6, started P.S. Case and then endorsed this P.W. for investigation of the case. This witness proved the signature of O.C. Zia Rahman accordingly these are market Ext. 5/1, 6/1, 6/2. This witness stated that during investigation he seized Nika register material Ext.I by seizure list Ext.7. He proved his signature on the same marked Ext. 7/1 and proved the signature of 2 witnesses marked Ext. 7/2, 7/3. He also stated and proved that during investigation he prepared map with index (Ext.8 and 9) of the place of</i></p>

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		<p><i>occurrence. He proved his signature on the same marked 8/1, 9/1. He stated that during investigation he recovered Rina khatun from the house of accused Abul Kalam and thereafter Rina khatun was sent for medical examination and subsequently Rina khatun made statement to Upazila Magistrate, Santhia who recorded the same u/s 164 Cr.P.C. It is an evidence that during investigation of the case P.W.6 was transferred and accordingly O.C. Zia Rahman completed the rest investigation and submitted charge sheet. During cross-examination of this witness by defence we do not find any gross defects to disbelieve him. We can any that necessary links of the case are proved by P.W.6 Kazi Anowarul Islam. We do not find anything in his deposition to discard his evidence and to disbelieve him.</i></p> <p><i>P.W.7 is S.I. Younus Ali. He stated that subsequently he was endorsed with further investigation of the case and during further investigation he visited place of occurrence considered earlier works of investigation and also evidence collected earlier and thereafter he submitted charge sheet against all accused persons under necearry section of B.P.C. as mentioned earlier with section 4-kha and (ga) of Cruelty to Women Ordinance, 1983 read with Special Powers Act, 1974. In his cross-examination by defence he stood the test and nothing could be out from him to disbelieve him in any way. On recall by prosecution it was taken from him that O.C. Zia Rahman had been under going treatment in the Shwardy Hospital for kinny trouble and for this reason O.C. Zia Rahman could not be examined as witness in this case, So, through P.W.7 prosecution has given an explanation for non-examination of O.C. Zia Rahman. During cross-ecamination of this P.W.7 after recall by the defence this witness stated that Nika Registrar Sukur Ali did not tell him that he registered the Nika at 5/5-30 P.M. but P.W. Sukur Ali told him that he registered the Nika at 9-30 P.M. in the night following 24.12.88. Pointing out this discrepancy it was argued by learned defence lawyer that the time of registration of the marriage was told by P.W.8 in deposition to be 5/5-30 P.M. On 24.12.88 where as he stated to I.O. P.W.7 the time of marriage to be 9-30 P.M. at night on 24.12.88 learned lawyer argued that due to this discrepancy P.W.8 should be</i></p>

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		<p><i>disbelieved. By such submission indirectly defence tried to show that Nikanama was registered not at 5-30 P.M. but at 9-30 P.M. at night following 24.12.88 indirectly defence supported the alleged registration of Nika of victim Rina Khatun with accused Abul Kalam. So, this types of submission of defence indirectly supported the prosecution case and story. It appears from evidence of P.W.8 and from Ext. 10 in material Ext.I that all other accused persons came with accused Abul Kalam and victim Rina khatun to P.W.8 and they all described Rina khatun to be divorced lady and thereafter by false representation the Nika of Rina khatun with Abul Kalam was registered vide Ext. 10 in material Ext. I while discussing evidence of P.W.8 we stated all these things earlier. So, we find that Rina khatun although a married women having her husband Azibor Rahman alive was married by accused Abul Kalam against her will falsely describing herself to divorced lady with colleoboration with other accused persons who abeted the offence u/s 4-kha of Cruelty to Women Ordinance, 1983 read with schedule 4-kha of Special Powers Act, 1974.</i></p> <p><i>We find another circumstances against accused persons including Abul Kalam. It appears that all accused persons including Abul Kalam at the time of 342 Cr.P.C. statements simply claimed to be innocent and in answer to other 2 questions they stated nothing. Therefore, regarding marriage registration of Nika of Rina khatun with accused Abul Kalam in the office of P.W.8 Nika Registrar Sukul Ali in the Nikanama Ext. 10 they completely remained silent which indirectly means that they have nothing to say regarding Ext.10 and evidence of P.W.8 This circumstances will indirectly bring presumption against accused persons. Another circumstances we find against accused Abul Kalam himself. It appears that Abul Kalam put LTI on 342 Cr.P.C. statement sheet but in Vokatnama examined in favour of his engaged lawyer on 5.6.89 as appears in the record Abul Kalam put his signatures. Similarly Abul Kalam put his signature on the Vokatnama executed in favour of engaged lawyer on 17.1.89. It therefore, appears that accused Abul Kalam knows him to write his name but it is not known why he did not put his signature on the 342 Cr.P.C. statement sheet on which he put LTI. Therefore, this is a strong circumstance to be used</i></p>

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		<p><i>against accused Abul Kalam to the effect that he is suppressing fact and truth from the Court for reason not disclosed.</i></p> <p><i>We stated earlier that we shall see whether non-examination of C.S. witness No.6 Abdul Aziz and 13 O.C. Zia Rahman and also subsequently cited witnesses vide Order No.11 dated 31.7.90 will have any reaction on the merit of the prosecution case. We shall now discuss and see to that point. Earlier we discussed that P.W.6 and 7 I.O. Kazi Anowarul Islam and Yunus Ali stated and proved the works done by O.C. Zia Rahman in the case. P.W.6 Kazi Anowarul Islam stated that he knew person hand writing and signature of O.C. Zia Rahman and as such P.W.6 proved that O.C. Zia Rahman received written FIR Ext.4 vide his endorsement Ext.5 and started SAnthia P.S. Case 8 dated 25.12.88 and O.C. Zia Rahman filled up FIR form Ext.6 and thereafter endorsed the investigation work to P.W.6 who also proved during his deposition signatures of O.C. Zia Rahman and accordingly marked Ext. 5/1, 6/1, 6/2, P.W.7 S.I. Younus Ali stated while examined on recall by prosecution that O.C. Zia Rahman at present had been hospitalized in the Suharwardhy Hostipal for kidney trouble. Therefore, we already observed earlier that non-examination C.S. witness 13 O.C. Zia Rahman will not affect the prosecution case in any way as regards C.S. witness No.6 Abdul Aziz alias Azibor s/o Badaruddin village Paikarhat, it appears that prosecution filed hazira of this witness Abdul Aziz alias Azibor on 22.8.90 and 24.10.90 but did not examine as P.W. in the case. Subsequently, C.S. witness No. 6 Abdul Aziz was not brought to be examined nor any explanation was given by the prosecution for his non-examination. This is due to lack of intelligent and careful conducting of the prosecution case by the conducting P.P. But fact remains that this C.S. witness No.6 Abdul Aziz @ Azibor is admittedly the husband of victim woman Rina khatun. We already pointed out earlier while discussing the evidence of P.W.4 Rina khatun that after she was released from court in the zimma of her husband Abdul Aziz @ Azibor Rahman on 29.12.88 P.W.4 Rina khatun was subsequently taken from the zimma of her husband Azibor Rahman to the Upazila Magistrate Bera on 16.1.89 and on that dated P.W.4 Rina</i></p>

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		<p><i>khatun made an affidavit before Upazila Magistrate, Bera denying allegation of the prosecution against all accused persons. That affidavit is kept in the L.C. record where from it appears that one Abdur Rauf. Advocate engaged for accused persons indentified P.W.4 Rina khatun at the time of swaring that affidavit before Upazila Magistrate, Bera. We already stated earlier such affidavit was collusive and modified and it was filed only to creat favourable atmosphere for the accused persons. Such fact is found disclosed from the record wherefrom it appears that after the said affidavit on 16.1.89 main accused of the case namely Abul Kalam surrendered before Upazila Magistrate, Santhia and sought for bail maing reference to affidavit of P.W.4 Rina khatun. From all these facts we can presume that no called affidavit was collusive and motivated and that was sowrn by P.W.4 Rina khatun when she was in the zimma of her husband C.S. witness No.6 Abdul Aziz @ Azibor being influenced and gained over by the accused persons. We can therefore, presume that even if C.S. witness No.6 Abdul Aziz alias Azibor would have been examined by presecution he would have given deposition like P.W.4 collusively favouring accused persons. We therefore, hold that non-examination of C.S. witness No.6 can not also be fatal fro the prosecution case. Prosecution should have produced him when his hazira was filed on 14.10.90 and also on 22.8.90 but due to less intelligent conducting of the case it was not done by the prosecution. We therefore, hold that non-examination C.S. witness Nos.6 and 13 can not materially affect the prosecution case. From the record it appears that prosecution by special petition dated 31.7.90 cited 6 persons as witnesses. Among those 6 persons there is one Aftab Hossain scribe of FIR Ext.4. At the time of discussion of evidence of P.W.3 informant Mazahar ali whoe was declared hostile by prosecution. We stated that non-examination of Aftab Hossain as a scribe of Ext.4 will not materially affect the prosecution case when P.W.3 being informant of the case himself disclaimed his own FIR Ext.4 and as such P.W.3 was declared hostile by prosecution having put suggestion to him to the effect that being influenced and gained over by defence P.W.3 was deposing falsely. So, even if scribe of FIR Ext.4 such as cited witness Aftab Hossain were brought and examined by</i></p>

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		<p><i>prosecution he would have also given the same role like P.W.3 favouring the defence case. It is of course true that when Aftab Hossain was cited as witness he would have been brought by prosecution and would have been produced on the plea that he had gone to the other side but that was not done due to laches in conducting of the case on behalf of prosecution. Similarly, it appears that cited witness Kobad Hossain, peon of Upazila Magistrate Court, Santhia is one who according to deposition of P.W.5 Magistrate Abdul Mannan wrote the name of P.W.4 Rina khatun after taking her LTI on 164 Cr.P.C. statement Ext.3. Of course P.W.5 proved the signature of this cited witness Kobad Hossain. Peon of Santhia Upazila Court and marked Ext. 3/3 but still then prosecution should have brought that cited Peon Koban Hossain for examination in this case. We find that since signature of Peon Kobad Hossain was proved by P.W.5 non-examination of that cited witness will not be fatal also. In the same manner we can say that prosecution should have given explanation for non-examination of other cited witness also. This will be due to un-scientific conducting of the case on behalf of prosecution. But this Court is of the view that non-examination of those cited witnesses can not also be fatal when this Court is convinced that decision of this case can be taken passing on evidence of P.W.8 Nika Registrar Kari Sukur Ali and on Nikanama Ext. 10 in the Nika Register material Ext.I. Considering facts and circumstances together as above we can say that non-examination of C.S. witnesses and subsequely cited witnesses can not bring any material reaction on the result of this case nor will materially affect the prosecution case in any way.</i></p> <p><i>Considering facts and circumstances of the case we find that accused Abul Kalam committed offence u/s 4-kha of the Cruelty to Women Ordinance, 1983 read with schedule 4-kha of the Special Powers Act, 1974 and similarly other accused persons committed offence u/s 4-kha/9 of Cruelty to Women Ordinance, 1983 read with schedule 4-kha/6 of Special Powers Act, 1984 and as such all the accused persons are liable for the offences as alleged and they all are accordingly liable for punishment there under.</i></p> <p><i>Points 1 and 2 are accordingly answered in the affirmative and against accused persons and in favour of</i></p>

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		<p><i>prosecution.</i></p> <p><i>Hence,</i></p> <p style="text-align: center;">Ordered</p> <p><i>That accused Abul Kalam be found guilty of the offence u/s 4-kha of Cruelty to Women Ordinance, 1983 read with schedule 4-kha of Special Powers Act, 1974 and he is accordingly convicted and sentenced to suffer R.I. for 5(five) years and also sentenced to pay of fine of Taka 5,000/-(five thousand) in default to suffer R.I. for 1(one) year more and accused Babar Ali, Shomsher Ali, Shahid Ali, Abdur Rahman and Afsar Ali be found guilty of the offence u/s 4-kha/9 of Cruelty to Women Ordinance, 1983 read with schedule 4-kha/6 of Special Powers Act, 1974 and they all are accordingly convicted and sentenced each of them to suffer R.I. for 5(five) years and also sentenced to pay of fine of Taka 5,000/-(five thousand) in default to suffer R.I. for 1(one) year more.</i></p> <p><i>Dictated and corrected by me.</i></p> <p style="text-align: right;"><i>(M.A. Quddus)</i> <i>Sessions and Special Tribunal</i> <i>Judge, Pabna.</i> <i>29.11.1990</i></p> <p>প্রসিকিউশন পক্ষের সকল স্বাক্ষীগণের সাক্ষ্য সবিস্তারে পর্যালোচনায় প্রতীয়মান যে, সকল সাক্ষ্যগন পরস্পর পরস্পরকে সমর্থন করে বক্তব্য প্রদান করে প্রসিকিউশন পক্ষের অভিযোগ সন্দেহাতীতভাবে প্রমাণ করতে সক্ষম হয়েছেন। বিচারিক আদালতের রায় পর্যালোচনায় কোন প্রকার ত্রুটি বিচ্যুতি পরিলক্ষিত হয় না। বিজ্ঞ বিচারিক আদালতের রায় ও দন্ডদেশ সঠিক এবং ন্যায্যনুগ হয়েছে। অত্র আপীলটি না-মঞ্জুরযোগ্য।</p> <p>অতএব, আদেশ হয় যে, অত্র আপীলটি না-মঞ্জুর করা হল।</p> <p>বিজ্ঞ দায়রা এবং বিশেষ ট্রাইব্যুনাল জজ, পাবনা কর্তৃক বিশেষ ট্রাইব্যুনাল মামলা নং ১০/১৯৯০-এ প্রদত্ত বিগত ইংরেজী ২৯.১১.১৯৯০ তারিখে তারিখের প্রদত্ত রায় ও দন্ডদেশ এতদ্বারা বহাল রাখা হল।</p> <p>অত্র রায় ও আদেশের অনুলিপি প্রাপ্তির ৩০(ত্রিশ) দিনের মধ্যে আসামী-আপীলকারীগণকে বিজ্ঞ বিচারিক আদালতে আত্মসমর্পনের নির্দেশ প্রদান করা হল। ব্যর্থতায় বিজ্ঞ আদালত আপীলকারীগণকে গ্রেফতারের প্রয়োজনীয় পদক্ষেপ গ্রহন করবেন।</p> <p>অত্র রায়ের অনুলিপিসহ অধস্তন আদালতের নথি সংশ্লিষ্ট আদালতে দ্রুত প্রেরন করা হউক।</p> <p style="text-align: right;">(বিচারপতি মোঃ আশরাফুল কামাল)</p>

নম্বর ২০

ক্রমিক নং	তারিখ	নোট ও আদেশ
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