

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 1213 of 1998

Md. Kayum alias Kayum alias Kayem Ali

...Appellant

-Versus-

The State

...Respondent

No one appears.

...For the appellant

Mr. S.M. Golam Mostofa Tara, D.A.G with

Mr. A. Monnan (Manna), A.A.G

...For the State

Heard on 30.07.2023, 31.07.2023, 13.08.2023 and
22.08.2023**Judgment delivered on 23.08.2023**

This appeal under Section 30 of the Special Powers Act, 1974 is directed against the judgment and order dated 10.05.1998 passed by Senior Special Tribunal, Nawabganj in Special Powers Case No. 53 of 1995 convicting the appellant under Section 6 of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983 and sentencing him thereunder to suffer rigorous imprisonment for 5(five) years and to pay a fine of Tk. 1000, in default, to suffer rigorous imprisonment for a further period of 3(three) months more.

The prosecution case, in short, is that Razia Khatun, sister of the informant, was married to accused Quayum according to Mohammedan Law in November 1993 and after marriage, he demanded Tk. 10,000. Due to non-payment of the said amount, the accused left his wife at the house of the informant at village Shibpur. On 08.08.1994, he again married another girl and informed the matter to the informant. Subsequently, he applied to the Chairman of the concerned Union Parishad on 05.04.1995 and they settled the matter between them requesting him to pay Tk. 5000 to the wife of the accused. Before payment of the Tk. 5000, the accused came to the house of the complainant on 13.06.1995 and next at 1.00 am while the family members of the informant were sleeping, the accused went to his wife and dealt a knife blow on her throat and two fingers and

left the house quickly. After that, the victim was admitted to Nachole Thana Health Complex.

Police took up investigation of the case. During the investigation, the Investigating Officer visited the place of occurrence, seized documents, and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. After completing the investigation found the prima facie truth of the allegation made against the accused and submitted charge sheet against him on 11.09.1995 under Section 6 of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983. After that, the case record was sent to the Special Tribunal, Nawabganj. During the trial, the charge was framed under Section 6 of the said Act and the charge was read over to the accused who pleaded not guilty to the charge and claimed to be tried following the law.

During the trial, the prosecution examined 11(eleven) 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 declined to adduce any D.W. 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 Md. Khalilur Rahman is the informant and brother of victim P.W. 2 Razia Khatun. He stated that the accused is the husband of his sister Razia Khatun and after marriage, he demanded Tk. 10,000 as dowry. Father of the informant is a poor man and he could not pay the dowry. Subsequently, he left his wife at the house of the father of the informant. After that, he married another girl for which he filed a complaint to the Chairman, Manda Union Parishad. The Chairman of the said Union Parishad instructed the accused to pay dower money amounting to Tk. 5,000 out of Tk. 10,000 and also requested him to return the gifted materials given at the time of marriage. Before payment of the said money, the accused came to his house and at about 11.00 pm he along with his co-villager Sabir Uddin saw him in his village. At that time, the accused said that he would take his wife to his house. At about 1.30 am,

the accused came to the house of the informant. At that time, his sister was sleeping in the Baranda and a quarrel took place between the accused and his wife. He told them that he would take his wife without paying the dower money but she refused to go along with him without the dower money. Suddenly, the accused caused injury with a knife to the throat and two fingers. The informant saw that the accused was fleeing away. During cross-examination, he stated that he did not want a divorce from the Chairman and affirmed that they claimed the dower. The victim wanted to go to the house of the accused but he told that it was not possible to maintain two wives and in the salish, it was decided that within the next 15 days, the accused would pay the dower money and the decision of the meeting was written. When the accused came to his house at 1.30 am, he was sleeping and his sister and mother were also sleeping on the balcony. At the time of the altercation between the husband and wife, he woke up. On recall, he stated that he lodged the FIR. He proved the FIR as exhibit 6 and his signature as exhibit 6/1.

P.W. 2 Razia Begum is the victim and wife of accused Md. Kayum alias Kayum. She stated that after 8 months of her marriage accused left her at the house of her parent for dowry. Thereafter, the local Chairman conducted a salish and in that salish, she claimed divorce. It was decided that the accused would pay Tk. 5,000 and after that, the divorce will take place. Thereafter, the accused went to the house of the father of the victim and called her out of the house. He told her to go along with him without the dower money. But she refused to go along with him and told him that in the early morning, she would go. After an altercation, the accused caused injury with a knife to the throat and two fingers of both hands. While the victim raised a hue and cry, the accused fled away. During cross-examination, she stated that she is the sixth wife of the accused and he saw a lady in the house of the accused as his wife and her name is Sabi. She denied the suggestion that the accused filed a case in the Court of Naogaon. On 17th April, she went to the Chairman. In the salish, the accused wanted to divorce her. In the meeting, it was decided that the accused would pay Tk. 5,000 as dower and Tk. 2,000 within 8 days. After

payment, the accused will divorce her. After 8 days, she along with his brother and the accused went to the Chairman. At that time, the accused said that he would not pay the dower. She affirmed that he was called by the accused and she went out of the house, she did not say anything to her mother. She also affirmed that the accused said that he would not follow the decision of the Chairman. Hearing hue and cry, her brother came to her and he saw that the accused was fleeing away.

P.W. 3 Md. Mokbul Hossain is the father of victim P.W. 2 Razia Begum. He stated that the occurrence took place about 1 year and 3 months ago at 1.00 am. About 3 years ago, the accused married his daughter and at the time of marriage, it was decided that he would pay Tk. 10,000 to the accused. Due to non-payment of the said money, the accused left his wife in the house of the informant and about 2 years ago accused left his wife at his house and married another girl. After that, he filed a complaint to the Chairman. On the date of occurrence, he was sleeping on the balcony and in the meantime, the accused entered the house. He saw that the accused was talking to his daughter and he said that he would take his daughter. At that time, he woke up and saw that the accused was trying to slaughter the daughter of the informant, she was trying to resist with her hands and she sustained injuries on her throat and fingers, hearing hue and cry, the witnesses came to the place of occurrence. After that, the victim was taken to hospital. During cross-examination, he affirmed that the victim read up to class III. He stated that his son applied to the Chairman of Nachole Union Parishad. The victim and accused were talking sitting on the floor. He affirmed that the bloodstained shares and the beddings were handed over to the Investigating Officer.

P.W. 4 Saber Uddin stated that the victim is known to him and she is the wife of the accused. Before 1 year and 3 months, the occurrence took place in the house of Mokbul. On that day at 10.00 pm after dinner, while he was washing his hands he saw the accused. At that time, the accused said that he would take his wife. Thereafter, he went to his house. On the next day in the morning, he heard that the accused caused injury to

victim Razia for nonpayment of dowry. He heard that a quarrel took place between the accused and his wife.

P.W. 5 Md. Shajeman alias Kalu stated that victim Razia is the wife of accused Quayum. The occurrence took place on 13.06.1995 at 1.00 am in the house of Makbul. On that day, he was sleeping in his house situated 20 yards south of the house of the informant. Hearing a hue and cry, he went to the house of the informant and with the light of the Mosque, he saw that the accused was feeling away from the house of the informant. He found Razia Khatun in the balcony in injured condition and saw injuries on the throat and fingers of both hands of Razia. He heard that due to nonpayment of Tk. 10,000 as dowry, the accused caused injury on 08.08.1994. The accused left his wife of the house of her father. On 22.06.1995, the Investigating Officer seized a hurricane lamp from the house of the informant. He signed the seizure list. He proved the seizure list as exhibit 1 and his signature as exhibit 1/1. During cross-examination, he affirmed that the father of the victim Razia is his uncle and there was a road between his house and the house of the informant. The house of Younus is situated on the north of his house and the house of informant is situated on the west of the house of Younus. He heard that a salish took place in the presence of the local Chairman.

P.W. 6 Dr Taj Uddin is a doctor at Nachole Hospital. He stated that on 14.06.1995 he was posted at Nachole Hospital. On that day, he examined Razia Khatun aged about 20 years and found the following injuries:-

(1) There was a liner fracture with associated incised injury measuring $1'' \times \frac{1}{4}$ x bone depth found on the ventral aspect of the distal phalange of the left thumb. Profused bleeding occurs from that region and the injuries were caused by sharp cutting weapon and grievous in nature. Reduction of fracture done manually.

(2) One incised injury measuring $\frac{3}{4} \times \frac{1}{4}$ x skin depth was found on the ventral aspect of the distal phalanx of the right finger. This injury was caused by a sharp cutting weapon and was simple in nature.

(3) One incised injury measuring $1'' \times \frac{1}{8}''$ x skin depth was found on the left submandibular region. This injury was caused by a sharp cutting weapon and simple in nature.

The age of the injuries was 5(five) hours and after treatment, he along with Doctor Shafiqul Islam and another issued the certificate. He proved the certificate as exhibit 2 and his signature as exhibit 2/1. During cross-examination, he affirmed that before issuance of the certificate, he examined the victim. On 20.06.1995, the Medical Board was constituted and following the register, the report was prepared. He denied the suggestion that he issued the medical certificate without examining the victim.

P.W. 7 Md. Anisur Rahman stated that the informant and the accused are known to him. The accused is the husband of the victim Razia Khatun. The occurrence took place on 13.06.1999 at night in the house of the informant. On the date of occurrence after dinner, he was sleeping. Hearing hue and cry, he went to the house of Khalil and saw injuries on the throat and hand of Rezina. He heard from the informant that the accused caused the injuries and fled away. During cross-examination, he stated that he saw the injury on the finger of both hands.

P.W. 8 Afzal Hossain stated that the occurrence took place one and six months ago. The Investigating Officer seized a Hurricane and prepared the seizure list. He signed the seizure list. He proved his signature on the seizure list as exhibit 1/2. During cross-examination, he stated that the informant is his son-in-law.

P.W. 9 A.S.I Abdul Mazid Sarkar stated that at the time of occurrence, he was posted as A.S.I at Manda Thana. At that time, he verified the PCPR of the accused. He stated that on 28.06.1995, he arrested the accused from his house and on 29.06.1995 he sent the accused to Naogaon Thana.

P.W. 10 Md. Ziaul Huq stated that the occurrence took place about 1 year 9/10 months ago. At night after dinner, he was sleeping. Hearing hue and cry in the house of Khalil, he went there and heard from Razia that her husband Quayum caused injuries for non-payment of the dowry.

P.W. 11 S.I. Zahedur Rahman stated that he is posted at Special Branch, Lalmanirhat. On 22.06.1995, while he was discharging his duty as Sub-Inspector of Nachole Thana, the Officer-in-Charge M.A. Hamid filled up the FIR and appointed him as Investigating Officer. He proved the FIR form as exhibit 3 and the signatures of O.C. M. A. Hamid as exhibit 3/1, 3/2 and 3/3. He visited the place of occurrence, prepared the sketch map and index and seized the alams. He proved the sketch map as exhibit 4 and his signature as exhibit 4/1. He proved the index as exhibit 5 and his signature as exhibit 5/1. He recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure, 1898. After investigation, he found the truth of the allegation against the accused and submitted charge sheet. During cross-examination, he affirmed that he heard that the accused told the Chairman that she would not go to the house of her husband and claimed divorce. On recall by the prosecution, he proved the hurricane as exhibit 1.

No one appears on behalf of the appellant.

Learned Deputy Attorney General Mr. S.M. Golam Mostofa Tara appearing on behalf of the State submits that P.W. 2 Razia Khatun is the victim and P.W. 1 Md. Khalilur Rahman is the informant and brother of P.W. 2. P.W. 3 is the father of the victim and they are direct witnesses of the occurrence. P.W. 4 Saber Uddin saw the accused on the date of occurrence at night in the village of the victim. He further submits that hearing the hue and cry of the victim and her family members, P.Ws. 5, 7 and 10 went to the house of the informant and heard about the occurrence from the victim and saw the injuries on her throat and fingers of both hands and P.W. 6 Dr Taj Uddin who issued the medical certificate along with the members of the Medical Board found the injuries on throat and two fingers of both hand and issued the medical certificate (Exhibit 2). The prosecution witnesses proved the charge against the accused beyond all reasonable doubt. He prayed for the dismissal of the appeal.

I have considered the submissions of the learned Deputy Attorney General who appeared on behalf of the State, perused the evidence, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that the alleged occurrence took place on 14.06.1995 at 1.00 am in the house of victim Razia Khatun and the FIR was lodged on 22.06.1995 at 2.50 pm 8 days after the alleged occurrence. In the FIR, the informant stated that after the occurrence, he took her sister Razia Khatun to Nachole Hospital and she was admitted there for treatment and after collecting the medical certificate, he lodged the FIR. On perusal of the evidence of P.Ws. 1 and 2, it reveals that they did not say anything as regards the date of occurrence. P.W.s 1 and 2 also did not say that after the occurrence, P.W. 1 took the victim to Nichole Hospital and victim Razia Khatun was admitted therein. P.W. 6 Dr Taj Uddin is a Medical Officer, Nachole Hospital. He stated that on 14.06.1995, he examined the victim Razia Khatun at Nachole Hospital and issued the medical certificate. He proved the medical certificate of the victim as exhibit 2 and her signature as exhibit 2/1. On perusal of Exhibit 2, it reveals that nothing has been stated in the medical certificate that the victim was admitted to Nachole Hospital and no reference to the register is mentioned in the certificate. P.W. 6 stated that nature of the injury No. 1 is grievous. No explanation has been given by the prosecution as to why the victim was not admitted to hospital after sustaining a grievous injury. Furthermore, the father of the victim P.W. 3 stated that during the investigation, he handed over the blood-stained cloth of the victim and the bedding to the Investigating Officer. On perusal of the evidence of Investigating Officer P.W. 11, it appears that no blood-stained cloth of the victim and the bedding whereon the victim was sleeping at the time of occurrence was seized by the Investigating Officer. No explanation has been given by the informant as to why he lodged the FIR after collecting the medical certificate from the hospital after 8 days of occurrence.

Whenever the Officer-in-Charge of a Police Station receives information as regards the commission of the cognizable offence, he is legally bound to register the FIR. No statement has been made by the informant in the FIR that initially the Officer-in-Charge of the concerned Police Station refused to register the FIR without a medical certificate. In the given facts, I am of the view that the prosecution failed to give any

reasonable explanation regarding the cause of the delay in lodging the FIR.

P.Ws. 1 and 2 did not say anything as regards the date of occurrence. P.W. 2 victim Rezia Begum also did not say that he was admitted to the hospital for the injury caused by her husband at the time of occurrence. Material omission in the evidence of a direct witness is a material contradiction. Attempts to cause death or grievous hurt are the elements of Section 6 of the Cruelty to Women (Deterrent Punishment) Ordinance, 1983. A mere statement in the medical certificate by the doctor that the injury is grievous in nature is not sufficient to attract Section 320 of the Penal Code, 1860 unless the injury caused by the accused attract Section 320 of the Penal Code. The prosecution neither proved the admission register of the Nachole Hospital nor any statement is made in the medical certificate (exhibit 2) that the victim was admitted to the said hospital. The prosecution failed to prove the alleged injury sustained by the victim. Therefore, I am of the view that the prosecution failed to prove the charge under Section 6 of the said Ordinance.

In view of the above facts and circumstances of the case, evidence, findings, observation and proposition, I am of the view that the prosecution failed to prove the charge against the accused to the hilt 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 records at once.