

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 11084 of 2023

Shukanto Biswas

...Appellant

-Versus-

The State and another

...Respondents

Mr. Khandker Mehboob Alam, Advocate with

Mr. S. M. Asadullah Tarique, Advocate

...For the appellant

Mr. Mohammad Zafar Imam, Advocate with

Mr. Ajgar Hossain, Advocate with

...For the complainant-respondent No. 2

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

Mr. Sultan Mahmood Banna, A.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Ms. Farhana Abedin, A.A.G with

Mr. Md. Kaium, A.A.G

...For the State

Heard on 18.03.2025, 21.04.2025 and 23.04.2025

Judgment delivered on 24.04.2025

This appeal under Section 28 of the Nari-O-Shishu Nirjaton Daman Ain, 2000 (as amended in 2003) is directed against the impugned judgment and order of conviction and sentence dated 15.10.2023 passed by the Nari-O-Shishu Nirjaton Daman Tribunal No. 05, Chattogram in Nari-O-Shishu Nirjaton Daman Case No. 663 of 2018 (new) arising out of Baklia Thana Nari-O-Shishu Nirjaton Tribunal Case No. 288 of 2014 convicting the accused under Section 11(ga) of the said Ain and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 10,000(ten thousand), in default, to suffer imprisonment for 1(one) month.

The prosecution's case, in short, is that the complainant Shima Das @ Biswas is the wife of the accused Shukanto Biswas. The complainant was serving as Senior Officer of the Rupali Bank Limited, and the accused Shukanto Biswas was the Manager of the Rupali Bank

Limited. The marriage of the complainant and the accused was solemnized on 04.02.2010. During their conjugal life, the complainant gave birth to a daughter on 24.07.2011. The accused Nos. 1 to 3, in connivance with their relations, demanded a motorcycle, freeze, and other materials as dowry. She took loan of Tk. 1,50,000(one lakh fifty thousand) on 22.05.2013 to purchase a motorcycle for her husband. After that, he again demanded Tk. 3,00,000 as dowry on 28.03.2014 at 10.30 am and started scolding. When she made protest against them at the instigation of the accused Nos. 2-3, the accused Shukanto Biswas started beating her on different parts of her body. At that time, she fell on the floor and sustained injuries. He also pressed her neck to kill her. At one point in time, she bite the hand of her husband and came out of his house and took shelter in the house of her mother. On that day at 8.00 pm, a salish took place between the mother, maternal uncle, witnesses, and the accused Nos. 1 to 3. At that time, the accused persons again demanded dowry of Tk. 3,00,000. On 29.03.2014, the complainant was admitted to O.C.C, Chattogram Medical Hospital and on 01.04.2014 at 8.00 pm she went to the Officer-in-Charge of Baklia Thana to lodge the FIR. The Officer-in-Charge refused to register the FIR and instructed her to file the case in the Tribunal. After that, she filed the case on 03.04.2014 in the Nari-O-Shishu Nirjatan Daman Tribunal No. 3, Chattogram.

After filing the complaint petition, the said Tribunal passed an order directing the Chief Metropolitan Magistrate, Chattogram to conduct a judicial inquiry and after inquiry, the learned Magistrate found the truth of the allegation against the accused Shukanto Biswas. Considering the inquiry report, the said Tribunal took cognizance of offence on 11.08.2014 against him. During the trial, charge was framed against the accused Shukanto Biswas under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 which was read over and explained to him and he pleaded not guilty to the charge. The prosecution examined 7(seven) witnesses to prove the charge against the accused.

After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code of Criminal Procedure, 1898 and he examined himself as D.W. 1. 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 Shima Das @ Biswas is the complainant and wife of the accused Shukanto Biswas. She stated that the occurrence took place on 28.03.2014 at 10.30 am. The accused Shukanto Biswas used to scold her with filthy language for dowry. Subsequently, he beat on different parts of her body. At the time of the occurrence, the daughter of the complainant was about 4 years old and she along with her daughter went to the house of her father. At 8 pm, a salish took place in the house of the landlord. In that salish, he also demanded dowry of Tk. 3 lakh and refused to take the minor daughter unless she paid the dowry. On 29.03.2014, she was admitted to O.C.C, Chattogram Medical College Hospital and she was released on 30.03.2014. Since the FIR was not registered, she filed the complaint petition. She proved the complaint petition as exhibit 1 and her signature on the complaint petition as exhibits 1 series. During cross-examination, she stated that before marriage, her husband was serving as an Officer of Pubali Bank Limited. Her mother-in-law was the Headmistress of a Primary School and her father-in-law is an Engineer. After marriage, they enjoyed their conjugal life at the house of her husband at Nandankanon along with his parents. They stayed there for two years. At the time of marriage, she used to withdraw Tk. 10,000 as salary. Her mother was a fourth-class employee of the City Corporation. In 2012, they rented a house near the house of her mother and at that time, her mother-in-law and maternal uncle used to come to their house. She maintained several DPS of Tk. 4,500. Now the accused is a Senior Officer of the Bank. After filing this case, her husband filed a case for the dissolution of their marriage. The accused demanded dowry for the share business. She affirmed that she

discharged her duty for about four and a half years as an Officer of Agrani Bank, Medical College Branch. After marriage, she completed her MBA. She affirmed that before the date 1/4, she did not go to the local police station. She affirmed that on 29.03.2014 at 11 am, she went to the O.C.C Department and she was released on 30/3. She told 28.03.2014 at 10.30 am, the concerned nurse physically examined her. She affirmed that in the OCC Department, age of injury was written as 10 hours. At the time of marriage, no transaction took place regarding the dowry. She also affirmed that on 29.03.2014 at 10.58, she met her husband at D.C Hill and they talked to each other. She denied the suggestion that she met at 3.40 pm. Witness Suman Dey is her cousin, Rajib Das is her elder brother, Bimal Sarker is her maternal uncle, Arnob Sarker Deb is the wife of her maternal uncle, and Akash Sarker is also her maternal cousin. None of the neighbours of her flat were cited as witnesses. She denied the suggestion that on 29.03.2014 her husband requested her at D.C Hill to come back to his house. She also denied the suggestion that on several occasions, parents of her husband requested her to come back to the house of her husband, or that she was serving as Officer of Agrani Bank, Chattogram Medical College and she managed the certificate from the Chattogram Medical College taking advantage of her service in the said branch.

P.W. 2 Rajib Das is the brother of the complainant Shima Das. He stated that the occurrence took place on 28.03.2014 at 10.30 am. The accused persons demanded dowry of Tk. 3 lakh and she refused to pay the dowry. Consequently, the accused persons beat her physically and drove her out of their house. Thereafter, she came back to his house and he took the victim to Chattogram Medical College Hospital. The occurrence took place at 11.30 in the house of the accused. They made a complaint to the landlord. In the salish, they refused to take her sister without dowry of Tk. 3 lakh. During cross-examination, he stated that the mother of the accused is a teacher and the father of the accused is

serving as the Engineer of BRTC and the financial condition of the family of the accused was good. In 2007, he was serving in the buying house. The house of the accused was situated 200 yards away from his house. He regularly visited the house of his sister. Razzak was the neighbour of the accused. Before 28.03.2014, the accused also demanded dowry. He could not say whether the accused is now serving as the Manager of Pubali Bank Limited, Dharmopur Branch. His financial condition is good, like his family. He affirmed that after marriage, her sister completed the MBA. He denied the suggestion that her sister completed MBA at the cost of the accused. A salish took place on 28.04.2014, and Ismail was present in that salish, but he was not cited as a witness in the case. The accused Susanto also filed a case against the complainant. Her sister also filed Case No. 292 of 2016 for maintenance. At the time of marriage, the accused was residing at Nandankanon. After one year of their marriage, they were residing in the Kulsum Bhaban near their house. He heard that the accused demanded dowry. He denied the suggestion that the accused did not cause any injury for dowry.

P.W. 3 Akash Sarker is the brother of the complainant. He stated that on 28.03.2014, her sister came back to their house. She said that her husband had beaten her for the dowry of Tk. 3,00,000. In the evening, a salish took place in the house of Shukanto. He was also present in that salish. The accused Shukanto Biswas and her mother demanded dowry in that salish, and they refused to take the victim without dowry of Tk. 3 lakh. After that, her sister was admitted to Chattogram Medical College Hospital. Her sister also went to Baklia Thana to lodge the FIR. During cross-examination, he stated that he is a student of the Master's of Mohsin College. On 28.03.2014 at 10/10.30 am, her sister came back to their house along with her daughter. At the time of marriage, the accused was serving as an Officer, Rupali Bank. He heard that now the accused is the Manager. At the time of marriage, the accused was residing at the Nandankanon area. After 2012/2013, they came near their house. They

used to live on the fourth floor. The mother of the complainant took her sister to Chattogram Medical College Hospital. The salish took place on 28.03.2014 in the evening, his uncle Bimal Sarker, the mother of the complainant, Rajib and he along with the mother of the accused, sister Mousumi, and her husband, were present. He denied the suggestion that he did not go to Baklia Thana. He affirmed that his father went there. He denied the suggestion that they did not go to Thana.

P.W. 4 Suman Dey is the owner of a medicine shop situated at gate No. 2. He stated that on 28.03.2014 at 10 am, he went to the house of her maternal uncle, Bimal Sarker. At that time, he saw that her maternal cousin Shima Das was crying. She stated that the accused Shukanto Biswas, her sister and mother had beaten her for the dowry of Tk. 3 lakh. He also found marks of injuries on her neck and hands. At 08.30 pm, he, along with her maternal cousin went to the house of the accused Shukanto. At that time, he saw Suman and Krishna Das. They said that they will not take the victim without dowry of Tk. 3 lakh. He tried to convince them, but they scolded them with filthy language. Consequently, he came back to his house. During cross-examination, he affirmed that after marriage, the accused was residing along with his wife at Nandankanon. The house of her maternal uncle was situated at Dewan Bazar, D.C Road. On 28.03.2014, the accused was residing in the house of Younus at Dewan Bazar. Before 28.03.2014, he went to the house of Shima Das. He admitted that the accused Shukanto Biswas is the Senior Officer of Pubali Bank. A salish took place on 28.03.2014 at 8.30 pm in the house of the accused Shukanto. At the time of inquiry, he did not make any statement. Earlier, her sister also made an allegation of beating against her husband. Her sister sustained injuries to the shoulder, face and hands. He did not take any pictures of the marks of injury. He went to Chattogram Medical College for the treatment of her sister. He affirmed that he went up to the gate of the Medical College. His maternal uncle Bimal Sarker also went along with him. The accused demanded a

dowry of Tk. 3,00,000 for the share business. He denied the suggestion that on 28.03.2014, he did not go to the house of his maternal uncle, or that he did not see Shima Das in an injured condition. He affirmed that the mother of the complainant is serving as a peon at the Railway School.

P.W. 5 Jharna Sarker stated that on 28.03.2014 at 10.30 am, the accused beat the complainant for dowry. She came to know that Shukanto got married second time. On that day at 8.30 pm, they went to the house of Shukanto. At that time, they also demanded dowry of Tk. 3 lakh and scolded them. Thereafter, they came back. After marriage, the accused was residing along with his wife at the Nandankanon area. While the victim conceived, the accused Shukanto rented a house near the house of Bimal and the mother of the complainant. She used to visit their house at night. On 28.03.2014, the complainant came to their house. The mother of the complainant used to reside in the said house. The accused Shukanto demanded money for the share business. She saw the mark of injuries on her shoulder, hands and face, but there was no bleeding. Her sister Swapna Das proposed for compromise. At 8.30 pm, they went to the house of the accused. She also affirmed that the accused is the Senior Officer, his father is an Engineer and his mother is a School Teacher. She denied the suggestion that she deposed falsely.

P.W. 6 Bimal Kanti Sarker stated that the occurrence took place on 28.03.2014 at 10-10.30 am which was a Friday. On that day the accused having beaten his wife for dowry drove her out of his house. He heard and saw the mark of bleeding injury on her face. At 8 pm, he along with others went to the house of the accused. At that time, his mother, sister and others refused to take the victim without dowry of Tk. 3 lakh. The accused also repeated the same. After that, they left the house. During cross-examination, he affirmed that the mother of the complainant used to reside in their house. They are member of the joint family. At the time of marriage, the complainant Shima was residing in

his house. He also affirmed that the mother of the accused is the Headmistress and after coming back from Thana he went to Advocate Arun Sarker who is his relation. He affirmed that before 28.03.2014, Shima Das was residing in his house. The accused Shukanto married second time about two and a half years ago. At the time of filing the complaint, he also went to Court. He is not aware that the complainant filed the case to dismiss the accused from service. He requested the landlord Ismail to come in the salish. On 29.03.2014, he also went to the Medical College. He affirmed that at the time of marriage, the accused did not demand any dowry. He denied the suggestion that on 31.01.2014, the complainant came back to his house. She came back on 28.01.2014. The accused left the house of Kulsuma Bhaban without giving any information to them. He affirmed that he talked to Advocate Arun. He could not remember whether he advised for collecting a medical certificate. He could not say how many days after talking with Advocate Arun, the complaint was filed. He affirmed that on 28.02.2014 a salish took place. He did not take any pictures of the complainant. He denied the suggestion that on 28.03.2014, he did not see any mark of bleeding injury on the face and hands of the complainant.

P.W. 7 Dr. Shib Prosad Nondy stated that on 18.09.2014, he was discharging his duty in the OCC and at that time, he issued the medical certificate of victim Shima Das. He examined victim Shima Das on 29.03.2014, and he found the following injuries on her body:

“(1) Brushing over the back of chest-5"x 3" by wooden stick & by hand.

(2) Oedema, small hematoma on the scalp $\frac{1}{2}$ "x1" by wooden stick.

(3) Small abrasion on the root of neck-1" x 1" by hand

All Injuries caused by a blunt weapon and simple in nature.” He proved the medical certificate as exhibit 2 and his signature on the medical certificate as exhibit 2/1. During cross-examination, he stated that he

could not remember when she was released from the OCC. He admitted that on 18.09.2014, he issued the medical certificate and on 29.03.2014, he examined Shima Das at 10.30 pm. On 18.09.2014 Shima Das was not present. He prepared the medical certificate following the OCC Register. He affirmed that in the certificate age of injury has been mentioned as 10 hours which means that the injury was caused 10 hours before the examination. He also affirmed that there is a Branch of Agrani Bank at Chattogram Medical College Hospital. He is not aware whether Shima Das was an officer of that branch. He admitted that, as per the injuries stated by him, the occurrence took place on 29.03.2014 at 10.30 am. In the medical certificate, the name of the mother of Swapna Das has been mentioned as an identifier. As per the statement made by Shima Das, he wrote the statement on the medical certificate. He also recorded her statement in the OCC Register. The victim also showed the mark of injuries. He denied the suggestion that he issued the medical certificate at the instance of Shima Das who was serving as Officer of Agrani Bank, Chattogram Medical College Hospital Branch. He mentioned the mark of a stick in the MC following the statement made by the victim. It is required to undress the victim to examine the mark of injury on the back of her chest. On recall, he stated that on 17.11.2014, he wrote a report regarding the amended medical certificate. He proved the report as exhibit 3 and his signature as exhibit 3/1. In the report, the date of occurrence has been mentioned as '28.03.2014' in place of '29.03.2014' which was a printing mistake. He could not remember the date when he came to know about the amendment of the certificate. He amended on 17.11.2014. On 10.12.2020, he deposed in Court. At that time, he could not disclose anything about the amendment for which he again received the summons to depose. After going through the treatment register, he amended the certificate. In the treatment register, the serial number of Shima Das was mentioned at serial No. 31. He stated that now he is discharging his duty as Resident Surgeon, Neurology, Chattogram

Medical College Hospital. He was posted in the OCC Department for 13 months. He affirmed that, except the date of occurrence, he did not find any printing mistakes in the medical certificate. The history sheet was written by him. He affirmed that the injuries mentioned in the medical certificate might have taken place due to an accident. He denied the suggestion that by issuing a false certificate, he aided the complainant in filing the case.

D.W. 1 Shukanto Biswas is the accused. He stated that at the time of engagement in 2009, the complainant was serving in the Agrani Bank, and in the month of February, their marriage was solemnized. After marriage, in August 2010, she was admitted to MBA program. After marriage, she disclosed that the financial condition of their family was not good for which she had to pay part of her salary for the welfare of her family. He used to pay her Tk. 200 every day. After marriage, they enjoyed their conjugal life in their house at Nandankanon. In 2010, the complainant took loan of Tk. 2 lakh from Agrani Bank beyond his knowledge. In 2012, he paid her loan of Tk. 1 lakh. He used to pay Tk. 8,000 as the installment of the said loan. In 2012, he also opened a DPS with the Mercantile Bank. In 2010, he also paid Tk. 20,000. He purchased a motorcycle on 23.05.2013. The complainant made false statement regarding purchasing the motorcycle. He took loan of Tk. 2-5 lakh from Trust Bank. He submitted the blue book and the bank loan. After marriage, she requested him to pay the loan of Tk. 3 lakh taken by her mother. He also paid Tk. 1 lakh at the time of the marriage of her brother Rajib Das. The complainant used to misbehave with him. The complainant put pressure to rent a house near the house of her mother and for the peace of the family, he agreed to the proposal of his wife. The complainant used to come at night to his house and during the daytime, she used to reside in the house of her mother. In July 2013, his wife instructed him to divorce her. On 31.01.2014, she left her house along with the ornaments and other belongings. On 28.02.2014, he went

to the house of her mother along with his mother. At that time, her mother requested him to stay with them in the house of his mother-in-law failing which his wife refused to live with him. Thereafter, he came back from the house of her mother-in-law. After that, he served notice to the landlord. On 22.03.2014, he informed his wife to come back. On 29.03.2014, he requested his wife to meet and at 10.30 am, he met his wife at DC hill and requested her to come back. The complainant took the key to the motorcycle and the helmet. On 31.03.2014, he came to the house of Golap Singho Lane. After that, the complainant took the money for their daughter. On 18.08.2014, the complainant along with his brother Rajib and the police came to his office and he was arrested from his office. The complainant filed Case No. 292 of 2016 for maintenance. In 2015, he lodged a GD with Baklia Thana for the recovery of the motorcycle. Thereafter, the motorcycle was recovered. In 2017, he again got married. The complainant changed her medical certificate. During cross-examination, he stated that at the time of marriage, the complainant passed master's degree. After marriage, she completed MBA. He affirmed that the mother of the complainant, her brother, maternal uncle and the maternal cousin used to live in the same house. The complainant applied to his higher authority to dismiss him from his service. He produced the application of the complainant, the loan certificate dated 09.05.2012 of Agrani Bank, the money receipts regarding the purchase of gold by his mother, the money receipt dated 23.05.2013 regarding purchasing a motorcycle being registration No. Chatto Metro-Ha-14-0165, loan certificate dated 11.11.2013, legal notice issued by the sister of the complainant, the GD dated 25.03.2014. He admitted that the mother and brother of the complainant and the maternal uncle of the complainant were also serving. He denied the suggestion that the complainant used to hand over her salary or that the loan taken in 2012 was not paid, or that he did not open any DPS in the name of the complainant, or that he did not pay the cost of the Diploma. He affirmed

that on 23.05.2013, he purchased the motorcycle. On 11.11.2013, he took loan from Trust Bank. He is not aware that on 22.05.2013, the complainant withdrew Tk. 1-5 lakh from the Agrani Bank. He denied the suggestion that again and again he put pressure on the complainant to give a motorcycle, or that the complainant took the special facility from the bank to purchase the motorcycle in his name, or that the complainant did not go to the house of her father voluntarily or to compromise, the complainant met the accused at DC Hill. He also denied the suggestion that on that day, he demanded dowry of Tk. 3 lakh.

Learned Advocate Mr. Khandker Mehboob Alam appearing along with learned Advocate Mr. S. M. Asadullah Tarique on behalf of the appellant submits that in the complaint petition, the complainant stated that on 29.03.2014 at 1 pm, he went to the Chattogram Medical College Hospital for treatment but in the medical certificate (exhibit 2) issued by P.W. 7 Dr. Shib Prosad Nondy it has been mentioned that the victim was admitted in the hospital on 29.03.2014 at 8.20 pm and age of injury has been mentioned in the medical certificate (exhibit 2) as 10 hours which proved that the alleged occurrence took place on 29.03.2014 at about 10 am and no occurrence took place on 28.03.2014 at 10.30 am as stated by the complainant. He further submits that there is no provision in any law to correct/amend the medical certificate. If there is any printing mistake or any other mistake in the medical certificate, it can be looked into only by the trial Court after calling the records from the concerned hospital, and P.W. 7 illegally amended the medical certificate (exhibit 2) issuing amended certificate of P.W. 1 (exhibit 3) and without any order of the Court, intimated the same to the trial Court. P.W. 7 is an interested witness and he made an exaggeration in amending the amended medical certificate (Exhibit 3). He also submits that P.W. 6 admitted in cross-examination that the victim Shima Das was residing in her house along with the mother of the victim before the occurrence and the trial Court without considering the evidence of D.W. 1 only

considered the evidence of the prosecution witnesses and illegally passed the impugned judgment. Having drawn the attention of the Court to the evidence of P.Ws. 1 to 6, he submits that a salish allegedly took place on 28.03.2014 at 8.30 am in the house of the accused and in that salish, the landlord and the another tenant of the landlord were also present but the prosecution malafide withheld those witnesses and only examined the close relatives of the victim. Therefore, an adverse presumption should be drawn against the prosecution for non-examination of the neutral and the credible witnesses. He lastly submits that on the application of the accused, the treatment register of the victim was called for by the trial Court but the hospital authority malafide did not send the register and the alleged treatment sheet of the victim and the photocopies of the register was illegally exhibited as exhibit 3 and the trial Court illegally relied on the exhibit 3. He prayed for the acquittal of the appellant.

Learned Advocate Mr. Mohammad Zafar Imam appearing along with learned Advocate Mr. Ajgar Hossain on behalf of the complainant-respondent No. 2 submits that on 28.03.2014 at 10/30 am the accused demanded dowry of Tk. 3,00,000 and when she refused to pay the dowry the accused beat her mercilessly and drove her out of his house. Thereafter, the victim was admitted to Chattogram Medical College Hospital at 8.20 pm and exhibits 2 and 3 proved that the victim was mercilessly beaten by the accused and she sustained injuries on different parts of her body due to nonpayment of the dowry by the complainant. He also submits that although the trial Court called for the register and the treatment sheet of the victim but the concerned authority of the hospital inadvertently sent photocopy of those documents which was legally exhibited as exhibit 3 without objection. He prayed for sending the case on remand to the trial Court to prove the admission register and the treatment sheet of the victim.

I have considered the submissions of the learned Advocate Mr. Khandker Mehboob Alam who appeared on behalf of the appellant along

with learned Advocate Mr. S. M. Asadullah Tarique and the learned Advocate Mr. Mohammad Zafar Imam who appeared on behalf of the complainant-respondent No. 2 along with learned Advocate Mr. Ajar Hossain, perused the evidence adduced by the parties, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it appears that at the time of marriage of the complainant Shima Das @ Biswas and the accused Shukanto Biswas on 04.02.2010, the complainant Shima Das @ Biswas was an Officer of Agrani Bank and after marriage she obtained MBA degree. The mother of the complainant is a Clerk of Chattogram City Corporation and the brother of the complainant is serving in a buying house. Admittedly, the accused Shukanto Biswas is the Manager of Pubali Bank Limited, his father is an Engineer of the BRTC and his mother is the Headmistress of a Primary School.

The alleged occurrence took place on 28.03.2014 at 10.30 am in the house of the accused Shukanto Biswas situated at Kulsuma Bhaban, Dewanbazar Thana, Baklia, Chattogram. In the complaint petition, it has been stated that on 29.03.2014 at 1.00 pm the complainant-P.W. 1 was admitted to the OCC, Chattogram Medical College Hospital and the discharge certificate issued by the doctor was also annexed along with the complaint petition but it is not proved in the case. P.W. 1 Shima Das @ Biswas stated that the occurrence took place on 28.03.2014 at 10.30 am and on 29.03.2014 she was admitted to OCC, Chattogram Medical College Hospital and on 30.03.2014 she was released from the hospital. No statement is made by P.W. 1 as to the time of her admission to the OCC, Chattogram Medical College Hospital.

On perusal of the medical certificate (exhibit 2) issued by P.W. 7 Dr. Shib Prosad Nondy, Co-ordinator (CC), One Stop Crisis Centre (OCC), Chattogram Medical College Hospital, it reveals that the victim Shima Das, aged about 30 years, was admitted to the One Stop Crisis Centre (OCC), Chattogram Medical College Hospital, Chattogram on

29.03.2014 at 8.20 pm. In Exhibit 2, the age of injury has been mentioned as 10 hours (approximate) which proves that the alleged occurrence took place on 29.03.2014 at about 10.30 am. No certificate was proved by the prosecution to show that P.W. 1 victim Shima Das was admitted to the hospital on 29.03.2014 at 1.00 pm as stated by P.W. 1. P.W. 7 admitted in cross-examination that as per medical certificate (exhibit 2) the alleged occurrence took place on 29.03.2014 at 10.30 am.

After adducing evidence of both parties, the trial Court heard the argument of both parties on 30.11.2021 and fixed the next date on 07.03.2022 for delivery of judgment. On the application of the accused the trial Court by order dated 07.03.2022 withdrew the case from the category of judgment and fixed the next date on 23.05.2022 for argument. By order dated 23.05.2022 the trial Court re-called P.W. 7 to prove the amended medical certificate dated 17.11.2014. On 19.09.2022, the accused applied to call for the registration No. 35140/159, OCC REG No. 79/2019 and the treatment register from 01.03.2014 to 31.03.2014, and the trial Court fixed the next date on 28.11.2022 and by order dated 28.11.2022 called for the treatment register of the OCC, Chattogram Medical College Hospital.

On perusal of the order dated 28.02.2023, it reveals that the photocopy of the treatment register from 01.03.2014 to 31.03.2014 was sent by the OCC, Chattogram Medical College Hospital to the trial Court. No reason has been assigned by the concerned authority of the Chattogram Medical College Hospital as to why the original treatment register of the victim Shima Das @ Biswas was not sent to the trial Court in compliance with the said order. I am of the view that the order dated 28.11.2022 regarding the production of the treatment register from 01.03.2014 to 31.03.2014 of the OCC, Chattogram Medical College Hospital was not complied with malafide.

P.W. 7 Dr. Shib Prosad Nondy stated that the medical certificate was prepared following the register of the OCC and the age of injury was

about 10 hours. He affirmed that the age of injury 10 hours means that the occurrence took place 10 hours before the examination. He admitted that the injury mentioned in the medical certificate (exhibit 2) was written in the OCC register following the statement of the victim. No application has been filed by the complainant for calling the register regarding her medical certificate. P.W. 7 admitted in cross-examination that an order has been passed by the trial Court calling for the report regarding the amendment of the medical certificate of victim Shima Das @ Biswas, but he issued the amended certificate considering the application of a person, but he could not remember his name.

On perusal of the records, it appears that the Nari-O-Shishu Nirjaton Daman Tribunal No. 3, Chattogram by order dated 28.11.2022 called for the medical records of the victim Shima Das @ Biswas from 29.03.2014 to 30.03.2014. In the amended medical certificate dated 17.11.2014 (exhibit 3), it has been stated that in compliance with the said order passed by the Tribunal, P.W. 7 Dr. Shib Prosad Nondy issued the medical certificate of the victim on 18.09.2014 (exhibit 2). After that, no report was called for by the trial Court to send any report regarding the amendment of certificate dated 18.09.2014. No order has been passed by the trial Court to give any report regarding the mistake in the medical certificate dated 18.09.2014 (exhibit 3). There was no reason to send the report dated 17.11.2014 (exhibit 3). If any party is aggrieved by any medical certificate issued by the doctor, either party is entitled to apply to the Court to call for the medicate records of the victim and without an order of the Court the concerned doctor or hospital authority is not empowered to correct the medical certificate. Therefore, I am of the view that the amended medical certificate dated 17.11.2014 of the victim (exhibit 3) was illegally issued by P.W. 7 and the hospital authority acted malafide in not sending the register and the treatment sheet of victim P.W. 1 to the trial Court.

It is found that P.W. 1 Shima Das @ Biswas was admitted to OCC, Chattogram Medical College Hospital on 29.03.2014 at 8.20 pm. D.W. 1 Shukanto Biswas stated that in July 2013, his wife instructed him to divorce her. On 30.01.2014, the complainant left her house and went to the house of her mother. On 28.02.2014, he along with his mother went to the house of his mother-in-law and he was requested to stay with the family of his mother-in-law. Thereafter, he came back along with his mother and he rented a new house on 28.03.2014. On 29.03.2014 at 10.30 am, he met the complainant at DC Hill, Chattogram and requested her to come back to his house. During cross-examination, P.W. 1 also admitted that on 29.03.2014 at 10.30 am, she also met the accused at DC Hill.

It reveals that the place of alleged occurrence is the house of the accused who is residing on the fourth floor of the house of one Ismail. It has been alleged that after the alleged occurrence, a salish took place on 28.09.2014 at 8.30 am in the house of the accused in the presence of his landlord and another tenant. The complainant did not cite them as witnesses in the case. P.W. 1 is the complainant and P.Ws. 2 to 6 are the mother, brothers, maternal uncle and cousin of the victim and inimical to the accused. The prosecution withheld the neutral witnesses who were present in the alleged salish that took place on 28.03.2014 at 8.30 pm after the alleged occurrence and examined only the inimical witnesses. Therefore, an adverse presumption is drawn under section 114(g) of the Evidence Act, 1872 against the prosecution for non-examination of witnesses who were present in the said salish.

P.W. 6 Bimal Kanti Sarker is the maternal cousin of the victim Shima Das @ Biswas. He stated that on 29.03.2014, the accused Shukanto Biswas beat the victim for the dowry of Tk. 3,00,000 and when she refused to pay the dowry, the accused persons drove her out of his house and she came back to his house. During cross-examination, P.W. 6 admitted that before 28.03.2014 the victim Shima Das was residing in

his house which proved that before the occurrence P.W. 1 was residing in the house of P.W. 6 along with her mother and brother. No evidence regarding the injury of P.W. 1 allegedly caused on 28.03.2014 was proved in the case. Medical certificate (exhibit 2) proved that the alleged occurrence took place on 29.03.2014 at 10.00 am which is also admitted by P.W. 7. Therefore, the prosecution's case that the alleged occurrence took place on 28.03.2014 at 10.30 am in the house of the accused Shukanto Biswas is untrue and an afterthought.

In the complaint petition, it has been mentioned that the discharge certificate of the victim was annexed with the complaint petition, but the discharge certificate and the treatment sheet of P.W. 1 were not proved in the case. P.W. 7 issued the medical certificate (exhibit 2) on 18.09.2014 and at that time the victim Shima Das was not present. As per the medical certificate (exhibit 2) the occurrence took place on 29.03.2014 at 10.30 am. On scrutiny of the records revealed that the discharge certificate was not annexed with the complaint petition and it is also not available with the records. I am of the view that at the time of filing the complaint petition the discharge certificate of the victim P.W. 1 was not available and medical certificate of the victim P.W. 1 (exhibits 2 and 3) were subsequently created by the complainant through P.W. 7, a doctor of Chattogram Medical College, taking the advantage of her service in the Rupali Bank Ltd, Chattogram Medical College Branch, Chattogram.

When both parties adduce evidence the trial Court shall consider evidence of both parties in juxtaposition. In the instant case, the trial Court did not consider the evidence of D.W. 1 and only considered the evidence of the prosecution witnesses. Therefore, the trial Court failed to adopt the correct principle of appreciation of evidence adduced by the parties and arrived at a wrong decision as to the guilt of the accused. The evidence adduced by the parties indicates that a misunderstanding developed between the complainant P.W. 1 and the accused Shukanto

Biswas before the occurrence. The alleged date of occurrence mentioned in the medical certificate (exhibit 2) and the amended medical certificate (exhibit 3) are contradictory. The discharge certificate and the treatment sheet of P.W. 1 Shima Das @ Biswas were not proved in the case. P.W. 1 collected a false medicate certificate (exhibit 2) regarding her treatment to file the case against the accused Shukanto Biswas.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution's case is untrue and afterthought and the appellant was falsely implicated in the case.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial Court against the accused Shukanto Biswas is hereby set aside.

However, there will be no order as to costs.

Send down the lower Court's records at once.