

Present:

Mr. Justice Md. Salim

CRIMINAL APPEAL NO.120 OF 2024

Md. Rashel Uddin

.....Appellant.

-Versus-

The State and another

.....Respondent.

Mr. Al Reza Md. Amir, Advocate

.....For the Appellant.

Mr. Monzurul Alam Sujan, DAG with

Mr. Syed Akhtarul Islam, AAG

..... For the State.

Heard on 26.07.2026 and 27.07.2026

Judgment on: 03.08.2026

This appeal is directed against the judgment and order of conviction and sentence dated 15.11.2023 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Cox's Bazar, in Nari-O-Shishu Nirjatan Case No.12 of 2020, convicting the appellant under section 11(ga) of Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amendment- 2003), and sentencing him to suffer rigorous imprisonment for 2(two) years with a fine of Tk.20,000/- in default to suffer simple imprisonment for 4 (four) months more.

The prosecution case, in brief, is that P.W.1, Esmot Ara Begum brought a complaint before the Nari-O-Shishu Nirjatan

Daman Tribunal, Cox's Bazar, against the convict-appellant alleging, inter alia, that the complainant was married to the accused-appellant on 23.02.2016 in accordance with Muslim Shariah. After the marriage, the accused-appellant demanded dowry from the complainant on several occasions. Lastly, on 04.08.2019 at about 6:00 p.m., the accused-appellant again demanded Tk.1,00,000/- for his business from the complainant and, upon her refusal to meet the said demand, subjected her to severe physical torture.

Upon receipt of the complaint petition, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal No. 1, Cox's Bazar, examined the complainant under Section 200 of the Code of Criminal Procedure and took cognizance of the offense against the convict appellant under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, and, thereafter, directed the Deputy Director, Women Affairs Department, Cox's Bazar, to conduct an inquiry into the allegations. Pursuant to the said direction, the concerned officer conducted the inquiry and submitted his report on 09.09.2019.

The learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Cox's Bazar, framed the charge against the appellant under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain,

2000 (Amendment- 2003), which was read over and explained to him, who then pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 06 (six) witnesses, while the defense examined none.

After the evidence was closed, this appellant was not examined under Section 342 of the Code of Criminal Procedure, due to his absence from the court.

Subsequently, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Cox's Bazar, by the judgment and order dated 15.11.2023, found the appellant guilty under Section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, and sentenced him to suffer rigorous imprisonment for 2 (two) years with a fine of Tk.20,000/- in default, to suffer simple imprisonment for 4 (four) months more.

Being aggrieved by and dissatisfied with the above judgment and order of conviction and sentence, the accused appellant preferred the instant appeal.

Mr. Ali Reza Md. Amir, the learned Counsel appearing on behalf of the appellant, taking us through the impugned judgment, evidence, and other materials on record, submits that the learned Judge of the Tribunal failed to consider the defense case at all, overlooking the fact that the witnesses have not

corroborated the allegation against the appellant; the prosecution failed to prove the cause of the victim's injury by adducing a valid injury certificate; the doctor, having issued the incorrect injury certificate, committed professional misconduct; that the learned Judge of the Tribunal has failed to consider that, save and except the P.W.1-victim, all the witnesses are hearsay witnesses who have contradicted each other. Therefore, the appellant is liable to be discharged from the charge levelled against him.

On the contrary, Mr. Monzurul Alam Sujan, the learned Deputy Attorney General for the State, opposes the contention so made by the learned advocate for the appellant and submits that the prosecution successfully proved the charge against the appellant by adducing and producing the oral and material evidence. He then submits that the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal has perfectly and justifiedly convicted and sentenced the appellant based on the most cogent and reliable evidence.

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

In order to prove the charge, the prosecution examined as many as 06 (six) witnesses. Of them, P.W.1, Ismat Ara Begum, in her deposition, stated that the accused is her husband. She stated that on 04.08.2019 at about 6:00 p.m., while she was at her rented residence at Kamal Mansion, Baitush Sharaf Mosque Road, the accused demanded Tk.1,00,000/- from her for his business. As she failed to provide the said amount, she was assaulted by the accused with a wooden stick in the presence of the witnesses, causing injuries to her right shoulder and back. At that time, Ramiza, Bazal Ahmed, and Faridul Alam were present, and the accused restrained them. Thereafter, the witnesses took her to Sadar Hospital, and the case was instituted. The petition of complaint was produced and marked as Exhibit-1, and her signature thereon was marked as Exhibit-1/1 and 1/2.

P.W.-2, Ramiza Begum, in her deposition, stated that the complainant is her younger sister and the accused is her sister's husband. It was stated that the occurrence took place on 04.08.2019 at about 6:00 p.m. at the rented residence of the complainant at Kamal Mansion, Baitush Sharaf Mosque Road, Cox's Bazar. At about 4:00 p.m., the complainant telephoned her and informed her that her husband had assaulted her. Upon receiving the information, she went to the place of occurrence,

and the other two witnesses arrived shortly thereafter. Upon arrival, the complainant was found sitting on the bed, while the accused was found in another room. Thereafter, the accused came out and assaulted the complainant with a wooden stick measuring approximately one and a half hands in length, and blows were inflicted upon her waist and back. She restrained the accused. According to her deposition, the complainant was assaulted as she had failed to provide Tk.1,00,000/- demanded by the accused for the purpose of his business. Thereafter, the complainant was again assaulted in the presence of the other two witnesses, who also intervened and restrained the accused. Subsequently, the complainant was taken to the Sadar Hospital.

P.W.-3, Bazal Ahmed, in his deposition, stated that the complainant is his niece. It was stated that the occurrence took place on 04.08.2019 at about 6:00 p.m., after Maghrib, at a rented residence on Baitush Sharaf Road. At about 3:30 p.m., he received a telephone call from the complainant, Ismat, whereupon he proceeded towards the place of occurrence by CNG. On the way, Ramiza and Farid also joined them. Thereafter, they went to the complainant's residence, where the complainant and the accused were found sitting beside each other on chairs in the same room. In their presence, the accused

demanded Tk.1,00,000/- from the complainant for his business. When the complainant expressed her inability to provide the said amount, she was immediately assaulted by the accused with a wooden stick. Although the witnesses intervened and attempted to restrain the accused, the assault was continued. Thereafter, the complainant was taken to Sadar Hospital for treatment, and she subsequently instituted the case.

P.W.-4, Monowara Begum, in her deposition, stated that the occurrence took place on 04.08.2019 at about 6:00 p.m. It was stated that the accused, Rashed Uddin, demanded Tk.1,00,000/- as dowry from the complainant, Ismat Ara. When the complainant expressed her inability to provide the said amount, she was assaulted and injured by the accused with a wooden stick in her presence. Thereafter, other witnesses arrived at the place of occurrence, and the complainant was rescued and taken to the hospital by them.

P.W.-5, Dr. Mizanur Rahman, in his deposition, stated that Ismat Ara was examined by him on 04.08.2019 for medical treatment. Upon examination, a swelling injury was found on her left shoulder. The medical certificate was produced and marked as Exhibit-2, and his signature thereon was identified and marked as Exhibit-2/1.

P.W.-6, Md. Kalu, in his deposition, stated that on 04.08.2019 at about 6:00 p.m., upon hearing the cries of Ismat Ara, he went to the place of occurrence and asked the accused, Rashed, why Ismat Ara was being assaulted. In reply, Rashed stated that Tk.1,00,000/- was required from Ismat Ara for his business. When Ismat Ara stated that she had no money and asked from where she would arrange the said amount, she was assaulted by Rashed with a wooden stick. Thereafter, Ismat Ara was rescued and taken to the hospital.

Analyzing the above evidence on record, it appears that, in the petition of complaint, the complainant alleged that on 04.08.2019 at about 6:00 p.m., the accused-appellant demanded Tk. 1,00,000/- from her for his business and, upon her refusal to comply with the said demand, she was assaulted by him with a wooden stick. P.W.1, the complainant, in her deposition, stated that the accused-appellant demanded Tk.1,00,000/- from her for his business; similarly, P.W.3 – P.W. 6 stated that the accused demanded Tk.1,00,000/- from the complainant for his business.

Section 2(3) of the Nari-O-Shishu Nirjatan Daman Ain provides that money, articles, or any property demanded by the bridegroom or his father, mother, or anybody directly related to

the bridegroom party as a condition for consideration of marriage is called dowry.

In the instant case, having evaluated the evidence on record, it appears that the convict appellant demanded Tk.1,00,000/- for business purpose from his wife (complainant); therefore we are of the firm view that the prosecution failed to prove that the convict appellant demanded money as dowry at the relevant time of the occurrence. Therefore, the alleged demand of money of Tk. 1,00,000/- does not fall within the purview of the definition of dowry contemplated in section 2(3) of the Ain.

Further, it appears that upon refusal to provide the said demand, the complainant-victim was assaulted by the convict appellant with a wooden stick, causing injuries to her right shoulder and back. In that regard, P.W.1, the complainant, stated that she had sustained an injury on her right shoulder. P.W. 2 stated that the convict appellant inflicted injuries to the victim's waist and back; P.W. 3, 4 and 6 did not mention the point of injuries of the victim. On the contrary, P.W. 5, the doctor who examined the victim, stated that upon examination, a swelling injury was found on her left shoulder. Moreover, Exhibit 2, the

medical certificate, also shows that a swelling injury was present on the left shoulder. Therefore, a discrepancy exists between the complainant's oral evidence between the evidence of P.W.5 the doctor and the medical certificate regarding the location of the alleged injury, which creates a serious doubt about the allegation of physical torture of the victim by the convict appellant which cast a serious doubt as to the alleged occurrence and the prosecution case.

In view of the above facts and circumstances, it appears that the learned Judge of the Tribunal failed to evaluate the evidence on record properly to establish that the implication of the convict-appellant in the felony has been established by credible, reliable, and clinching evidence. The prosecution left no stone unturned to rope in the convict-appellant and overdid its job by fabricating false evidence and a colored version. Therefore, the learned Trial Judge committed a serious error in presuming the guilt of the convict-appellant first and, thereafter, attempting to find another reason to justify such a conclusion without an objective, independent, and impartial analysis of the materials before recording a finding of guilt against the convict-appellant. The doubtful and suspect nature of the evidence

sought to be relied upon to substantiate the circumstances suffered from serious infirmities and lacked legal credibility. Accordingly, the findings of the learned Judge of the tribunal do not deserve the merit of approval of this Court, having regard to the infirmities and illegalities vitiating the judgment and the patent errors apparent on the face of the record, resulting in a serious and great miscarriage of Justice in convicting the appellant.

In view of the above facts and circumstances, we are of the firm view that the prosecution failed to prove the charge under section 11(ga) of the Nari-O-Shishu Nirjatan Dama Ain against the convict appellant; thus, we held that the prosecution case is a hoax, having no ground under its legs. So, the impugned judgment is liable to be set aside.

Resultantly, the appeal is allowed.

The judgment and order of conviction and sentence dated 15.11.2023 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.1, Cox's Bazar, in Nari-O-Shishu Nirjatan Case No.12 of 2020, arising out of C.P Case No. 386 of 2019, is hereby set aside.

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

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

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(Md. Salim, J).

Rakib(ABO)