

**In The Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 1087 of 1996

Md. Solaiman Ali

-Vs-

The State and another

None appears

..For the appellant

Mr. Md. Anichur Rahman Khan, DAG

with

Mr. Mir Moniruzzaman, AAG with

Mr. Md. Sarwar Alam Khan, AAG

with

Ms. Nargis Parvin (Alija), AAG

... for the respondents

Heard on 06.01.2026

Judgment on 07.01.2026

This appeal under Section 24 of the নারী ও শিশু নির্যাতন দমন বিশেষ বিধান, ১৯৯৫ is directed challenging the legality and propriety of the impugned judgment and order dated 09.07.1996 passed by Sessions Judge and Nari-O-Shishu Nirjatan Daman Bishash Judge, Rangpur in Nari-O-Shishu Nirjatan Daman Bishesh Case No. 01 of 1995 arising out of Pirgonj Police Station Case No. 01 dated 03.08.1995 corresponding G.R. No. 752 of 1995 convicting the appellant under section 11 of নারী ও শিশু নির্যাতন দমন বিশেষ বিধান, ১৯৯৫ and sentencing him thereunder to suffer rigorous

imprisonment for 05(five) years and fine of Tk. 5000, in default, to suffer rigorous imprisonment for 01(one) month.

The prosecution's case, in short, is that the informant Most. Fency Mai is the wife of accused No. 1 Md. Sulaiman Ali. At the time of marriage, the accused Md. Sulaiman Ali, along with the accused Nos. 2 to 4, demanded Tk. 20,000 as dowry. Due to the inability of the father of the informant, her father could not pay the said dowry instantaneously, but he promised that he would pay Tk. 15,000 as dowry. Thereafter, the marriage was solemnized. After a few days, the accused persons demanded Tk. 15,000 as dowry to the informant and she informed her father. The father of the informant managed Tk. 5,000 and paid it to the accused Md. Sulaiman Ali, with a further promise that he would pay the remaining amount of Tk. 10,000 within a few days. Subsequently, he again demanded Tk. 10,000 to the informant Fency Mai, who again reported the matter to her father. Considering the well-being of the Fency Mai, her father gave a cow worth Tk. 2500 to the accused Md. Sulaiman Ali. Again, the father of the informant gave a goat to the accused worth Tk. 500, but he expressed his dissatisfaction regarding the payment of the dowry and started torturing Fency Mai. On 03.05.1995 at 09/10 am, the accused Md. Sulaiman Ali, along with accused Nos. 2 to 5, instructed his wife to go to her father's house, if they failed to pay the dowry. At that time, she raised an objection regarding further payment of the dowry, but the accused persons became infuriated upon her and accused Nos. 2 to 5 instructed the accused No.1 to beat her. At that time, the

accused Sulaiman Ali at the instigation of the accused Nos. 2 to 5 beat Most. Fency Mia mercilessly. Consequently, her right hand was fractured. She informed her father. Thereafter, her father, along with her brother, came to the house of the accused Md. Sulaiman Ali and took his daughter to his house by a van. The next day, the victim was taken to the Pirgonj Hospital for treatment, and she was admitted there for 3/4 days. She remained under treatment for about one month due to the fracture of her right hand. After that, she lodged the complaint petition on 16.07.1995 in the Court of Magistrate, First Class, Court No. 1, Rangpur, who directed the O.C., Pirgonj to take legal action after enquiry. Thereafter, the FIR was lodged on 03.08.1995 against the accused Md. Sulaiman Ali and four others.

S. I. Md. Abul Hossain, Pirgonj Thana, Rangpur, was appointed as the investigating officer of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and after completing the investigation, found prima facie truth of the allegation against the accused persons and submitted charge sheet on 01.10.1995 against the accused Md. Sulaiman Ali and four others.

After that, the case record was sent to the Nari-O-Shishu Nirjatan Daman Adalat, Rangpur, who took cognizance of the offence against the accused and also framed charge against him under section 11 of নারী ও শিশু নির্যাতন দমন বিশেষ বিধান, ১৯৯৫ and

against accused Nos. 2-5 under section 14 of the said Act which was read over and explained to the accused persons who pleaded not guilty to the charge and claimed to be tried following the law.

During trial, the prosecution examined 10 witnesses to prove the charge. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898, who pleaded not guilty to the charge and claimed to be tried following law, and the defence declined to adduce any DW. After concluding trial, the trial court, by impugned judgment and order, convicted the appellant Md. Sulaiman Ali, as stated above and acquitted accused Nos. 2 to 5 from the charge framed against them, against which the appellant filed the instant appeal.

No one appears on behalf of the appellant.

The learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing on behalf of the state, along with the learned Assistant Attorney General, submits that P.W.1 is the victim and the appellant Md. Sulaiman Ali demanded dowry and received the part payment as dowry from the father of the P.W.1, and due to non-payment of the remaining dowry, on 03.05.1995 at 9/10 am, the accused Md. Sulaiman Ali caused grievous injury to P.W. 1. During the trial, the prosecution proved the charge against the accused beyond all reasonable doubt, and the trial court, on correct assessment and evaluation of the evidence of

prosecution witnesses, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, 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 reveals that P.W. 1 Most. Fency Mai is the wife of the accused Md. Sulaiman Ali, P.W. 2 Md. Abed Ali is the uncle of P.W. 1, and P.W. 3 is the father of P.W. 1. P.Ws. 4 and 5 were tendered. P.W. 6 Md. Ismail Hossain is a hearsay witness, P.W. 7 Doctor Horendra Nath Goshami is the Medical Officer, Pirgonj Thana Health Complex. P.W. 8 Md. Abul Hossain is a hearsay witness, P.W. 9 Md. Golam Mortoza, O.C., Taragonj Thana, is the recording officer. P.W. 10 S.I. Abul Hossain is the I.O of the case.

P.W. 1 Ms. Fency Mai stated that on 20th Boishak, 1402, at 9/10 am quarrel took place with her husband. She affirmed that at the time of marriage, the accused did not demand any dowry from her. After one year of marriage, her father paid Tk. 5000 to her husband. Thereafter, he did not demand any dowry. When her husband tried to beat her, she resisted. Consequently, she sustained injury to her hand, and now she is residing peacefully along with her husband in his house. She put her thumbprint on the complaint petition. During cross-examination, she also affirmed that the complaint petition was not read over to her. She did not file any case for demanding dowry. Her husband

did not demand any dowry. He also did not cause any injury for dowry.

P.Ws. 2 and 3 admitted that they are not direct witness of the alleged occurrence. P.W. 3 admitted that he has no allegation against the accused. P.W. 6 Md. Ismail Hossain also admitted that he is not a direct witness to the occurrence. P.W. 7 stated that on 05.05.1995, he examined the victim Ms. Fency Mai at Pirgonj Hospital and found 5 injuries on her body, and injury No. 1 is painful swelling. P.W. 7 issued a medical certificate (Exhibit 1) on 10.05.1995, relying on the report of the Radiologist Dr. Md. Altaf Hossain of Central Clinic Lab, J.L. Road, Rangpur. Although P.W. 7 proved the report of the radiologist as exhibit-2, the Radiologist Md. Altaf Hossain was not examined in the case. The said radiologist issued the X-ray report, but the X-ray report of P.W. 1 is also not proved in the case. Since the radiologist Dr. Md. Altaf Hossain was not examined in the case, and no X-ray plate regarding the fractures on the lower ulna of the victim is available, it cannot be said that the injury No. 1 allegedly caused on the left lower ulna of P.W. 1 is grievous in nature. The prosecution failed to prove any fracture of the lower end of the ulna of P.W. 1. Therefore, the offence alleged against the appellant does not attract the grievous hurt as defined in section 320 of the Penal Code, 1860.

Furthermore, P.W. 1 admitted both examination in chief and cross-examination that the accused did not demand any dowry from her and she is now residing along with her husband

in the house of her husband Md. Sulaiman Ali. I am of the view that the prosecution failed to prove the charge against the accused Md. Sulaiman Ali beyond all reasonable doubt. It is to be remembered that the trial court is not a machinery of conviction. In the instant case, the prosecution totally failed to prove the charge against the accused, but the trial court, without proper assessment and evaluation of the evidence of the prosecution witnesses, made an exaggeration in convicting the accused Md. Sulaiman Ali.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order passed by the trial court against the accused Md. Sulaiman Ali is hereby set aside.

Send down the lower Court's records at once.