

Present:

Mr. Justice Md. Shohrowardi

Criminal Appeal No. 2872 of 2013

Md. Rezwan Ali

...Appellant

-Versus-

The State

...Respondent

Mr. Md. Wahiduzzaman Sohel, Advocate with

Mr. Md. Tariqul Islam, Advocate with

Ms. Hasina Akter, Advocate

...For the appellant

Mr. Md. Anichur Rahman Khan, D.A.G with

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

Mr. Mir Moniruzzaman, A.A.G

...For the State

Heard on 24.06.2025, 17.07.2025, 24.07.2025 and
28.07.2025**Judgment delivered on 04.08.2025**

This appeal under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) is directed challenging the legality and propriety of the impugned judgment and order of conviction and sentence dated 05.05.2013 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, Dinajpur in Nari-O-Shishu Nirjatan Case No. 205 of 2011 convicting the appellant Md. Rezwan Ali under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentencing him thereunder to suffer rigorous imprisonment for 1(one) year and fine of Tk. 1,000, in default, to suffer rigorous imprisonment for 1(one) month.

The prosecution's case, in short, is that the complainant Most Zinia Farzana Sonia is the wife of the accused Md. Rezwan Ali and their marriage was solemnized on 03.02.2010 under the Mohammedan Law. At the time of marriage, the father of the complainant gifted her 5 vori of gold, wearing apparel of the accused, and other goods. They have enjoyed their conjugal life in the house of the accused at the village Daikatbari. The accused Md. Rezwan Ali is the Marketing Representative of Bikan Pharmaceuticals Limited,

Dhaka. After 2 years of their marriage, he demanded Tk. 5,00,000 to get a good job in a big company. When she refused to pay the dowry, the accused physically beat and mentally tortured her. She reported the matter to her parents. During the last Eid-ul-Azha, the accused came to his house and demanded Tk. 5,00,000 as dowry. On the next day, on 19.11.2010 at 10:00 am, the accused, along with his wife, went to the house of the father of the complainant for the dowry of Tk. 5,00,000. At that time, he demanded Tk. 5,00,000 as dowry, failing which he threatened his wife not to go to his house. On 23.11.2010 in the evening, he informed that after 4/5 days, his parents will go to her house and will talk in detail. On 27.11.2010, the parents of the accused visited the house of the father of the complainant, and at 5:00 pm, the accused also went there. At that time, they demanded Tk. 5,00,000 as dowry to get a job in a big company, but she refused to pay the dowry. Consequently, the accused dealt a lathi blow on her head, which caused swelling injury. He again caused a lathi blow on her right thigh. The accused also pressed her neck to kill. At one point in time, the witnesses came to rescue the victim, and she informed the witnesses of the situation. She was taken to the Gulshan Clinic situated at Munsipara, Dinajpur, and Doctor Golam Mostafa examined her. Thereafter, the parents of the accused made several attempts for compromise, and on 14.01.2011, they finally informed that unless Tk. 5,00,000 is paid as dowry, they will not take the victim to their house.

P.W. 6 S.I. Md. Mamunur Rashid took up the investigation of the case. During 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 investigation, he found the prima-facie truth of the allegation made against the accused-persons under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and accordingly, he submitted charge sheet on 31.03.2011.

After that, the case record was sent to the Nari-O-Shishu Nirjatan Daman Tribunal, Dinajpur, and the cognizance of the offence was taken against the accused and his parents.

During the trial, charge was framed against the accused persons, which was read over and explained to them, and they pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 6(six) witnesses to prove the charge against the accused persons. After examination of the prosecution witnesses, the accused persons were examined under section 342 of the Code of Criminal Procedure, 1898, and the defence examined 3(three) witnesses. After concluding the trial, the trial Court by impugned judgment and order convicted the accused Md. Rezwan Ali under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentenced him as stated above against which he filed the instant appeal.

P.W. 1 Zinia Farzana Sonia is the victim. She stated that on 27.11.2010 at 4.00 pm, the accused Rezwan Ali, Manowara Begum, and Shajahan Ali came to the house of her father, and at that time, her parents were not present in their house. After one hour, her husband came to her house. The parents of the accused informed that if Tk. 5,00,000 is paid, the accused Md. Rezwan Ali will get a good job. She told her husband 'greedy'. At that time, her husband beat her with a stick on her left hand. When she resisted, he again beat her on her right thigh. She raised a hue and cry loudly, but he pressed her neck to kill her. Hearing hue and cry, the neighbour came to her house. Dilip and Mojibar Rahman also came. At that time, the parents of the accused left her house. After some time, the parents of the victim came to the house and took her to the Gulshan Clinic at Munsipara. She communicated with the parents of the accused, but finally, they refused to take her. On 14.01.2011, her father visited the house of her husband. At that time, her husband and his parents informed that they would not take the victim unless Tk. 5,00,000 is paid as dowry.

Consequently, her father came back to their house. She proved the FIR as exhibit 1 and her signature on the FIR as exhibit 1/1. During cross-examination, she admitted that after one month and 23 days, he lodged the FIR. She denied the suggestion that on 02.01.2011, the accused divorced her. She affirmed that she did not receive any notice of divorce. She denied the suggestion that, despite the service of notice of divorce, he filed the case showing false information. She affirmed that Mojibar Rahman, Ziaur Rahman, Mohan, and Nayon are her neighbours, and many people live in Mudipara. She is not aware that the houses of the accused persons were situated 20 miles away from the Dinajpur town. She was admitted to Gulshan Clinic for 10 days.

P.W. 2 M Qaium Dilip stated that on 27.11.2010 at 5.00 pm, he, along with Mojibar Rahman, was going through the road. The house of Mr. Zakir was situated beside the road. Suddenly, he heard the hue and cry, and he entered the house of Mojibar Rahman. He found the accused and his father in that house. Sonia was crying, lying on the floor. At that time, she was unconscious. After regaining her senses, she informed that the accused persons demanded dowry. After 20/25 minutes, her father came to the house. The victim was taken to a doctor for treatment. During cross-examination, he stated that the house of the accused is situated 16 kilometers away from the place of occurrence. He affirmed that there were many houses beside the place of occurrence. He denied the suggestion that no occurrence took place on 27.11.2010 as stated by him.

P.W. 3 Md. Mojibur Rahman Mohan stated that on 27.11.2010 at 5.00 pm, he, along with Abdul Qaium, was going through the road situated in front of the house of Zinia Farzana. Hearing hue and cry, they entered their house and saw that the victim was lying on the floor. He saw that the husband of the victim was standing, keeping a stick in his hand. At that time, the victim was unconscious. After regaining her senses, she informed that her husband had beaten her

for dowry and pressed her neck. After that, he called the father of the victim, and he came after 15 minutes, and the victim was taken to the hospital. During cross-examination, he stated that he did not see any blood on her body. He denied the suggestion that demand of Tk. 5,00,000 as dowry is a false story. He could not remember whether he told the Investigating Officer that, hearing hue and cry, he, along with Qaium, entered the house of the victim. He denied the suggestion that he deposed falsely.

P.W. 4 Md. Zaker Hossain stated that the occurrence took place on 27.11.2010 at 4.00/5.00 pm. The accused is the husband of the victim Zinia Farzana. After marriage, his daughter went to the house of her husband. After two months, the occurrence took place. They demanded Tk. 5,00,000 as dowry for a good job. They tortured and beat her. After six months, the accused demanded Tk. 5,00,000. After one day of the Eid ul-Adha on 19.11.2010, the accused came to his house and said that unless he pay Tk. 5,00,000 as dowry, the accused will not take his wife. On 23.11.2010, he told Farzana that after 4/5 days, he would come again. On 27.11.2010 at 4.00/5.00 pm, the accused came along with his parents and demanded Tk. 5,00,000 to his daughter. When she refused to pay the money, the accused beat her with a stick on her left hand and thigh. Consequently, she raised hue and cry, and the accused also pressed her neck. At that time, Qaium, Dilip, and Mojibar Rahman Mohan came to his house. Dilip informed the matter. He took the victim to Gulshan Clinic. During cross-examination, he stated that on the date and time of the occurrence, he was not present in his house. His wife was also not present in his house. He denied the suggestion that the accused tortured the victim for refusing to pay the dowry is a false story or that the accused-persons had not visited his house or that they also did not beat the victim for dowry. He affirmed that General Hospital is situated in the Municipality. Gulshan Clinic is also situated at Munsipara. The Gulshan Clinic is situated 1 kilometer away from the

General Hospital. He denied the suggestion that General Hospital is situated 200 yards from Gulshan Clinic. He affirmed that the victim was not admitted to the clinic. He denied the suggestion that no occurrence took place as stated by him or that on 02.01.2011, the accused Rezwan divorced the victim or that after receipt of the notice of divorce, the case was filed.

P.W. 5 Doctor Golam Mostafa stated that on 27.11.2010 at 7.00 pm, the victim Most Zinia Farzana came to his private chamber and he examined her. She was injured due to an assault at 5.00 pm on that day. He issued the medical certificate. He found the following injuries on her body

- (i) One swelling present on the anterior aspect of the left elbow, 1/2 inch in diameter, caused by a blunt weapon.
- (2) One swelling present on the anterior aspect of the rt thigh, 1" in diameter, caused by a blunt weapon.
- (3) multiple abrasions & finger nail marks present on the anterior aspect of the neck on both sides of the trachea as an attempt of throat-slashing.

All the injuries were simple in nature & two hours of age.

He proved the medical certificate as exhibit 2 and his signature as exhibit 2/1. During cross-examination, he stated that Upazilla Health Complex is situated in Birol Upazilla. His chamber is situated at Munsipara of Dinajpur. He admitted that the Dinajpur General Hospital is situated 200 yards from his chamber. He did not find any mark of injury on her left leg. He denied the suggestion that he did not find any mark of injury on the body of the victim or that he issued a false certificate.

P.W. 6 Md. Mamunur Rashid is the A.S.I. He stated that he was appointed as Investigating Officer. During the investigation, he visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. During the investigation, he found the

prima facie truth of the allegation made against the accused persons and submitted charge sheet against them. He proved the sketch map as exhibit 3 and his signature on the sketch map as exhibit 3/1. During cross-examination, he stated that the occurrence took place on 27.11.2010 at Mudipara, Dinajpur. He affirmed that he did not seize any alamat. He did not record the statement of the doctor. He examined Qaium Dilip on 20.02.2011.

D.W. 1 Md. Moslem Uddin is the Assistant Postmaster, Head Post Office, Dinajpur. He stated that on 06.01.2011, Zinia Sultana received a registered letter and signed the AD. He attested the photocopy by comparing the original. He proved the AD as Exhibit Ka. The certificate regarding the service of the letter is issued by the Postmaster. He proved the certificate as Exhibit Kha. During cross-examination, he stated that he had no personal knowledge as to how the peon distributed the letter.

D.W. 2 Most Shahin Sultana Beauty is the Councilor, Dinajpur Poursava, and President of the Reconciliation Council. She stated that she issued a notice to the accused and Zinia Farzana Sonia. The accused Rezwan divorced his wife. He proved the notice as Exhibit Ga. He proved the report sent based on the divorce. No compromise took place between the parties. He proved the report as Exhibit Ga/1. During cross-examination, she affirmed that she called both parties. On 06.04.2011 husband did not appear. The second party was a lady, and her father was present.

D.W. 3 Kazi Md. Khokan stated that the divorce has been registered at page 81 of the Register No. 1/2011. He proved the copy of the divorce as Exhibit Gha. On 02.01.2011, Rezwan Ali divorced his wife Zinia Farzana Sonia. During cross-examination, he stated that he did not issue any notice and accused Rezwan Ali was not known to him. He denied the suggestion that the divorce is collusive.

Learned Advocate Mr. Md. Wahiduzzaman Sohel appearing on behalf of the appellant Md. Rezwan Ali submits that the accused

Md. Rezwan Ali divorced his wife on 02.01.2011 and notice of divorce was served upon his wife P.W. 1 Zinia Farzana Sonia and D.W. 2 Most Shahin Sultana Beauty as Chairman of the Reconciliation Council admitted that 06.04.2011 was fixed for reconciliation between the husband and wife and during trial, the defence proved that the accused divorced his wife on 02.01.2011 and after about 1 month and 20 days of the occurrence without explaining the delay, the FIR was lodged on 20.01.2011. He further submits that no medical report as provided in section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) was proved by the prosecution and the prosecution failed to prove the charge against the accused beyond all reasonable doubt and the trial Court without considering the defence case only relied on the evidence of the prosecution witnesses and illegally passed the impugned judgment and order. He prayed for setting aside the impugned judgment and order passed by the trial Court.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Sultan Mahmood Banna on behalf of the state, submits that the accused demanded dowry of Tk. 5,00,000, and when she refused to pay the dowry, the accused beat her, and P.W. 5 Doctor Golam Mostafa proved the medical certificate of the victim P.W. 1 Zinia Farzana Sonia as exhibit 2. P.Ws 2 to 4 and P.W. 6 also corroborated the evidence of P.W. 1 victim Zinia Farzana Sonia. The prosecution proved the charge against the accused beyond all reasonable doubt, and the trial Court, considering the evidence of both parties, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submissions of the learned Advocate Mr. Md. Wahiduzzaman Sohel who appeared on behalf of the appellant and the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan who appeared on behalf of the state along with learned

Assistant Attorney General Mr. Sultan Mahmood Banna, perused the evidence adduced by both the parties, impugned judgment and order passed by the trial Court and the records.

On perusal of the evidence, it transpires that P.W. 1 Zinia Farzana Sonia is the victim, and P.W. 2 M Qaium Dilip and P.W. 3 Md. Mojibar Rahman Mohan is the neighbor of P.W. 1. P.W. 4 Md. Zaker Hossain is the father of P.W. 1. P.W. 5 is the doctor who treated the victim P.W. 1, and P.W. 6 is the Investigating Officer. D.W. 1 Md. Moslem Uddin is the Assistant Postmaster, Head Post Office, Dinajpur. D.W. 2 Most Shahin Sultana Beauty is the Councilor, Dinajpur Poursova, and President of the Reconsideration Council of the Poursova and D.W. 3 Kazi Md. Khokan served the notice upon P.W. 1 Zinia Farzana Sonia.

On perusal of the evidence, it reveals that the alleged occurrence took place on 27.11.2010 at 5 pm in the house of the father of the victim, P.W. 1 Zinia Farzana Sonia. It has been alleged that on 27.11.2010 at 5 pm the accused Md. Rezwan Ali, along with his parents, accused Manowara Begum and Shajahan Ali, came to the house of the father of P.W. 1 and demanded dowry of Tk. 5,00,000. When she refused to pay Tk. 5,00,000 as dowry, the accused beat her. At that time, her parents were not present in their house. Hearing the hue and cry, P.W. 2 and 3 came to the place of occurrence, and they informed the matter to P.W. 4. Thereafter, the victim was taken to private chamber of P.W. 5 Doctor Golam Mostafa.

P.W. 5 admitted that the Dinajpur General Hospital is situated 200 yards from his chamber. On perusal of the medical certificate (exhibit 2/1) dated 27.11.2010, it appears that P.W. 5 examined the victim in his private chamber, Gulshan Clinic. Under section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), the certificate of the victim from the government hospital or a private hospital recognized by the government for the purpose is required to prove the offence under section 11(ga) of the said Act. In the instant

case, certificate issued by a doctor of the government hospital or a private hospital recognized by the government for the purpose has not been proved.

P.W. 1 stated that she took the treatment for the alleged injury caused by the accused from the Gulshan Clinic situated 200 yards away from Dinajpur General Hospital. No explanation has been given by the prosecution as to why the victim did not go to the Dinajpur General Hospital for treatment as required under section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). To prove the charge under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), a certificate issued by a doctor of the government hospital or a private hospital recognized by the government for the purpose is indispensable.

During cross-examination, a suggestion was given to P.W. 1 Zinia Farzana Sonia that the accused divorced her on 02.01.2011, which has been denied by her. She affirmed that she did not receive any notice of divorce. D.W. 1 Md. Moslem Uddin, Assistant Postmaster, Head Post Office, Dinajpur, stated that on 06.01.2011 Zinia Sultana received the registered letter and the AD was proved as exhibit Ka. D.W. 2 Most Shahin Sultana Beauty stated that she issued notice to the accused Rezaul and Zinia Farzana Sonia regarding the reconciliation between them as Chairman of the Reconciliation Council, and the notice was proved as exhibit Ga. In the notice (exhibit Ga), it has been stated that the accused divorced his wife, Most Zinia Farzana (Sonia) on 02.01.2011. Therefore, it is found that the accused Md. Rezwana Ali divorced P.W. 1 on 02.01.2011 and he sent a notice of divorce to his wife and the Chairman of the Reconciliation Council and she also received the notice. No settlement took place following the notice sent by D.W. 2 Most Shahin Sultana Beauty between the husband and wife. D.W. 3 proved the talaknama as Exhibit Gha.

From the evidence discussed hereinabove, it is found that the accused Md. Rezwan Ali divorced his wife P.W. 1 Zinia Farzana Sonia on 02.01.2011 and notice of divorce was also sent to the complainant and the Reconciliation Council. They also received the notices. Therefore, the divorce between the accused and P.W. 1 took place. The FIR was lodged on 20.01.2011 after 14 days of receipt of notice of divorce on 06.01.2011 by P.W. 1 and after 1 month and 20 days of the alleged occurrence. No reasonable explanation has been given by the complainant as to the long delay of about 50 days. The medical certificate of the victim issued by the government hospital or a private hospital recognized by the government for the purpose is sine qua non to prove the offence. The prosecution failed to prove the medical certificate as provided in section 32 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). Although the Dinajpur General Hospital is situated 200 yards away from the Gulshan Clinic but the victim did not go to the said hospital for treatment. I am of the view that after receipt of notice of divorce on 06.01.2011, the complainant managed a medical certificate through P.W. 5 to file a case under section 11(ga) of the said Act against the accused. The prosecution's case is an afterthought and untrue.

In view of the above evidence, findings, observation, and the proposition discussed hereinabove, I am of the view that the prosecution failed to prove the charge against the accused beyond all reasonable doubt, and the accused Md. Rezwan Ali was falsely implicated in the case.

I find merit in the appeal.

In the result, the appeal is allowed.

The impugned judgment and order of conviction and sentence passed by the trial Court against the accused Md. Rezwan Ali is hereby set aside.

Send down the lower Court's records at once.