

In The Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)  
**PRESENT:**  
**MR. JUSTICE MD. SHOHROWARDI**  
**CRIMINAL APPEAL NO. 6657 OF 2015.**

Md. Jahidul Islam  
..... Appellant.

-Versus-  
The State

..... Respondent.  
Ms. Sabnam Momtaz Khan, Advocate  
.....For the Appellant.  
Mr. Md. Anichur Rahman Khan, D.A.G with  
Mr. Sultan Mahmood Banna, AAG with  
Mr. Mir Moniruzzaman, AAG  
....for the State

**Heard on 26.05.2025 and 23.06.2025**  
**Judgment delivered on 29.06.2025**

**MD. Shohrowardi, J.**

This appeal under section 28 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) is directed challenging the legality and propriety of the impugned judgment and order dated 16.07.2015 passed by Nari-O-Shishu Nirjatan Daman Tribunal-2, Jhalakathi in Nari-O-Shishu Case No. 159 of 2013 convicting the accused Md. Jahidul Islam under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentencing him thereunder to suffer rigorous imprisonment for 5 years and fine of Tk. 50,000, in default, to suffer rigorous imprisonment for 6 months.

The prosecution's case, in short, is that the informant Most. Hamida Akhter is the mother of the victim Mahjabin Tasnim Najah aged about 8 years. She was residing on the second floor of House No. 59, Monohar Potti Road, Thana, and District Jhalakathi belonged to Md. Amanat Hossain for about 3 years as tenant. She was a student of class three of Baopita Registered

Primary School, and the mother of the minor girl was the Headmistress of West Baopita Registered Primary School and her husband was serving at Satkhania Baitul Izzat Training Centre, BGB. On 11.06.2013 at 10.00 am, keeping her daughter Mahjabin Tasnim Najah in the custody of the owner of the house who was residing on the first floor of the building, she went to the Office of Thana Primary Education to attend a meeting. At 01.30 pm on that day, after returning home, she found the marks of tooth bite on her cheek and beside the neck of her daughter. Her daughter informed that the accused Md. Jahidul Islam took her to the first floor of the south side of the building and forcefully kissed her on her cheek and neck, and made an attempt to undress her. He also inserted his finger in her vagina. Instantaneously, she informed the matter to Md. Mahamudul Hasan, Hasan Imam, Md. Riaz Hossain, Md. Niaz Hossain, Saimul Hasan, Md. Amanat Hasan and Montaj Begum. They heard and witnessed the occurrence. She also reported the matter to the police, and the police came to the place of occurrence and detained the accused. She took her minor daughter to the hospital for treatment. After treatment, she talked to her husband and lodged the FIR.

Sub-Inspector Md. Abdur Rahim took up the investigation of the case. During the investigation, he visited the place of occurrence, prepared the sketch map and index, seized the alams, collected the medical certificate of the victim, and recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898. The statement of the victim was recorded under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003). During the investigation, the investigating officer found the truth of the allegation made against the accused Md. Jahidul Islam and submitted charge sheet

on 03.07.2000 against him under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003).

During trial, charge was framed against the accused under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), which was read over and explained to the accused, and he pleaded not guilty to the charge. Prosecution examined 9 witnesses to prove the charge. After examination of the prosecution witnesses, the accused was examined under section 342 of the Code of Criminal Procedure, 1898, and the accused Md. Jahidul Islam was examined as DW.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 Hamida Akhter is the informant and the mother of the victim Mahjabin Tasnim Najah. She stated that her daughter is now aged about 9 years and Md. Jahidul Islam is the accused. She is the headmistress of a registered primary school, and at the time of the occurrence, she was the tenant of Amanat Hossain, House No. 59, Monohar Patti. On 11.06.2013, she went to her office, keeping her daughter in her rented house. At 1.30 pm, she came back to her house and found the mark of tooth bite on her cheek and the right side of her neck. Her daughter informed that the accused Md. Jahidul Islam, having taken her bite on the chest, cheek, and right side of the neck. He also inserted his finger in her vagina. She reported the matter to the police and subsequently took her daughter to the hospital for treatment. She lodged the FIR. She proved the FIR as exhibit-1 and her signature on the FIR as exhibit-1/1. After lodgment of the FIR, the investigating officer seized the wearing apparel of her daughter. She proved the seizure list as exhibit-2 and her signature on the seizure list as exhibit-2/1.

During cross-examination, she stated that at the time of the occurrence, she was present in the school. The occurrence took place any time between 10.00 am to 1.30 pm. The accused was known to her landlord. At the time of the occurrence, she was not present. She came back to her house at 1.30 pm. Her daughter informed her about the occurrence. Her daughter was staying alone in her house. The accused used to visit her house occasionally. Police arrested the accused from the house of his sister. The journalists also came. She denied the suggestion that the accused was falsely implicated in the case due to enmity or that she deposed falsely.

P.W. 2 Mohamudul Hasan is the uncle of the victim. He stated that the occurrence took place on 11.06.2013 at any time from 10.00 am to 1.30 pm at house No. 59, Manohar Patti, in the rented house of Amanat Hossain. At the time of the occurrence, he was outside the house and, having received a phone call from the mother of the victim, he came back to her house. The victim Mahjabin Tasnim Najah informed that the accused Md. Jahidul Islam bit her. He found marks of injury on her body. The victim also disclosed the occurrence. The accused Md. Jahidul Islam tortured the minor girl, and the police detained the accused. Police seized the wearing apparel of the victim and the cot. He signed the seizure list. He proved his signature on the seizure list as exhibit-2/2. During cross-examination, he stated that the informant is the wife of his elder brother. He admitted that he resides in his house situated 6/7 km away from the place of occurrence. He was not present at the time of the occurrence. He came to the place of occurrence at about 2/2.30pm. The accused is a relation of the landlord. The wife of his elder brother informed

him. Hasan Imam was the headmaster of the school. He denied the suggestion that he deposed falsely.

P.W. 3 Md. Anisur Rahman is the father of the victim and the husband of the informant. He stated that the victim Mahjabin Tasnim Najah is his daughter. On 11.06.2013 at 2.00 pm his wife informed him over the phone that the accused Md. Jahedul Islam bit his daughter on her cheek and neck. On the next date, he came to his house and heard about the occurrence. During cross-examination, he stated that on the date of the occurrence, he was discharging his duty at Chattogram. He is not aware of the accused Jahidul Islam. He admitted that he is not eye witness to the occurrence.

P.W., 4 Mahjabin Tasnim Najah is the victim. She stated that she is now about 9 years. On 11.06.2013, she disclosed to the Magistrate about the occurrence that took place between 10.00 am to 1.30 pm. The accused Jahidul Islam called her to the south room and bit on her chest and neck. He tried to undress her by opening her pant. She disclosed the occurrence to her mother when she came back to the house. She also stated the same to the Magistrate. During cross-examination, she affirmed that the occurrence took place on 11.06.2013. The accused used to come to his sister. He also used to go to the house of the sister of the accused. The accused caused her injuries. She could not say the exact time. She affirmed that at 1.30 pm, when her mother came back to the house, she informed the matter to her mother. The sister of the accused also used to come to her house. She did not visit the house of the accused. She affirmed that no quarrel took place between the accused and her parents. On the date of occurrence, her house was not under lock and key. When her mother went to school, she went to the house of her uncle Amanat

Hossain. She stayed there till 11.30 am. The accused used to scold her without reason. The accused threatened her not to disclose the occurrence to her mother, grandfather, and grandmother. She denied the suggestion that no occurrence took place, as stated by her, or she deposed falsely.

P.W. 5 Md. Hasan Imam stated that the informant Hamida was his neighbor. On 11.06.2013, he was present at the monthly meeting held in the Upazila Sadar. At about 1.00 pm, Hamida informed him to go to her house. He went to the house of Hamida and saw the daughter of Hamida in her house. Her daughter Hamida informed that the accused Jahidul Islam bit on her chest and face. He also found the mark of injuries on her cheek and neck. During cross-examination, he stated that he is a headmaster of a primary school and the informant is a teacher. The house of the informant was situated near the school. The victim and the informant were known to him before the occurrence. When he went to the place of occurrence, he saw that the accused was detained in a room. He is not present at the time of the occurrence. He denied the suggestion that there was an illicit relation between the accused and the informant or that he deposed falsely.

P.W. 6 Md. Niaz stated that the informant Hamida is the wife of his maternal uncle. On 11.06.2013 at 1/1.30pm, the informant called him, and after going to the house of the informant, he saw the mark of teeth bite injuries on the cheek and neck of the victim. She stated that accused Jahidul Islam bite on her chest and neck. Police arrested the accused. During cross-examination, he stated that the occurrence took place before 1/1.30pm. There was a good relationship between the informant and the accused. His house was situated about 1/1.5 km away

from the place of occurrence. He denied the suggestion that no occurrence stated by him took place, or that he deposed falsely.

P.W. 7 S.I. Abdur Rahim stated that on 11.06.2013, before lodgment of the FIR, he went to the petrol duty based on the dairy No. 118 dated 11.06.2013. The officer in charge of the police station informed over the mobile phone that a person was detained at the place of occurrence, and he was instructed to take step. He went to the place of occurrence and found that the accused was detained by the locals. Hamida informed him that the accused bit on the cheek and neck of her minor daughter. The accused also attempted to undress the girl. He also found the mark of injuries on the cheek and neck. Abdul Mannan recorded the FIR. His signature is known to him. He proved the signature of Mannan as exhibit-1/2. He took up the investigation of the case and visited the place of occurrence, prepared the sketch map, and an index. He proved the sketch map as exhibit-3 and his signature on the sketch map as exhibit-3/1. He proved the index as exhibit-4 and his signature on the index as exhibit-4/1. He seized the alamats. He proved the alamats as material exhibit-I. He prepared the seizure list. He proved his signature on the seizure list as exhibit-2/3. He handed over the custody of the seized goods. He proved the Zimmanama as Exhibit 5. He sent the victim to the learned Magistrate and the hospital. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898. After investigation, found the truth of the allegation made against the accused and, with prior approval of the higher authority, submitted charge sheet on 03.07.2013 against the accused. During cross-examination, he stated that the occurrence took place on 11.06.2013 between 10.00 am to 01.30 pm. The accused was detained at the place of occurrence. The victim, her

mother, Manik, and many others were present at that time. The locals encircled the accused. At 2.15 pm, he went to the place of occurrence. The occurrence took place in the building of Amant Hossain at Manoharipatti. The occurrence took place on the first floor of the building. He found the accused in the flat of Amant Hossain situated on the first floor. On 11.06.2013 from 1.30 pm to 2.30 the accused was detained in the police station. On 12.06.2013, he prepared the seizure list at the place of occurrence and recorded the statement of Hasan Imam on 11.03.2013. He sent the victim to the hospital for treatment. From 11.06.2013 to 12.06.2013 at 1.04 pm, no one filed any complaint. He denied the suggestion that he did not visit the place of occurrence, or he submitted a report as per his desire, or he deposed falsely.

P.W. 8 Doctor Md. Khalid Mahmud stated that he was a Medical Officer of Sadar Hospital, Barisal. On 11.06.2013, he was posted at Jhalokathi. On that day at 6.30 pm, he examined Mahjabin Tasnim Najah, aged about 8 years. He found 4 tooth bite injuries on her cheek, neck, and beside her breast. He proved the medical report as exhibit-6 and his signature on the report as exhibit-6/1. He also proved the signature of his medical assistant as exhibit-6/2. He denied the suggestion that, on presumption, he wrote the mark of injuries caused by teeth bite.

P.W. 9 Arifuzzaman is the Magistrate. He stated that on 13.06.2013, the victim was produced to him and he recorded her statement. He proved the statement of the victim as exhibit-7 and his signature on the statement as exhibit-7/1. During cross-examination, he stated that he examined the mental condition of the victim. No one was present at the time of recording her statement. Time was allowed to think. He did not take any help from any woman to ascertain the injuries to the cheek, chest, and

face. He denied the suggestion that the statement of the victim was not recorded properly.

D.W. 1 Md. Jahidul Islam stated that the husband of his sister is the owner of the house wherein the alleged occurrence took place. His sister was sick, and the husband of his sister had already died. He used to visit the house of his sister to look after her. The informant is her tenant. A quarrel took place between Hamida and the landlord, for which the case has been filed. He did not commit any offence. The prosecution did not cross-examine D.W.1.

The learned Advocate Mr. Md. Mostafa, appearing along with learned Advocate Ms. Sabnam Momtaz Khan on behalf of the appellant, submits that before the occurrence, a quarrel took place between the accused Md. Jahidul Islam and the informant regarding the realization of the rent of his sister, who was a sick lady, and the accused was falsely implicated in the case. He further submits that victim P.W. 4 Mahjabin Tasnim Najah was aged about 8 years at the time of the occurrence and she was not capable of understanding to depose in court. Therefore, her statement should not be relied on by this court to find the accused guilty of the offence. He lastly submits that at the time of the alleged occurrence, except the victim, no one was present there but no rape was committed, and the accused was falsely implicated in this case. However, he submits that the sentenced passed by the trial court is too harsh and not sustainable in law.

The learned Assistant Attorney General, Mr. Sultan Mahmood Banna, appearing on behalf of the state, submits that the evidence of victim P.W. 4 Mahjabin Tasnim Najah is corroborated by P.W. 8 Dr. Md. Khalid Mahamud and the medical certificate (exhibit-6). The learned AAG further submits

that P.W. 5 Hasan Imam is a headmaster of a Primary School, and the informant is also a teacher of a primary school, and evidence of P.W. 4 is corroborated by P.Ws 1, 2, 3, and 5 to 9. 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 both parties, legally passed the impugned judgment and order. He prayed for dismissal of the appeal.

I have considered the submission of the learned Advocate Mr. Md. Mostafa, who appeared along with the learned Advocate Ms. Md. Sabnam Momtaz Khan on behalf of the accused and Mr. Sultan Mahmood Banna, Assistant Attorney General, who appeared on behalf of the respondent, perused the evidence, impugned judgment and order passed by the trial court, and the records.

On perusal of the evidence, it reveals that the victim P.W. 4 Mahjabin Tasnim Najah was aged about 8 years at the time of the alleged occurrence. She stated that the occurrence took place on 11.06.2013 between 10.00 am to 1.30 pm. The accused Md. Jahidul Islam called her to the south room and he bit on her chest and neck. He also attempted to undress her. She disclosed the occurrence to her mother. She also stated about the occurrence to the Magistrate. The evidence of P.W. 4 is corroborated by P.W. 8, Dr. Md. Khaled Mahmood and the medical certificate (exhibit-6) issued by P.W. 8. P.W. 1 is the mother of the victim, P.W. 3 Anichur Rahman is the father of the victim, and P.W. 5 Hasan Imam is the headmaster of a primary school. P.Ws 1, 2, 3, 5, and 6 also corroborated the evidence of P.W.4.

During cross-examination, P.W.4 affirmed that there was no bad relationship between the accused and the informant. The evidence of D.W. 1 that there was a quarrel between the accused and the informant regarding the realization of the rent of the house is not corroborated by any witness. Furthermore, the sister of the accused is not examined in the case to affirm that the accused used to collect the rent from the informant. At the time of examination of the victim P.W. 4, she firmly stated that the accused bit her on different parts of her body, which is corroborated by the medical certificate (exhibit-6) issued by the P.W.8. By cross-examining P.Ws, 1, 2, 4, 5 and 8, the defence failed to bring any contradiction in their evidence.

I am of the view that P.W. 4 is a competent witness to depose in the case, and the prosecution failed to bring any contradiction in her evidence. The prosecution proved the charge against the accused beyond all reasonable doubt and the trial court, on correct assessment and evaluation of the evidence, legally passed the impugned judgment and order of conviction.

It is found that at the time of the occurrence, the victim was residing in her house alone and the accused did not commit rape. Considering the gravity of the offence, evidence and the facts and circumstances, I am of the view that ends of justice would be best served if the sentence passed by the trial court is modified as under:

The accused Md. Jahidul Islam is found guilty of the offence under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), and he is sentenced thereunder to suffer rigorous imprisonment for 3 (three) years and fine of Tk. 10,000.

The accused is entitled to get the benefit of section 35A of the Code of Criminal Procedure, 1898.

The accused Md. Jahidul Islam is directed to surrender before the trial court within 30 days from the date and pay the fine.

In the result, the appeal is disposed of with modification of the sentence.

However, there will be no order as to costs.

Send down the lower court's record at once.