

Present:

Mr. Justice Md. Shohrowardi

Criminal Revision No. 1008 of 2007

Md. Moktarul Islam alias Md. Moktarul Is:

...Convict-petitioner

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioner

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

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 03.02.2026 and 17.02.2026

Judgment delivered on 18.02.2026

On an application under section 439 read with section 435 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 26.09.2006 passed by the Additional Sessions Judge, Dinajpur in Criminal Appeal No. 50 of 1997 affirming the judgment and order dated 06.11.1997 passed by the Additional District Magistrate, Dinajpur in Non G.R Case No. 1048 of 1996 (Khan) corresponding T.R Case No. 137 of 1997 convicting the petitioner under section 417 of the Penal Code, 1860 and sentencing him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 2,000, in default, to suffer imprisonment for 2(two) months should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The prosecution's case, in short, is that the complainant Most. Sultana Begum and the accused Md. Moktarul Islam are neighbours and the accused used to visit her house occasionally and talked to her. The accused Shamiul Haque is the father of accused Md. Moktarul Islam. The accused Shamiul Haque expressed his desire to make the complainant as his daughter-in-law. On 01.02.1996, the accused Md.

Moktarul Islam talked to the complainant and offered cohabitation with her on promised to marry her by divorcing his wife, if necessary but she denied his proposal unless the accused married her. On 02.02.1996 at 5 pm, the accused Md. Moktarul Islam told her to come out from her house. On 03.02.1996 at 11/12 pm following his instruction, she came out from her house at the given time and the accused took her in an open room of Pakerhat College. She saw that an unknown bearded person was sitting along with the different registers. Thereafter, two persons came there. The bearded person written something in the register and took her signature and wanted to know whether she is willing to marry the accused at a dower money of Tk. 20,000. The complainant replied in the affirmative. Thereafter, the bearded man and two other persons left the said college and the accused Md. Moktarul Islam cohabited with her on a bench in that room and subsequently, he also cohabited with her many times. Consequently, she conceived and requested the accused to take her formally to his house as wife but on different pretext, the accused took time and lastly on 10.07.1996 at 5 pm, he denied the marriage. Thereafter, the complainant filed the complaint petition on 14.07.1996 under section 493/34 of the Penal Code, 1860.

After filing the complaint petition on 14.07.1996, the learned Magistrate, First Class, Dinajpur took examine the victim under section 200 of the Code of Criminal Procedure, 1898 and directed the Officer-in-Charge, to submit a report after investigation and by memo dated 16.07.1996 sent the complaint petition to the concerned Police Station and after investigation, the police submitted the Non-FIR report against the accused Md. Moktarul Islam under section 493 of the Penal Code, 1860 and submitted the final report in favour of accused Shamiul Haque.

During trial, the Additional District Magistrate took cognizance of the offence against the accused Md. Moktarul Islam under section 493 of the Penal Code, 1860 which was read over and

explained to the accused and he pleaded not guilty to the charge and claimed to be tried following law. During trial, 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 the defence declined to adduce any evidence.

After concluding trial, the trial Court by judgment and order dated 06.11.1997 convicted the accused under section 417 of the Penal Code, 1860 and sentenced him thereunder to suffer imprisonment for 1(one) year and fine of Tk. 2,000, in default, to suffer imprisonment for 2(two) months. Against the said judgment and order passed by the trial Court, the accused Md. Moktarul Islam filed Criminal Appeal No. 50 of 1997 before the Sessions Judge, Dinajpur. The appeal was heard by Additional Sessions Judge, Court No. 2, Dinajpur who by impugned judgment and order dated 26.09.2006 affirmed the judgment and order passed by the trial Court against which the convict-petitioner obtained the Rule.

P.W. 1 Sultana Begum is the victim and the complainant of the case. She stated that on 10.07.1996 at 5.00 pm the occurrence took place. On 01.02.1996 at noon, the accused came to the house of the victim and had given proposal for cohabitation, on the promise, that if she want, he will divorce his wife. On 02.02.1996 at about 5 pm, he told her to come out from her house. Accordingly, on the next day at 10/11 pm and she came out from her house and the accused took her in a room of Pakerhat College and she saw a bearded man in that room. After that, two other persons also entered into the room who were not known to the complainant. At that time, the said Moulana took her signature on the register and written Tk. 20,000 as dower. After marriage, they left the college. At that time, the accused made cohabitation several times. Subsequently, he also cohabited several times. Consequently, she conceived. She informed the matter to the accused. Thereafter, he denied their marriage on 10.07.1996. She

informed the matter to her parent. Thereafter, she filed the case. On 10.09.1996, she went to Pakerhat. On 11.09.1996 at 10 am, she gave birth a daughter but unfortunately she died at 1 pm. She claimed that she was admitted to hospital for four days and obtained the medical certificate. During cross-examination, she stated that at the time of occurrence, she was student of class five. Before filing this case, the father of the accused also filed a case against her father.

P.W. 2 Rafiqul Islam is the father of P.W. 1. He stated that on 10.07.1996, he heard that accused Moktarul married her daughter and she conceived. He informed the matter to the father of the accused but they denied the occurrence. He also informed the matter to the villagers who advice him to file case. Her daughter gave birth a daughter at Pakerhat Hospital but after three hours she died. During cross-examination, he stated that on 07.10.1996 at 5 pm, he heard about the occurrence from his daughter. In reply to a question put to the Court, he stated that the victim was taken to the hospital for delivery. His mother is aged about 50 years who is a worker of a sawmill.

P.W. 3 Rahima Khatun is the mother of P.W. 2. She stated that occurrence took place on 10.07.1996. On Wednesday at 5 pm, Sultana told that she conceived for five months and the accused cohabited with her. She informed the matter to P.W. 2 and father of the accused. Subsequently, the victim gave birth a daughter, but she died.

P.W. 4 Laxmi Bala stated that on 10.07.1996 at 5 pm, the complainant told her that she conceived for five months and Moktar is responsible for the occurrence. He is now present in Court. She informed the matter to the mother, father and maternal parents. Subsequently, the victim gave birth a child who died after three hours.

P.W. 5 Ukli stated that on 10.07.1996 at 6 pm, Sultana informed her that she conceived by accused Moktar.

P.W. 6 Doctor Abdul Karim stated that on 12.09.1996, he discharged his duty in the Khansama Thana Health Complex as TH.

On that day, he examined Sultana Begum daughter of Rafique aged about 15 years. She was admitted to hospital on 10.09.1996. On 11.09.1996 at 10 am, she gave birth a daughter who subsequently died at 1.00 pm. Her registration number was 1347/61. He issued the medical certificate. During cross-examination, he stated that photocopy of the MC is available with the record. He issued the MC. During cross-examination, he stated that police did not talk to him. There is no signature of the Magistrate on the MC. He denied the suggestion that a fake certificate was issued. No one identified the victim.

P.W. 7 Shahidul Islam is the Sub-Inspector of Police. He stated that on 10.07.1996, he discharged his duty as Sub-Inspector of Khansama Thana. He was entrusted with the investigation of the case. During investigation, he visited the place of occurrence, prepared the sketch map and index. He proved the sketch map as exhibit 1 and his signature as 1/1, index as exhibit 2 and his signature on the index as exhibit 2/1. He recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898 and submitted the report against the accused Moktar under section 493 of the Penal Code, 1860. He proved the report as exhibit 3 and his signature as exhibit 3/1. During cross-examination, he admitted that in the prosecution report, the date of occurrence has been mentioned as 03.02.1996. He recorded the statement of the night guard Nizam of Pakerhat College. There are 3/4 shops adjacent to the college. Hospital is situated to the south side. The College is situated beside the road. He did not record the statement of the shop owners. There is no medical certificate of the victim. He denied the suggestion that at the influence of the informant party a false report is submitted.

No one appears on behalf of the convict-petitioner.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State submits that on the date and

time of occurrence at the instigation and on the promise of the accused Md. Moktarul Islam, the victim P.W. 1 came out from her house and the accused took her to Pakerhat College and the accused married the victim in presence of witnesses and he enjoyed his conjugal life with the accused but subsequently he refused the victim to take her as wife to his house. At the time of occurrence, the victim conceived and subsequently gave birth a daughter at Pakerhat Hospital and the prosecution witnesses including the Doctor P.W. 6 corroborated the evidence of P.W. 1 and the prosecution proved the charge against the accused beyond all reasonable doubt.

I have considered the submission of the learned Deputy Attorney General Mr. Md. Anichur Rahman Khan who appeared along with learned Assistant Attorney General Mr. Mir Moniruzzaman on behalf of the State, perused the evidence, impugned judgments and orders passed by the Courts below and the records.

On perusal of the evidence, it reveals that the alleged occurrence took place on 03.02.1996 at 10/11 pm at Pakerhat College and the accused made cohabitation with her. Consequently, she conceived and on 11.09.1996 at 10 am, she gave birth a daughter who died at 1 pm on that day. P.W. 1 was admitted to hospital for four days. Except P.W. 1, there is no eye witness to the occurrence. It is found that there are 3/4 shops adjacent to the said College and there is also a night guard of the College but the prosecution did not examine those witnesses. Although P.W. 6 issued a medical certificate but the original medical certificate of the victim is not proved in the case. In the absence of any medical certificate, it cannot be said that the victim P.W. 1 Sultana Begum gave birth a daughter on 11.09.1996 due to cohabitation of the accused with her. P.W. 2 admitted that father of the accused also filed a case against the father of P.W. 1. No reason has been assigned as to why the medical certificate of the victim was not proved in the case. I am of the view that the evidence adduced by

the prosecution and the facts and circumstances of the case, suggest that false implication of the accused cannot be ruled out. The prosecution failed to prove the charge against the accused Md. Moktarul Islam alias Md. Moktarul Islam beyond all reasonable doubt.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders passed by the Courts below against the convict-petitioner Md. Moktarul Islam alias Md. Moktarul Islam are hereby set aside,

Send down the lower Court's records at once.