

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 7665 of 2011

Md. Jaynal Abedin

.....Convict-appellant.

-Versus-

The State.

.... Respondent.

Mr. Md. Wahiduzzaman Sohel, Advocate

....For the appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Respondent.

Heard on 03.03.2024, 05.03.2024,
06.03.2024 and Judgment on 12.03.2024

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Md. Jaynal Abedin is directed against the judgment and order of conviction and sentence dated 24.11.2011 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari in Nari-O-Shishu Case No. 339 of 2002 arising out of Nilphamari police station Case No. 04 dated 04.06.2002 convicting the accused-appellant 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 a period of 1(one) year and to pay a fine of Taka 5,000/- (five thousand).

Facts of the case, briefly, are that one, Most. Lovli Akhter as complainant on 05.06.2002 filed a petition of complaint against the accused-appellant and 4 others under section 11(kha)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) in the court of Magistrate, 1st class, Nilphamari stating, inter-alia, that accused No.1, Md. Joynal Abedin out of love made physical relationship with the complainant resulting the complainant became pregnant when the accused No.1 denied to marry her. In this background complainant informed the matter to local respectable men including the U. P. chairman and thereafter, as per their shalish the accused No.1 married the complainant by registered kabinnama and subsequently, the accused fallen monetary hardship resulting the accused No.1 asked his wife (complainant) to bring Taka 20,000/- from her parents as dowry but the complainant denied to bring the same from her parents and then accused No.1 with the help of other accused persons beaten the complainant and thereafter, on 24.12.2001 accused No.1 with the help of other accused again tortured on her in demanding dowry and at one stage in order to kill the

complainant the accused persons throttling her and at that point of time on hearing hue and cry the witnesses came there to rescue her. Thereafter, the accused persons forcefully driven her out from the house and thereafter, local people tried to settle the matter in a vain.

On receipt of the petition of complaint, the learned Magistrate examined the complainant under Section 200 of the Code of Criminal Procedure and sent the petition of complaint to Officer-in-Charge of Nilphamari police station to submit an inquiry report in treating the same as first information report. Thereafter, on 04.06.2002 officer-in-charge, Nilphamari treated the petition of complaint as first information report.

In this backdrop Nilphamari police station Case No. 04 dated 04.06.2002 under section 11(Ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) was started against the accused appellant and 4 others.

Ultimately, one, sub-inspector of police , Nure Alam after completion of investigation submitted charge sheet against the accused-appellant under section 11(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) in which recommending for discharging other 4 accused persons.

Thereafter, the accused-appellant was put on trial before Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari to answer a charge under section 11(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) to which the accused appellant pleaded not guilty and prayed to be tried stating that he has been falsely implicated in this case.

At the trial the prosecution side examined as many as 6 witnesses to prove its case, while the defence examined none.

The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellant under section 342 of the Code of Criminal Procedure appeared to be that the accused-appellant was innocent and he has been falsely implicated in the case.

The learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari after completion of trial by the impugned judgment and order dated 24.11.2011 found the accused-appellant guilty under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 5,000/- (five thousand).

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 24.11.2011 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari, the convict-appellant preferred this criminal appeal.

Mr. Md. Wahiduzzaman Sohel, the learned Advocate appearing for the convict-appellant in the course of argument takes me through the impugned judgment, deposition of witnesses, FIR, charge sheet and other materials on record and then submits that in this case occurrence took place on 24.12.2001 and the petition of complaint was treated as F.I.R on 04.06.2002 without any reasonable explanation as to long delay in filing the petition of complaint as well as FIR which creates a serious doubt as to the truthfulness of the case. The learned Advocate further submits that the prosecution side to prove its case examined as many as 6 witnesses out of which PW-1, is the victim of the case, PW-2 is mother of the victim, PW-3 is maternal uncle of the victim, PW-4 is also maternal Uncle of the victim and PW-5 was tendered, PW-6, I.O. who investigated case which clearly suggests that the witnesses are close relatives with each other and it is on record, the prosecution miserably failed to produce any neutral or neighbour witnesses although the learned Judge, Nari-

O-Shishu Nirjatan Daman Tribunal, Nilphamari without considering all these vital aspects of the case mechanically relying on the evidence of the interested witnesses convicted the accused-appellant under section 11 (Ga) of the Nari-O-Shishu Nirjatan Daman Ain (as amended in 2003) and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 5,000/- (five thousand) and as such, the impugned judgment and order of conviction and sentence is liable to be set-aside. Finally, the learned Advocate submits that in this case the prosecution could not produce the medical certificate as well as doctor before the Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari which renders the prosecution case doubtful according to section 114(g) of the Evidence Act. In the facts and circumstances of the case and the evidence on record, it must be held that the prosecution failed to prove charge against accused beyond reasonable doubts. The learned Advocate to fortify his submission has relied on the decisions reported in 48 DLR 305 and 13 MLR 88.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State supports the impugned judgment and order of conviction and sentence dated 24.11.2011, which was according to her

just, correct and proper. She next after placing the FIR, charge sheet, deposition of witnesses submits that the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari justly found the appellant guilty under section 11 (Ga) of the Nari-O-Shishu Nirjatan Daman Ain (as amended in 2003) inasmuch as all the prosecution witnesses categorically stated in their respective evidence that on the date of occurrence the appellant beaten the victim-complainant in demanding dowry and as such, the appeal is liable to be dismissed.

Having heard the learned Advocate and the the learned Deputy Attorney-General for the parties and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the trial Judge committed any error in finding the accused- appellants guilty of the offence under 11 (Ga) of the Nari-O-Shishu Nirjatan Daman Ain (as amended in 2003).

On scrutiny of the record, it appears that the prosecution to prove its case in all examined 6 witnesses out of which PW-1, victim of the case stated in her deposition that on 24.12.2001 at 5:00 p.m. accused Joynal by claiming dowry amounting to Taka 20,000/- beaten on her leg and thereafter, accused Joynal driven her out from the house asking her to bring Taka 20,000/-

failing which he did not accept her and thereafter, the victim went to her father's house and on getting treatment she filed the case. This witness proved the petition of complainant as "Ext-1" and her signature thereon as "Ext.-1/1 series". This witness in her cross-examination stated that- "আসামী জয়নালকে ভালবেসে বিয়ে করেছিলাম। আসামী জয়নাল আমাকে মারডাং করার সময় পাড়া প্রতিবেশী এসেছিল। তাদের নাম খোরশেদ, হানিফ, তোতা, কাশেম ইত্যাদি। এরা বাদে অনেক লোক এসেছিল যাদের নাম মনে নাই। জয়নালের বাড়ী থেকে আমার মা ও মামা খোরশেদ, তোতা ইত্যাদি আমাকে আমার পিতার বাড়ীতে নিয়ে এসেছিল। আসামীরা আমাকে প্রহার করে আমার শাড়ী ছিড়ে ফেলেছিল এবং আমার উক্ত শাড়ীতে মাটি লেগেছিল। আমার পড়নের উক্ত ছেড়া শাড়ী পুলিশকে দেই নাই বা আজ কোর্টে আনি নাই। আসামী জয়নাল আমাকে ভরণ পোষন দেয় না। আসামী জয়নাল ঢাকায় গেলে আমি আমার পিতার বাড়ীতে থাকি। তখন আমার মামারা আমাকে টাকা দেয়।" PW-2, Most. Jaheda Begum, mother of the victim stated in her deposition that occurrence took place on 24.12.2001 at about 11:00 a.m. in the house of accused Joynal. This witness in her evidence also stated that- "ঘটনার সময় ২০,০০০/- টাকা যৌতুক দাবি করে আসামী জয়নাল আমার কন্যা লাভলীকে মারডাং করে বাড়ী থেকে বের করে দেয়। অতঃপর লাভলীকে নীলফামারী সবুজ পাড়ায় মতিয়ার ডাক্তারের নিকট চিকিৎসা করাই। তারপর লাভলী এই কেস করে।" This witness in her cross-examination stated that she and her brother Khorshed took the victim to the doctor at 5:00 p.m. This witness in her cross-examination also stated

that accused Joynal did not take care of her daughter for 2 years. PW-3, was tendered. PW-4, Md. Khorshed Alam stated that- on 24.12.2001, Saturday at 11:00 am, he heard hue & cry & accordingly rushed to the place of occurrence and found that the accused Zainal & Ainal were calming dowry amounting to Tk. 20,000/- to victim Lovely and accused Zainal also beaten on her calming dowry. The accused Ainal caught hold the hair of the victim and pulled her down while other accused persons conjointly driven the victim out from their house. PW-5 was tendered. PW-6, Inspector Md. Nure Alam Siddique investigated the case. This witness stated in his evidence that during investigation he visited the place of occurrence, examined the witnesses under section 161 of the Code of Criminal Procedure. In cross-examination this witness stated that the doctor was not a Government employee.

On an analysis of the evidence and materials on record together with the petition of complaint, it appears that occurrence took place on 24.12.2001 at 11:00 a.m. and thereafter, the victim took treatment from a private doctor named, Matiar and thereafter she filed the petition of complaint on 10.01.2002, that is, after 17 days from date of occurrence. It further appears that PW-1, PW-2, PW-4 and PW-6 stated in one voice that the accused-

appellant in claiming dowry tortured on the person of the victim-complainant and also driven her out from his house and thereafter, the victim took treatment under a private doctor named Matiar.

It further appears that the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Nilphamari on due consideration of the entire materials on record arrived at a finding that:- “উপরোক্ত দালিলী ও মৌখিক সাক্ষ্য প্রমানাদী পর্যালোচনায় প্রতিয়মান হয় যে, এই মামলার আসামী মোঃ জয়নাল আবেদীন এর বিরুদ্ধে নারী ও শিশু নির্যাতন দমন আইন, ২০০০ (সংশোধিত-০৩) এর ১১(খ) ধারার অভিযোগ প্রতিষ্ঠিত হয় নাই। তদন্তে ১১(গ) ধারার অভিযোগ প্রমাণিত হয়েছে। যার পরিপ্রেক্ষিতে বর্ণিত আসামী মোঃ জয়নাল আবেদীন-কে উক্ত আইনের ১১(খ) ধারার দোষী সাব্যস্ত করা হলো।” This findings are based on relevant evidence on record and those suffer from no error of law or of procedure affecting the merit of the case.

It is found that PW 1, complainant as well as victim of the case proved the prosecution case and PW 2, PW 4 and PW-6 gave evidence in support of the prosecution and made similar statements like P. W 1 and further PW 6 deposed that on completion of the investigation he found a prima facie case and accordingly submitted charge sheet against the accused

appellant and he produced the relevant documents as per requirement of law, which were marked as exhibits.

In view of the attending facts and circumstances of the case and the evidence on record, I am constrained to hold that the prosecution witness namely P.Ws. 1-2, 3-4 and 6 proved the prosecution case as to the time, place and manner of occurrence and accordingly, the prosecution proved the guilt of the accused appellant beyond reasonable doubt. I find no flaw in the reasonings of the trial Court or any ground to assail the same.

Mere delay in lodging FIR is really of no consequence, if the reason is explained. Delay in lodging every case, cannot be a ground to arouse suspicion. It can only be so, if the delay is explained. Where the delay was sufficiently explained, delay in lodging FIR by itself cannot be a ground to doubt the prosecution case. I have already indicated that in this case delay has been explained satisfactorily which took place due to salish as well as the treatment of the victim-Pw-1. Further, the submission of the learned Advocate for appellant that the witnesses are highly interested to the prosecution case as they are relatives with each other and as such, their evidence is not tenable in the eye of law, in the facts and circumstances of the case, I am unable to see eye to eye

in such submission of the learned Advocate for the appellant.

However, considering the law, facts and circumstances of the case as discussed above, particularly the fact that occurrence took place in the year of 2001, to be precise December 24, 2001 and a period of 23 years has already gone by. Petitioner has already suffered the agony of protracted trial, spanning over a period of two decades, I think that, the ends of justice, will be met if the sentence of fine is maintained and the substantive sentence is reduced to the period already undergone, as prayed for.

Learned Assistant Attorney General has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the appellant is concerned.

The appeal is, consequently, allowed in part only to the extent that the sentence of imprisonment for the offence is reduced to the period already undergone. In all other respects the appeal shall stand dismissed. Sentence of fine is, however, maintained. The same shall be deposited within a period of six months from the date of receipt of this order. In case, the fine is not

deposited, the benefit of reduction in sentence shall not accrue to the accused appellant.

The bail bonds of the appellant, who was ordered to be released on bail, shall stand discharged.

Send down the lower Court records at once.