

8 SCOB [2016] HCD 35**HIGH COURT DIVISION**

Criminal Appeal No. 2634 of 2015
(Jail Appeal No. 185 of 2013)

Mr. Muhammad Tafazzal Hossain
Patwary, Advocate.
...For the appellant.

Md. Ibrahim

...Convict-appellant

Mr. Abdullah Al Mamun, D.A.G. with
Ms. Delwara Begum (Bela), A.A.G
...For the State.

Versus

The State

...Respondent

The 2nd day of July, 2015.

Present:

Mr. Justice Abu Bakar Siddiquee

Nari-O-Shishu Nirjatan Daman Ain, 2000

Section 10:

There is no further burden of proof when the assertions of the witnesses remain unchallenged. In the instant case the convict-appellant failed make out his defence on cross-examining the witnesses. On perusal of the aforesaid position of the facts, circumstances and other materials on record nothing cogent could be elicited to disbelieve the witnesses. Thus I find that there is no scope to interfere into the findings and decision as has been arrived by the learned Judge of the Trial Court.

... (Paras 28 and 29)

JUDGMENT

Abu Bakar Siddiquee, J.

1. This Criminal appeal is directed against the Judgment and order of conviction and sentence dated 30.09.2013 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Chandpur in Nari-O-Shishu Case No. 104 of 2009 arising out of Faridgonj Police Station Case No. 01 dated 01.07.2009 corresponding to G.R. No. 108 of 2009 convicting the appellant under Section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amended, 2003) and thereunder to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Tk. 20,000/- (twenty thousand) in default to suffer rigorous imprisonment for further period of 1(one) year more.

2. The fact, relevant for disposal of this appeal may briefly be stated as follows.

One Md. Lokman Hossain lodged the F.I.R. with Faridgonj Police Station as informant alleging inter alia that he has been rendering his service as Assistant Teacher, Rupsha Ahamadia High School and victim is his daughter who has been performing her study in Greedkalindia Hajera Hashmot Degree College on the other hand convict Md. Ibrahim is criminal type of man who used to lease School going student. It has been further alleged that on 01.07.2009 at about 2.30 p.m. while the victim returning back to her house from her College, reached to eastern side of

Chatura Bridge and at that time convict-appellant Md. Ibrahim rushed there and embraced the victim whereupon she raised hue and cry. It has been further alleged on hearing hue and cry the witness No. 1 rushed to the spot whereupon the convict-appellant tried to assault him. However, he was able to escape his daughter and lodged the FIR after being rushed to the Police Station.

3. One S.I Abul Kashem took over the task of investigation and visited the place of occurrence and prepared its sketch map along with index. Thereafter he recorded the statements of the P.Ws. On completion of the investigation he has submitted a charge sheet against the convict-appellant with recommendation to stand trial for commission of offence punishable under Section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. Thereafter the case record was sent to the Nari-O-Shishu Nirjatan Daman Tribunal, Chandpur who after performing all formalities has framed a formal charge and read over the same to the convict-appellant whereupon he pleaded not guilty of the offence and claimed to be tried.

4. Prosecution adduced as many as 8 (eight) witnesses. On the other hand, defence examined none.

5. The defence case as it appears that he is innocent and he has been falsely implicated in the case and that he is a victim of village policy.

6. On conclusion of the trial the learned judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Chandpur found the convict-appellant guilty of the offence and attributed the order of conviction and sentenced him to suffer rigorous imprisonment for 7(seven) years and to pay a fine of Tk. 20,000/- (twenty thousand) in default to suffer rigorous imprisonment for further period of 1(one) year more.

7. Being aggrieved by and dissatisfied with the order of conviction and sentence the convict-appellant preferred this appeal.

8. Mr. Muhammad Tafazzal Hossain Patwary, the learned Advocate appearing on behalf of the convict-appellant strenuously argued that there is no eye witness of the occurrence and the prosecution hopelessly failed to prove the case beyond reasonable shadow of doubt in spite of that the learned Tribunal imposed the order of conviction and sentence mere on surmise and conjecture and as such the impugned judgment and order of conviction and sentence is liable to set aside.

9. On the other hand, Mr. Abdullah Al Mamun, the learned Deputy Attorney General appearing on behalf of the respondent strenuously argued that all the formalities has been duly complied with and all the P.Ws. duly supported the prosecution case mentioning the time place and manner of occurrence and as such the impugned judgment and order of conviction is liable to be affirmed.

10. I have heard the learned Advocate for both the parties and perused material available on record.

11. Let me proceed to examine the evidence and other materials of the case and see therefrom as to how far the prosecution has been able to prove its case beyond reasonable shadow of doubt.

12. P.W. 1, Md. Lokman Hossain Master is the informant of this case who deposed that the victim Amena Akhter is his daughter and she has been reading in Greedkalindia Hajera Hashmot Degree College. He further deposed that Ibrahim Khalil is a scoundrel type of man. He further deposed that on the day of occurrence at about 2.30 p.m. victim started to return to her house and the convict-appellant embraced the victim on the spot who tried to escape and raised hue and cry. Thereafter he deposed that witness Giasuddin all on a sudden rushed to the place of occurrence and rescued the victim and sent her to the house. He further deposed that after stating all those facts, he lodged F.I.R. which has been marked as exhibit-1.

13. None cross-examined this witness.

14. P.W. 2 Amena Akter is the victim in this case who deposed that her father is a School Teacher and she has been reading in a nearby college. She further adds on 01.07.2009 while she was on the way of returning back from her college, the convict-appellant Ibrahim Khalil apprehended her near Chatura Bridge area at about 2.30 a.m. and she was trying to escape and also raised hue and cry. She further deposed that at that time her close neighbour Gias Uddin was also returning back on riding of his bicycle who rushed there to help her and was able to escape from the grip of the convict-appellant. Thereafter she deposed that the convict-appellant became angry with Gias Uddin and took a iron rod from the tea-stall of one Belal Hossain and thereafter the convict-appellant was resisted by one Hafez Ahmed and others. She further deposed that after arrival at her home, she informed the matter to her parents who informed the matter to the police. Thereafter police apprehended the convict-appellant. She further deposed that her father lodged the FIR on stating all the facts.

15. None cross-examined this witness.

16. One Gias Uddin while deposing as P.W. 3 stated that both the parties are known to him and they are his close neighbour. He further deposed that on 01.07.2009, at 2.30 p.m. while he was returning to his house on riding his bicycle the convict-appellant caught the victim near Chatura Bridge area and he has escaped the victim from grip of the convict-appellant and took her to her house. He further deposed that the convict-appellant tried to inflict rod blow towards him but he was resisted by some other local people and subsequently the convict-appellant was caught by the police.

17. None cross-examined this witness.

18. P.W. 4 Hafez Ahmed deposed that both the parties are known to him they are his close neighbour. He also deposed that on 01.07.2009 the convict-appellant apprehended the victim near Chatura Bridge and thereby outraged her modesty. He further deposed that another close neighbour rescued the victim from the grip of the convict-appellant who became angry and tired to caused blow towards the Gias Uddin but due to his interference it was not possible on his part to inflict such blow.

19. None cross-examined this witness.

20. P.W. 5 Md. Selim Mia is Additional Chief Judicial Magistrate attached to Chandpur Magistracy who deposed that while he was serving as Judicial Magistrate the police forwarded one Amena Begum before him for recording her statements under Section 22 of the Nari-O-Shishu Nirjatan Daman Ain. Thereafter he deposed that he recorded statement of

victim Amena Begum after performing all legal formalities and victim executed the confessional statement on putting signature.

21. None cross-examined this witness.

22. P.W. 6, Md. Abul Kashem is the investigating officer in this case who deposed that after taking over the task of investigation, he rushed to the place of occurrence and prepared its sketch map along with index. He also deposed that he recorded 161 statements of the P.Ws and forwarded the victim before the Magistrate for recording her statements. Thereafter he deposed that completion of investigation, he has submitted a charge sheet against the convict-appellant with recommendation to stand trial for communication of offence punishable under Section 10 of the Nari-O-Shishu Nirjatan Daman Ain. He produced the FIR Form sketch map along with index which has been marked as exhibit-3, 4 and 6 series.

23. None cross-examined this witness.

24. P.W. 7 Abul Kalam Mizi deposed that both the parties are known to him and he is their close neighbour. He further deposed that on 01.07.2009 at about 3.00 p.m. on hearing hue and cry he rushed to tea-stall near their Jame Mosque and wherein witness Gias Uddin informed him the convict-appellant Ibrahim Khalil apprehended the victim near Chatura Bridge area and tried outrage her modesty. He further deposed Gias Uddin told that he rescued the victim and took her their house. He identified the convict-appellant on dock.

25. None cross-examined him.

26. P.W. 8 Nasima Begum deposed that both are her close neighbour. She deposed that on 01.07.2009 at about 2.30 p.m. the convict-appellant caught the victim while she was returning towards to her house at Chatura Bridge area and tried to outrage her modesty. She also deposed that all on a sudden Gias Uddin rushed their and rescued the victim and took her to their house. Thereafter she deposed that the convict-appellant tried to inflict injury towards Gias Uddin and she rushed to the tea-stall one Belal Hossain on hearing hue and cry and saw the occurrence.

27. None cross-examined this witness.

28. On perusal of the evidence on record it appears that all the P.Ws are local witness excepting the P.W. 5 who is a Magistrate and recorded the statements of the victim under Section 22 of the Nari-O-Shishu Nirjatan Daman Ain. It further appears that P.W. 1 is the informant, P.W. 2 is the victim, P.W. 3 is the Gias Uddin who rescued the victim from the grip of the convict-appellant. All those witnesses are eye witnesses of the occurrence. P.W.4 Hafez Ahmed is another witness who rescued the Gias Uddin from grip of the convict-appellant since the convict-appellant became angry with Gias Uddin and P.W. 6 and P.W. 7 are hearsay witnesses who have heard the fact just after the occurrence. None cross-examined these witnesses. A reference may be made from the decision enunciated in 40 DLR, 186 wherein it has been held that there is no further burden of proof when the assertions of the witnesses remain unchallenged. In the instant case the convict-appellant failed make out his defence on cross-examining the witnesses.

29. On perusal of the aforesaid position of the facts, circumstances and other materials on record nothing cogent could be elicited to disbelieve the witnesses. Thus I find that there is

no scope to interfere into the findings and decision as has been arrived by the learned Judge of the Trial Court. Hence, I have no other option but to agree with the decision as has been arrived by the Trial Court. Thus the impugned judgment and order of conviction is liable to be affirmed.

30. On perusal of the evidence on record it appears to me that the convict-appellant had already suffered almost 6 (six) years imprisonment in addition to the agony of trial and total punishment was for 7(seven) years imprisonment.

31. Having considered the aforesaid facts, circumstances and evidence on record, it is felt that the sentence already undergone by him is sufficient to meet the ends of justice. Thus, I would like to reduce the sentence to that extend which has been already served out.

32. In the result, the appeal is dismissed with modification in respect of sentence. The Judgment and order of conviction and sentence dated 30.09.2013 passed learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Chandpur in Nari-O-Shishu Case No. 104 of 2009 arising out of Faridgonj Police Station Case No. 01 dated 01.07.2009 corresponding to G.R. No. 108 of 2009 is hereby modified and reducing to sentence undergone by him.

33. The order and sentence regarding imposition of fine is hereby affirmed. The trial Court is to take step for realization of the same.

34. Let a copy of this judgment along with L.C.Rs. be sent to the concerned court at once.