

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Criminal Appeal No. 8438 of 2016

Rashedul Islam alias Bipul and another.

...Convict-appellants.

-VERSUS-

The State.

... Respondents.

Present
Mr. Justice Mamnoon Rahman

Mr. Md. Monzurul Alam (Sujan), Adv.
... For the Appellants.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

...For the State.

Heard on: 06.06.2023 & 13.02.2024

And

Judgment on: The 20th February, 2024

This appeal is directed against the Judgment and order of conviction and sentence dated 24.08.2016 passed by the learned Judge of Nari- O- Shishu Nirjatan Daman Tribunal, Gaibandha in Nari-O-Shishu Case No. 68 of 2013 arising out of Gobindaganj Police Station Case No. 01 dated 01.11.2012 corresponding to G.R. No. 431 of 2012 (Gobi) convicting the Appellant No.1 under Section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) sentencing him to suffer rigorous imprisonment for 3(three) years and to pay a fine of Tk. 5,000/- in default of which to suffer rigorous imprisonment for a period of 1(one) month more and convicting the Appellant No.2 under Section 11(Ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) sentencing him to suffer rigorous imprisonment for

1(one) year and to pay a fine of Tk. 1,000/- in default of which to suffer rigorous imprisonment for a period of 15(fifteen) days more.

The short facts relevant for the disposal of this appeal, is that, one Suriya being informant lodged First Information Report on 01.11.2012 with the Gobindaganj Police Station implicating four accused persons including the appellants alleging *inter-alia* that the appellant Rashedul Islam married the informant eight years back and after execution of marriage the said convict persons including the appellants consistently tortured the informant for dowry and ultimately on 10.12.2012 they demanded Tk. 2,00,000/- as dowry and she refused to arrange the same the accused persons indiscriminately assaulted the informant causing injury. The informant filed the case after taking treatment in the hospital. The police after investigation submitted charge sheet against two accused persons. The trial court eventually framed charge and proceeded with the case. During trial the prosecution adduced as many as nine witnesses and the defence adduced one. The trial court eventually examined the accused persons under section 342 of the Penal Code and ultimately by the impugned judgment and order convicted and sentenced the accused appellants.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction the appellants moved before this court by way of appeal and obtained the order of bail.

Mr. Md. Monzurul Alam, the learned Advocate appearing on behalf of the appellants at the very outset submits that the appellant No.

2 died on 20.06.2021. Hence, the appeal so far it relates to appellant No. 2 is hereby dismissed.

The learned Advocate for the appellant No. 1 submits that the court below without applying its judicial mind and without considering the facts and circumstances most illegally and in an arbitrary manner passed the impugned judgment and order of conviction and sentence which is liable to be set aside for ends of justice. He submits that all the witnesses are highly interested witnesses but the trial court ought to have disbelieved the same. But in the present case in hand the trial court on mere probably and suspicion passed the judgment and order of conviction and sentence which requires interference by this court. He further submits that in the case in hand the witnesses miserably failed to prove the demand of dowry and subsequent assault in a proper manner rather there are serious doubt in the prosecution case so far it relates to demand of dowry and physical assault and as such the appellant is liable to get the benefit of doubt. By referring the decisions reported in 6 ALR (AD) 90 he submits that there is no scope to proceed a case under the Nari-O-Shishu Nirjatan Daman Ain, after divorce by the husband.

Mr. Mohammad Taifoor Kabir, the learned Deputy Attorney General appearing on behalf of the opposite party/state vehemently opposes the appeal. He submits that the court below on proper appreciation of the facts and circumstances, evidence both oral and documentary as well as the relevant provisions of law passed the

impugned judgment and order of conviction and sentence which requires no interference by this court.

I have perused the impugned judgment and order passed by the court below, memorandum of appeal, grounds taken thereon, necessary papers and documents as well as the LC records. I have heard the learned Advocates for the appellant as well as the learned Deputy Attorney General for the State.

On perusal of the same, it transpires that the appellant Rashedul Islam along with his father stood charge for the offence committed under section 11(ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain. The main allegation as made by the informant who is the wife of the appellant No. 1 is that they got married eight years back and at the time of marriage the father of the informant gave valuable goods and money to the accused persons. But despite the same the informant facing regular mental and physical torture for demand of dowry and ultimately on the date of occurrence the accused persons demanded dowry and as she refused to arrange the same they all assaulted her causing physical injury. It further transpires that the police after investigation submitted charge sheet and the trial court proceeded with the case.

P.W. 1 in her deposition stated that on the date of occurrence they demanded dowry and injured her and she got treatment for the same. In her cross-examination she stated that she filed the FIR. She also stated that the witnesses are her brothers and other relations. In her cross-examination she further stated that the appellant caused injury

using hand. P.W. 2 is a father of the informant who heard about the occurrence. P.W. 3 in his deposition stated that he heard about the occurrence. P.W. 4 in her deposition stated that the victim informant came to their house and he notices injury in her eye. In her cross-examination however stated that she heard about the divorce. P.W. 5 is the brother of the informant who in his deposition stated that he took the victim for treatment. P.W. 6 is the uncle of the informant who heard about the occurrence. P.W. 7 is the grandmother who heard the occurrence. P.W. 8 is the doctor who treated the victim informant. In her deposition stated that the victim came for treatment with the complain of hard blunt weapon, simple in nature. P.W. 9 is the Investigation Officer who submitted charge sheet.

It also transpires that during trial the defence adduced one witness, namely Md. Abdul Khalek who is the Nika Registrar in his deposition stated that the appellant No. 1 divorced his wife on 14.10.2012 by following all the formalities.

So, on meticulous perusal of the aforesaid papers and documents, it transpires that this is an allegation of demand of dowry and subsequent assault. On perusal of the deposition, First Information Report and other papers and documents it clearly transpires that there is a doubt regarding the injury in question. In the First Information Report (FIR) as while deposing the P.W. 1 the informant did not mention about the specification of the injury. In her cross-examination she stated that the appellant Rashedul infected blow using his hand but he

did not use any weapon. Also it transpires from the evidence of the other witnesses that they mostly hearsay witnesses and just reproduced the statement made by the informant.

In the present case in hand on careful scrutiny of the papers and documents, it transpires that though it has been alleged that the occurrence took place on 10.10.2012 but the FIR was lodged long after 21 days. Such delay clearly shows about the doubt regarding the genuineness of the prosecution case. There are material contradictions regarding the nature of injury as claimed on the basis of the evidence, medical report as well as the testimony of Doctor who treated the informant.

In the present case in hand, it further transpires that the appellant Rashedul divorced the informant on 14.10.2012 which has been duly affirmed by the deposition of D.W. 1 who is the Nika Registrar. In his deposition he categorically stated that after following all the formalities regarding the registration the appellant divorced the victim. In the decisions reported in 6 ALR(AD)90 their lordships came to a conclusion that there is no scope for filing a case after divorce as because the presumption is that the wife cannot stay with the house of the husband after divorce. In the present case in hand, it further transpires that admittedly the case was filed on 01.11.2012 that is after divorce which creates serious doubt in the prosecution case.

Considering the facts and circumstances, I find substance in the instant appeal. Accordingly, the appeal so far it relates to appellant No.

1 is hereby allowed. The impugned judgment and order passed by the court below is hereby set aside and the appellant No. 1 be discharged from the bail bond.

Send down the L.C. records to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman,J.)

Emdad. B.O.