

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 3453 of 2017

Md. Saddam Sheikh

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. Md. Abdul Bari, Advocate.

.....For the appellants.

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 14.07.2024, 28.07.2024 and
Judgment on 28.07.2024

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Md. Saddam Sheikh is directed against the judgment and order of conviction and sentence dated 17.10.2016 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Sessions Case No. 87 of 2014 arising out of non G.R No. 21 of 2012 corresponding to Modhukhali Police Station Non G.R F.I.R No. 21 dated 18.04.2012 convicting the accused-

appellant under section 313 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 40,000/- (forty thousand) in default to suffer simple imprisonment for 1 (one) year more.

The prosecution case, in short, is that on 05.01.2012 one, Most. Beauty Begum as complainant filed a petition of complainant in the Court of the learned Judicial Magistrate, cognizance Court No.4, Faridpur against the accused-appellant and 6 others under section 147/323/307/313/ 315/ 34 of the Penal Code stating, inter-alia, that the accused No.1 is husband of the victim complainant and other are relatives of accused No.1. Before marriage accused No.1 used to make bad proposal to the complainant on the way to school and on 13.09.2011 while complainant was reading in her house the accused No.1 entered into the reading room of the complainant and forcefully raped on her and thereafter, the complainant informed the matter to her father and neighbours and accordingly a shalish took place and as per decision of salish accused No.1 compelled to marry her on 23.09.2011 according to Muslim law and thereafter, the complainant started living in the house of accused No.1 as wife and thereafter, at one stage victim became pregnant and thereafter, the accused persons in

collusion with each other tried to miscarriage her but the complainant denied to do so resulting the accused persons became angry and thereafter the accused No.1 asked the complainant to drink গাছ গাছরার রস and medicine otherwise they will kill her. Thereafter, accused persons conjointly compelled the victim to drink গাছ গাছরার রস and medicine as a result of which on 12.12.2011 the abortion took place and thereafter, on 13.12.2011 the complainant was shifted to Desh clinic hospital for ultrasound to confirm her abortion. Thereafter, the accused persons forcefully driven the complainant-victim out from their house in demanding Taka 1,00,000/- as dowry. In this backdrop after getting initial treatment the victim went to Modhukhali police station for lodging case, while police advised her to file the case in Court.

On receipt of the petition of complaint, the learned Judicial Magistrate sent the petition of complainant to Officer-in-charge, Modhukhali police station for inquiry. After completion on inquiry one, S.I. Bipul Chandra Dey submitted his report against the accused appellant under section 313/315 of the Penal Code being non G.R. F.I.R Case No. 21 dated 18.04.2012 and did not send up other accused in charge sheet.

Against which the complainant-victim filed naraji petition and ultimately, S.I. Sheikh Abu Bakar, D.B, Faridpur after completion of further inquiry also found prima-facie case against the accused Saddam Sheikh under section 313/315 of the Penal Code and also recommending other accused for discharging from the case.

Ultimately, the trial was held in absentia against the accused-appellant.

At the trial, the prosecution side has examined as many as 09(nine) witnesses to prove its case, while the defence examined none.

On conclusion of trial, the learned Additional Sessions Judge, 2nd Court, Faridpur by the impugned judgment and order dated 17.10.2016 found the accused-appellant guilty under section 313 of the Penal Code and sentenced him thereunder to suffer rigorous imprisonment for a period of 7(seven) years and to pay a fine of Taka 40,000/- (forty thousand) in default to suffer simple imprisonment for 1 (one) year more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 17.10.2016, the accused-appellant preferred this criminal appeal.

Mr. Md. Abdul Bari, the learned Advocate for the convict-appellant in the course of argument at the very outset takes me through the petition of complaint, inquiry report, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 17.10.2016 and then submits that in-fact this is a case of no evidence inasmuch as in this case the prosecution side examined in all 9 witnesses out of which none of them testified any word against the accused-appellant connecting with the crime under section 313 of the Penal Code. He adds, in this case there is nothing on record to suggest that the accused-appellant without having any consent of his wife (complainant victim) played the main role as to causing miscarriage rather as per petition of complaint and other documents, who played the main role in causing miscarriage, they have been left out from 2 (two) back to back police reports.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction and sentence dated 17.10.2016, which was according to her just, correct and proper. She submits that in this case all the witnesses testified in one voice that the accused appellant without having any consent of the victim

complainant compelled her to miscarriage thus, the learned trial Court below rightly found the accused-appellant guilty of the offence under section 313 of the Penal Code.

Having heard the learned Advocate for the convict-appellant and the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence under section 313 of the Penal Code.

On scrutiny of the record, it appears that on 05.01.2012 the complainant filed a petition of complainant in the Court of the learned Judicial Magistrate, cognizance Court No.4, Faridpur against the accused-appellant and 6 others under section 147/323/307/313/ 315/ 34 of the Penal Code stating, inter-alia, her husband accused, Md. Saddam Sheikh in collusion with other accused without having her consent forcefully entering গাছ গাছরার রস and medicine from her mouth causing miscarriage. It further appears that on receipt of the petition of complaint the learned Judicial Magistrate sent it to O.C. of local police station for submitting inquiry report and accordingly, one S.I. Bipul Chandra after completion of investigation submitted a

report against the accused-appellant under section 313/315 of the Penal Code and did not send up others in the police report and thereafter, the complainant filed a naraji petition and on that naraji petition one, S.I. Sheikh Abu Bakar, D.B, Faridpur after completion of inquiry also submitted a report adopting earlier report and ultimately trial was held in absentia in the Court Additional Sessions Judge, Faridpur During trial the prosecution side examined in all 9 witnesses out of which PW-1, Md. Abul Hossain, father of the victim-complainant stated in his deposition that- “চার বছর (অনুমান) আগে সকাল ৮.৩০ টার ঘটনা। এই মামলার বাদী আমার মেয়ে। ঘটনা ৪ বছর আগের। আমার মেয়ে স্কুলে যেত। মেয়ের বিয়ে হয় সাদ্দামের সাথে সংসার করার সময় অত্যাচার করে। আমার মেয়ে মোঃ সাদ্দাম শেখের ঔরষে গর্ভবর্ত হয়। আসামী মোঃ সাদ্দাম আমার মেয়েকে জোর করে ঔষধ খাওয়ায় ও বাচ্চা গর্ভপাত হয়। মেয়েকে হাসপাতালে নিই এবং চিকিৎসা করাই। পরে মেয়ে মামলা করে। মেয়ে ঢাকা চাকরী করে। এই সেই মামলা। মেয়ে স্বাক্ষর করেছে। Medical certificate আছে। ঘটনাস্থল আসামীর বাড়ি। ঔষুধগুলি গাছগাছার তৈরী।” This witness was not cross-examined as the accused appellant was absconding. PW-2, Beauty Begum, complainant and victim of the case, who stated in her deposition that she got married in 2011 and soon thereafter became pregnant. This witness also stated that- “আমার গর্ভের সন্তান গাছগাছরা জোর করে খাইয়ে নষ্ট করে ফেলেছে।

আমি মামলা করি। আমাকে মারধরও করেছে। এরপর এলাকায় লোকজন সালিশ করে আমাদের মধ্যে ছাড়াছাড়ি করে দিয়েছে। আমি মামলা তুলে না নিলে তারা আমাদের এলাকা ছাড়া করে দিবে। আদালত কর্তৃক প্রশ্নের উত্তরঃ আমার গর্ভের সন্ধান আমার স্বামীর বাড়ীতেই নষ্ট করে। ডাক্তার দেখায় আমার স্বামীই। হাসপাতালের নাম মনে নাই, আমি অসুস্থ ছিলাম। হাসপাতালের কাগজপত্র নথিতে আছে। আমি ঢাকাতে চাকরী করি। এই সেই নালিশী দরখাস্ত, এই আমার স্বাক্ষর। (প্রদ-১, ১/১, ১/২, ১/৩)”。 PW-3, 4, 5, 6, 7 all these witnesses in their respective evidence stated that the accused-appellant committing miscarriage of the victim by compelling to take medicine. PW-8, Doctor Shirin Akter stated in her deposition that- “আমি মা ও শিশু কল্যাণ কেন্দ্র, ফরিদপুর-এর মেডিকেল অফিসার (ক্লিনিক) থাকাকালে এই মামলার ভিকটিম বিউটি বেগম, বয়স-১৮ দেশ ক্লিনিক এ ভর্তি হলে আমি তার পরীক্ষা করি। সে ১৩/১২/২০১১ তাং ভর্তি হয়। তিনি profuse vaginal bleeding (অতিরিক্ত রক্তক্ষরণ) কারণে আমি Dilatation evacuation and curettage (DE&C) করাই ঐদিনই এবং পরবর্তীতে এই সনদ ইস্যু করেছি। এই সেই Medical certificate এবং এই আমার সহি। যদিও এটা ফটোকপি তবু আমি এটা ইস্যু করেছি। (প্রদ-২, ২/১) এই certificate এর বিবরণসমূহ সঠিক আছে। কাগজপত্রে এসছে মেয়েটা গর্ভবতী ছিল এবং তার গর্ভপাত হয়েছে।”。 This witness was not cross-examined as the accused appellant was absconding.

PW-9, S.I. Bipul Chandra Dey investigated the case. This witness stated in his evidence that during investigation he examined the witnesses and obtained medical certificate and after completion of investigation he found prima-facie case against the accused-appellant.

On scrutiny of the above quoted evidence together with the petition of complaint, medical certificates, inquiry report, it appears that none of the witnesses testified any specific allegation against the accused-appellant that the accused-appellant without having any consent of the victim-complainant causing miscarriage of the complainant-victim, medical certificate also does not reflect that the accused persons forcefully causing miscarriage of the victim.

In view of the attending facts and circumstances of the case and the evidence on record, I am constrained to hold that the prosecution has failed to prove the charge under section 313 of the Penal Code against accused-appellant beyond any reasonable doubts. The learned Additional Sessions Judge, 2nd Court, Faridpur has failed to evaluate the evidence on record from a correct angle thereby reaching a wrong decision that the accused-appellant guilty of the offence under section 313 of the Penal Code, which occasioned a miscarriage of justice. In the facts and evidence on record the trial Court ought

to have acquitted the accused by giving the benefit of doubt. Consequently the appeal succeeds.

In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 17.04.2018 passed by the learned Additional Sessions Judge, 2nd Court, Faridpur in Sessions Case No. 87 of 2014 arising out of Non G.R No. 21 of 2012 corresponding to Modhukhali Police Station non F.I.R. Case No. 11 dated 18.04.2012 convicting the accused-appellant under section 313 of the Penal Code is set-aside.

Convict appellant, Md. Saddam Sheikh is discharged from his bail bond.

Send down the lower Court records at once.