

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 4871 of 2018

Jane Alam Jani

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Mr. Md. Asad Miah, 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 23.05.2024, 30.05.2024,
02.06.2024 and Judgment on 12.06.2024**

Sheikh Abdul Awal, J:

This criminal appeal at the instance of Jane Alam Jani is directed against the judgment and order of conviction and sentence dated 17.04.2018 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi in Nari-O-Shishu Case No. 89 of 2011 arising out of G.R No. 224 of 2010 corresponding to Raipura Police Station Case No. 01 dated 04.09.2010 convicting the accused-appellant under section 10 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 3(three) years

and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 3 (three) months more and also convicting the appellant under section 323 of the Penal Code and sentencing him thereunder to suffer simple imprisonment for a period of 3(three) months with a direction that both the sentences shall run concurrently.

The prosecution case, in short, is that on 04.09.2010 at 18:45 hours one, Nipa Akter as complainant filed a petition of complainant in the Court of the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi against the accused-appellant and 2 others under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 326 of the Penal Code stating, inter-alia, that the complainant is a minor girl, student of class ten and accused Nos. 1 and 2 used to irritate the complainant on the way to school and also gave bad proposal to the complainant, who used to ignore the same. In this background the accused persons became angry and accordingly on 22.08.2010 at 7:00 a.m. on knowing the fact that except the complainant no one present in the house of the complainant and soon thereafter, the accused persons in collusion with each other entered into the house of the complainant while the accused No.3 stood on the door of the house and accused No.1 gave bad proposal to her but the complaint denied while accused No.2 tightly caught-hold the hand of the complainant and accused No.1 tried to rape on her by touching secret part of her body and thereafter the

complainant raised hue and cry and then the accused No.1 dealt a lathi blow on the left ear of the victim complainant resulting she falls to the ground and then the neighbours of the complainant came there, while the accused persons flee away from the place of occurrence and thereafter, the witnesses took the victim in hospital for treatment. the delay has been caused in filing the petition of complaint due to victim's treatment in hospital.

On receipt of the petition of complaint, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi examined the complainant under section 200 of the Code of Criminal Procedure and sent the petition of complaint to local police station with a direction to treat the same as first information report.

Under this backdrop Raipura Police Station Case No. 01 dated 04.09.2010 under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 326 of the Penal Code was started against the accused persons.

Police after completion of investigation submitted charge sheet against the accused persons, vide charge sheet No. 214 dated 26.11.2010 under section 10/30 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 323 of the Penal Code.

Ultimately, the accused appellant and 2 others were put on trial to answer the charge under section 10/30 of the

Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 323 of the Penal Code in which the accused persons pleaded not guilty and claimed to be tried stating that they have been falsely implicated in this case.

At the trial, the prosecution side has examined as many as 08(eight) witnesses to prove its case, while the defence examined 2 witnesses. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellant and others under section 342 of the Code of Criminal Procedure appeared to be that the accused-appellant and others were innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi by the impugned judgment and order dated 17.04.2018 found the accused-appellant guilty under section 10 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 3(three) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 3 (three) months more and also convicting the appellant under section 323 of the Penal Code and sentencing him thereunder to suffer simple imprisonment for a period of 3(three) months with a direction that both the sentences shall run concurrently while acquitted 2 others from the charges levelled against them.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 17.04.2018, the accused-appellant preferred this criminal appeal.

Mr. Md. Asad Miah, the learned Advocate for the convict-appellant in the course of argument at the very outset takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 17.04.2018 and then submits that in this case the accused-appellant is innocent, who has been falsely implicated in the case out of previous enmity with the informant party and the prosecution witnesses are highly interested to the prosecution case and they are close relatives with each others, who inconsistently deposed before the trial Court as to involvement of the accused appellant with the crime although the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal without considering all these vital aspects of the case from a correct angle most illegally convicted the appellant under section 10 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 3(three) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 3 (three) months more and also convicted the appellant under section 323 of the Penal Code and sentenced him thereunder to suffer simple imprisonment for a period of 3(three) months with a direction that both the

sentences shall run concurrently while acquitted 2 other accused on the same footing from the charge levelled against them which occasioned a failure of justice and as such, the impugned judgement and order of conviction is liable to be set-aside for the ends of justice. Finally, the learned Advocate submits in attending facts and circumstances of the case and the evidence on record, it must be held that the prosecution has failed to prove the charge against the appellant Jane Alam Jani beyond any reasonable doubts. The learned Advocate to fortify his arguments has relied on the decisions reported in 48 DLR 184, 10 BLC 695, 12 BLC 165, 15 BLC 291, VII BLD (AD) 1 and 13 BLC 52 and 12 BLC 427.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction and sentence dated 17.04.2018, which was according to her just, correct and proper. She after placing the petition of complaint, charge sheet and deposition of witnesses and the impugned judgment and order of conviction and sentence submits that the prosecution has been succeeded to prove its case beyond reasonable doubts. She further submits that in this case the prosecution to prove its case examined as many as 8 witnesses out of which all of them in their respective evidence categorically testified that the accused-appellant on the fateful day tried to rape on the person of the complainant-victim and in failing to do so accused appellant

dealt lathi blow on the ear of the victim girl and accordingly, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal rightly found the accused-appellant guilty of the offence under section under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and section 323 of the Penal Code.

Having heard the learned Advocate for the convict-appellant and the learned Deputy Attorney General, perused the record including the petition of complaint, charge sheet, deposition of witnesses and other materials on record. Now, the only question that calls for my consideration in this appeal is whether the trial Court committed any error in finding the accused-appellant guilty of the offence under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and section 323 of the Penal Code.

On scrutiny of the record, it appears that the victim PW-1 as complainant filed a petition of complainant in the Court of the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi against the accused-appellant and 2 others under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 326 of the Penal Code stating, inter-alia, that the complainant is a minor girl, student of class ten and the accused Nos. 1 and 2 used used to irritate the complainant on the way to school and also gave bad proposal but the complainant used to ignore the same. In this background the

accused persons became angry and accordingly on 22.08.2010 at 7:00 a.m. on knowing the fact that except the complainant no one present in their house and accordingly soon thereafter the accused persons in collusion with each other entered into the house of the complainant while accused No.2 tightly caught-hold to the hand of the complainant and accused No.1 (appellant) tried to rape on her by touching secret part of her body and thereafter, the complainant raised hue and cry and then the accused No.1 dealt a lathi blow on the left ear of victim complainant resulting she falls to the ground while the neighbours of the complainant came there and thereafter, the accused persons flee away from the place of occurrence and thereafter, the witnesses took the victim in hospital for treatment. On receipt of the petition of complaint, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsindi examined the complainant under section 200 of the Code of Criminal Procedure and sent the case to local police station for treating the same as first information report and in this way the case was started against the appellant and 2 others. Police after completion of the investigation submitted charge sheet against the accused-appellant and 2 others under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 323 of the Penal Code. It further appears that to prove the case the prosecution side examined as many as 8 witnesses out of which PW-1, complainant as well as victim of the case

stated in her deposition that at the time the occurrence she was a student of class X. On 22.08.2008 at 7:00 a.m. while her mother went to the house of their neighbour and her father went to his office, the accused No. 3. Shirin sent message to accused Nadim and Jane Alam that there are nobody in the house except the complainant and soon thereafter the accused entered in the house of victim and gave bad proposal to victim but she denied then the accused Nadim caught-hold the hands of the complainant tightly and accused Shirin standing on the door to observe the situation and accused Jane Alam tried to rape on her by touching secret part of her body and thereafter, the complainant raised hue and cry and then the accused Jane Alam became angry and dealt a lathi blow on her left ear resulting she falls to the ground and became senseless. Thereafter, witnesses came there and took the victim in hospital for treatment. This witness proved the petition of complaint and her signature thereon as “Ext.-1” and “Ext.-1/1” In cross-examination this witness stated that- “রানী বেগম আমার বোন। প্রথমে থানায় গেলে মামলা নেয়নি। ঘটনার দিন বিকালে থানায় যাই। ঘটনার প্রায় ১ সপ্তাহ পরে কোর্টে মামলা করি। অদ্য আমার সংগে বড় আপা শীলা এসেছিল। আমি অভিযোগ পড়িয়া শুনিয়াছি। আমাদের বাড়ির সামনের বাড়িই আসামীদের। পারিবারিক ঝগড়া নাই। জানে আলম ও নাদিম ২ বৎসর আগে হতে উত্যক্ত করিত।” This witness in her cross-examination also stated that- “আমার বোন রাণী বেগমও নূরে আলমের বিরুদ্ধে আরেকটা মামলা করিছিল। আমাদের ঘরে দরজা বন্ধ ছিল। জানে আলম লাঠি কোথা হতে আনে তাহা মনে নাই।” PW-2, Abdul Kadir, father of the victim-

complainant simply stated that- “ঘটনার সময় আসামী জানে আলম আমার মেয়েকে অত্যাচার করেছে। আমি বিকালে বাড়ীতে গেলে নিপা ঘটনা বলে। ডকে জানে আলম ও শিরিন আছে।” PW-3, Saleha Begum, mother of the victim, PW-4, Shila Begum, sister of the victim gave similar type of evidence as like as PW-1. PW-5, Rani, another sister of the victim also gave evidence in support of the prosecution case in respect of all material particulars. This witness in her cross-examination stated that- “সত্য নয় যে, বাদীকে আসামী জানে আলম ২২/০৮/১০ তারিখে ধর্ষনের চেষ্টা করেনি ও শিরিন সহায়তা করেনি।” PW-6, Didarul Alam (Akhi), uncle of the victim-complainant as well as uncle of the accused-appellant stated in his deposition that- “আমি চিৎকার শুনে গিয়ে দেখি নিপা মাটিতে শোয়া। রক্তাক্ত অবস্থায় কানে, গায়ে ও মাটিতে রক্ত। ঘটনা কি জিজ্ঞাস করলে শুনি আসামী জানে আলম, নাদিম ও শিরিন নিপার ঘরে ঢুকে শ্রীলতা হানী করতে চেয়েছে, ইজ্জত নষ্ট করতে চেয়েছে। কিন্তু তা করতে না পেরে জানে আলম কানে বারি মারে। আমি ডাক্তারের কাছে নিতে বলি।” PW-7, Doctor Md. Mahmudur Kabir examined the victim girl. This witness stated in his deposition that- “জখম ছিল simple in nature. জখমের বয়স ছিল (age of injury) ৯ ঘন্টা। যা আমার দ্বারা পরীক্ষিত আমি ২২/০৮/১০ পরীক্ষা করি এবং certificate প্রদান করি ০৮/০৯/১০ খ্রিস্টাব্দ ইহাই সেই ইনজুরী সার্টিফিকেট যা প্রদঃ ২, তাতে দেখানো ডান পাশের স্বাক্ষরটি আমার যা প্রদঃ ২/১ চিহ্নে চিহ্নিত করা হলো।”

PW-8, S.I. Md. Atikur Rahman investigated the case. This witness stated in his evidence that during investigation he recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, obtained medical

certificate, prepared seizure list, sketch-map, index and after completion of investigation he found prima-facie case and accordingly submitted charge sheet against all 3 accused under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 323 of the Penal Code.

On scrutiny of the above quoted evidence, it appears that PW-1, victim stated that during the occurrence no one at home and PW-4 stated in her cross-examination that- “ঘটনার তারিখ ২২/০৮/১০ তারিখ। আমি ভিকটিম যে রুমে ছিল তার পাশের রুমে ছিলাম।” PW-1 stated in her deposition that on the fateful day door of her home was closed but as to how the accused persons entered the into house no one disclosed it. PW-1, stated in her cross-examination that- “আমার বোন রাণী বেগমও নূরে আলমের বিরুদ্ধে আরেকটা মামলা করেছিল। আমাদের ঘরে দরজা বন্ধ ছিল। জানে আলম লাঠি কোথা হতে আনে তাহা মনে নাই।” PW-2, father of the complainant-victim stated in his cross-examination that- “আমার মেয়ে রাণী জানে আলমের বিরুদ্ধে একটি মামলা করেছিল।” On the other hand, PW-4 sister of the victim stated in her cross-examination that- “আমার বোনকে আসামী জানে আলম পছন্দ করে কিন্তু আমার বোন পছন্দ করে না। এ নিয়ে আমার পিতামাতার সাথে তাদের বিরোধ।” It is found that the investigating officer mentioned in the charge sheet that- “পাশাপাশি ঘরবাড়ি থাকার কারণে অকারণে ঝগড়াঝাটি হয়।”

It is also found that PW-1, stated in her deposition that- “আসামী নাদিম ২ হাত ধরে রাখে। শিরিন দরজায় দাড়াইয়া পাহাড়া দেয়।

জানে আলম অশোভন অঙ্গভঙ্গি করে আমার শরীরের স্পর্শকাতর স্থানে হাত দিয়া ধরে কাপড় টানা হেচরা করে।” PW-5 stated in his deposition that the accused in failing to do rape dealt lathi blow on the ear of the victim girl. Moreover, in this case some of the PWs namely, PW-1, PW-2, PW-3 stated in their deposition that at the time of occurrence no one was present at home but some of the witnesses stated that at the time of occurrence they were present in the house. Furthermore, all the witnesses are close relatives with each other and there was long standing enmities between the parties.

On a reading of the FIR/ petition of complaint together with the deposition of witnesses, it is very difficult to believe whether the appellant and others were entered into the house of the victim-complainant for committing rape on her or touched her secret part of the body. Moreover, it appears that FIR was lodged under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 326 of the Penal Code and charge sheet was submitted under section 10/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) read with section 323 of the Penal Code and the accused-appellant guilty of the offence under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and section 323 of the Penal Code.

From the above, it is very difficult to believe that accused persons entered into the house of the victim for

committing rape on her or causing sexual harassment. Besides, over the similar type of allegations 2 accused persons have been acquitted from the charges levelled against them. Moreover, in this case occurrence took place on 22.08.2010 and on 04.09.2010 victim Nipa Akter as a complainant filed a petition of complainant in the Court of the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi against the accused-appellant and 2 others without any reasonable explanation as to inordinate delay in filing the case. This inordinate **delay** in lodging the FIR corrodes the credibility of the prosecution story. The Superior Court of this sub-continent in several cases held that delay in loading the F.I.R. creates a doubt, if the delay is not properly explained. In the facts and circumstance of this case the **delay** has not been properly explained. It is duty of Court to consider trustworthiness of evidence on record. I have already indicated that evidence of witnesses is filled with discrepancies, contradictions and improbable versions which led to irresistible conclusion that, evidence of witnesses cannot be a basis to convict Accused.

As discussed above, there are so many limps and gaps as well as doubts about the existence of the facts as well as circumstances. In that light, it creates a doubt in the case of the prosecution about the accused appellant being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the tribunal Judge ought to have

acquitted the accused-appellant by giving the benefit of doubt. In that light, the judgment of the Nari-O-Shishu Nirjatan Daman Tribunal is to be interfered with.

In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 17.04.2018 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi in Nari-O-Shishu Case No. 89 of 2011 arising out of G.R No. 224 of 2010 corresponding to Raipura Police Station Case No. 01 dated 04.09.2010 convicting the accused-appellant under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and section 323 of the Penal Code is set-aside.

Convict appellant, Jane Alam Jani is discharged from his bail bond.

Send down the lower Court records at once.