

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 4380 of 2018**

Md. Liton

.....Convict-appellant.

-Versus-

The State.

.....Respondent.

Ms. Mst. Ismath Ara, 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 27.02.2024 and Judgment on**  
**29.02.2024.**

Sheikh Abdul Awal, J:

This criminal appeal at the instance of convict appellant, Md. Liton is directed against the judgment and order of conviction and sentence dated 11.02.2018 passed by the learned Judge, Shishu Adalat, Chapainawabgonj in Shishu Case No. 11 of 2016 arising out of G.R No. 65 of 2015 (Nachol) corresponding to Nachol Police Station Case No. 05 dated 04.09.2015 convicting the accused-appellant under section 9(4)(Kha) 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 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for 3 (three) months more.

The prosecution case, in brief, is that on 04.09.2015 at 20:05 hours one, Durul Huda as informant lodged an Ejahar with Nachol police station against the accused-appellant under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 alleging, inter-alia, that his daughter Mst. Kulsum Khatun aged about 7 years is a student of class 1 of Ujirpur Primary School. On 04.09.2015 at 11:05 a.m. while she went to collect তাল and then the accused Md. Liton of that area brought the victim Kulsum Khatun forcibly in a toilet and opened her dress and thereafter tried to rape on her while the victim raised hue and cry and on hearing the same witnesses namely, Most. Somija Begum, Md. Salam, Md. Saibur Master came there and rescued his daughter (victim) from the accused while the exited people in the local area caught hold of the accused-appellant and beaten him. In this backdrop, the informant talked with his relatives and lodged the case.

Upon the aforesaid First Information Report, Nachol Police Station Case No. 05 dated 04.09.2015

under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 was started against the accused-appellant.

On receipt of the F.I.R. police started investigation and during investigation visited the place of occurrence, prepared sketch-map, examined the witnesses under section 161 of the Code of Criminal Procedure, forwarded the victim to the learned Magistrate for recording her statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain and accordingly victim made statement to the Magistrate stating that the accused tried to rape on her forcefully and after completion of investigation police found a prima facie case and submitted charge sheet being charge sheet No. 83 dated 09.11.2015 under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) against the accused appellant.

Thereafter, the case record was sent before the learned Nari-O-Shishu Nirjatan Daman Tribunal-1, Chapainawabgonj, wherein it was registered as Nari-O-Shishu Case No. 23 of 2016. Thereafter, the case record was sent to Shishu Adalat, Chapainawabgonj for disposal wherein the case was renumbered as Shishu Case No. 11 of 2016. Ultimately, the accused-appellant was put on trial to answer a charge under section 9(4)(Kha) of the

Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) before the learned Judge, Shishu Adalat, Chapainawabgonj to which the accused-appellant pleaded not guilty and prayed to be tried stating that he has been falsely implicated in this case out of previous enmity with the informant party.

At the trial, the prosecution has examined as many as 7 (seven) 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 out of previous enmity with the informant party.

On conclusion of trial, the learned Judge, Shishu Adalat by the impugned judgment and order dated 11.02.2018 found the accused-appellant guilty under section 9(4)(Kha) 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 5(five) years and also to pay a fine of Taka 10,000/-

(ten thousand) in default to suffer simple imprisonment for 3 (three) months more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 11.02.2018 the accused-appellant preferred this criminal appeal.

Ms. Mst. Ismath Ara, the learned Advocate appearing for the convict-appellant submits that it is apparent from the evidence and materials on record that no occurrence of attempt to rape took place at all, the informant party out of previous enmity lodged the false case in order to harass and humiliate the accused-appellant. The learned Advocate further submits that in this case important witnesses, who were allegedly present in the place of occurrence have not been examined by the prosecution which creates serious doubt as to truthfulness of the prosecution case which can safely be said that if those witnesses would have been examined, then probably the ocular version of the eyewitnesses would have stood falsified although trial Judge without considering all these vital aspects of the case mechanically found the accused-appellant guilty section 9(4)(Kha) 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 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for 3 (three) months more and as such, the impugned judgment and order of conviction is liable to be set-aside.

Ms. Shahida Khatoon, the learned Deputy Attorney-General, on the other hand, supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper. She submits that in this case it is apparent that occurrence took place on 04.09.2015 at 11:05 a.m. and all the PWs including the victim in their respective evidence corroborated each other as to attempt to rape beyond doubts and accordingly, the learned Judge, Shishu Adalat, Chapainawabgonj rightly found the accused-appellant guilty under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced him thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for 3 (three) months more.

Having heard the learned Advocate and the the learned Deputy Attorney General for the parties and having gone through the evidence and materials on record, the only question that calls for my consideration

in this appeal is whether the learned Judge of the Shishu Adalat committed any error in finding that the accused-appellant guilty for the offence of attempt to rape under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003).

On scrutiny of the record, it appears that on 04.09.2015 at 20:05 hours one, Durul Huda as informant lodged an Ejahar with Nachol police station against the accused-appellant under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 ( as amended in 2003) on the allegation that accused Md. Liton brought her minor daughter ( victim) to a nearby toilet from his house and attempted to rape on her while her daughter victim raised hue and cry and then the witnesses namely, Most. Somija Begum, Md. Salam, Md. Saibur Master went there and rescued her minor daughter and caught hold of the accused and beaten him. It further appears that police after completion of usual investigation submitted charge sheet against the accused-appellant under section 9(4) (Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003).

At the trial the prosecution side to prove its case examined in all 07(seven) witnesses out of which PW-1, Durul Huda, informant of the case stated that- “আমি

এজাহারকারী ভিকটিম কুলসুম আমার মেয়ে। ঘটনা ৭/৮ মাস আগে। সকাল অনুমান ১১ টার দিকে ঘটনা। সালাম এর পিছনে পায়খানার মধ্যে ঘটনা। কুলসুম বয়স ৭ তাল কুড়াতে যায়। সালাম এর গাছ। আসামী লিটন আমার মেয়েকে জোর করে পায়খানার মধ্যে নিয়ে উলঙ্গ করে। আমার মেয়ে চিল্লাচিল্লি করে। সান্ধীরা গিয়ে উদ্ধার করে। মেম্বার চেয়ারম্যানকে বলি। তারপর থানায় যাই। আমি এই মামলা করি।” This witness in cross stated that knowing about the facts from his wife and local people he lodged the case. PW-2, Md. Abdus Salam stated in his deposition that the accused and the informant are his neighbours and he knew both the parties. This witness also stated that- “আমার বাড়ীর পাশে ছোট বাচ্ছা কুলসুম তাল কুড়াতে যায়। পুকুর পাড়ে তাল গাছ। ১০/১১ টা হবে। তালের লোভ দেখিয়ে আসামী লিটন মেয়েটাকে টয়লেটে গিয়ে যায়। মেয়ে কে ধর্ষন এর চেষ্টা করে। কুলসুম কান্না করে চিৎকার করে। আমরা ডাকি সমিঁজা সব দেখে আমাকে ডাকে। আমি বের হই। দেখি কুলসুম কান্না করছে। কি হয়েছে জিজ্ঞাসা করলে বলে তাকে পায়খানায় নিয়ে জামা খুলে লিটন লুঙ্গি খুলে বুকে হাত দিয়েছে। লিটনকে জিজ্ঞাসা করলে সে অন্যায় স্বীকার করে। চৌকিদার কে ডাকি। লিটনকে ইউনিয়ন পরিষদে নেয়। আমরাও যাই। চেয়ারম্যান থানায় পাঠায়। পরে বাদী এই মামলা করে।” PW-3, Kulsum, victim of the case stated in her deposition that- “আমি তাল কুড়াতে গেছিলাম। তাল দিব বলে লিটন আমাকে ধরে নিয়ে টয়লেটে নিয়ে যায়। সালাম এর টয়লেটে। টয়লেটে আমার প্যান্ট খসায়। আমার বুকের উপর উঠে গেছে। আমি কাঁদছি। সালাম এর ভাবী দেখে সালামকে বলে। লিটন তখন বের হয়ে যায়। সালাম আমাকে ও লিটনকে ডাকে। আমার কাছ থেকে শুনে লিটনকে বাঁধে। লিটন স্বীকার করলো। আব্বা মামলা করে।” PW-4, Sohibur Rahman



corroborated the evidence of PW Nos. 1-3 in respect of all material particulars. PW-5, Somiza Khatun stated in his deposition that- “আমি গোবর নিয়ে বাড়ীর পেছনে ফেলতে যাই। তখন সকাল ১০ টা। এক বছর হয়ে গেলে। আমি কুলসুমকে প্যান্ট পড়তে দেখি। লিটন পায়খানা হতে বের হয়ে আসে। তখন আমি আমার দেবর সালামকে বলি। সালাম লিটনকে ধরে বাড়ীতে নিয়ে যায়। লোকজন আসে। এই আমি জানি।” PW-6, Magistrate, Md. Shahidul Islam recorded the statement of the victim Kulsum Khatun under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). This witness proved the said statement of the victim Kulsum Khatun under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 as “Ext.-2” and his signature there on as “Ext.-2/1” as well as signature of the victim as “Ext-2/2”. PW-7, Inspector Goutom Candra Mali investigated the case, who stated in his deposition that during investigation he visited the place of occurrence, prepared sketch-map, examined the witnesses under section 161 of the Code of Criminal Procedure and collected the copy of statement of victim under section 22 of the Act and after completion of investigation having found prima-face and thus, he submitted charge sheet against the accused-appellant. The evidence of PWs remained unshaken in the cross examination and all the PWs corroborated their evidence with each other.

On a close analysis of the above quoted evidence of PWs together with the statement of the victim under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), it appears that all the witnesses in their respective deposition corroborated with each other as to the fact that on 04.09.2015 the convict-appellant forcefully took the victim in a toilet and closed the door and thereafter, he tried to rape on her while on hearing the hue and cry of the victim local people came there and caught-hold of the convict-appellant and beaten him. All the prosecution witnesses proved the prosecution case as to the time, place and manner of occurrence and thus the prosecution proved the guilt of the accused appellant beyond reasonable doubt and accordingly the trial Court below on due consideration of the entire evidence and materials on record found the accused-appellant guilty under 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced him thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for 3 (three) months more.

On an analysis of the impugned judgment and order of conviction and sentence, I find no flaw in the reasonings of the trial Court below or any ground to

assail the same. The learned Judge of the trial court appears to have considered all the material aspects of the case and justly found the appellant guilty for the offence 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), I find no reason to interfere therewith.

In view of my discussion made in the foregoing paragraph it is by now clear that the instant appeal must fail.

In the result, the appeal is dismissed. The impugned judgment and order of conviction and sentence dated 11.02.2018 passed by the learned Judge, Shishu Adalat, Chapainawabgonj in Shishu Case No. 11 of 2016 arising out of G.R No. 65 of 2015 (Nachol) corresponding to Nachol Police Station Case No. 05 dated 04.09.2015 convicting the accused-appellant under section 9(4)(Kha) of Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) and sentencing him thereunder to suffer rigorous imprisonment for a period of 5(five) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for 3 (three) months more is hereby affirmed.

The convict-appellant is directed to surrender his bail bond within 3 (three) months from today to suffer rest of the sentence, failing which the Trial Court shall

take necessary steps against the convict-appellant, Md.  
Liton to secure his arrest.

Send down the lower Courts' records at once.