Present :

Mr. Justice Ashish Ranjan Das.

Criminal Appeal No. 2408 of 1994

In the matter of:

Hamidur Rahman alias Suman alias Mir Hamidur Rahman (Suman)

..... Appellant

-Versus-

The State

..... Respondent.

None appears for the appellant.

Mr. Kazi Eliasur Rahman, A.A.G. with
Ms. Tahmina Sultana, A.A.G

... For the State

Heard on: 11.08.2022 and 14.08.2022
Judgment on: 25.08.2022

Ashish Ranjan Das, J:

Learned Sessions Judge, Tangail cum-Ex-Officio Judge of the Santrash Mulak Aparadh Daman Tribunal attracting Section 4 of the Santrash Mulak Aparadh Daman Ain (for short the Act of 1992) by his judgment dated 27.11.1994 in Santras Mulak Aparadh Daman Case No. 4 of 1994 found the appellant Hamidur

Rahman alias Suman guilty of the offence under section 4 of the Act of 1992 and sentenced him to suffer rigorous imprisonment for 5 years followed by a fine of Tk. 2000/- in default to suffer rigorous imprisonment for 01 (one) month more.

Short facts relevant for the purpose that could be gathered from the appeal and its connected papers are that at about 12-O'clock at night following 10.07.1994, two young men entered the students' hostel of Bharetesh Wari Homes, Mirzapur,Tangail, a reputed residential school. The young men were seen carrying cut weapons like kirij. Thus panic was created and the girls raised a hue and cry, some attending staffs gave a chase to the culprits. Those 2 young men jumped into the residential house of Mridul Kanti Barua, a resident Engineer of Kumudini Well Fare Trust. Mr. Barua could see those 2 boys and in fact he could catch one young man by his legs but the young man could make

an escaped. On the following day the victim girls made an account to Protima Saha, Assistant Superintendent of the hostel who transmitted the matter to Ulfatun Nessa, the Assistant Principal and finally it was raised with Miss Protiva Mutsuddi the Principal of the School and College. It was further known that those 2 young men, this appellant Hamidur Rahman alias Suman and another used to vex the resident students entering the access of the hostel. Thus, on the basis of an information of the Principal of the school, Mirzapur police station case No.6 dated 11.07.1994 was set on motion. The Officer-in-charge of the police station himself became the I.O. He recorded statements of the relevant witnesses under section 161 of the Code of Criminal Procedure (for short the Code) and could also recover alamat from the office room of the principal that was left by the culprits in the previous night. On record it was seen that the accused appellant

Hamidur Rahman alias Suman was at the relevant time aging below 16, thus for him the case was separated under section 6(2) of the Children Act of 1974 and the case proceeded as usual. Charge under section 4 of the Act of 1992 was framed and read over to the appellant Hamidur Rahman alias Suman who pleaded not guilty and claimed to be tried.

In order to bring the charge home 9 of the cited witnesses were examined by the prosecution. Next the appellant accused was examined under section 342 of the Code and in that stage also he reiterated nothing excepting claiming himself not guilty.

Short fact is that in the fateful night this appellant being accompanied by another found with indigenous cut weapon kiriz entered the Dormitory of the students brandished the weapon that created panic in that midnight.

P.W.1Miss Prativa Mutsuddi used to be the

principal of the school and college and not an eye witness. However she made an account and added that as no criminal case was recorded till next evening, those 2 young men once again entered the main gate of the hostel and tried to contact particular girls. The police was contacted and immediately they rushed and could catch hold of the culprits. The P.W.1 exhibited her FIR (Ext.1). P.W.2 the vice principal of the school and college and P.W.3 Mridul Kantu Barua a resident Engineer of the hostel and one staff P.W. 4 made the same account. Mr. Barua particularly mentioned that he could see and recognize those two young men and he could catch one of them by legs when the boy threw away the cut weapon and jumped outside the boundary. Mr. Barua gave a brief account of the place of occurrence that seems to have not been contradicted in cross-examination. The Engineer Mr. Barua described that the residential school and Kumudini Hospital used

to share a common vicinity and a common main gate. Mr. Barua exhibited the alamat a dao left by the culprits and as those two boys once again in the following afternoon attempted to enter the Dormitory. The students fully recognized them informed with the Protima Saha and knowing from the persons police immediately appeared there, took those 2 young men into custody. In addition there was P.W.6, a first class magistrate, who recorded the statements of the principal and the night guard of the hostel. The witnesses categorically recognized the 2 culprits on the dock and there was no confusion regarding their recognition as could be evidenced in cross-examination.

This has been a simple story lingering in the court for some 30 years. It was a claim of the appellant that he was below 16 years of age for which the case was separated and independently tried. The factum of recognition of those 2 young men remained undenied.

Now, the only question remains is whether the activities of the appellant could attract section 4 of the Act of 1992. It has been also stated in the FIR, police report and evidence that deep at night as those 2 young men entered the hostel with cut weapons kirij, naturally the girls residing there became panicked and they raised hue and cry. It is the prosecution case that those 2 boys finally could run away but were once again caught in the next afternoon. Such an act by more than one person carrying indigenous in weapons deep at night in the students hostel obviously calls for a punishment defined in section 4 of the Act of 1992.

It requires a mention that the case has been pending in this High Court Division for some 30 years.

No one for the accused appellant appears.

Although the matter has been occurring in the daily cause list with the name of the advocate.

The learned Assistant Attorney General pointed out that the case is of petty nature. It is believed that the appellant was allowed bail and is not supposed to have been languishing in jail custody for some 30 years.

So, I find the findings and the resolutions of the learned trial court quite based on facts that requires no interference nor the range of punishment imposed was proportionately harsh.

As a result, I find no merit in this appeal and the same is accordingly dismissed.

The judgment of conviction and sentence passed on this appellant Hamidur Rahman alias Suman under section 4 of the Act of 1992 is hereby upheld.

The appellant is directed to surrender before the trial court if any portion of the sentence remains unserved.

Send down the L.C.R and the copy of the order to the trial court for information and necessary action.

(Justice Ashish Ranjan Das)

Md. Atikur Rahman, A.B.O