

**Present**  
**Mr. Justice Sheikh Abdul Awal**  
**Criminal Appeal No. 148 of 2020**

Md. Harun

.....Convict-appellant

-Versus-

The State.

.....Respondent

Ms. Laboni Akter, Advocate

.....For the appellant

Ms. Shahida Khaton, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent

**Heard on 13.02.2024, 15.02.2024,**  
**18.02.2024 and Judgment on 20.02.2024.**

Sheikh Abdul Awal, J:

This criminal appeal at the instance of Md. Harun is directed against the judgment and order of conviction and sentence dated 18.11.2019 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Laksmipur in Nari-O-Shishu Case No. 45 of 2014 arising out of G.R No. 142 of 2013 corresponding to Ramgonj Police Station Case No. 20 dated 28.08.2013 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 7(seven) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer imprisonment for 1 (one) month more.

The prosecution case, in brief, is that on 28.08.2013 one, Nurul Islam as informant lodged an Ejahar with Ramgonj police station against the accused-appellant under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) stating, inter-alia, that the accused appellant used to give bad proposal to her daughter since long and in this manner on 26.08.2013 at about 17:00 hours while the informant's daughter went to bring ducks and then the accused-appellant forcefully raped on her, when one Aysha Begum, close neighbour of the informant saw the incident of rape and then she called informant's elder brother's wife Momtaj and others and thereafter, the inmates of the informant's house rushed to the place of occurrence and caught hold of the accused and brought him to the house of informant's elder brother and thereafter, the informant informed the matter to one, Mizan, who on hearing the same gave assurance to settle the matter and thereafter, the accused appellant

did not come forward to settle the matter, rather he threatened to the informant party and under such circumstances the delay has been caused in filing the case.

Upon the aforesaid First Information Report, Ramgonj Police Station Case No. 20 dated 28.08.2013 under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) was started against the accused-appellant.

Police after completion of investigation submitted charge sheet being charge sheet No. 142 dated 16.12.2013 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, Laksmipur, wherein it was registered as Nari-O-Shishu Case No. 45 of 2014. 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 (amended in 2003) before the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Laksmipur 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 11(eleven) 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 Nari-O-Shishu Nirjatan Daman Tribunal by the impugned judgment and order dated 18.11.2019 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 7(seven) years and also to pay a fine of Taka 10,000/- (ten thousand) in default to suffer imprisonment for 1 (one) month more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated

18.11.2019 the accused-appellant preferred this criminal appeal.

Ms. Laboni Akter, the learned Advocate for the convict-appellant submits that in this case F.I.R. was lodged on the allegation of rape stating that one neighbour Aysha Begum saw the occurrence of rape while she raised hue and cry and thereafter, the inmates of the informant's house came there and caught hold of the accused appellant and took him to the house of informant's elder brother and thereafter, the informant party tried to settle the matter in a vain and accordingly F.I.R. was lodged under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and thereafter, police after completion of investigation submitted charge sheet against the appellant under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003), that is, attempt to rape as there was nothing on record to suggest that the accused-appellant raped on the person of the victim PW-3, Ripa Akter. The learned Advocate further submits that in this case victim was examined by the doctor and the doctor gave certificate stating that "no sign of rape is found" and in this case the prosecution witnesses inconsistently deposed before the Court as to rape or attempt to rape although the learned Judge, Nari-O-

Shishu Nirjatan Daman Tribunal without considering all the 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 7(seven) years and to pay a fine of Taka 10,000/- (five thousand) in default to suffer imprisonment for 1 (one) month more and as such, the impugned judgment and order of conviction is liable to be set-aside. The learned Advocate next relying on the decision reported in 48 DLR 305 submits that in this case as per F.I.R occurrence took place on 26.08.2013 and F.I.R was lodged on 28.08.2013 without any proper explanation of delay in lodging the F.I.R. which creates a serious doubt as to the truthfulness of the case and benefit of the doubt ought to have given to the accused appellant although the trial Court below giving a go-by to such facts most illegally convicted the accused-appellant and in such view, the impugned conviction and sentence cannot stand in the eye of law. The learned Advocate to fortify his submission has also relied on the decisions reported in 49 DLR 577, 9 ALR (AD) 217 and 40 DLR (AD) 291.

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 although F.I.R. was lodged under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) for the offence of rape and police submitted charge sheet under section 9(4)(Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) for the offence attempt to rape but the evidence and other materials on record clearly shows that occurrence took on the fateful day and all the PWs in their respective evidence corroborated each other as to fact of rape or attempt to rape whatsoever beyond doubt and the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Laksmipur 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 7(seven) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer imprisonment for 1 (one) month more.

Having heard the learned Advocate and the the learned Deputy Attorney General for the parties and having gone through the materials on record, the only question that calls for my consideration in this appeal is whether the Tribunal Judge committed any error in

finding that the accused- appellants guilty of the offence 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 one, Nurul Islam (father of the victim) as informant lodged an Ejahar with Ramgonj police station against the accused-appellant under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) stating, inter-alia, that the accused appellant used to make bad proposal to her adopted daughter since long and in this manner, on 26.08.2013 at evening while his adopted daughter went to bring ducks and then the accused-appellant forcefully raped on her and at that time one Aysha Begum, close neighbour saw the incident of rape when she called informant's elder brother's wife Momtaj and then the inmates of the house rushed to the place of occurrence and brought the accused to the house of informant's elder brother and thereafter, the informant informed the matter to one, Mizan, who on hearing the occurrence gave assurance to settle the matter and thereafter, the accused appellant did not come forward to settle the matter rather he threatened to the informant party.

During investigation police forwarded the victim to the learned Magistrate for recording her statement



under section 22 of the Nari-O-Shishu Nirjatan Daman Ain (as amended in 2003) and accordingly, the victim girl made statement in the following language-

“গত সোমবার বিকাল বেলা অনুমান ৫.০০ টার দিকে আমি বাগানে হাঁস খুজতে গেলে আমাদের বাড়ীর হারুন আমাকে ডেকে নিয়ে আমার ইচ্ছার বিরুদ্ধে আমার মুখ চেপে ধরে জোর পূর্বক আমার সাথে খারাপ কাজ করে। আমার কাপড় খুলে। সেও কাপড় খুলে। আমার গোপন অঙ্গে জোর পূর্বক ওর পুরুষ অঙ্গ ঢোকায়। আমি ব্যাথা পাই। আমার মুখ চেপে ধরায় আমি চিৎকার দিতে পারি নাই। আমাদের বাড়ীর বুইজা ঘটনা দেখে ফেলে অন্যদের খবর দেয়। আমার মা, খালা সহ অন্যরা তখন আসে। হারুন সবাইকে দেখে চলে যায়। এই আমার জবানবন্দী।”

It further appears that during investigation police examined the witnesses under section 161 of the Code of Criminal Procedure and also obtained medical certificate of the victim girl and after completion of 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).

To justify the case, I feel it necessary to quote here under the provisions of section 9(4) (Kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) which reads as follows:

“৯(খ) ধর্ষণের চেষ্টা করে তাহা হইলে উক্ত ব্যক্তি অনধিক দশ বৎসর কিন্তু অন্যান্য পাঁচ বৎসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন”

From the above, it appears that the informant party lodged the case for the offence of rape and police after completion of investigation submitted charge sheet for the offence attempt to rape against the accused-appellant. Besides, in this case doctor gave certificate stating that no sign of rape was found, her radiological age is in between 10-12 years but in this case PW-3, victim stated in her deposition that- “আমি হাঁস খুজতে ইব্রাহিমের বাগানের পাশে যাই। এই সময় হারুন আমাকে মুখ চেপে ধরে বাগানের ভিতর নিয়ে যায় এবং আমার সাথে খারাপ কাজ করে। আমার দাদী সম্পর্কিত কবিরের মা সহ তার ছেলে বৌ আমাকে উদ্ধার করে। আমি ম্যাজিস্ট্রেটের কাছে ২২ ধারায় জবানবন্দী দেই এবং হাসপাতালে আমাকে পরীক্ষা করে ডাক্তারগণ।” This witness in her cross-examination stated that- “আমাকে হারুন মাটিতে শোয়ায়। শোয়ানোর সময়েও চিৎকার দিতে পারি নাই।” On the other hand another eye witness namely PW-4, Aysha Begum in her cross-examination stated that- “আমি হারুন ও রিপাকে দাড়ানো অবস্থায় বাগানের ভিতর দেখি। দাড়ানো অবস্থায় হারুন রিপার সাথে খারাপ কাজ করছিল। আমি ও আমার বৌ লজ্জায় ঘরে চলে যাই।”

This evidence of PW-3 in the facts and circumstances of the case is totally absurd and unbelievable as I have already noticed that in this case doctor gave certificate stating victim is aged about 10-12 years and no sign of rape was found.

There is another aspect of the matter to which I think the attention of the tribunal ought to have been drawn. It is found in the F.I.R. that accused-appellant was caught red-handed by the informant party from the place of occurrence and accordingly, took him to the house of informant's brother but subsequently one Mizan saying to the informant party as to make compromise about the matter and accordingly, took the accused appellant from the place of occurrence and during trial the said Mizan was examined as PW-8, who was declared hostile by the prosecution.

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 trial Court is to be interfered with.

In the result, the appeal is allowed. The impugned judgment and order of conviction and sentence dated 18.11.2019 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Laksmipur in Nari-O-Shishu Case No. 45 of 2014 arising out of G.R No. 142 of 2013 corresponding to Ramgonj Police Station Case No. 20 dated 28.08.2013 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 7(seven) years and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer imprisonment for 1 (one) month more is set-aside and the convict appellant, Md. Harun is acquitted of the charge levelled against him.

Convict appellant, Md. Harun is discharged from his bail bond.

Send down the lower Court records at once.