

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 2416 OF 2020

Md. Nur Islam and others

.....*convict appellants*

VERSUS

The State and another

.....*Respondents*

Mr. Chowdhury Shamsul Arifin, Adv.

... For the petitioners.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

....For the State.

Heard on 13.06.2023

And

Judgment on: The 20th June, 2023

Present
Mr. Justice Mamnoon Rahman

This appeal is directed Judgment and order of conviction and sentence dated 02.03.2020 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.2, Naogaon convicting and sentencing the convict-appellant No.1 to suffer rigorous imprisonment for 3 years and to pay a fine of Tk. 50,000/- (fifty thousand) under section 11 (Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) and also convicting and sentencing the convict appellant Nos. 2 and 3 to suffer rigorous imprisonment for 1 year under section 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) in Nari-O-Shishu Nirjatan Daman Tribunal Case No.22 of 2017.

The prosecution case, in short is that the complainant Most. Fatema Khatun, filed a petition of complaint, being No.138 of 2016,

before the Nari-O-Shishu Nirjatan Daman Tribunal, Noagaon on 24.07.2016 alleging *inter-alia* that the convict-appellant No.1 and complainant got married on 19.09.2014. Thereafter, the father of the complainant gave Tk.5,00,000/(Five lac) for ensuring the service of the convict-appellant and also gave Tk. 4,00,000/- (Four Lac) for the purpose of getting bill of the aforesaid service of the convict-appellant. Thereafter, the convict-appellant No.1 claimed dowry of Tk. 5,00,000/-(Five lac) from the victim and a case under section 4 of the Joutuk Nirodh Ain was filed against the convict-appellant No.1, though simultaneously the case was withdrawn by the complainant side and thereafter the convict appellants increased the oppression against the victim and conjointly tortured her. Thereafter, the father of the victim filed an application under section 100 of the Code of Criminal Procedure before the learned Executive Magistrate to rescue the victim and the learned Magistrate issued a search warrant and the police rescued the victim from the house of the convict-appellant and the victim was admitted into Joypurhat Adhunik Hospital, Joypurhat for treatment and subsequently went to the police station who refused to register the case and finding no other alternative filed the complaint petition and hence the case.

After filing of the petition of complainant the learned Tribunal sent the matter to Upazila Mohila Bisoyok Kormokorta, Dhamoirhat, Naogaon for inquiry and after inquiry he submitted inquiry report on 20.09.2016 and against which the complainant submitted a Na-raji

petition and on 09.11.2016 the learned Chief Judicial Magistrate, Naogaon and the learned Magistrate submitted an inquiry report against the convict appellants finding prima-facie case against the convict appellants. The learned Judge took cognizance the present case against the convict-appellants on 10.01.2017 and the petition case was renumbered as Nari-O- Shishu Nirjatan Tribunal Case No.22 of 2017. The convict appellant and others were arrested by the police and they are also granted on bail by the learned Court below. Thereafter, the learned Tribunal framed charge against the convict appellants Under Section 11 (Ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) and proceed. During trial prosecution adduced as many as 8 (eight) witnesses and defence adduced none. The learned Tribunal examined the convict appellants under section 342 of the Code of Criminal Procedure on 23.02.2020 and ultimately passed the impugned Judgment and order of conviction and sentence wherein the court below found the appellants guilty of offence under section 11(ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003). Being aggrieved the convict appellants moved before this Court by way of appeal.

Mr. Chowdhury Shamsul Arifin, the learned council appearing on behalf of the appellants submits that the court below without applying its judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner passed the

impugned judgment and order of conviction and sentence which requires interference by this court. He submits that in the case in hand though the prosecution examined as many as eight witnesses but except P.W. 1 all are hearsay witnesses and also there are material contradictions in between the deposition of the P.Ws. regarding the manner, time and place of occurrence. He further submits that as per the complainant the occurrence took place on 11.07.2016 and the case was lodged on 24.07.2016 which is long after 13 days which creates serious doubt in the prosecution case. He submits that admittedly there were family dispute and other issues and just to harass and humiliate the present appellants the complaint petition was lodged which the court below failed to appreciate in its true perspective and handed down the conviction and sentence. Referring the papers and documents as well as L.C. Records he submits that though the complainant filed the case with an allegation and torture and injury but no medical report was annexed in any manner which clearly shows the doubt and malafide intention on the part of the complainant side thus the appellants are entitled to get the benefit of doubt and liable to be acquitted for ends of justice. The learned council lastly submit that though the complainant went to Police Station for lodging F.I.R. and the Police Station refused to take her case and at the time of filing of petition of complainant there is a mandatory provision to file an affidavit in support of her going to police station but in that connection she failed to annex affidavit at the filing of petition of

complainant and thus there is clear violation of the Section 27 of the Nari-O-Shishu Nirjatan Daman Ain, 2000(as amended in 2003) and thus the case is barred by law and thus the appellants are entitled to get the benefit of doubt and liable to be acquitted for ends of justice.

Mr. Mohammad Taifoor Kabir, the learned Deputy Attorney General appearing on behalf of the respondent-state vehemently opposes the appeal. He submits that the court below on proper appreciation of the facts and circumstances and material on record has rightly passed the impugned judgment and order of conviction and sentence which requires no interference by this court.

I have heard the learned Advocate for the appellants as well as the learned Deputy Attorney General for the state. I have perused the impugned judgment and order of conviction and sentence passed by the court below, Memorandum of appeal as well as LC Records.

On perusal of the same, it transpires that the charge was framed against the appellant along with three others for the offence committed under section 11(ga) of the Nari-O-Shsishu Nirjatan Daman Ain, 2000 wherein it has been alleged that in demand of dowry the complainant was tortured and injured by the husband appellant. It transpires that the occurrence took place on 11.07.2016 and as per the victim and the P.Ws. she went to her father's house on 16.07.2016 and got treatment in hospital and subsequently lodged the complaint petition on 24.07.2016.

It transpires from the papers and documents that the complainant was examined as P.W. 1 who in her deposition supported the case made out in the complaint petition. In her cross-examination however stated that the First Inquiry Officer filed final report and subsequently she filed Naraji Petition. She also stated in her cross-examination that there was no eye witness of the occurrence in question. P.W. 2 is the father of the victim. In his deposition he stated that he heard the occurrence from her daughter. P.W. 3 is the mother of the victim who also is not eye witnesses and heard the occurrence. P.W. 4 is an elder sister of the victim she is also not an eye witness and heard the occurrence. P.W. 5, 6 and 7 are the neighbor of the victim and they are also not an eye witness and heard the occurrence.

So, on meticulous perusal of the oral evidence, it transpires that except P.W. 1 who is the victim herself there is no eye witness in any manner. The other witnesses while deposing in the court of law made certain lump allegations against the appellant.

It is to be noted that though the victim was released from the hospital on 16.07.2016 but she filed the case long after 8 (eight) days as much as on perusal of the papers and documents it transpires that the Inquiry Officer also found no prima-facie case against the appellant but on a Naraji cognizance was took against the appellant. It further transpires from the papers and documents annexed herewith as well as evidence both oral and documentary that though there was allegation of injury but no medical report was filed proved or

exhibited and there is a clear violation of the section 27 of the Nari-O-Shsishu Nirjatan Daman Ain, 2000. On careful scrutiny of the L.C. Records, it transpires that a photocopy of a discharge report is being annexed but not specified the nature of injury or treatment in any manner. It transpires from the aforesaid papers and documents that the court below failed to appreciate that there are serious contradictions in between the testimony of the P.Ws. as much as the manner, place and time of occurrence. Apart from that it further transpires that though there was an allegation of injury but no medical report has been filed or proved nor even the doctor was examined in any manner which creates serious doubt in the prosecution case. Hence, I find substance in the instant appeal.

Accordingly, the appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial court is hereby set aside. The appellants are discharged from the bail bond and the appellants are acquitted from the charge leveled against them.

Send down the L.C. Records to the concerned court below with a copy of the judgment at once.

(Mamnoon Rahman,J:)