

**District: Bhola.**

**In the Supreme Court of Bangladesh  
High Court Division  
(Criminal Appellate Jurisdiction)**

**Present:  
Mr. Justice Syed Md. Ziaul Karim  
And  
Mr. Justice K.M. Emrul Kayesh**

**Criminal Appeal No. 245 of 2009**

Yousuf Ali alias Yusuf

..... Convict-appellant.

Versus

The State

..... Respondent.

No one appears.

..... For the Convict-appellant.

Mr. Mohammad Monirul Islam, Deputy-Attorney-  
General with

Mr. Robiul Islam, Assistant-Attorney-General,  
Ms. Ayesha Flora, Assistant-Attorney-General and  
Mr. Md. Jahir Ahmed, Assistant-Attorney-General  
Ms. Belgish Nafisa Hoque, Assistant-Attorney-General

..... For the State-respondent.

**Heard on: 01.11.2023**

**and**

**Judgment on: 02.11.2023.**

**K. M. EMRUL KAYESH, J:**

(1) The convict-appellant was put on trial in the Court of learned Additional Sessions Judge and Bicharak in charge of Nari-O-Shishu Nirjatan Daman Tribunal, (hereinafter referred to as Tribunal), Bhola.

(2) However the learned Tribunal acquitted two accused persons namely Oliullah and Solaiman from the charge leveled brought home against them.

(3) By this appeal the convict-appellant has challenged the legality and propriety of the Judgment and order of conviction and sentence dated 12.03.2008 passed by learned Additional Sessions Judge, Bhola, in Nari-O-Shishu Case No. 69 of 2001, arising out of M.P. Case No.563 of 2001(Char) convicting the appellant under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) (hereinafter referred to Ain) and sentencing him there under to suffer imprisonment for a period of 14(fourteen) years and to pay a fine of Tk.5000/- (five thousand) in default to suffer rigorous imprisonment for 01(one) year more.

(4) The prosecution case as projected in the petition of complaint and unfolded at the trial is that one Noor Banu wife of Fayzal Haque of village Karimpar, under Police Station, Charfashion, within District-Bhola, filed a petition of complaint in the cognizance court of Bhola being M.P.

Case No.563 of 2001(Char) under section 7 and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) alleging, inter alia that the mother of the complainant got some property from her father as legal heirs. Her mother from there sold a parcel of land measuring 40 decimal by a registered Kabala to accused Yousuf Ali with a condition to re-conveyance the same subject to repay the value of the land fixing valued at Tk.8,000/-(eight thousand) showing value of the same. Where there was a condition to execute an agreement in order to re-conveyance the property containing in the sale deed. But the accused Yousuf was delaying to execute an agreement to the mother of the complainant. Where upon a dispute arose between her mother and accused Yousuf. Thereafter accused Yousuf assured her mother to re-conveyance the same within 4 years subject to return back the value of the deed, for which the complainant sent her mother to her sister's house at Hazir pur village to collect an ammount of Tk.8,000/-(eight thousand) from her sister Roshona with accused Yousuf. Six days later she came to know her

mother did not go to her sister's house. Thereafter she searched her mother nearby the possible places and her close relative's house, but failed. Thereby she suspected that her mother might have been killed by the accused persons. Thus Noor Banu as complainant filed the case.

(5) After filing a petition of complaint the learned Magistrate of the cognizance Court, Bhola sent it to the local Police Station for submission of a report, thereafter the police submitted a report before the Magistrate cognizance Court, Bhola in favour of the accused persons. Whereupon the complainant filed a Narazi petition against the report submitted by the police during pendency of the Narazi petition for hearing the learned Magistrate transmitted the case record to Nari-O-Shishu Nirjatan Daman tribunal Bhola, who took cognizance against the accused Yousuf under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and against the accused Oli Ullah and Soleman under section 7 and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). Then charge was framed accordingly.

The charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

(6) In course of trial the prosecution examined as many as four witnesses to substantiate the prosecution case.

(7) After closure of the evidence of the prosecution witnesses then the accused was examined under section 342 of the code. Where the trial court drew their attention to the incriminating evidences one by one, when they further expressed their innocence and claimed to be justice and declined to examine defence witness.

(8) The defence case as it transpires from the trend of cross-examination of the prosecution witnesses are that the case is totally false and that the accused was falsely implicated this case.

(9) On plenary trial the learned Judge by the impugned Judgment and order of conviction and sentence convicted the accused as aforesaid holding.

(a) The prosecution successfully proved the charge against the accused by giving corroborative, clinching and trustworthy evidence.

(b) The evidence as produced against the accused was consistent, uniformed and corroborative in nature.

(c) The accused failed to explain his plea of innocence, by giving evidence.

(10) Mr. Mohammad Monirul Islam, Deputy-Attorney-General, assisted by Mr. Robiul Islam, Ms. Ayesha Flora, Mr. Md. Jahir Ahmed, and Ms. Belgish Nafisa Hoque, Assistant-Attorney-Generals appearing for the state supports the impugned Judgment and order of conviction and sentence drawing our attention through the FIR, charge sheet evidence and materials on record that the learned Judge rightly convicted and sentenced the accused after perusal of those documents and evidences on record. He next contends that accused persons out of their previous enmity with mother of the complainant kidnapped her and she has been traceless yet. As the learned court below came to a correct findings, as such the impugned Judgment does not deserve any interference by this court on appeal.

(11) On the other hand the appeal was filed in the year 2009 but no one appears on behalf of the convict-

appellant on repeated call for which we have taken up the appeal for disposal taking into consideration of the submission led by the learned Deputy Attorney General and the memo of appeal as produced at the time of presenting the present appeal.

(12) The appeal is taken up for disposal on merit considering it as old case and sifting of evidences on record.

(13) P.W-1 Roshan Begum, stated in her examination-in-chief that she is the daughter of the victim Safia Khatun. Victim used to live with her at Bongor Char house under Bhola Sadar, Police Station and the accused persons were known to her. She identified the accused on dock. She further stated that her mother out of financial constraint sold a parcel of land measuring 40 decimal with a condition to re-conveyance the same, when it was decided to execute an agreement against the said registered deed. Then the accused person did not execute an agreement in favour of the seller. On her repeated request the accused persons agreed to re- conveyance the said property to her

mother by executing a deed. Accordingly the victim was sent to her sister's house at Karimpur village to bring an amount to Tk.8,000/-(eight thousand) with accused Yousuf on 8 Asar at 5.00 p.m. on Friday. Thereafter on search she came to know her mother did not go to the housed Noor Banu at Karimpur since then she has been traceless. She further stated that her sister (complainant) had died which she came to know through a Mobile Phone before examination in court.

(14) In cross-examination stated that the accused Ollullah was not involved with the incident of the case. She further stated that she did not know whether her mother (victim) was called by accused Yousuf or not. She denied a suggestion that her sister (complaint) has falsely implicated accused Yousuf with this case. She denied a suggestion that accused Yousuf was innocent.

(15) PW-2, Faizul Haque, stated in his examination in chief that the complainant was his wife and the victim Safia Khatun was his mother-in-law and the accused persons are Yousuf, Oliullah and Solaiman. He further



stated that there was a dispute between the accused and his mother-in-law over transaction of a parcel of land and the accused Yousuf took his mother-in-law from the house of his sister in law's house saying to reach to his house at Karimpur since then she has been missing. He further stated that the accused Yousuf took his mother-in-law from the house of her sister-in-law's house Roshana to have reached her in his home.

(16) He admitted in his cross-examination that he has been living in his father-in-law's house since their marriage. He further admitted in her cross-examination that his mother-in-law had gone to her sister-in-law's house five years back since then she did not come to his house.

(17) He denied a suggestion that he was deposing falsely implicating accused persons with this case. He further denied a suggestion that accused Yousuf did not take his mother-in-law from the house of his sister-in-law's house saying to reach his house and also to settle the dispute arose between them.

(18) P.W-3 Mostofa, stated in his examination in chief that the complainant was his sister-in-law and there was a dispute between his mother-in-law and the accused person. He further stated that his mother-in-law(victim) was disappearing at the time of filing the petition of complainant.

(19) He denied a suggestion that the complainant (since deceased) filed a false case in order to harass the accused person to deprive them from enjoyment of the land peacefully. He denied a suggestion that the complainant filed the case hiding his mother-in-law. He denied a suggestion that his mother-in law did not use to live in her house at the time of filing the case.

(20) P.W-4 Salamot, stated in his deposition that 4(four) years back at 8<sup>th</sup> Asar, 1404 on Friday Noor Banu informed him that her mother was missing and the accused persons made her disappearance as to dispute of land. He further stated that the accused persons after filing this case had killed the complainant.

He denied a suggestion that his sister-in-law has filed this case hiding his mother in law.

(21) We have heard the submissions of the learned Deputy Attorney General and perused the memo of appeal as none appears on behalf of the appellant. But considering the appeal as old one we have taken up for disposal of the appeal on merit. It appears from the record that the complainant had died after filing the case and P.W-1 Roshan Begum, is the elder sister of the complainant Noor Banu. P.W-2 Foizul Haque, is the husband of complainant Noor Banu (since deceased). P.W-3 Mostofa, is the brother-in-law of the complainant and P.W-4 Salamat, is the neighbor of the complainant. P.W-1, P.W-2 and P.W-3 are all the interested witnesses in connection with this case. It appears from plain reading of the petition of complaint that the victim Safia Khatun was taken away by the accused Yousuf from the house of the complainant on 08 Asar at 5.00 p.m saying to reach her in the house of Roshan Begum. P.W-1 stated in her deposition in court that the accused Yousuf took the victim from her house saying to

reach her in the house of the complainant Noor Banu (since deceased). P.W-2 and P.W-3 also stated in one voice in their deposition that the victim Safia Khatun was taken by the accused Yousuf from the house of Roshana Begum on 8<sup>th</sup> Asar at 5.00 p.m. on Friday, which they have made deviating from the averment of the petition of complaint. Moreover P.W-4 Salamat as neighbour of the complainant deposed in court that the complainant (since deceased) informed him that the accused Yousuf took her mother from her house (informant since deceased) saying to reach her to the house of Roshana Begum. P.W-1, PW-2 and PW-3 have deposed in court deviating from the averment of the petition of complaint as to taking away from the house of Noor Banu. Which has been subsequently embellished by the P.W-1, P.W-2 and P.W-3.

(22) In this context, we rely upon a case

State.....Appellant

–Vs–

Siraj Mondal @ Siraj..... condemned-

Prisoner

reported in 8 BLC (2003), at page-52,  
wherein your lordship observed as under:

**Code of Criminal Procedure (v of 1898)**

**Section 154**

**Evidence Act (I of 1872)**

**Section 155**

“The evidence of PWs were full of contradictions in material particulars and were not mere unsubstantial discrepancies. The FIR case of the prosecution was departed from and embellished during the course of trial which has always been looked with disfavour and considered as a serious infirmity in the prosecution case.”

(1)- Gopal Rajgor and others vs State, reported in 42 DLR(1990), at page-446, and

(2) State –Vs- Azharul, 3BLC 382

(23) In the above cited case the evidence of P.W-3 were full of contradictions in material particulars. In the case in hand that the version of petition of complaint and the deposition of P.Ws-1-3 are contradictory and P.Ws-1-3 have deposed in court deviating from the version of the petition of complaint which created a serious doubt over the prosecution story. Which ought to have considered it as

a serious infirmity in the prosecution case. The fact in the cited case and the fact of the instant case are holding good.

(24) Over and above the complainant had been killed after filing the petition of complaint. It further appears from the petition of complaint that the victim being the mother of the complainant used to live in her house. P.W-2 stated in his deposition that the victim Safia Khatun was taken away from her house. Which did not support the averment of the petition of complainant. From a plain reading and careful scrutinization of evidences of the prosecution witnesses and averment of the petition of complaint are not consistent with each other rather contrary. The prosecution has not proved the case against the accused on material particulars. We have meticulously perused the memo of appeal that the appellant and the complainant had dispute over transfer of a parcel of land and thereby the complaint wanted to take possession of the land which has been possessing by the accused by foisting false case against the accused persons.

(25) Moreover the complainant after filing the petition of complaint before the cognizance Magistrate,

Bhola Sadar, who sent the case to police for submission of a report, whereupon the police submitted a report in favour of the accused person, thereunder the complainant filed a narazi petition against the submission of report in favour of the accused. Thereafter the learned Magistrate sent the case record to Nari-O-Shishu Nirzatan Adalat in charge Bhola. The tribunal after getting report from officer in charge Bhola took cognizance against the accused setting at naught the report submitted in favour of the accused. The petition of complaint was filed before the Magistrate under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) which was not congruent with section 27 of the said AIN. In spite of that the learned tribunal proceeded the case against the accused person and after trial found guilty of the accused and sentenced under section 7 of the said Ain for a period of 14 years rigorous imprisonment with a fine of Tk.5,000/- in default to suffer rigorous imprisonment for one year more.

(26) We have carefully scrutinized the impugned Judgment that the learned court below observed the victim

Safia Khaton was taken away from the house of Noor Banu, which has been supported by the deposition of P.Ws-1-4 which is not proper appreciation of the evidence of the prosecution because P.W-4 has given different version in court deviating from the deposition of PWs-1-3. So the learned court below came to a finding that the prosecution proved the case against this accused beyond reasonable doubt which has got no leg to stand in view of the averment in the petition of complaint and evidence of PW-4. Whereupon, it appears from the findings of the learned court below, which depends upon conjecture and surmises without assessing legal evidences on record.

(27) Considering the facts and circumstances of the case we are of the view that the prosecution has completely failed to prove the case against the convict appellant beyond reasonable doubt and therefore the impugned Judgment and order of conviction and sentence cannot be sustained.

Thus the appeal having merit.

**(28) In the result:-**



(I) The appeal is allowed and the impugned Judgment and order of conviction and sentence dated 12.03.2008 passed by learned Additional Sessions Judge and Bicharak, Bholra, in Nari-O-Shishu Case No. 69 of 2001 is hereby set aside.

(II) Convict-appellant Yousuf Ali alias Yusuf is found not guilty to the charge levelled and he is acquitted thereof.

(III) Surety is discharged from his bail bond.

(29) The Office is directed to send down the records along with a copy of the judgment communicate at once.

**(Justice K.M. Emrul Kayesh)**

**Syed Md. Ziaul Karim, J:**

I agree.