

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

Criminal Appeal No.5513 of 2022

Md. Lutfar Rahman

.....Convict-Appellant

-Versus-

The State

..... Respondent

Mr. Ashok Kumar Banik, Advocate

.....For the convict-Appellant

Mrs. Umme Masumun Nesa, A.A.G

...For the State

Heard on 04.12.2023 and

Judgment on: 05.12.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 15.06.2022 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat in Nari-O-Shishu Case No.164 of 2018 arising out of Panchbibi Police Station Case No.37 dated 20.06.2018 corresponding to G.R. No.307 of 2018(Panch) convicting the convict-appellant under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) and sentencing him to suffer rigorous imprisonment for a period of 02(two) years and also to pay a fine of Tk.10,000/-, (ten thousand) in default to suffer simple imprisonment for a period of 01(one) month more.

At the time of admitting the appeal this Court granted bail for a period of 06(six) months and stayed the realization of fine.

The prosecution case, in short is that a marriage was taken place between the convict-appellant and the complainant in consideration of dower money and she appointed as English Teacher in the Kakra Punglu High School in consideration of Dowry of Tk.,1,80,000/- and during their wed-lock they blessing with one daughter and one son and while performing the conjugal life the convict-appellant demanded the amount of Tk.3,00,000/- as dowry to the informant and while she refused to bring the same, the convict-appellant started both physical and mental torture upon the complainant. On the alleged date of occurrence on 18.05.2018 at about 02.15 hours while the victim worked at baranda of own house then the appellant came and demanded Tk.3,00,000/- as dowry. But while she refused to pay the said dower money then the appellant attack upon the victim and given lathi blow upon the head of the victim which caused bleeding injury of the victim thereafter, the victim was taken to the Hospital and where the duty doctor stitched in the some parts of the body including the head of the victim and she had been taken treatment there and hence the prosecution case.

After holding a investigation on 24.07.2018 the Police of the Panchbibi Police Station submitted charge sheet No.335 dated 24.07.2018 under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) against the appellant.

On the basis of the charge sheet, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat took cognizance under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended 2003) against the convict-appellant and thereafter on 19.01.2019 charge was framed under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) against the appellant and it was read over to him, he pleaded himself innocent and claimed to be tried.

The prosecution examined as many as 06(six) witnesses to prove its case and defence examined none.

Thereafter the convict-appellant was examined under section 342 of the Code of Criminal Procedure and he claimed himself innocent.

After completion of trial, upon hearing both the parties and considering on materials on records on 15.06.2022 the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat convicted the appellant under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) against the appellant and sentenced him to suffer rigorous imprisonment for a period of 02(two) years and also a fine of Tk.10,000/- in default to suffer simple imprisonment for a period of 01(one) months more.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 15.06.2022 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat in Nari-O-Shishu Case

No.164 of 2018 arising out of Panchbibi Police Station Case No.37 dated 20.06.2018 corresponding to G.R. No.307 of 2018 (Panch), the convict-appellant filed this Appeal before this Hon'ble High Court Division.

Mr. Ashok Kumar Banik, the learned Advocate appearing on behalf of the convict-appellant submits that no neutral and disinterested witness has been examined in this case and the P.W.1 is the informant and the P.W.2 is the daughter of the victim and P.W.3 is son of the victim and the P.W.4 is the local witness who did not support the prosecution story and their evidence is not credit worthy, but the learned Judge of the tribunal failed to consider such aspect of the case and thereby committed wrong in convicting the appellant, as such the impugned judgment and order of conviction and sentence is liable to be set-aside.

The learned Advocate lastly submits that the learned Judge of the tribunal miserably failed to consider such evidence on records that no marital existed at the time of commission of so called offence and the learned Judge of the tribunal miserably failed to appreciate the facts and circumstances and evidence on record and as such has committed a great illegality passing the impugned judgment and order of conviction and sentence and as such the impugned judgment and order of conviction and sentence is liable to be set-aside for ends of justice. Accordingly, he prays for allowing the Appeal.

On the other hand, Mrs. Umme Masumun Nesa, the learned Assistant Attorney General appearing on behalf of the

respondents submits that a marriage was taken place between the convict-appellant and the complainant in consideration of dower money and she was appointed as English Teacher in the Kakra Punglu High School in consideration of Dowry of Tk.,1,80,000/-, but during their wed-lock they blessing with one daughter and one son and while performing the conjugal life the convict-appellant demanded the amount of Tk.3,00,000/- as dowry to the informant and while she refused to bring the same, the convict-appellant started both physical and mental torture upon the complainant and on the alleged date of occurrence i.e. on 18.05.2018 at about 02.15 hours while the victim worked at baranda of own house then the appellant came and demanded Tk.3,00,000/- as dowry. But while she refused to pay the said amount of dowry money then the appellant attack upon the victim and given the lathiblow upon the head of the victim which causes bleeding injury of the victim, thereafter, the victim was taken to Hospital and where duty doctor stitched in the some parts of the body including the head of the victim. Then victim was hospitalized for treatment. Thereafter filed the prosecution case. After completion of trial, upon hearing both the parties and considering on materials on records on 15.06.2022 the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat convicted the appellant under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) against the appellant and sentenced him to suffer rigorous imprisonment for a period of 02(two) years and also a fine of Tk.10,000/- in default to suffer simple imprisonment for a period of 01(one) months more rightly,

which is maintainable in the eye of law. Therefore, he prays for dismissing the Appeal.

I heard the submissions of the learned Advocates of both the parties and perused the judgment and order of conviction and sentence and the materials on record.

It appears from the record that a marriage was taken place between the convict-appellant and the complainant in consideration of dower money and she appointed as English Teacher in the Kakra Punglu High School in consideration of Dowry of Tk.,1,80,000/-, and during their wed-lock they blessing with one daughter and one son and while performing the conjugal life the convict-appellant demanded the amount of Tk.3,00,000/- as dowry to the informant and while she refused to bring the same, the convict-appellant started both physical and mental torture upon the complainant. On the alleged date of occurrence on 18.05.2018 at about 02.15 hours while the victim worked at baranda of own house then the appellant came and demanded Tk.3,00,000/- as dowry. But while she refused to pay the said amount of dowry money then the appellant attack upon the victim and given the lathi blow upon the head of the victim which causes bleeding injury of the victim and thereafter, the victim was taken to Hospital and where the duty doctor stitched in the some parts of the body including the head of the victim and she had been taken treatment there and thereafter filed the prosecution case after following all legal formalities. After completion of trial, upon hearing both the parties and considering on materials on records on 15.06.2022

the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Joypurhat convicted the appellant under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended, 2003) against the appellant and sentenced him to suffer rigorous imprisonment for a period of 02(two) years and also a fine of Tk.10,000/- in default to suffer simple imprisonment for a period of 01(one) months more.

Further, it appears that the prosecution witnesses supported the prosecution case and the victim as P.W.1 in her deposition made statement implicating the appellant and she supported the prosecution story. It is also found that PW. 2 , PW. 3, PW.4, PW. 5 & PW.6 corroborated the PW.1.

In the light of the above discussion and materials on record, it appears that the appellant tortured the victim for dowry, which is supported by the prosecution witnesses.

Considering the above facts and circumstances and materials on record, I think that the respondents proved his case by giving evidence beyond reasonable doubt. Therefore, the judgment and order dated 15.06.2022 rightly passed by the learned Judge, Nari-O-Shishku Nirjatan Daman Tribunal, Joypurhat in Nari-O-Shishu Case No.164 of 2018.

Accordingly, I find cogent and legal ground in the submissions of the learned Assistant Attorney General for the respondents. The appeal, therefore, has no merit.

But, considering evidence and other circumstance, sentenced passed by the learned Trial Court is hash for the

convict appellant. So I think that it will be best served for ends of justice if I reduce the sentence of the appellant in this case from rigorous imprisonment 02(two) years to 01(one) year.

In the result, the Criminal Appeal No.5513 of 2022 is dismissed with modification.

The judgment and order of conviction and sentence dated 15.06.2022 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribuna, Joyopurhat in Nari-O-Shishu Case No.164 of 2018 is hereby modified with this direction that the rigorous imprisonment for a period of 02(two) years will reduce to rigorous imprisonment for a period of 01(one) year and fine will be as it is.

The convict-appellant is hereby directed to surrendered before the concerned Court below (if he is on bail) with in 15(fifteen) days from the date of the receipt of the judgment and order, failing which the concerned Court below will take necessary steps to secure arrest him.

The order of bail granted earlier by this Court is hereby cancelled and recalled and the order of stay of realization of fine is hereby vacated.

Send down the lower Court records along with a copy of the judgment and order to the concerned Court below at once

Md. Anamul Hoque Parvej
Bench Officer