

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

Present:

Mr. Justice Md. Kamrul Hosssain Mollah

And

Mr. Justice Khandaker Diliruzzaman

Criminal Appeal No.2970 of 1998

Rafique Miah

.....convict-Appellant

-Versus-

The State

..... opposite-party

No one appears

.....For the convict-Appellant

Mr. Imran Ahmed Bhuiyan, D.A.G with

Mrs. Aleya Khandker, A.A.G and

Mr. Binoy Kumar Ghosh, A.A.G

.....For the State

Heard on 08.06.2023 And

Judgment on: 15.06.2023

Md. Kamrul Hossain Mollah.J:

This appeal has been preferred against the judgment and order of conviction and sentence dated 26.11.1998 passed by the learned Additional Sessions Judge and Nari and Shishu Nirjatan Daman Special Judge, Sunamganj in Nari and Shishu Nirjatan Daman Special Case No.16 of 1997 convicting the accused-appellant under section 6(1) of the Nari and Shishu Nirjatan Ain and sentencing him to suffer rigorous imprisonment for life and also to pay a fine of Tk.5,000/-, in default to suffer rigorous imprisonment for 01(one) year more.

The prosecution case, in short is that one Rufia Begum lodged a petition of complaint on 02.07.1996 with the learned cognizance Magistrate, Chhatak, Sunamganj alleging inter alia that on 14.02.1996 at about 12:00 p.m. while she was waiting for her brother arrival at her hut at that time the accused-appellant having forced his way inside the said hut, raped her by show of force, thereafter, the accused left the house with a promise to marry the informant whereupon she did not disclose the matter to anyone. Subsequently, when the informant was found to have been carrying child the matter was disclosed to other, salish took place but failed, thereafter, the complainant was lodged for redress. The learned Magistrate upon receipt of the complaint, sent the same to Chhatak police station for investigation upon treating it to be an FIR, whereupon the FIR was recorded on 31.01.1997 in Chhatak police station case No.24.

The investigating officer having taken up the case for investigation submitted charge sheet under section 6(1) of the Nari-O-Shishu Nirjatan Ain in G.R. Case No.24 of 1997.

Thereafter, the case was sent to the Court of Nari and Shishu Nirjatan Daman Special Tribunal for trial, where it was registered as Nari and Shishu Nirjatan Daman Special Case No.16 of 1997 and charge was framed under section 6(1) of the

Nari and Shishu Nirjatan Daman Ain against the accused appellant.

Thereafter, on transfer it was taken up for trial and 13 witnesses were examined by the prosecution while the defence adduced none and upon conclusion of the trial the learned Special Tribunal convicted the accused-appellant under section 6(1) of the Nari and Shishu Nirjatan Daman Ain and sentencing him to suffer rigorous imprisonment for life and also to pay a fine of Tk.5,000/-, in default to suffer rigorous imprisonment for 01(one) year more.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction, the convict-appellant preferred this Appeal against the judgment and order of conviction dated 26.11.1998 passed by the learned Additional Sessions Judge and Nari and Shishu Nirjatan Daman Special Judge, Sunamganj, before this Hon'ble High Court Division.

No one appears for the convict-appellant.

It appears from the appeal of the convict-appellant that the learned tribunal ought to have held that the alleged victim Rupia Begum is one of a questionable character and because of her free mixing with her co-villager Aklis the local elders got herself married with said Aklis on 3rd Poush, 1304 B.S.

whereupon she conceived a child and taking advantage of such situation her maternal uncle Akrom who has got land dispute with the father of the accused-appellant, having prevailed upon the informant, falsely implicated the appellant who is otherwise innocent and in no way connected with the occurrence and in that view of the matter the appellant ought to have been acquitted and a contrary view is not sustainable under the facts and circumstances and the evidence on record.

Further, the appellant stated in his appeal that regard being had to the admission of P.W.1 to the effect that her brother Haris is aged about 5/6 years and the distance of her hut from the ghat of the Chhatak river is about 5 miles and she raised hue and cry upon hearing the sound of opening the door by the accused and in view of conspicuous absence of any evidence on record that the alleged victim disclosed the occurrence to any one immediately after the occurrence or that any one even heard any sound raised by the informant as alleged, the learned Tribunal ought to have held that the occurrence did not take place in the manner and at the time or on the date as alleged by the prosecution and in that view of the matter the convict-appellant ought to have been acquitted.

Lastly, the convict-appellant stated in his appeal that Akrom Ali P.W.10 has got boundary dispute with the father of

convict-appellant and in view of his evasive replays to whether C.R. Case No.193 of 1994 was initiated by Abdul Quddus against convict-appellant at the instance on P.W.10 Akrom Ali, the learned Tribunal ought to have held that the appellant has been falsely implicated in this case out of previous grudge at the behest of said Akrom Ali. Therefore, the prosecution miserably failed to prove the ingredients of offence under section 6(1) of Nari-O-Shishu Nirjatan Daman Ain, 1995 beyond reasonable doubt and in that view of the matter the appellant ought to have been acquitted. He prayed for allowing the Criminal Appeal preferred by this convict-appellant.

On the other hand, Mr. Imran Ahmed Bhuiyan, the learned Deputy Attorney General appearing on behalf of the State submits that the convict-appellant raped the victim Rupia Begum forcefully and the prosecution had been able to prove the charge as brought against the convict-appellant to the hilt and as such, the learned trial Judge rightly passed the impugned judgment and order of conviction and sentence dated 26.11.1998 against the convict-appellant and such, it warrants no interference by this Court. The learned Deputy Attorney General prayed for dismissal of the Criminal Appeal as filed against the impugned judgment and order of conviction and sentence.

In order to appreciate the submission and counter submission of the learned Advocates representing both the parties, this Court is to weigh the relevant evidence and materials on record and scan the attending evidence of the case to unearth the actual facts of the case to arrive at a proper and correct decision.

Now, let us discuss the evidence of prosecution witnesses in order to ascertain, how far the prosecution has succeeded in proving the charge as levelled against the accused-person.

P.W.1 complainant Rukia Begum stated in her deposition that on the 2nd of Falgun, at 12 o'clock in the night, the accused Rafique entered her room by cutting the rope of the door and extinguished the kupa lamp in the room and raped her against her will by pressing her face. The accused asks not to tell anyone about the matter and promises to marry her. She believed the words of the accused and did not tell the incident to anyone. She also said that 04 months after the incident, she realized that she was pregnant and informed her mother about the incident and her mother called the Panchayat people. The Panchayat decreed that the accused should marry the victim. The accused offered to settle the dispute by paying some money and expressed his unwillingness to marry her. She also said that

later a son was born to the accused. As the accused did not marry her, she filed a case before Court.

In her cross-examination she stated that at 12 o'clock in the night she was not asleep and screamed when she heard the door of the house being opened and she could not say whether the neighbors heard her.

P.W. 2 Sonamala Bibi mother of the victim stated in her deposition that on the date and time of occurrence she was working on the stone work at Chhatak. After four months of the occurrence, her daughter told her that she became pregnant due to the accused raping her at the date and time of the occurrence. A Panchayat meeting was held regarding the said occurrence and in the meeting the accused proposed to give some money to her daughter. Later she had a child.

In her cross-examination she stated that realizing that her daughter is pregnant, she interrogates her daughter and then her daughter narrates the incident.

P.W.3 Iskander Ali stated in his deposition that between Rukia and accused had a meeting regarding the incident and he was present at the Salish. In the Salish Rukia Begum said that she got pregnant because the accused raped her. He also said that first time no decision was made in the Salish. Later on the

day of the Salish, the accused admitted to committing illegal acts with Rukia and it was decided in the Salish that the accused would pay five thousand taka as compensation and Rukia would not file a case. Rukia disobeyed Salish's decision and later gave birth to a child in Rukia's womb.

In his cross-examination he denied the suggestion of the Advocate on behalf of the accused that he did not give any evidence to the investigating officer. There was no arbitration on the facts or he was not present at the arbitration or the accused plead guilty in the arbitration or there was no decision in the arbitration.

P.W.4 Sonahor Ali father of the victim stated in his deposition that his wife told him that his daughter Rukia Begum was impregnated by the accused through illicit intercourse and his wife heard this incident from her daughter. He further stated that first time he called the Panchayat meeting and in the Panchayat the accused admitted his guilt and passed a decision in the Panchayat that the accused would give some money to his daughter. He also said that they did not obey the decision of the Salish. His daughter has a child.

In his cross-examination stated that when her daughter was 8 months pregnant, she told the incident to her mother.

P.W.5 Usman Ali stated in his deposition that accused Rafique got pregnant as a result of having sex with Rukia. A Panchayat meeting was held regarding the incident and the decision of the Panchayat was not obeyed. Later Rukia got a child in her womb.

In his cross-examination he stated that Rukia is his niece and they live in the same house. His brother Akram Ali's co-accused has a dispute over the deposit of his father's land.

P.W.6 Dr. Omal Chandra Paul in his deposition stated that Dr. Badiuzzaman, Dr. Abdul Hakim and he himself examined the body of Rukia Begum on 03.08.1996 and gave a report that the age of the victim would be 14-15 years. He identified the report given by him and his signature thereon. The report is marked as Ex.1 and his signature thereon as Ex.1/1.

In his cross-examination the accused suggested to him that Rukia Begum was more than 18 years of age. He denied such suggestions.

P.W.7 Dr. Md. Abdul Hakim identified his signature on Ex.1 which is marked as Ex.1/2. The accused did not cross-examine him.

P.W.8 Alam Mia stated in his deposition that in the village Panchayat Rukia Begum said that she became pregnant because the accused Rafique had sex with her.

In his cross-examination stated that he did not give evidence to the police.

P.W.9 and 10 Tayub Ali and Akram Ali tendered by the prosecution.

P.W. 11 Himanshu Kumar Das stated in his deposition that previous investigating officer Abu Jafar conducted the investigation of the case and submitted the memorandum of evidence and when he was transferred, further investigation was assigned to him and he obtained the permission of the higher authority and the offense under section 6(1) of the Nari-O-Shishu Ain was prima facie proved against the accused and submitted a charge sheet.

In his cross-examination he denied that he filed the charge sheet without properly reviewing the investigation papers of the previous investigating officer.

P.W.12 Dr. Badiuzzaman Lasker stated in his deposition that he examined Rukia Begum's X-Ray plate and gave a report that Rukia Begum's age would be 14/15 years. He identified the Court report and his signatures therein which are marked as

Ext. 2 and 2/1 respectively. He identified his signature in Court on Ext.1, which is marked as Ext.1/3.

In his cross-examination he denied the accused suggestion that from the findings of the report given by him, it is found that Rukia Begum is above 18 years of age.

P.W. 13 S.I. Abu Jafor stated in his deposition that while he was working at Chatak Police Station, Amir Hossain Saheb, Officer-in-charge of the Police Station filed Chatak Police Station Case No.24 dated 31.01.1997 and entrusted him with the investigation of the case. He recognized the handwriting and signature of the Officer-in-charge. He identified the FIR columns written and signed by the Officer-in-charge in the Court, which are marked as Ext.4 and 4/1. He identified the declaration in Court and the signatures of the Officer-in-charge therein which are marked as Ext.5 and 5/1 respectively. He also said that during the investigation of the case, he visited the spot and prepared the sketch map and index of the spot. He produced the map index and his signatures in the Court which are marked as Ext.3 and 3/1 respectively. In the investigation of the case, if the allegations against the accused are initially proved, he submits a memorandum of evidence to the higher authority.

In his cross-examination he stated that Court Petition No.103 of 1996 filed by the victim was sent to the Chatak

Police Station on 07.07.1997 and after investigating the petition a prosecution report was filed under section 493 of the Penal Code and later on receiving the order of the Court the case was registered in Police Station. He denied the suggestion of accused that during the investigation, the witnesses did not tell about the accused forcibly raping victim against her will or the witnesses told her that victim and the accused used to visit each other's houses and that love developed between them or that he never went to the spot or that he sat in the police station and colluded with the prosecution document production evidence submitted.

We have gone through the impugned judgment and order, specially the evidence of P.W.1, P.W.2, P.W.3, P.W.4. P.W.5, P.W.6, P.W.7, P.W.8, P.W.9, P.W.10, P.W.11, P.W.12 and PW.13, the FIR, charge sheet, charge, Seizure List, Medical Examination Report and other relevant papers and documents minutely.

On perusal of the above evidence, it appears that the only eyewitness to the alleged occurrence of victim is none other except Rukia Begum. From the testimony of the witnesses, it is proved beyond doubt that victim Rukia Begum became pregnant and gave birth to a child. The accused has not denied that victim was not pregnant or that her child was not born.

According to the accused, the victim was married to Akhlis Ali and victim became pregnant while they were living as husband and wife. No prosecution witness has admitted the alleged occurrence of the accused. No evidence has been presented by the accused to support Akhlis's marriage with victim or their free association.

Now, the evidence of P.W.1 Rukia Begum may be considered and evaluated. She testified that accused Rafique Miah entered her living room at 12 o'clock in the night and forcibly had sexual intercourse with her against her will and as a result of his sexual intercourse she became pregnant and when the accused promised to marry her, she did not tell anyone about the incident. There is no reason to disbelieve her testimony.

In this regard, in the 43 DLR our Apex Court's decision has been held that:-

“The evidence an injured person carries much since the injured person does not usually allow the real culprit to escape and falsely implicate an innocent person. Further, it has been held that- It is settled principle of law that when injured witness marked assailant it cannot be said that he would give up real assailant and falsely implicated person with when there was no enmity.”

Considering the evidence on record, facts and circumstances, the irresistible findings of this Court is that at the time and date of occurrence the accused Rafique Miah raped the victim Rukia Begum forcefully.

In view of the discussion made above and materials on record this Court is led to come to a decision that the prosecution has successfully proved the charge as brought against the accused Rafique Miah under section 6(1) of the Nari-O-Shishu Ain for raping the victim Rukia Begum beyond reasonable doubt. So, the trial Court rightly found guilty of the charge as brought against the accused Rafique Miah under section 6(1) of the Nari-O-Shishu Ain and rightly passed the judgment and order of conviction and sentence dated 26.11.1998 in Shishu Nirjatan Daman Special Case No. 16 of 1997 against the convict-appellant. We do not find any cogent and legal ground to interfere with the impugned judgment and order of conviction and sentence. The appeal, therefore, has no merit.

In the result, the Criminal Appeal No.2970 of 1998 is hereby dismissed. The judgment and order of conviction and sentence dated 26.11.1998 passed by the learned Additional Sessions Judge and Nari-O-Shishu Nirjatan Daman Special

Judge, Sunamganj Shishu Nirjatan Daman Special Case No. 16 of 1997 is hereby upheld and confirmed.

The order of bail granted earlier by this Court is hereby cancelled and recalled.

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.

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

Khandaker Diliruzzaman, J:

I agree.

Md. Anamu Hoque Parvej
Bench Officer