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

Criminal Appeal No. 4268 of 2020

Md. Sohel Rana.
...Convict-Appellant.

-VERSUS-

Most. Ripa Akther Alo and another.
... Complainant-respondents.

Present
Mr. Justice Mamnoon Rahman

Mr. Faisal Dastagir, Adv.
… For the appellant
Mr. Md. Mostafezur Rahman Miah, Adv.
....For the complainant-respondent.
Mr. Khan Md. Peer-E-Azam Akmal, DAG with
Mr. A.K.M. Mukhter Hossain, AAG
Ms. Sonia Tamanna, AAG
Mr. Md. Uzzal Hossain, AAG
…For the State.

Heard on: 31.10.2023 & 11.07.2024
And
Judgment on: The 2nd February, 2025

This appeal is directed against the judgment and order of conviction and sentence dated 09.08.2020 passed by Nari-O-Shishu Nirjatan Daman Tribunal, Kushtia in Nari-O-Shishu Case No. 62 of 2017 arising out of Petition Case No. 05 of 2017 convicting the appellant under section 11(Ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amendment-2003) and sentencing him there under to suffer rigorous imprisonment for three years and to pay a fine of Tk. 50,000/- in default to suffer simple imprisonment for three months.

The short facts relevant for the disposal of the instant appeal, is that on 22.01.2017 the respondent-opposite party No. 1 as complainant filed a Complaint Petition being No. 5 of 2017 before the trial court

implicating two accused persons including the appellant alleging *inter-alia* that she got married with the appellant on 12.02.2010. At the time of marriage the appellant demanded dowry for an amount of Tk. 2,00,000/- and the parents of the complaint respondent accepted the same. Subsequently, they paid an amount of Tk. 120,000/- and also certain ornaments. They are also blessed with a son who is at the age of two years at the time of filing of the complaint petition. After the birth of the child the appellant started torturing the complainant for demand of dowry as they failed to meet up the demand the appellant forced them to leave the house. Ultimately, the complainant filed a case under section 4 of the Dowry Prohibition Act being C.R. No. 325 of 2016. Eventually, on a compromise the appellant took the complainant to his house on 14.12.2016 but ultimately on the date of occurrence the accused persons including the appellant injured the complainant severely causing serious injuries. They started tortured the complainant again on the next day morning. Subsequently, hearing the hue and cry the parents of the complainant recovered her with the help of the police and got her admitted in the local hospital, hence, the case.

The tribunal took cognizance and proceeded with the case. During trial the prosecution adduced as many as seven witnesses and the defence adduced none. The trial court examined the evidence both oral and documentary as well as the materials on record and the tribunal after hearing the parties found the appellant guilty of the offence under section 11(ga) of the Act of 2000 convicted and sentenced him as

mentioned hereinabove. Being aggrieved by and dissatisfied with the said judgment and order passed by the court below the appellant moved before this court by way of appeal.

Mr. Faisal Dastagir, the learned Advocate appearing on behalf of the appellant submits that the court below without applying its judicial mind and without considering the facts and circumstances as well as on misreading of evidence both oral and documentary passed the impugned judgment and order of conviction and sentence which requires interference by this court. He submits that in the present case in hand the prosecution miserably failed to prove the case of demand of dowry and subsequent injuries on out of the said demand of dowry by credible and unimpeachable evidence and the trial court failed to consider the same side by side most illegally and in an arbitrary manner passed the impugned judgment and order which requires interference by this court. He further submits that in the present case in hand the prosecution did not adduce any independent or trust towards the evidence as much as the complainant miserably failed to prove the time, place and manner of occurrence which requires interference by this court.

Mr. Md. Mostafezur Rahman Miah, the learned counsel appearing on behalf of the complainant vehemently opposes the appeal. He submits that in the present case in hand the trial court on proper appreciation of the facts and circumstances, evidence both oral and documentary has rightly found the appellant guilty of the offence as alleged and convicted and sentenced him which requires no interference by this court. He

further submits that in the present case in hand the prosecution proved the case of dowry and injury on the basis of the demand of the same by sufficient and credible evidence both oral and documentary which requires no interference by this court. The learned counsel relied the decisions as reported in 48 DLR(1996)61 submits that mere relationship of witness should not be a ground for discarding the evidence unless it is found that the said witness is biased or lying.

I have perused the impugned judgment and order of conviction and sentence passed by the court below, memorandum of appeal, application for bail, grounds taken thereon, necessary papers and documents as well as the LC records, provisions of law, decisions as referred to and heard the learned Advocates for the contesting parties.

On perusal of the same, it transpires that in the present case in hand admittedly the present appellate stood charge for an offence under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 before the tribunal for demanding dowry and consequently injured the complainant. On meticulous perusal of the papers and documents, it transpires that the complainant filed a complaint petition on 22.01.2017 before the tribunal alleging the offence committed by the appellant under section 11(ga) of the Nari-O-Shishu Nirjatan Daman Ain, 2000. It transpires that after filing of the case the tribunal took cognizance and proceeded wherein the prosecution adduced seven witnesses. The complainant deposed before this court as P.W. 1 who in her deposition stated that the appellant consisted the demanding dowry resulting which

she filed a case under the Dowry Prohibition Act. In the said case there was an amicable settlement resulting which the appellant took her to his house but on the very next day the appellant again demanded dowry and injured the complainant severely with wood and stick. The next day morning *i.e.* on 17.12.2016 again the appellant demanded dowry and bit the complainant. During hear and cry the mother of the complainant after hearing about the occurrence from the local inhabitants recovered her with the help of the police and admitted her to medical. In her cross-examination stated that the witness Ujjal and Rajib are her own brother and Golam Mostafa and Abul Kashem are the neighbors. In her cross-examination she further stated that there is no local witness about the occurrence in question. However, in her cross-examination she denied the suggestion that she filed a false case. P.W. 2 Ujjal Hossain is the brother of the complainant. In his deposition he narrated the story made out by the complainant in the complaint petition. In his deposition he further stated that after receiving the news about the incident he went to the place of occurrence and took her hospital for treatment. In his cross-examination stated that he recovered the victim with the help of the police. In his deposition he further stated that he don't know who recovered the victim initially. P.W. 3 is the neighbor of the P.W. 2 in his deposition he stated that on 17.12.2016 the witness Ujjal called him over telephone and requested him to go to his house. In that house the witness Ujjal disclosed to him about the demand of dowry and thereafter they went to the house of the appellant and admitted the complainant into

hospital. In his cross-examination he stated that he is also a witness in C.R. Case No. 325 also stated that he found many local people in the house of the appellant. P.W. 4 was tendered and the defence declined to cross. P.W. 5 is a doctor. In her deposition stated that he found injury in the back of the complainant which is simple in nature. In her cross examination she stated that the appellant gave her blow with hand and on the request of the complainant she admitted her for 4/5 days. P.W. 6 is the formal witness who proved the medical report and P.W. 7 another doctor was tendered.

So, on meticulous perusal of the aforesaid testimony it transpires that there is allegation of demand of dowry and injury to that effect. Section 11 of the Act of 2000 deals with the provision relates to demand of dowry and as per section 11(ga) if it has been proved that a person committed an offence by demanding dowry and consequently injured the wife and if the nature is simple as such the provisions of section 11(ga) shall be applicable. In the present case in hand, it transpires that the prosecution adduced seven witnesses out of which P.W. 1 is the complainant and P.W. 2 is the brother of the complainant. P.W. 3 is the neighbor of P.W. 2 while P.W. 4 was tendered and also P.W. 7. Admittedly, P.W. 3 is the neighbor of the witness No. 2 *i.e.* he is not the local inhabitant of the place of occurrence. As per his testimony he received a call from P.W. 2 and then he went to the house of the P.W. 2 and then went to the place of occurrence. It has been further revealed

that P.W. 3 is also a witness of the C.R. Case filed by the complainant against the appellant under section 4 of the Dowry Prohibition Act.

So, on meticulous perusal of the aforesaid evidences it transpires that P.W. 3 is neither an independent witness or an eye witness but he is an interested witness as because he already deposed against the appellant in a case under section 4 of the Dowry Prohibition Act. Admittedly, as per the decisions as reported in 48 DLR 61 the High Court Division came to a conclusion on discussion of section 146 of the Evidence Act that mere relationship of a witness should not be a ground for discarding his evidence unless he is found to be biased and lying. It transpires that the said witness is already appearing as a witness in another case filed by the complainant against the appellant and as such the word biased is attracted as per the decisions reported in 48 DLR 61. Apart from that on meticulous perusal of the evidence it transpires that though the occurrence took place in the house of the appellant and as per the assertion of the complainant many people rushed to the place of occurrence but not a single person was cited as witness in any manner. The deposition of P.W. 1 clearly revealed that after hearing the news the mother of the complainant went to the place of occurrence and recovered her but she was also not examined as witness. But the P.W. 2 in his deposition stated that he went to the place of occurrence not the mother which also shows a material contradiction in between the testimony of the P.W. 1 and 2. Admittedly, it is a cardinal principle that the evidence of one person is enough to warrant a conviction and as per the

submissions of the learned counsel the present appellant can be convicted solely on the based upon the evidence of P.W.1. But in this type of cases a heavy duty cast upon the prosecution to prove the case and charge by sufficient credible and independent witnesses.

In the present case in hand, it transpires that the occurrence took place on 16/17 December, 2016 and the case was filed on 22.01.2017. Admittedly, in our society there was no scope of sometime practically difficulties to approach for legal assistances but when there is a delay such delay has to be explained in an appropriate manner by sufficient material and evidence. In the present case in hand, it transpires that the petitioner claimed to be admitted in the hospital on 16 and released after four days and they tried to file the case on 25.12.2016 with the local police station but there was no explanation what happened between 25.12.2016 to 22.01.2017. On perusal of the complaint petition, it transpires that there was some lump reason has been stated. It is true and mentioned above already that in our society and other aspects sometime consumed but such delay were not properly explained and determined the same shall affect the genuineness of the case which ultimately rendered support as a benefit of doubt to the accused person. It also transpires from the papers and documents as well as L.C. records that the case was lodged on 21.01.2017 and on initial scrutiny of the L.C. records I do not find any affidavit accompanied the complaint petition as emphasized as a legal requirement in section 27 of the Act of 2000. As per the provisions of said law, namely section 27(1)(ka) it transpires that

initially the complainant has to try to file a case before the police station but in case of failure the complainant can file a case before the tribunal directly. But in that situation the complainant has to file the complaint petition along with an affidavit affirming the statement that she approached the police station but in vain. So the language of the said law clearly demanded that the complaint petition must accompany with an affidavit on the date of filing of the complaint petition before the tribunal. Subsequently, it has been detected that there is an affidavit with the L.C. records not curiously enough the same was affirmed on 04.01.2017 *i.e.* two weeks before filing of the complaint petition. The language of the law is very much clear that the complaint petition has to be accompanied by an affidavit and as per the law it is very much clear that the same has to be affirmed on the date of filing of the complaint petition which in the present case in hand creates a serious doubt.

To warrant a conviction under section 11(ga) of the Act of 2000 a duty cast upon the complainant to prove two things, namely injury and demand of dowry. Admittedly, there is a medical report supported by evidence of P.W. 5 and as per the report it is an injury of simple in nature. But on meticulous perusal of the same, it transpires that there are contradictions regarding the manner of injury as claimed by the complainant and the medical report. But in the instant case in hand, the demand of dowry and the injuries has to be corroborated as a particular incident and proved by credible evidence. But in the present case in hand there is no credible evidence which is independent and unimpeachable to

the effect that injury was caused by the appellant demanding dowry at that time.

All these counts, I am of the view that during trial the prosecution miserably failed to prove the charge. Hence, the instant appeal is allowed. The impugned judgment and order passed by the court below is hereby set aside. The appellant is discharged from the bail bond.

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

(Mamnoon Rahman, J:)

Emdad. B.O.