

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

**Criminal Appeal No. 11284 of 2023**

**In the matter of:**

Dipok Deb

...Convict-petitioner

**-VERSUS-**

The State

... Opposite party

**Present**

Mr. Justice Mamnoon Rahman

Mr. Ujjal Paul, Adv.

... For the petitioner.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

....For the State.

**Heard on: 15.07.2024 & 31.07.2024**

**And**

**Judgment on: The 1<sup>st</sup> August, 2024**

This appeal is directed against the judgment and order of conviction and sentence dated 05.11.2023 passed by the learned Judge (District and Sessions Judge) of the Nari-O-Shishu Nirjaton Damon Tribunal No. 3, Habiganj in Nari-O-Shishu Nirjaton Damon Case No. 148 of 2020 arising out of G.R. No. 52 of 2020 corresponding to Nabiganj Police Station Case No. 15 dated 23.03.2020, convicting the appellant and another accused, namely Dhananjoy Deb under sections 11(Ga), 30 of the Nari-O-Shishu Nirjaton Damon Ain, 2000 (as amended 2003) and sentencing them to suffer rigorous imprisonment for three years along with a fine of Tk. 50,000/- in default to suffer simple imprisonment for another one year more.

The prosecution case in short, is that, one Sanchita Dhar being informant lodged a First Information Report on 23.03.2020 with Nabiganj Police Station against five accused persons under sections 11(Ga), 30 of the Nari-O-Shishu Nirjaton Damon Ain, 2000 (as amended 2003) alleging *inter-alia* that the victim is the daughter of the informant who was married with the accused No. 1 on 14.11.2018. The accused No. 1 staying in Australia and he demanded a dowry of Tk. 10,00,000/-. Subsequently, the accused persons tortured the victim on different occasions and ultimately on the date of occurrence all the accused persons indiscriminately injured the victim. Also the accused Nos. 1 and 2 injured the victim with stick, the informant rescued the victim and took her to the hospital for medical treatment and they tried to settle the matter amicably and as they failed to do so the informant filed the case.

The police registered the case as Nabiganj Police Station Case No. 15 against the accused persons and proceeded the investigation. The Investigation Officer submitted charge sheet being No. 94 dated 4.7.2020 impleading five accused persons. The trial court discharged three accused persons and proceeded against the appellant as well as another accused person. During trial the prosecution adduced as many as nine witnesses and defence adduced none. The trial court thereafter exhausting all the procedures vide the impugned judgment and order convicted and sentenced the appellant and another. Being aggrieved the present appellant moved before this court by way of appeal.

Mr. Ujjal Paul, 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 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 present case in hand the court below failed to appreciate the legal position as much as failed to notice the contradiction in between the testimony of the witnesses and other extenuating circumstances and as such the impugned judgment and order of conviction and sentence is liable to be set aside for ends of justice. The learned counsel placed the evidences and submits that though the witnesses corroborated about the time, place and manner and occurrence but they are highly interested witnesses as much as by referring the deposition of P.Ws. 3 and 4 he submits that though both the witnesses are independent but they are very closed to the father of the victim and as much as the prosecution failed to produce two vital witnesses as cited by P.W. 4 in his deposition. He also submits that the doctor who proved the medical report did not examine the victim in person which also creates a serious doubt in the prosecution case.

Ms. Taifoor Kabir, the learned Deputy Attorney General appearing on behalf of the opposite party/state vehemently opposes the Appeal. He submits that the court below on proper appreciation of the facts and circumstances, evidence both oral and documentary as well as

the relevant provisions of law passed the impugned judgment and order of conviction and sentence which requires no interference by this court.

I have perused the impugned judgment and order passed by the lower appellate court as well as trial court. I have perused the memorandum of appeal, grounds taken thereon, necessary papers and documents as well as the LC records and I have heard the learned Advocate for the petitioners as well as the learned Deputy Attorney General for the State.

On perusal of the same, it transpires that the appellant along with another stood charge before the trial court for an offence committed under sections 11(Ga), 30 of the Nari-O-Shishu Nirjaton Damon Ain, 2000. The mother of the victim Sanchita Dhar being informant lodged a First Information Report resulting which the police initiated a regular case and investigated the same. It transpires that after investigation the police submitted charge sheet and implicated five accused persons. Eventually, the trial court discharged three others and proceeded against the appellant and another. The allegation as it transpires from the trend of the examination and cross-examination is that the victim was married to Dhananjoy Deb who resides in Australia. After marriage the accused persons claiming dowry on different occasions and ultimately on the date of occurrence they demanded dowry and further stated that they will not allow the victim to enter into the house as they approached the house all the accused persons indiscriminately attacked the victim and the informant and the accused Nos. 1 and 2

caused different injuries and the body of the victim. Thereafter, the informant rescued the victim and took her hospital for medical treatment.

Informant deposed before the court as P.W. 1 and supported the version stated in the First Information Report. P.W. 2 is the husband of the informant who stated that he went to the place of occurrence after hearing about the occurrence from his wife. P.W. 3 is a local witness. In his deposition he stated that he went to the place of occurrence and found the door was locked, however, somehow he managed to see that the accused persons are torturing the victim. In his cross-examination he stated that he well known to the P.W. 2. P.W. 4 is also a local witness. In his deposition he stated that after hearing call from the P.W. 2 and went to the place of occurrence. In his cross-examination he stated that the accused persons demanded dowry in presence of Upazilla Chairman namely Selim Chowdhury and another Syfuzzaman Chowdhury. P.W. 5 is the mother of the victim who in her deposition corroborated the deposition made by the informant as P.W. 1. P.W. 6 is the relation who heard the occurrence from the informant. P.W. 7 is the brother of the victim who is also a hearsay witness. P.W. 8 is the doctor who took the medical report but in his cross-examination stated that he did not examine the victim and P.W. 9 is the Investigation Officer.

So, on meticulous perusal of the deposition of the witnesses, it transpires that P.W. 9 is the Investigation Officer and P.W. 8 is the medical doctor. On further meticulous perusal of the evidence of P.W.

8 it transpires that the doctor certified the medical report but he did not examine the victim in person though he was the member of the Board. Apart from these P.Ws. all are relation of the victim except P.Ws. 3 and 4. On perusal of the cross-examination of P.Ws. 3 and 4 it transpires that they are well known to the father of the victim and they went to the place of occurrence after receiving the call from P.W. 2 the husband of the informant. It further transpires that as per the depositions of P.Ws. 3 and 4 they went to the place of occurrence but they cannot enter into the house but they somehow managed to see the occurrence.

So, on meticulous perusal of the papers and documents, it further transpires that there is a serious contradiction regarding the manner, place, time and occurrence. On perusal of the depositions of the P.Ws, it transpires that except P.Ws. 1 and 5 they are no exact eye witness of the occurrence in question. P.Ws. 3 and 4 in their depositions stated that they got information and called from P.W. 2 about daughter and they went to the place of occurrence but they did not mention about the distance or how they reached in the place of occurrence. It further transpires from their depositions that they somehow managed to see from outside of the house that the accused person including the appellant is causing injury in the body of the victim.

Apart from that it also transpires that there is a delay in filing of the First Information Report which was not properly explained. So; it transpires that in the present case in hand the prosecution failed to prove the charge against the present appellant beyond all reasonable

doubt though in the First Information Report and from the deposition of P.W. 1 it transpires that all the accused persons started beating the victim.

Considering the facts and circumstances, I find substance in the instant appeal which is required to be allowed. Accordingly, the instant appeal is allowed. The impugned judgment and order of conviction and sentence passed by the court below so far it relates to the present appellant is hereby set aside and the appellant be 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.*