

Criminal Appeal No. 11930 of 2023

Jannatul Ferdos

... Appellant

-Versus-

The State

...Respondent

Mr. Sazzad-Ul-Islam, Advocate

...For the appellant

Mr. Md. Sarwar Hossain Bappi, DAG with

Ms. Moududa Begum (Fancy),

Mr. Mohammad Selim and

Mr. Mirza Mohammed Soyeb Muhit, AAGs

.....For the State

Heard and Judgment on: 29.02.2024**Present:****Mr. Justice Zafar Ahmed****And****Mr. Justice Khandaker Diliruzzaman****Khandaker Diliruzzaman, J.**

This appeal under Section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (amended in 2023) is directed against the order No. 02 dated 30.10.2023 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, Feni in Nari-O-Shishu Case No. 243 of 2023 arising out of Feni Model Police Station Case No. 11 dated 05.03.2023 corresponding to G.R. Case No. 134 of 2023 under sections 7/ 9(1)/30 of the Nari-O-Shishu Nirjaton Daman Ain, 2000 (amended in 2003) rejecting the prayer for jimma of the appellant Jannatul Ferdos.

The facts, relevant for disposal of the appeal, are that the mother of the appellant namely, Sahena Akter being informant lodged an FIR against one Emdadul Haque Rahul and others alleging inter alia that the appellant was a student of Class-VII of a local Madrasha and on her way to Madrasha, the said Emdadul Haque Rahul used to tease her daughter. After being informed of the matter, the informant told the matter to the guardian of the accused and as a result, the accused became angry with the informant. Thereafter, on 28.02.2023 at about 10.00 a.m., all the accused persons kidnapped the appellant from the Madrasha gate and took her to an unknown place. Thereafter, the informant along with others went to the spot and lastly filed the instant case on 05.03.2023.

After completion of investigation, the Investigation Officer submitted Charge Sheet being Charge Sheet No. 439 dated 27.08.2023 against one Emdadul Haque Ruhul under sections 7/9(1) of the Nari-O-Shishu Nirjaton Daman Ain, 2000 (amended in 2003).

Soon after recovering the appellant, a medical examination report was prepared on 15.03.2023 by the doctor and in that report the radiological age of the victim was not

determined. Thereafter, the appellant was sent to the safe custody by the learned Magistrate vide his Order dated 15.03.2023.

The appellant made a statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (amended in 2003).

On 30.10.2023, the appellant filed an application before the learned Magistrate praying for allowing her to be in own Jimma and after hearing the parties and perusing the documents on record the learned Nari-O-Shishu Nirjatan Daman Tribunal, Feni rejected the application for Jimma of the appellant vide his order No. 02 dated 30.10.2023.

Being aggrieved by and dissatisfied with the Order No.2 dated 30.10.2023, the appellant moved before the instant criminal appeal before this Court.

The learned Advocate appearing for the appellant submits that as per the Birth Registration Record Verification, the date of Birth of the appellant is 22.11.2004 i.e. the appellant has already attained majority and at the time of alleged occurrence, the appellant was an S.S.C Examinee and she willingly got married with the accused on 28.02.2023 which was registered on 28.05.2023. Therefore, the appellant was

neither kidnapped nor abducted nor enticed away against her will. Moreover, the statement of the appellant recorded under section 22 of the Nari-O-Shisu Nirjatan Daman Ain, 2000(amended in 2003) corroborates regarding her majority of age. Therefore, the judicial custody of the appellant is illegal and as such, the order No. 02 dated 30.10.2023 is liable to be set aside. On these grounds, the learned Advocate prays for jimma of the appellant.

The learned Deputy Attorney General opposes the prayer for Jimma of the appellant.

We have heard the learned Advocate for the appellant, and the learned Deputy Attorney General.

The mother of the appellant stated in the FIR that the appellant was a student of Class-VII of a local Madrasha i.e., the appellant was minor at the time of alleged occurrence. But it appears from the records that as per Birth Registration Record Verification, the date of birth of the appellant is 22.11.2004 and the occurrence took place on 28.02.2023. It also appears from the impugned order No.02, dated 30.10.2023 passed by the learned Nari-O-Shisu Nirjaton Daman Tribunal, Feni that the appellant's date of birth is 22.11.2007 as per Birth Certificate.

If the date of birth of the appellant as per the birth certificate recorded as 22.11.2007 is correct, the appellant has already attained majority. Moreover, the appellant made a statement under section 22 of the Nari-O-Shishu Nijjatan Daman Ain, 2000 (amended in 2003) which supports the claim regarding her attainment of majority. However, the medical examination report of the appellant was prepared by the doctor on 15.03.2023 but in that report the radiological age of the victim was not determined.

Considering the above facts, we are inclined to grant Jimma of the appellant in her custody.

In the result, the appeal is allowed.

The authority of Nirapodh Abason Kendra, Forhadabad, Hathajari, Chattogram is hereby directed to set the appellant at liberty in her Jimma.

Office is directed to send a copy of this judgment and order to the concerned Court below immediately.

Zafar Ahmed, J.

I agree.

Mustafiz/BO