

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

**Criminal Appeal No. 2845 of 2022**

Md. Enamul Haque and others.

...Convict-Appellants.

**-VERSUS-**

The State and another.

... Respondents.

**Present**

Mr. Justice Mamnoon Rahman

Ms. Hosne Ara Diba, Adv.

... For the appellants.

Mr. Md. Taifoor Kabir, DAG with

Mr. Md. Lokman Hossain, AAG

Mr. Md. Hatem Ali, AAG

....For the State.

**Heard on: 22.02.2024**

**And**

**Judgment on: The 13<sup>th</sup> March, 2024**

This appeal is directed against the judgment and order of conviction and sentence dated 23.02.2022 passed by the learned Judge (District and Sessions) of Nari-O-Shishu Nirjatan Daman Tribunal No. 2, Rajshahi in Shishu Case No. 103 of 2019 convicting the appellants under section 9(4)(Kha)/30 of Nari-O-Shishu Nirjatan Daman Ain, 2000 (amended 2003) and sentencing them to suffer simple imprisonment for 5(five) years and also to pay a fine of Tk. 10,000/- each, in default to suffer simple imprisonment for 3(three) months.

The prosecution case, in short, is that, one Most. Sufia Begum wife of Md. Sukur Ali of Village- Paharpur, Vobaniganj Pourashava, Police Station- Bagmara, District-Rajshahi lodged First Information Report (FIR) on the allegation that her niece most Tania Khatun

daughter of late Abu Syed went for cutting grass in the field on 21.07.2013 at about 14.00 hours and while she was cutting grass the accused No. 1, Md. Enamul Haque, Son of late Meher Ali, accused No. 2, Md. Farhad Hossain, Son of Md. Rahidul, accused No. 3, Md. Mithun Son of Md. Anar and accused No. 4, Md. Moznu Son of Md. Shutka all of Village-Paharpur, Police Station-Bagmara, District-Rajshahi came with ill motive and tried to rape making her nude and at that time hearing sought the witnesses came forward and seeing her presence of the witnesses the accuseds fled away. Hence the case.

The tribunal took cognizance and proceeded with the case. The appellant and others were apprehended by the police and they were enlarged on bail. The court below thereafter framed charge against the appellant and others under section 9(4)(Kha)/30 of the Nari-O-Shsishu Nirjatan Daman Ain, 2000( Amended 2003) and proceeded. During trial the prosecution adduced as many as 7(Seven) witnesses out of nine witnesses and the defence adduced none. The court below did not examine the convict-appellant and others under section 342 of the Code of Criminal Procedure and ultimately passed the impugned judgment and order of conviction and sentence wherein the court below found the appellants guilty of offence under section 9(4)(Kha)/30 of the Nari-O-Shsishu Nirjatan Daman Ain, 2000. Being aggrieved, the appellants moved before this court by way of appeal.

Ms. Hosne Ara Diba, the learned counsel appearing on behalf of the appellants 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. She submits that in the case in hand admittedly the accuseds are minor but police has submitted charge sheet under Section 9(4) (Kha)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amended 2003) which is not tenable in the eye of law and learned Nari-O-Shishu Nirjatan Daman Tribunal framed charge under said sections in pursuance of that charge sheet, hence the total proceeding on the basis of that charge sheet is illegal and full of nullity and the conviction is also illegal and without jurisdiction and as such the impugned judgment and order of conviction is liable to be set aside. She further submits that the accuseds are minor, their offence should be the trial under Child Act in a competent Children Court (শিশু আদালত) but they were tried and convicted by Nari-O-Shishu Nirjatan Daman Tribunal which is illegal and without jurisdiction and as such the impugned judgment and order of conviction should be set aside.

Mr. Mohammad Taifoor Kabir, the learned Deputy Attorney General appearing on behalf of the respondent-state vehemently opposes the appeal. He submits that the court below on proper appreciation of the facts and circumstances and material on record has

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

I have heard the learned Advocate for the appellants as well as the learned Deputy Attorney General for the state. I have perused the impugned judgment and order of conviction and sentence passed by the court below, Memorandum of appeal as well as LC Records.

On perusal of the same, it transpires that the charge was framed against the appellant along with three others for the offence committed under section 9(4) (Kha)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amended 2003) wherein it has been alleged that the accused and others with an ill motive tried to rape the victim. It transpires that the occurrence took place on 21.07.2013 but there is no eye witness in the instant case. Moreover, the testimony of the witnesses do not support with the FIR.

It transpires from the papers and documents that the informant was examined as P.W. 1 who in her deposition stated that she lodged the FIR hearing the occurrence from local people. In her cross-examination however stated that she was not present at the time of place of occurrence or did not see anything. She further stated that the person from whom she heard the occurrence did not make them as witnesses in the instant case. P.W. 2 in his deposition stated that he does not know when the occurrence took place. He further stated that after few days he heard the occurrence from the informant that some

boys from the village had committed a misdeed with the informant's granddaughter. In his cross-examination stated that he knows the accuseds but he neither saw nor heard what the occurrence was about. P.W. 3 is the victim who in her deposition stated that she know the accuseds standing on the dock. She further stated that the accused Enamul took her to the place of occurrence and then he tried to commit misdeed with her after removing pant, but failed. In her cross-examination stated that she does not know the exact time when it took place. She further stated that the accuseds caught hold her for a while. She shouted there for a long. She after getting release came home with Sube Khatun. P.W. 4 who is the only eye witness as per FIR stated that “বাম্ভার সার্থে কি হয়, তা জানি না। তবে আমি কাজ করে ফেরার পথে বাম্ভাটাকে কাঁদতে দেখি। আমি বাম্ভাকে বাড়ী পাঠিয়ে দিয়ে চলে যাই আমার বাড়ীতে। বাম্ভাটা বলেছিল যে, ছ্যাড়ারা তাকে মেরেছে। তবে ছেলেপেলে দেখিনি” In her cross-examination stated that she saw the victim on the road while there were none and she further stated that on being asked the victim said that the boys beaten her. P.W. 5 in his deposition stated that informant is the grandmother of the victim and the victim is his sister. He further stated that at the time of occurrence he was at home and he further stated that the victim told him some boys beaten her. In his cross-examination he stated that he heard the occurrence from his grandmother. In cross-examination by the defence he stated that informant or victim nothing has been said about the occurrence. P.W. 6

is the Senior Judicial Magistrate and stated that he recorded the victim's statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain and P.W. 7 in his deposition stated that he did not know about the occurrence. In his cross-examination stated that he did not see the occurrence in his own eyes.

So, on meticulous perusal of the oral evidence, it transpires that P.W. 1 Most. Sufia Begum is the informant lodged the First Information Report hearing the incident from the local people rather than the victim more so her statement contradicts with the FIR. It further transpires that except P.W. 3 who is the victim herself there is no eye witness in any manner. The other witnesses while deposing in the court of law made certain lump allegations against the appellants.

On careful scrutiny of the L.C. Records, it transpires that on the day of occurrence there was no attempt to rape on the victim by the accused persons. It transpires from the aforesaid papers and documents that the court below failed to appreciate the testimony of the P.Ws. in its true perspective as much as the manner, place and time of occurrence. Apart from that it further transpires that though there was an allegation of attempting rape on the victim but the prosecution failed to prove the said allegation brought against the accused persons which creates serious doubt in the prosecution case. It further transpires that in the instant case the charge was not properly framed and there is no ingredients of section 9(4) (Kha)/30 of the Nari-O-Shishu Nirjatan

Daman Ain, 2000 but the court below on the basis of surmise and conjecture convicted and sentenced the appellants for a period 5(five) years which cannot be sustained in the eye of law. Hence, I find substance in the instant appeal which is required to be allowed.

Accordingly, the appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial court is hereby set aside. The appellants are discharged from the bail bond and the appellant is acquitted from the charge leveled against them.

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

(Mamnoon Rahman,J:)