

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 6821 OF 2009

IN THE MATTER OF:

Md. Majedur Rahman

..... Appellant

-Versus-

The State and another

..... Respondents

Mr. Md. Aminul Hoque with
Mr. Abdullah-Al-Mahmud Chowdhury
Mr. A. F. M. Saiful Karim

... For the appellant

Mr. Md. Aminur Rahman Chowdhury
Mrs. Monzu Naznin, A.A.G.

... For the respondent No. 1

Mr. Mominuddin

... For the respondent No. 1

Heard on 01.06.2011, 05.06.2011

Judgment on 06 June 2011

Present:

Mr. Justice Shahidul Islam

1. This appeal has been preferred by convict appellant

Md. Majedur Rahman, son of Mojir Uddin Ahmed of

village-Dakkin Nashratpur, Police Station-

Chirirbandar, District-Dinajpur against the judgment and order dated 14.10.2009 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, Dinajpur in Nari-O-Shishu Case No. 276 of 2006 finding the accused appellant guilty punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and convicting him thereunder to serve a sentence of 3 years rigorous imprisonment and to pay a fine of Tk.5,000/- in default to undergo simple imprisonment for 3 months more.

2. The prosecution case, in short, was that the PW1 Selina Akter, Office Assistant of Ghontaghar Adarsha Girls School, Chirirbandar, Dinajpur lodged an FIR on 22.4.2006 at 16.30 hours with the Chirirbandar Police Station contending, inter alia, that she is serving as Office Assistant of that school

and the accused appellant is the Headmaster of that school. She has been serving since 3 years last. The accused appellant used to offer her to witness blue film and illicit proposal often and on. She disclosed the fact to the religious teacher of the school who instructed her not to disclose the matter to any body and also assured her that he would take initiative just to have a talk with the headmaster. Thereafter the accused appellant abstained from making any proposal for 2-3 weeks. Again he started proposing as before and on 6.4.2006 at about 10.30 am she attended the Chamber of Headmaster (accused appellant) and she was given sexual offer and at one stage the accused caught hold her by the hands. She raised cry and hearing cry Aya Shamsun Nahar entered into the room and saw the occurrence. She

went outside the office and disclosed the matter to her husband at her home. Her husband instructed her to inform the matter to the school committee. On 9.4.2006 at 10.00 am she (informant) was sitting in the office room and was taking preparation for writing a complaint against the accused and at that time the accused again gave her an illicit offer and further requested her not to disclose the occurrence dated 6.4.2006 to others. There took place an altercation between the informant and the accused appellant and she raised hue and cry. On that day she submitted a complaint to the Managing Committee of the school. The Managing Committee took up investigation and took punitive action against the accused appellant, suspended him from service and instructed her to lodge an FIR with the Police Station.

The accused appellant admitted his guilt for doing unbecoming behavior with the informant on 9.4.2006 and gave a written admission to that effect. Accordingly she lodged FIR.

3. The case was investigated by Sub-Inspector Siddiquir Rahman PW14 who submitted charge sheet against the accused appellant under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2003.
4. That case was transmitted to the Nari-O-Shishu Nirjatan Daman Tribunal, Dinajpur and was registered as Nari-O-Shishu Case No. 276 of 2006.
5. The accused appellant was granted bail and he faced trial. The Tribunal framed charge against the accused appellant under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. The charge was read over

to the accused appellant who pleaded not guilty and claimed to be tried.

6. The prosecution examined 13 PWs and PW9 was tendered for cross-examination.
7. The prosecution evidence was closed. The accused appellant was examined under section 342 of the Code of Criminal Procedure and he claimed himself to be innocent and refused to adduce any defence witness.
8. The Nari-O-Shishu Nirjatan Daman Tribunal after considering the evidence on record found the accused appellant guilty punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and convicted him thereunder to serve out a sentence of 3 years rigorous imprisonment and to pay a fine of Tk.5,000/-, in default to undergo simple

imprisonment for 3 months more by the judgment and order dated 14.10.2009.

9. Being aggrieved by the said judgment and order of conviction the accused appellant has preferred the instant appeal.
10. Mr. Md. Aminul Hoque with Mr. Abdullah-Al-Mahmud Chowdhury and Mr. A. F. M. Saiful Karim, the learned Advocates appeared for the accused appellant.
11. Mr. Md. Aminur Rahman Chowdhury, the learned Attorney General with Mrs. Monzu Naznin, the learned Assistant Attorney General appeared for the respondent.
12. The learned Advocate for the appellant taking me through the impugned judgment, FIR, evidence on record both oral and documentary submitted that the

prosecution hopelessly failed to prove the case as against the accused appellant punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2002. He further submitted that the prosecution witness No. 1, 2 and 3 are all inter related and interested witnesses and the PW13 is the husband of the informant. He further submitted that, admittedly a case was filed by the accused appellant against the informant, PW2, PW3, PW11 and others under section 143/447/342/ 323/307/385/386/506 part-I of the Penal Code prior to the filing of the instant case and as such their evidence are not enough to hold that the accused appellant is guilty of the offence for which he has been charged. He submitted that the said case was being No. 6 dated 13.4.1986 of the Chiribandar Police Station but the instant case was

lodged dated 22.4.2006. He submitted that the Tribunal erred in law in filing to take into consideration the evidence entirely. He further submitted that the prosecution at the time of adducing evidence departed far away from the FIR case and embellished the prosecution case by adducing evidence that the accused appellant caught hold of the informant on 09.4.2006 for immoral purpose although that fact case was not disclosed in the FIR. He further submitted that the FIR was lodged after 16 days of the alleged occurrence and as such, the case was made out in the FIR ,lost its credibility inasmuch as much as had there been taken place any occurrence of sexual offence on a lady on 6.4.2006, who was an Office Assistant of the school, the victim would not have waited for the 2nd occurrence, similar in nature

till 9.4.2006 and would not have waited till 22.6.2006 for lodging FIR. He further submitted that as per the FIR she sent the written FIR through her husband to the Police Station but a typed FIR was produced before the Court at the trial. He further submitted that the exhibit-3 is an extra judicial confessional statement made by the accused appellant which is not admissible in evidence as per law. The said written extrajudicial statement was not seized by the police during investigation and as such no reliance could be placed upon the said exhibit-3. Mr. Huq referred to the case of State óv- Mozammel and others, 9 BLC 163 and submitted that an extra judicial confession is very weak type of evidence for convicting an accused unless by actual word of the accused persons making statement is brought on record and such a

case finds reliance corroboration. There is no corroboration as required by law and the case as made out is doubtful. He further submitted that the husband of informant PW13 was serving in shop of accused appellant and was dismissed and as such the PW3 is an inimical witness with the accused appellant. He further submitted that PW9 was an important witness but no evidence was taken from him. Had he been examined he would not have supported the prosecution case. He further submitted that out of 16 charge sheeted witness 2 (two) have been withhold. Had they been examined they would not have supported the prosecution case. He submitted that the Tribunal without discussing the prosecution evidence independently and without considering the vital evidence has awarded a moral

punishment as against the accused appellant. He prayed for setting aside the impugned judgment and order prayed for and acquittal of the accused appellant.

13. Mr. Md. Aminur Rahman Chowdhury, the learned Assistant Attorney General on the other hand submitted that the occurrence took place in broad day light in the office of the accused appellant who is the Headmaster of the Ghantaghar Adarsha Girls School and the victim Selina an the Office Assistant of the said School. He submitted that witness Shamsun Nahar came to the place of occurrence, saw the occurrence and deposed before the Court, supported the prosecution case and the informant is a lady who brought the case against the accused appellant who is the Headmaster of the school. The prosecution cae as

narrated in the FIR and the case made out from the lips of PWs proved it beyond doubt that the accused appellant committed an offence punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2002. He submitted that the Tribunal after considering the evidence on record has rightly and lawfully found the accused appellant guilty of the offence punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. The learned Assistant Attorney General referred to the decision in the case of Rokeya óv- State, 5 BLC (AD) 86 and submitted that sole evidence of one eyewitness is enough for awarding conviction. He submitted that PW3's evidence is very much vital evidence for upholding conviction. With these submissions he prayed for dismissal of the appeal.

14. The FIR has been marked as exhibit-1. It is mentioned in the FIR that the occurrence took place from 6.4.2006 to 9.4.2006 continuously. The case as made out in the FIR was that the accused appellant being the Headmaster of the school used to offer immoral sexual offer to the informant who is the Office Assistant of the school and on 6.4.2006 at 10.30 A.M the accused appellant gave an offer to the informant PW1 for an immoral sexual offer and also caught hold her by the hands. She with a view to escape her from the hands of accused appellant raised hue and cry and Aya Shamsun Nahar being on duty entered into the office of headmaster and saw the occurrence. The informant went outside the office and kept the matter concealed but disclosed to her husband. Her husband instructed her to inform the

fact to the President of the Managing Committee. Thereafter the second occurrence took place on 09.4.2006 at about 10.00 am while she was taking an attempt to write a complaint sitting in her chair and at that time the accused appellant again offered her for the second time an immoral offer and also requested her not to disclose the occurrence took place dated 06.4.2006. She raised cry, Shamsun Nahar and other teachers hearing her cry came to the office of the Headmaster and came to know about the occurrence. She made a complaint to the President of the Managing Committee on 9.4.2006 and thereafter the Managing Committee took a resolution and dismissed the accused appellant temporarily and also issued a show cause notice on him as to why he

should not be dismissed from service. Thereafter she lodged the FIR.

15. To prove the prosecution the prosecution examined the informant as PW1 who adduced evidence. In her examination-in-chief She supported the FIR case and the FIR was marked as exhibit-1 and her signature was marked as exhibit-1/1. During cross-examination she admitted the following:-

ওঘটনার ১৬ দিন পর এজাহার করিয়াছি। এজাহার আমার হা-তর লিখা।

এজাহার স্কু-ল বসিয়া লিখি। ৯/৪/০৬ইং এজাহার লিখি। আমি নি-জ

থানায় যাইয়া এজাহার দিয়াছি। এজাহার প-র দিয়াছি। ২২/৪/০৬ইং

থানায় যাইয়া এজাহার দেই। আমা-দর স্কু-ল বিল্ডিং ৬ কামরা বিশিষ্ট

পূর্ব-পশ্চিম লম্বা। স্কু-লর দক্ষিণদিক দিয়া একটি টানা বারান্দা আ-ছ।

স্কু-লর সর্ব পশ্চিম-মর কক্ষটি হেডমাষ্টা-রর অফিস। **www.givoxi i.g**

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 KivúDUvi KvR cwi Pvj bv Kx | -Kx Avgvi Rb" Avj v`v vWb i,g
 bvB | Avgv vWgvónxi i,ŕg eimqv KvR Kwi | Avgvxi -Kx ctq
 200/250 QvÎx Avx | 9.30 wgvbxi ci nBx QvÎxiv -Kx Avmv
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 vWetK Awdm nBx Avgv PxKixPjZ Kwi qv | NŠNo -Kxi
 mn mfvciZ Avāj Mvdi Avgvi Avcb kŕ'o | -Kxi mfvciZ
 AvRRj Ges Zvi fvBxi bvg nwj g | nwj xi vWx Avj Kvi
 minZ Avgvi vWv `jj weevn nBqv | Avgvi mŕgx PvKix Qvovq
 w`x Avgv H cx XŕK | Avgvi vWkxi bvg bWQgv | NUbvi mgq
 bWQgv Gg, G, cvk Kwi qv evox vWkvi eimqvQvj | vWkŕi gvi

Z`~~W~~AvB, I Gi minZ Avgvi ~~v~~lv nBqvQ| Awng AvB, I ~~v~~w

KvMRcÎ ~~v~~b bvB| 6/4/06 Bs Zwi ~~x~~i NUbv H w`~~x~~B Awng Avqv

mvgmtp bvrvi I `βwi dRj ~~p~~~~x~~ ewj qvQ Ges evox~~x~~I ewj qvQ|

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bvg evei | evei I ~~v~~šB Avcb PvPvĐ fvwZRv wK bv Rvb bv| mZ`

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evei evox GKB crovq| Avgvi PvPvi bvg BqvK~~e~~| Avgvi PvP~~x~~

~~v~~w~~Y~~qviv Avmvgxi ~~v~~wb| evey ~~v~~w~~Y~~~~x~~ fiv evmqv weevn Kwi qv~~x~~|

evey ~~v~~w~~Y~~qviv~~x~~ weevn Kwi evi Rb` Avmvgxi evey bwiRi ev`x nBqv

Avgvi PvPv BqvK~~e~~, evey Av°vm, PvPv Awgi, beve Gi wei~~x~~

Acni ~~x~~i gvqj v Kwi qvQj | ~~v~~wK~~i~~ gvq PvPv nvR~~x~~ wQj |

vlvYqivi eev ueevn gwlbqv vlv bvB | mZ" bxx vlv Avwg Avldm
 nBx hLb ZLb evmvq hvBZvg | mZ" bxx vlvGB vlbqv Avmvqx
 Avgvx AxxKevi mvearb Kwi qmQj | 9/4/06 Bs Avldm mgq evmvq
 hvB bvB | mZ" bxx vlv 9/4/06 Bs Avwg Avldm nBx evmvq
 wMqmQj vg Ges Avgvi Dci iVMiWM Kxx | 9/4/06 Bs m"vxxj
 w`qv Avwg mvmvqxK gwii | mZ" bxx vlv Avmvqx Avgvi Dci iVM
 Kwi x Avwg ZvK m"vxxj w`qv gwii | Avmvqx Avgvi mlgx l
 Avgvxi wei x GKwJ vlvK'gv Kwi qmQj | Avmvxi vlv ggy
 NUbvi mgq NŠNo -Kxx 7g vlvxx cwoZ | 6/4/06 Bs Zwi xxi
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 nBx ev` w`evi Rb" Avgvxi mnxxwMZvq Avwg AÎ gvgj v
 Kwi qmQj | mZ" bxx vlv Avgvi vlvK H -Kxx XkvBevi Rb" Ges
 AvmvqxK ev` w`evi Rb" wgv_vfvxx gvgj v Kwi qmQj | mZ" bxx vlv
 GRvnx ewYZ NUbv Nxx bvB | mZ" bxx vlv Avmvxi vlvK'gv
 wgv_v | mZ" bxx vlv wgv_v mvflx w`j vg | ö

16. The book binder of the school named Fazlul Haque was examined as PW2 who in his examination-in-chief added the following evidence:-

০৬/৪/০৬ইং ঘটনার তারিখ। ঐ দিন স্কুলের কক্ষ প্রতিবন্ধী-দর মিটিং
 চলিত। mKvj 10.30 ঊগ্ব* Avmvgx Avgv* ewi bx* Zvi
 K*| WwKqv Avnb* e*| Avg ewi bx* WwKqv Avnb| Avgvi
 mv* Avqv mvgmp bvnvi Av*| ewi bx Avmvgxi i, XyK* Avg
 Pwj qv hvB I ` i Rvq Avqv mvgmp bvnvi _v*| ঊগ্ব* Avmvgxi
 K*i mvg* hvB Ges vL vewi bx Kv` * Kv` * Avmvgxi i, g
 nB* ewni nBqv Avm*| ewi bx Avgv* e* v Avmvgx
 Avgv* al* i D**" RovBqv awi qvQj | ewi bx Av* e* v
 Avmvgx A*K ce^nB* Avgv* Lvi vc cŃ v w` qv AvmZ | ewi bx
 gb Lvi vc Kwi qv evox Pwj qv hvq| 9/4/06 Bs ewi bx `K* Av*
 I Avmvgxi i, XyK*| cāv kK i, Qj | Avg eviŠrq
 wQjvg| wKQj|b ci ewi bx wPrKvi v| wPrKvi i'wbqv `K*i
 KgPvix wKqKiv NUbv`n* Av* Ges ewi bxi wbKU NUbv i'wb|

ewi` bx NUbv g`v`R s KigwU` e` | তারপর আসামী-ক সাময়িক

বরখাস্ত করা হয়।ö

17. During cross-examination PW2 added the following evidence:-

আমি ১২ বৎসর হই-ত স্কু-ল চাকুরী করি। প্রতিষ্ঠা লগ্ন হই-ত আসামী

স্কু-লর হেডমাষ্টার। বাদিনী ৬/৪/০৬ইং তারি-খ চিৎকার ক-র নাই।

আমি দা-রাগার নিকট জবানবন্দি দিয়াছি। আমি বাদিনী-ক -হড মাষ্টা-রর

রুম হই-ত কাদি-ত কাদি-ত বাহির হইয়া আসি-ত -দখিয়াছি এই কথা

দা-রাগা-ক বলিয়াছি কিনা ম-ন নাই। ঘটনার দিন আয়া আসামীর রু-মর

দরজায় ছিল এই কথা দা-রাগা-ক বলিয়াছি কিনা ম-ন নাই। ৬/৪/০৬ইং

তারি-খর ঘটনা বিষ-য় বাদিনী আমা-ক বলিয়াছিল। উক্ত ঘটনা দা-রাগা-ক

বলিয়াছি কি না ম-ন নাই। বাদিনী আমা-ক ব-ল যে, আসামী অ-নক দিন

ধরিয়া তা-ক খারাপ প্রস্তাব দিয়া আসি-তছিল। উপ-রাঙ কথা দা-রাগা-ক

বলিয়াছি কিনা ম-ন নাই। ৯/৪/০৬ইং বাদিনী আসামীর রু-ম গিয়াছিল GB

K_v `v`Mv` ewj qwQ wKbv g` bvB | 9/4/06 Bs ewi` bx Avgv`

e` wv Avmvgx Zv` wKQy` b ce` nB` Lvi vc cT` w` qv

AvmmZiQj | NUbvi ci ew` bx D³ K_v eX | NUbvi mgq Avmvgxi
 i, X Avmvgx Qvov Ab` vWn uQj bv | Avmvgx GKwU gvgj v Kwi qvX
 Ges vWb gvgj vq Avig Avmvgx AvuQ | KwfCDUvi wkqK me mgq
 Avmvgxi i, X _vX bv | KvR _vKX KwfCDUvi wkqK Avmvgxi
 i, X XpX | 6/4/06 Bs NUbvi ci ew` bxX hLb evivŠiq vW
 ZLb Zvi MvX vWv Lv cov uQj | ö

18. Aya Shamsun Nahar PW3 who added the following evidence in her examination-in-chief:-

ঐশটনার তারিখ ৬/৪/০৬ইং। সময় অনুমান সরতভশটভপপাল ১০.৩০
 মিঃ। H w` b Avgvxi KX 6ô vWxi Kvmi, X cZeUxi wbcv
 GKwU wguUs Pj uQj mKvj 10.30 wguvxi w` X | wguUsX wFKwUg
 vWj bv I Avigmn AXK uQj | cãvb wkqK Zvi i, X uQj Ges
 wcb dRjj nXi gva`X wZvb wFKwUgX Zvi i, X wbcv hvb |
 wFKwUxi wCQX wCQX Avig Avim | wFKwUg AvgvX eX vW
 QvTxxi nwmRiv LvZv Kgb i, g nBZ wbcv Avm | Avig nwmRiv LvZv
 wbcv Avmvgxi i, X XKvi cXwFKwUxi wPrKvi i`vb | wPrKvi i`wbcv

Avxv ZvovZvwo XyKqv vut Avmvgx wFKuUg* RovBqv awi qv
 UvbuUwb Kwi xxi Ges Avgv* vutLqv Qvwoqv vuj | wFKuUg vuj bv
 Kwi x Kwi x Avmvgxi i,g nBx ewni nBqv evox Pwj qv hvq |
 cieZx 9/4/06Bs Awg Kx Avmm | wFKuUg vuj bv H w`b
 Kx Avx | wFKuUg vWgvónxi i,g g`vRr Kigui eivei
 NUbvi wex `iLv` tLx ex | vWgvóni ex vWvvi `iKvi
 bvB Ges wFKuUg wj Lx Pvq | এই নিয়া তা-দর ম-ধ্য বাক বিতন্ডা হয়
 । সকল সাক্ষীরা রু-ম আ-স ও ঘটনা শু-ন।ö

19. In cross-examination she added the following evidence:-

আসামীৰ রুম হই-ত শিক্ষক-দর রুম ২০ হাত দু-র শিক্ষক-দর হাজিরা
 খাতা আনি-ত গিয়াছিলাম। উক্ত সময় ৮/১০ জন শিক্ষক ছিল। মাধব,
 মিজুস, তপন, তুষারসহ আ-রা ৪/৫ জন শিক্ষক-শিক্ষকরু-ম উপস্থিত
 ছিল। আমি সব ক্লা-সর ছাত্রী-দর হাজিরা খাতা দিয়া আসি। ভিকটিম-ক
 আসামী যখন জড়াইয়া ধরিয়া টানাটানি ক-র তখন ভিকটি-মর পড়-নর
 কাপড় চোপড় ঠিক ছিল। ভিকটি-মর পড়-ন বোরখা ছিল। বাদিনী

20. Night Guard of the School named Hasimuddin was examined as PW4 who added the following evidence in his examination-in-chief:-

০৬/৪/০৬ইং স্কুল মিটিং হই-ত ছিল। আমি গে-টর বাহি-র ছিলাম। মিটিং চলাকা-ল দগুরী ফজলুল হক অফিস সহকারী সেলিনা-ক ডাকিয়া হেডমাস্টা-রর রু-ম নিয়া যায়। হেডমাস্টা-র সেলিনা-ক ডাকিয়াছিল। সেলিনা-র সা-থ আয়া ছিল। অফি-স চিৎকার শুনিয়া সেখা-ন যাই। সেলিনা-র চিৎকার শুনিয়া হেডমাস্টা-রর রু-ম যাই। আয়া সামসুননাহার আমা-ক ব-ল যে, হেডমাস্টা-র সা-হব সেলিনা-ক জড়াইয়া ধরিয়াছিল। সেলিনা বাসায় চলিয়া যায়। ৯/৪/০৬ইং সকাল ১০.৩০ মিনি-ট স্কুল-ল এয়া-সম-বলি চলি-তছিল। হেডমাস্টা-রর রু-ম চিৎকার শুনিয়া -সখা-ন যাই। সেলিনা-ক জিজ্ঞাসা করি-ল -স ব-ল যে, আসামী তা-ক জড়াইয়া ধরিয়াছিল আর কিছু জানি না।ö

21. PW4 in his cross-examination added the following evidence:-

০৬/৪/০৬ইং চিৎকার শুনিয়া আমার ম-তা আর -কউ আ-স নাই। ৬/৪/০৬
ও ৯/৪/০৬ইং দুইদি-নই দগুরি ফজলু ও আয়া সামসুননাহার ছাড়া অন্য
কাউ-ক -দখি নাই। ৬/৪/০৬ইং আমি ঘটনাস্থ-ল যাইবার পর অন্য কেহ
ঘটনাস্থ-ল আ-স নাই। ৯/৪/০৬ইং আমি ঘটনাস্থ-ল যাইবার পর হালিম,
হেনা, পিযুশ ঘটনাস্থ-ল আ-স। ৯/৪/০৬ইং বাদিনী-ক বোরখা পড়া
অবস্থায় দেখি। -----৯/৪/০৬ইং সকাল ১০.৩০ মিনি-ট এ্যা-সম-বলি
মিটিং চলাকা-ল চিৎকার শুনিয়া হেড মাস্টা-রর রু-ম যাই এই কথা
আই.ও. এর নিকট বলি নাই। এ্যা-সম-বলি হেড মাস্টা-রর রু-মর ১০/১৫
হাত দু-র হয়। এ্যা-সম-বলি পিযুশ চালা-তছিল। এ্যা-সম-বলি-ত ২০০
ছাত্র ছিল। এ্যা-সম-বলি হই-ত শিক্ষকরা আ-স।

22. PW5, Halim was the headmaster-in-charge on the date of examination-in-chief in Court and he was examined as PW5 who added the following evidence in his examination-in-chief:-

০৯/৪/০৬ইং ঘটনার তারিখ। ঐ দিন স্কু-লর এ্যা-সম-বল চলি-তছিল।
সকাল ১০.০০ টার দি-ক হেডমাস্টার রু-ম চিৎকার শুনিয়া তার রু-মর

বাবান্দায় যাই। যাইয়া দেখি সেলিনা কাদাকাটি কৰি-ত-ছ এবং সে
প্ৰধান শিক্ষক-ক গালাগালি কৰি-ত-ছ। সেলিনা-ক জিজ্ঞাসা কৰি-ল সে
ব-ল -য ৬/৪/০৬ইং আসামী তা-ক কুপ্ৰস্তাব দেয় ও জাপটাইয় ধ-ৰ।
এবং আজ-কও আসামী তা-ক জাপটাইয়া ধৰিয়া-ছ। সেলিনা বিষয়টি
ম্যা-নজিং কমিটি-ক জানায়।ö

23. He proved the seizure list and his signature in the said seizure list were marked as exhibit-2 and 2/1 respectively. During cross-examination he added that he heard the occurrence dated 06.4.2006 on 09.4.2006 for the first time by adducing the following evidence:-

ö৯/৪/০৬ইং চিৎকাৰ শুনিবাব পূ-ৰ্ব আমি সহকাৰী শিক্ষ-কৰ ৰু-ম ছিলাম।

----৬/৪/০৬ইং তাৰি-খৰ ঘটনা ৯/৪/০৬ইং আমি প্ৰথম শুনি।ö

24. One Assistant Teacher named Minati Bala was examined as PW6 who added the following evidence in his examination-in-chief:-

26. One Assistant Teacher named Madhab Chandra was examined as PW7 who in his examination-in-chief added the following evidence:-

õAwg wk¶K Kgbi g nBx 6ô wxi i, g hvBevi mgq cãvb
 wk¶xi Kx¶ wj bv wlgx Avmgx wlgvónxi cvx[©]1w
 vqvx ewmqv _vKx vL | Iwi xškb w nBevi ci iwbx
 cvB wv wlgvónxi ew`bx KcŮ v` w` qmQ | 9/4/56Bs Avgiv
 10.00 Uvi w` x wc.uJ. Kxixi mvgx `vorBevi Rb` wk¶K i, g
 nBx ewni nB | GB mgq wqcb nvmgvi b Bkvi vq Avgvxi x
 WwKw q | Avgiv 2/3 Rb wk¶K wv giónxi i, gi mvgx
 eviv šq Avm | vlvb nBx Rvbvj v w` qv vLx cvBwv
 ew` bx wj bv wlgvóni x Mvj vMvij cwi x x | Kw` x x | ew` bx
 KZŮ Avmgx RZv w` qv Wvs wv qv vL | Zvici iwbx cvB
 Avmgx ew` bx RovBqv awi qv PwinqvQj | 6 Zwi xi NUbv
 KvgwJx ew` bx RvbvBx PwinqvQj vB mgq Avmgx ew` bx
 RovBqv awi x PwinqvQj | ö

27. In cross-examination PW7 added the following evidence:-

011.00 Uv nBx 11.30 wqubxi gxi I wi xpskb Kvm Avi acng |

Awig I wi xpskb Kvxi wMqwiQj vg | ewi bxi Awdm Pj vKvxi

wWgvonxi i ,g KvR Kwi x nq | Kvxi Pvc wKx _wKxi QjU

nBevi cxi ewi bxi wWgvonxi i ,g _wKxi nq | I wi xpskb

i ,g hvBqv dRj y mvgmp bnvvi dRj y wLx cvB | Gb. wR.I .

msMVb I wi xpskb weI qwU Pvj vBqwiQ | I wi xpskb Kvxi 11.00

Uvq Avi acng Ges 12.30 wqubxi w nq | wWgvonxi i ,g nBx

wKqK Kvmi ,g 20/25 MR `xi ciwxi | ewi bxi `i Lv tviLqwiQ

wKbv gxi bvB | ewi bx exi w Awig hLb `i Lv tviLxiQj vg

ZLb Avmvgx Avgvxi RovBqv axi | Avmvgxi i ,g ewi bx KZU

Avmvgxi hLb Rzv gwii x wL ZLb i ,g ewi bxi mlgx wQj |

wKqK Rinej mn Avgi v 2/3 Rb AvmvgwiQj vg | Awig `vxiMvi

wbKU Revbevi w` qwiQ | Rvbj v w` qv wL vvevi bx Rzv w` qv wW

gvoivi ✱ gwii ✱✱ GB K_v `v✱vMvi woku eij qmQ wKbv g✱
bvB|ö

28. PW8 Mustafizur Rahman was the Assistant Teacher
who in his examination-in-chief added the
following:-

ö6/4/06Bs Zvii ✱i NUbv weI ✱ Avig wQy Rvnb bv| 9/4/06Bs
Avig `K✱ Avmqv wq¶K Kgbi ,✱ eimqv wQj vg| G'v✱g✱w i
mgq QvÎxiv jই-ন `voiq| BwZZg✱" `K✱i zbk çhix
nwiQgji xb Avgv✱i ✱ WvK v¶| Avgiv çâvb wq¶✱i i ,✱ Avm|
Avmqv Rvbj v `qv v¶L vvvvj bv, çâvb wq¶K Avmvg✱ Rÿv
w`qv gwii ✱✱| çâvb wq¶✱i i ,✱ XyK✱ hvBqv v¶L v¶ `i Rv
wfZi nB✱ j vMv| `i Rvi wQUwKwb Lij qv v¶| Avgiv çâvb
wq¶✱i i ,✱ çâk Kwi | ewi`bxi `evgx Avmvg✱ Uvbqv Ab"
v¶v✱ emvBqv w`qv e✱ v¶ v¶gvi v¶/gvoivi v¶v✱ eimevi
Avakvi bvB| Zvici ewi`bxi `evgx Avgv✱i ✱ i ,g nB✱ ewni
nB✱ e✱| Avig mn Ab'iv i ,✱i evm✱ Pij qv Avm| ö

He was declared hostile by the prosecution. During cross-examination from the side of prosecution the PW8 added the following evidence:-

06/4/06 Bs Avmvgxi i ,x evi` bix* Avmvgx KZU RovBqv awi evi
K_v i`wbqvQ| mZ` bxx vvv Avmg NUbv vvvLqvQ| mZ` bxx vvv
 Avmvgx Avgvi AvZkq|ö

And during cross-examination from the defence side the PW8 added the following evidence:-

0zk` chix nvmKgvil b Avgvxi Lei vvv| cåvb wkq*xi i ,xi
` i Rvq wQUwKwb vvvLvj qv vvv evj x cwi e bv| vvvgnóvxi i ,xi
Xvkqv evi` bix* mrfviek Kvcó cwi inZ Ae`nvq vvv| evi` bxi
mvgx_gvi wCU Kx* bvB| evi` bxi vvv bviQgv* wPib| NUbvi mgq
 evi` bxi vvv Gg, G cvk Kwi qv evox* eimqvQj | H mgq bviQgvi
 wkq|KZv Kwi evi vvvRwókb wQj | `Kzxi wkq|K nB* nB*
 vvvRwókb nB* nq|ö

29. PW9 Jahibul was tendered and he was declined to cross-examine by the defence side.
30. One member of the Managing Committee named Majid was examined as PW10 who added in his examination-in-chief that he was an employee under the ministry of works and also a member of the Managing Committee. He was informed through cell phone on 9.4.2006 that there took place chaos in the school. He went at 05.00 pm and saw many people in the room of headmaster. He heard that the Headmaster touched the body of the victim accordingly a meeting was held on 15.4.2006 and the Managing committee found the accused appellant guilty and dismissed him temporarily and also took a confessional statement from him. He proved the said exhibit-3 and his signature was marked as exhibit-3/1

32. In cross-examination he added that meeting of the Managing committee was held on 09.4.2006. He did not hand over the copy of the resolution to the Investigating Officer. He found 50/60 persons in the play ground.

33. One of the members of the Managing committee named Azizul was examined as PW12 who in his examination-in chief added the following evidence:-

õ6 Zwi ❊i NUbv Avng Rvnb bv | 9/4/06 Bs Zwi ❊i NUbv Rvnb |
9/4/06 Bs mKvj 11.00 Uvi mgq wfKwU❊i vvei meR Avgv❊
Rvbnq vW ~K❊ Av❊b | Avng ~K❊ Avim | ~K❊ Avimqv
vW/gvón❊i i ❊g XyK | vW vW/gvón❊ Zvi vW❊ bv emvBqv
Ab" vW❊ emvBqv ivLv nBqv❊ | Zvi ci Avng wK¶K Kgbi ❊
hvB | vW❊ gave, Avej ❊ wRÁvmv Kwi ❊ Zviv e❊ vW Zviv wKQy
Rv❊ bv | iv¾vK I wfKwUg, Avmvgx❊ gvwi qv❊ GB K_v wK¶Kiv
Avgv❊ e❊ | cieZ❊ g'v❊Rs KwguJi m`m`❊i Lei vW |

Lei w`evi ci Zviv Avx | wfKwUxi kji o Avmvgx ex vW Zyg
`exKv³ vW | Avmvgx `exKv³ vW | Rã Zwj Kiv mB
Kwi qvQ | GBw Avgvi mjt c 2/2 | ö

He was declared hostile by the prosecution and from
the cross-examination made by the prosecution he
added the following evidence:-

öAvmvgxi vW mKvi KvM^R Avmvg mB Kwi bvB | GBw Avgvi mB |
GB `K³ Avgvi vW Kvi PvKix K³ | Avmvgx Avgvi AvZ³
nq bv | 15 Zwi * Avmvgx³ mvgwqKfv³ ei Lv⁻Z Kiv nBqvQ |
wfKwUxi Avf³ Dci Avmvgx³ ei Lv⁻Z Kiv nBqvQ | ö

34. From the cross-examination made by the defence he
made following evidence:-

öAvgvi mB vW Kwi qv w`qv | Avmvgx Avgv³ ex
bvB | wfKwUxi mvg³ `K³ i gv³ vW qvQj vg | wfKwUxi
kji xi wBKU KvMRc¹ wQj | ö

Avng ~~vw~~ ei mqv Avmgxi wei ~~ax~~ Awf~~avM~~ wj mL~~Z~~Qj vg | H
 mgq Avmgx Zvi wBKU hvBqv ~~ex~~ ~~vw~~ Zvi wei ~~ax~~ ~~vb~~ Kigui
 wBKU Awf~~avM~~ ~~vw~~ qv bv nq | Avmgx cpi vq Avgi ~~ax~~ Kcõ Zve
~~vw~~ | Bni~~Z~~ Avgi ~~ax~~ Povl nBqv Avmgx~~ax~~ RÿZv w`qv gv~~ax~~ |
~~K~~axi KgPvix I w~~ax~~K GB wei q ~~K~~j Kigui~~ax~~ Rvbvq | GB
 NUbv ewin~~ax~~ QvovBqv cwo~~ax~~ ~~ax~~ nvbix ~~vw~~KRb Qv~~ax~~Qv~~ax~~xi v ~~K~~j
 gv~~ax~~ Dcw~~ax~~nZ nq | Kigui ~~vw~~KRb w~~ax~~KuUg~~ax~~ w~~ax~~Ávmv Kwi ~~ax~~
 w~~ax~~KuUg Kigui wBKU NUbv L~~ax~~j qv ~~ex~~ Ges Avmgxi wei ~~ax~~ wj mLZ
 Awf~~avM~~ ~~vw~~ | w~~ax~~KuUg~~ax~~ Awf~~avM~~ mZ~~ax~~Zv hvPvB Gi Rb~~ax~~ mKj
 w~~ax~~K KgPvix~~ax~~ w~~ax~~Ávmv K~~ax~~ | Kigui NUbv mZ~~ax~~Zv cvq | Kigui,
Avmgx~~ax~~ w~~ax~~Ávmv Kwi ~~ax~~ ~~vw~~ Zvi ~~vw~~ ~~ax~~ exKvi K~~ax~~ Ges
~~ax~~Kv~~ax~~w³ Kigui wBKU ~~vw~~ I mB K~~ax~~ | ö

36. During cross-examination PW13 added the following evidence:-

õ~~ax~~ K~~ax~~ cõZõvj M~~ax~~nB~~ax~~ Avmgx cãvb w~~ax~~K | mZ~~ax~~ b~~ax~~ ~~vw~~ ~~K~~ax
 PvKãx Kive~~ax~~nvq Avng ~~ax~~wqZj cvj b bv Kivq Avmgx Avgi~~ax~~

wZi`ji Kwi qv`| mZ` b` w` w`KwUg Avgv` NUbvi K_v e`
 bvB| Avgvi 2 weNv Rwg Avgvi evox nB` 1 w`K` nB`| NUbvi
 w`b Awig z`q` c` w`w`Qj vg| 6/4/05 Bs w`KwUg Avgv` 1g
e` w` Avmvgx Zv` we`fb` mgq DZ` Kwi Z| 6/4/06 Bs weKvj
5/5.30 w`b` w` w` w`KwUg Avgv` NUbvi K_v e`| Awig
KwUgi w`b`KwU w`LZ Awf`M Kwi bvB| Awig H mgq c`ovq
KvD` NUbvi K_v ewj bvB| 9/4/06 Bs w`KwUg KZ` Avmvgxi
we` w` w` Lv Awf`w`i `i Lv`Z Awig w`L bvB| `xi w`e` w`
Kw` w`L| Avmvgxi w`L `exKv`³ KvMR m`f`v`Z` w` qv
nq| mZ` b` w` Avmvgx `exKv`³ w` bvB I m`Kv`³ w` mB
w` bvB| mZ` b` w` Awig NUbv Rwb bv| GRvni nv`i w` Lv|
GRvni Awig `v`Mv` w`B w`Kbv g` bvB| mZ` b` w` GRvni
w`evi w`b w`KwUg `v`vq hvq bvB| GRvni Kwi evi Av` Avmvgx
w`R` vix gvgj v Kwi qv`Qj| Awig Avmvgx Av`Q| Avmvgx w`v`
Awf`M Kwi qv`| `v`Mvi w`b`KwU Revber` w` qv`Q| 6/4/06 Bs
mKvj w`vq Kg`n` hvB I weKvj w`vq evox w`w`i qv `w` gb

Lvivc Ae⁻nvq ~~vv~~ ~~vv~~ ⁻g wPrKvi Kwi ~~x~~ Avqv mvgmp bvnvi
~~vv~~ ~~vv~~ Bqv Av~~x~~, KvgwUi vbKU Awf~~x~~ ~~x~~ ~~M~~ w⁻evi Rb⁻ wfKwUg~~x~~
 ewj qvwQj vg, 9/4/06Bs mKvj 10.00 Uvi mgq dRjy Avgvi
 evox~~x~~ Avvmqv Avgv~~x~~ msev⁻ ~~vv~~ ⁻K~~x~~ Avvmqv ~~vv~~ ~~vv~~ ⁻g
~~vv~~ ~~x~~ eimqv Kw⁻ ~~x~~ ~~x~~ | ⁻g ewj qvwQj ~~vv~~ Avvmvxi wei~~x~~
 Awf~~x~~ ~~x~~ ~~M~~ wj wL~~x~~ ~~x~~ ~~Qj~~ Ges Avvmvq Zv~~x~~ RovBqv a~~x~~, wfKwUg
 Avvmvq~~x~~ Rz⁻v gv~~x~~ | ö

37. The Investigating Officer was examined as PW14 who in his cross-examination admitted that the extra judicial confessional statement was not handed over to him during investigation. From above evidence it appears that both the occurrence dated 6.4.2006 and 9.4.2006 allegedly took place during going on the national anthem of the school at about 10.30 am.
38. The defence case, in short, as transpired from the trend of cross-examination are that the accused-

appellant is the founder Head Master of the Ghantaghar Girls High School. He has been discharging his duties as the Head Master for last 15 years with due diligence. The father of the informant is the President of the Managing Committee of the School. The younger sister of the informant is an M.A. who got her name registered for becoming a teacher. The informant and other witnesses with a view to remove the accused appellant illegally from his post / service and to get appointed the sister of informant as Head Master staged a fake drama on 9.04.06. The husband of the informant and other witnesses illegally entered into the office room of the Head Master, assaulted him physically by beating him with Sandal and thereafter the Managing Committee took up a resolution dismissing the

accused appellant temporarily from service. The accused appellant lodged an F.I.R on 13.04.2006 with the Chirirbandar Police Station being P.S Case No. 6 under section 143/447/342/323/307/ 385/386/506 of the Penal Code against the informant Selina, her husband A. Razzaque (PW13), (3) Dulal, (4) Hashim Uddin (PW4), (5) Fazlur Rahaman (PW2), (6) Most. Shamsun Nahar (PW3). It is the further case of the defence that no occurrence took place on 6.04.2006 or 09.04.2006 as alleged in the F.I.R and the case has been filed upon falsehood.

39. The case made out by the prosecution as well as considering the submissions of learned Advocates for the parties the following points for determination are essentially liable to be decided by this Court for lawful disposal of the appeal:-

- i) Whether the prosecution has been able to prove its case in the alleged manner and on the alleged date and time as stated in the F.I.R. beyond reasonable doubt?
- ii) Whether the other witnesses namely the PW3, PW4, PW5, PW6, PW7, PW12, PW13 have embellished the prosecution case making the same doubtful?
- iii) Whether it is probable on the part of the accused appellant to commit offence punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain in the alleged place, manner and time as stated in the First information reports.
- iv) Whether the impugned judgment and order of conviction is sustainable in law?

40. **Let us take up the points for determination No. 1 for decision as to whether the prosecution has been able to prove its case in the alleged manner and on the alleged date and time as stated in the F.I.R.**

(a) The First Information reports has been admitted into evidence and was marked as exhibit-1 which is a typed copy and signed by the information (PW1). The said F.I.R was lodged with the Chirirbandar Police Station on 22.04.06 at 04:30 pm. The occurrence allegedly took place from 06.04.06 to 09.04.06 continuously as it is evident from 1st page of the F.I.R. In the body of the F.I.R it has been mentioned that the accused appellant being the Headmaster of the school was offering

proposal for witnessing blue film since for last 4/5 months and ultimately gave illicit offer. Thereafter on 06.04.06 at about 10.30 am the accused-appellant directed the informant to sit on the chair beside him which is the ear marked chair for the President of the Managing Committee and she sat on the said chair. After few minutes of her sitting the accused-appellant offered her immoral proposal and at one stage caught hold her by the hands. She raised hue and cry and hearing hue and cry the PW3 Shamsun Nahar (আয়া of the school) entered into the office of accused and saw the occurrence. Thereafter she left the office room of the accused appellant and without disclosing the matter to others left the school, went to her

residence and disclosed the fact to her husband (PW13) who instructed her to submit a complaint to the President of the Managing Committee. The first information report further disclosed the fact that she (informant) spent 7.04.06 and 8.04.06 without informing the occurrence to others and attended the school on 09.04.06 and was thinking of writing a complaint to the President of the Managing Committee at about 10 am on 09.04.06. At that time the accused appellant again gave her immoral proposal and requested her not to disclose the occurrence dated 06.04.06 to others and at this she raised hue and cry and hearing hue and cry the PW3 and other teachers came to the office of the Headmaster

(accused-appellant) and came to know about the occurrence. Thereafter she made a written complaint to the President of the Managing Committee who dismissed the accused-appellant temporarily and thereafter she sent the written F.I.R. to the police station through her husband.

- (b) The F.I.R. was lodged after 16 days of the occurrence dated 06.04.06 so it could be said that the fact narrated in the F.I.R. was the only occurrence and there took place no other occurrence. As per the F.I.R. the only occurrence took place on 06.04.06 at about 10.30 am inside the office of Headmaster of the Ghantaghar Adarshaya Balika Bidyalaya while the accused appellant being the

Headmaster of the school caught hold the Office Assistant (PW1) by his hands offering her immoral proposal. Thereafter she (PW1) waited for 3 (three) days without disclosing the matter to others but to her husband and attended the school normally and as usually. On 09.04.06 about 10.00 am the accused simply gave her immoral proposal and requested her not to disclose the occurrence dated 06.04.06 to others. Save and except offering immoral proposal and requesting the informant not to disclose the occurrence dated 06.04.06 there took place no other occurrence on 09.04.06 as per the F.I.R cae. As per the F.I.R. case the PW3 was the sole witness of the occurrence dated 06.04.06. After receiving

immoral proposal on 09.04.06 she raised hue and cry and the PW3 and other teacher`s came to the office of the Headmaster and came to know the occurrence. Section 10 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and 2003 as well reads as under:-

৓২০। -যৌন পীড়ন, ইত্যাদির দন্ডঃ- যদি কোন ব্যক্তি অবৈধভাবে তাহার -যৌন কামনা চরিতার্থ করার উদ্দেশ্যে তাহার শরীরের যে কোন অংগ বা কোন বস্তু দ্বারা কোন নারী বা শিশুর যৌন অংগ বা অন্য কোন অংগ স্পর্শ করেন বা কোন নারীর স্তন্যপান করান তাহা হইলে তাহার এই কাজ হইবে যৌন পীড়ন এবং তজ্জন্য উক্ত ব্যক্তি অনধিক দশ বৎসর কিন্তু অনূন্য তিন বৎসর সশ্রম কারাদন্ড দন্ডনীয় হইবে এবং ইহার অতিরিক্ত অর্থাৎ দন্ডনীয় হইবে।

- (c) Upon perusal of the contents of section 10 of the Ain it appears that to constitute an offence

punishable under section 10 of the Nari-o-shishu Nirjatan Daman Ain the following are the essentials:-

- i) There should be an illegitimate desire to fulfill sexual need.
- ii) To fulfill the said desire the accused should touch any organ of a woman or a girl of any age by hands or by any substance.

Or

- iii) The accused commits sexual intercourse.
- (d) The F.I.R disclosed that on 06.04.06, the accused made an offer to the informant with a view to commit immoral sexual act at 10.30 am inside his office room and thereafter caught hold her by the hands. So the case as disclosed

in the first information report about the occurrence dated 06.04.2006 comes within the essentials for constituting offence punishable under section 10 of the Nari-o-Shishu Nirjatan Daman Ain, 2000. The occurrence dated 09.04.06 as disclosed in the F.I.R. does not come within any of the essentials to constitute offence punishable under the said section:

- (e) Now let us see as to whether the prosecution has been able to prove the occurrence dated 06.04.2006 to constitute offence under section 10 of the Ain, 2000.

The PW1 (informant) in her examination in chief simply added the following:-

০০৬/০৪/০৬ তারিখ-ইং অনুমান সকাল ১০.৩০ টার সময় আসামী
তার অফিস-আমা-ক ডাকিল-আমি তার চেম্বা-র যাই। আমি তার

চেন্না-র বসি-ল সে আমা-ক কুপ্রস্তাব দেয় এবং এক পর্যা-য় আমা-ক
 জড়াইয়া ধ-র । তখন আমি চিৎকার করি-ল আয়া শামসুন নাহার ক-ক্ষ
 প্র-বশ করিয়া ঘটনা দে-খ। আমি অফিস হই-ত বাহির হইয়া বাড়ী
যাইয়া স্বামী-ক ঘটনা বলি। স্বামী ঘটনার বিষয় স্কুল কমিটি-ক জানায়।ö

In cross-examination she added the following
 evidence

Ö-হডমাস্টা-রর রু-ম কম্পিউটার আ-ছ এবং একজন কম্পিউটার
শিক্ষক আ-ছ। স্কুল আমার জন্য আলাদা কোন রুম নাই আমি
হেডমাস্টা-রর রু-ম বসিয়া কাজ করি। Avgvxi ~Kjx cŕq 200/250
 Qvŕx Avx| 9.30 wgvbxi ci nBx Qvŕxiv ~Kjx Avmv i i, Kx
 Ges 10.00 Uvi cxB vWgvónxi AwdmKŕ| msj M<gvx RvZxq
 msMxZ vvx wC,ŕU nq 10/15 wgvbU| Zvi ci Qvŕxiv hvi hvi Kvx
 hvq| 10.30 wgvbxi Kim i i, nq|ö

The PW1 further admitted in his cross-examination
 that the accused appellant is her uncle by relation
 adding the following evidence:-

õAavgvi eveni erox I Avmvgxi eveni erox GKB cvoiq | Avgvi
 Pvpvi bvg BqvKæ | Avgvi Pvpv ~~vuv~~Yqiv Avmvgxi ~~vub~~ | evel
~~vuv~~x~~x~~ fvj evmqv weevn Kwi qv~~x~~ | evel ~~vuv~~Yqiv ~~v~~x~~x~~ weevn Kwi evi
Rb` Avmvgxi evel bwiRi ev`x nBqv Avgvi Pvpv BqvKæ, evel Av°vm,
Pvpv Avvgi, beve Gi wei~~x~~ Acni~~x~~i gvgj v Kwi qvQj |
~~vuv~~KÍ gvq Pvpv nvR~~x~~ wQj | ö

The PW1 further admitted in her cross-examination
 that the daughter of the accused was a student of
 class VII of that school adducing the following
 evidence:-

õAvmvgxi ~~vuv~~ ggyNUbvi mgq NŠiNo `K~~x~~ 7g ~~vuv~~x~~x~~ cvoZ |
Bs 6/4/06 Zwi~~x~~i ci Avvg wbcvgZ Avdm Kwi qvQj | ö She
 further added õ9/4/06 Bs m`v~~x~~j w`qv Avvg Avmvgx~~x~~ gwii |
õõõõ Avmvgx Avgvi mlgx I Avgv~~x~~i wei~~x~~ GKwU ~~vuv~~KÍ gv
Kwi qvQj | ö

- (f) The PW2 Fazlul Hoque being the Daptari of the school in his examination-in-chief added that the occurrence dated 06.04.2006 took place in presence of PW3 by adducing the following evidence:-

০৬/৪/০৬ইং ঘটনার তারিখ। এই দিন স্কুলের কক্ষ
 প্রতিবন্ধী-দর মিটিং চলিত। ১০.৩০ ঘটনাক্ষণে
 ঘটনাক্ষণে Zvi K... W... A... e... | A...
 ঘটনাক্ষণে W... A... | A... m... A... b...
 A... | ঘটনাক্ষণে A... i... X... A... P... q... h... B... I...
 i R... A... m... b... v... | ö

In cross-examination this PW2 adduced evidence which are quite contradictory with the prosecution case with regard to the occurrence dated 06.4.2006 adducing the following evidence:-

ওঁআমি ১২ বৎসর হই-ত স্কু-ল চাকুরী কৰি। প্রতিষ্ঠা লগ্ন হই-ত
আসামী স্কু-লর হেডমাষ্টার। বাদিনী ৬/৪/০৬ইং তারি-খ চিৎকার ক-র
নাই।ö

(g) With regard to the time of occurrence the PW2
in his examination-in-chief as well as in his
cross-examination contradicted the prosecution
case. In his chief he added- ০৬/৪/০৬ইং ঘটনার
তারিখ। এই দিন স্কু-লর ক-ক্ষ প্রতিবন্ধী-দর মিটিং চলি-ত।
----- ংগু।স ~~ব্ব~~ Avmvgxi K~~ক~~i mvg~~ক~~ hvB Ges ~~ব্ব~~
~~ব্ব~~ew`bx Kv` ~~ক~~ Kv` ~~ক~~ Avmvgxi i,g nB~~ক~~ ewni nBqv
Avm~~ক~~~~ক~~।ö

In cross-examination the PW2 added ০NUbvi w`b
câZeÜx ংগু।স Gi c~~ক~~©c~~ক~~ ~~ক~~ Kv~~ক~~i ~~ব্ব~~ Kj nBqmwQj ~~ক~~%~~ক~~
K~~ক~~m nq bvB| ~~ক~~~~ক~~~~ক~~~~ক~~ ংগু।স i i , nBevi AvaN~~ক~~ ci Avmvgx
ew`bx~~ক~~ Ww~~ক~~Kqv Av~~ক~~b~~ক~~ ~~ক~~e~~ক~~| Avig I Avqv ংগু।স i i ~~ক~~~~ক~~
wQj vg| Avmvgx mvgmp bvnvi ~~ক~~ Ww~~ক~~~~ক~~ ~~ক~~e~~ক~~ bvB| QvÎ QvÎ x
A~~ক~~~~ক~~B ংগু।সG wQj | ংগু।স G g`v~~ক~~Rs K~~ক~~ig~~ক~~Ui mfv~~ক~~iwZ,
mnmfv~~ক~~iwZmn A~~ক~~~~ক~~B wQj |ö As per the evidence of
PW1 the National assembly held at 10 am.

Thereafter the parade took place for about 15 minutes and the class started after 10.30 am. As per the case of First Information Report the occurrence took place at 10.30 am on 06.4.2006 but as per the evidence of PW2 the occurrence took place after half an hour of the roll call was held. This PW2 admitted in his evidence that he was an accused in a case filed by the appellant. The PW2 if believed the time of occurrence varied at least one hour later than that of the time as mentioned in the FIR.

- (h) The PW3 Shamsunnahar being Aya of the school added in her examination-in-chief that the occurrence took place at 10.30 am on 6.4.2006 but in cross-examination she added that the occurrence took place after half an hour of the roll call was held. So the time of occurrence as stated by the prosecution was not supported by the PW3.

This PW3 added in her examination-in-chief
 öAvmg nvmRiv LvZv vrbqv Avmvgxi i XKvi cwfKwUgi
 vPrKvi i vrb| vPrKvi i vrbqv Avxv ZvovZvno XyKqv vvl
 Avmvgx wfkUlgx RovBqv awi qv UvbyUvnb Kwi xxi Ges
 Avgv vvlqv Qvwoqv vvl|ö In cross-examination
 she added that öভিকটিম-ক আসামী যখন জড়াইয়া ধরিয়া
 টানাটানি ক-র তখন ভিকটি-মর পড়-নর কাপড় চোপড় ঠিক
 ছিল। ভিকটি-মর পড়-ন বোরখা ছিল।ö This PW3 further
 added in her cross-examination that she did not
 disclose the occurrence dated 06.4.2006 and
 9.4.2006 to the Managing Committee adding-
 ö৬/৪/০৬, ৯/৪/০৬ ইং তারি-খর ঘটনা বিষ-য় কমিটির নিকট
 কিছু বলি নাই।ö

- (i) The PW4 Hasimuddin being the night guard of the school in his examination-in-chief added that the occurrence dated 6.4.2006 took place in presence of PW3 adducing the following evidence- ö৬/৪/০৬ইং স্কু-ল মিটিং হই-ত ছিল। আমি গে-টর বাহি-র ছিলাম। মিটিং চলাকা-ল দপ্তরী ফজলুল হক অফিস সহকারী সেলিনা-ক ডাকিয়া হেডমাস্টা-রর রু-ম নিয়া যায়।

হেডমাষ্টার সেলিনা-ক ডাকিয়াছিল। সেলিনার সা-থ আয়া ছিল।
 অফি-স চিৎকার শুনিয়া সেখা-ন যাই। সেলিনার চিৎকার শুনিয়া
 হেডমাষ্টার-রর রু-ম যাই। আয়া সামসুননাহার আমা-ক ব-ল যে,
 হেডমাষ্টার সা-হব সেলিনা-ক জড়াইয়া ধরিয়াছিল।ö This
 PW4 departed far away from the prosecution
 case in his examination-in-chief adducing
 ০৯/৪/০৬ইং সকাল ১০.৩০ মিনি-ট স্কু-ল এ্যা-সম-বলি
 চলি-তছিল। হেডমাষ্টা-রর রু-ম চিৎকার শুনিয়া -সখা-ন যাই।
 সেলিনা-ক জিজ্ঞাসা করি-ল -স ব-ল যে, আসামী তা-ক জড়াইয়া
 ধরিয়াছিল আর কিছু জানি না।ö although the
 prosecution case does not disclose any such
 occurrence took place on 09.4.2006 at 10.30
 am. This PW4 in his cross-examination
 contradicted the case of PW1, PW2 and PW3
 adducing ০৬/৪/০৬ইং চিৎকার শুনিয়া আমার ম-তা আর
 -কউ আ-স নাই।ö This PW4 made the credibility of
 other witnesses shaken in adducing ০৬/৪/০৬ ও
 ৯/৪/০৬ইং দুইদি-নই দগুরি ফজলু ও আয়া সামসুননাহার ছাড়া
 অন্য কাউ-ক -দখি নাই। ৬/৪/০৬ইং আমি ঘটনাস্থ-ল যাইবার
 পর অন্য কেহ ঘটনাস্থ-ল আ-স নাই।ö although the PW5

claimed to have gone to the place of occurrence and heard the occurrence from PW1.

- (j) The PW6 Mini Ara Bala being an Assistant Teacher made the prosecution case doubtful by adducing in her examination-in-chief ଓନ/୪/୦୬ଇଂ
 सकाल १०.१५ मिन-टर समय स्कूल पि.टि. चलि-तहिल। ए समय
 आमरा बारान्दाय हिलाम। हेडमास्टा-रर अफि-स तखन शोर-गाल
 गुनि। आमरा अफि-स याइया ~~खिल ववज by ववगवोवि~~
~~Mvj vMwj cwi~~ | ew` bxi wbKU i`wb ~~v Avmvgx Zv~~
~~Kc0 v w` qv RovBqv awi qwQj~~ | ö although no such
 occurrence of RovBqv aiv took place on
 9.4.2006. In cross-examination the PW6 added
 that the occurrence took place during the time
 of parade training.

- (k) The Office Assistant Madhab Chandra was examined as PW7 who in his examination-in-chief added that the occurrence dated 09.4.2006 was taken place at 10.00 am which is contradictory with the prosecution case.

along with the informant and her husband PW13 were present in the office room of Headmaster at the time of alleged giving immoral proposal to PW1 by the accused appellant.

This PW8 was declared hostile. In the case of *Abed Ali Mia vs Islam Miah*, 12 DLR 578 it was held "It should be remembered that a witness who is unfavourable is not necessarily hostile." In the case of *S.M. Faruque vs. state*, 28 DLR 192 it has been held "Evidence of a hostile witness is not necessarily untrue nor should be treated as hostile simply because he does not support the prosecution case in all respect."

- (m) PW9 was tendered for cross-examination but the defence did not cross-examine him. PW10 Majid being a member of the Managing Committee of the school is a hearsay witness and did not adduce any evidence about the

alleged occurrence. PW11 named Bhupen Mohan being a member of the Managing Committee did not adduce any evidence about the occurrence dated 6.4.2006. with regard to the occurrence dated 9.4.2006 he added that he visited the place of occurrence after the occurrence was taken place and came to know that the accused (headmaster) had touched the body of the victim (PW1) although that is not the prosecution case.

- (n) PW12 Azizul was the President of the Managing Committee of the school on 6.4.2006 who in his examination-in-chief added *õ6 Zwi ❄i NUbv Awng Rmbbv|ö* although the PW2 added in his cross-examination *মিটিং এ ম্য-নজিং কমিটির সভাপতি সহসভাপতি সহ অ-ন-কই ছিল।* With regard to the time of occurrence he added that at about 11.00 am on 9.4.2006 he was called on by Shabuj, the husband's brother of PW1 and he attended the school and found that

the headmaster was compelled to sit on another chair. He asked to Madhab (PW7) and Abul Hossain to let him know about the occurrence but they replied that they did not know anything adducing the following evidence-

09/4/06 Bs mKvj 11.00 Uvi mgq wfKilUgi vvi meR
 Avgv* Rvbvq vw ^K* Avxab | Avig ^K* Avim |
 ^K* Avimqv vW/gvónxi i ,g hvB | ---- vzv* gave,
 Avej * wRAvmv Kwi * Zviv e* vw Zviv wKQy Rv* bv |
iv³4vK (PW12) I wfKilUg Avmvgx* gwii qv* GB K_v
wk¶Kiv Avgv* ewj qv* |ö The PW12 was declared
 hostile. In cross-examination by the
 prosecution he added that he had no
 relationship with the accused and his daughter
 is a teacher of the school. The PW12 further
 added in his examination-in-chief that he was
 called for by the other members of the
 Managing Committee and a written paper was
 taken from the accused and he signed on the
 seizure list. In cross-examination he admitted

that he did not put his signature upon the paper taken from the accused and his signature was taken forcibly.

- (o) The victim's husband Abdur Razzaque was examined as PW13 who in his examination-in-chief added that he had heard the occurrence dated 6.4.2006 from his wife in the evening to the effect- "Abgvyb 10.30 ugubxiti w' x' Avmvgx Zv'x Kix' WmKqv wbyv Zv'x Kc'v' v'w' Ges GK ch'x Zv'x RovBqv ax'|ö With regard to the occurrence dated 9.4.2006 he added "9/4/06 Bs Abgvyb 10/10.30 ugubx' -K'xi `Bix dRjy Avgvi evox'x Avmivqv Avgv'x msev` v'w' v'w' -K'xi mgm'v nBqv'x Avciwb Av'xb| Avig -K'xi hvBqv v'w' v'w' w'fKilUg Zvi v'w'x' eimqv Kw'` x'x' Ges w'k'K'xi G'x'x'x'v'f'v'x v'w'x' cvB| w'fKilUg Avgv'x e'x' v'w' Avig v'w'x' eimqv Avmvgxi wei ,x' Avf'x'vM wj wL'x'vQj vg| H mgq Avmvgx Zvi w'vKU hvBqv e'x' v'w' Zvi wei ,x' v'w' Kw'vUj w'vKU Avf'x'vM

avivi Revben ŠZ 6/4/06 Zwi X cŕZeÜxXi wguUs
 Pj uQj ev wvewmXQj eX bvB| wguUs Pj vKvX dRjj
 nKX `Bix Xwj bvX wWgvóvi WvKvi K_v 161 avivi
 RevbenÜZ eX bvB| GRvni Kvi x wPrKvi i X 9/4/06
 Zwi X wWgvóvi i X hvl qvi K_v 161 avivi Revben ŠZ
 eX bvB|ö The PW14 further admitted in his
 cross-examination omv¶x gave PŠ (PW7) 161
 avivi Revben ŠZ eX bvB wv GRvni Kvi xi RZv w X
 wW gvóvi X gwii X X | Avmvgx wbxri wv mXKvi
 KXQj Dnv mv¶x gvae PŠ 161 avivi Revben ŠZ eX
 bvB|ö The PW14 further admitted in his cross-
 examination that ōfeb vjnb ivq (PW11) Gi 161
 avivi Revben Š 20/5/06 vKwKwi | Avmvgx wfKwUgX
 RvX aivi K_v 161 avivi Revben ŠZ eX bvB|ö

41. I have made a very careful scrutiny of the evidences of the PWs. As per the evidence of PW2, PW3 and PW4 the victim Selina (PW1) at 10.30 am on 6.4.2006 was in a meeting of cŕZeÜx students held in

the room of class VI (six) and she was called on by the accused in his room through PW2 Fazlul. In response to the said call the PW1 attended the office of headmaster (accused) and the PW3 followed her. The statement made in the FIR does not support this part of prosecution case. As per the FIR statement the informant was in the office room of the accused at 10.30 am on 6.4.2006 and she was given immoral proposal and was caught hold by the hands by the accused. Moreover the PW14, the Investigating Officer of the case in his cross-examination admitted the following ~~originals~~ Pj vKv~~x~~ dRjj nK~~x~~ (PW2) `Bix ~~vuj~~ bvx~~x~~ ~~vW~~ gvóvi Wkvi K_v 161 avivi Revbet~~Sz~~ ex~~x~~ bVB|ö The PW4 Hasimuddin although in his examination-in-chief added that during continuation of the meeting on 6.4.2006 the PW2 called for the

victim as he was directed by the headmaster but the PW14 investigating officer in his cross-examination admitted on 4/5/06 Zwi * mvqjx nvmme Dwi *i Revbewš vKW© Kwi | mvqjx nvmme Dwi b 161 avivi Revbewš 6/4/06 Zwi * cüzewš i wguUs Pj wQj ev wvewmš wQj Zv eš bvB | wguUs Pj vKvš dRjj nKš ZBix wvj bvš WvKvi K_v 161 avivi Revbewš eš bvB|ö From the discussion as made above the evidence of PW2, PW3 and PW4 that Selina (PW1) was in the meeting and she was called on by the accused through PW2 and thereafter the PW3 followed the PW1 is nothing but subsequent embellishment of the prosecution case as the FIR is quite silent about the said fact. The FIR was lodged after 16 days of the occurrence dated 06.4.2006. Had the PW1 been in the meeting dated 6.4.06 at 10.30 am and had she been called on by the headmaster

Zwi ✱ wPrKvi K ✱ bvB | ö This very piece of evidence has made the whole prosecution case dated 06.4.06 doubtful. The PW8 is a teacher of the school who in his examination-in-chief did not support the prosecution case dated 06.4.2006 adding ö6/4/06Bs

Zwi ✱i NUbvi wEl ✱ Awig wKQyRwbbv | ö

43. The most important witness of the prosecution is the PW3 who was accompanying the PW1 before the occurrence and at the time of occurrence dated 06.4.2006 she was outside the gate of the office of headmaster. Said PW3 in her cross-examination admitted that she did not disclose the occurrence to the Managing Committee adducing ö6/04/06, 9/04/06

Bs Zwi ✱i NUbvi K_v KwguUj wKQyewj bvB | ö Although as per the evidence of PW2 the President, Vice-President was present in the cÖZewf meeting on

6.4.2006 Moreover the PW5 is the headmaster in charge of the school who in his cross-examination admitted the following **৓ৃ/৔/৓ৃইং তারি-খর ঘটনা, ৓/৔/৓ৃইং** **আমি প্রথম শুনি।**ö It is quite incredible to believe that a heinous offence was committed by the Headmaster of the school on 6.4.06 at 10.30 am catching hold of a female Office Assistant for immoral purpose, who raised hue and cry but the Headmaster in charge of the school was unaware of the occurrence. It is also difficult to believe that the victim raised hue and cry on 6.4.06 and that was not heard by the PW2, who was nearer to the place of occurrence. Taking attempt for committing sexual offence by the Headmaster, during school hour, is not a simple occurrence and the fact of commission of such heinous offence would remain beyond the knowledge of the

Headmaster in charge (PW5) is not believable. The PW6 is also an Assistant Teacher of the school who also added in his cross-examination that he heard the occurrence dated 6.4.06 on 9.4.06. It is also difficult to believe that the PW8 being an Assistant Teacher of the school did not know the occurrence dated 6.4.06 who added in his chief 6/4/06Bs Zwi ❖i NUbv weI ❖ Awg wKQy Rvwb bv|ö The PW10 and PW11 being members of the Managing Committee did not adduce any evidence in support of the occurrence dated 6.04.06. The PW12 is the President of the Managing Committee who in an important prosecution witness in the case. The PW12 in his evidence admitted that he did not know the occurrence dated 6.4.06 adducing ö6 Zwi ❖i NUbv Awg Rvwbv|ö although the Pw2 claimed that the Pw12 was present in the school on

06/04/06. It is difficult to believe that a founder headmaster of a girls high school would commit an sexual offence in broad day light at about 10.30 am while the school was open and 200/250 students were present in the school and the victim being the office assistant of the school and also being related with the Headmaster as মামা ভাগিনী raised hue and cry but that fact was not known to the other teachers of the school as well as to the President of the Managing Committee. If the evidence of PW1, PW2, PW3, PW4, PW5, PW6, PW7, PW8, PW10, PW11, PW12 and PW13 are read together side by side it inspired me to come to a decision that the prosecution has failed to prove the occurrence dated 6.4.06 beyond doubt.

44. **Let us take up the point No. ii for discussion and consideration as to whether the prosecution witnesses have embellished the prosecution case creating the some doubt?**

As per the FIR case the accused appellant on 9.4.2006 at about 10.00 A.M gave immoral proposal to the PW1 and requested her not to disclose the occurrence dated 6.4.06 to others and at this she raised hue and cry and PW3 along with other teachers came to the place of occurrence. During cross-examination the PW1 added that she had beaten the accused on 9.4.2006 by her sandal. The PW7 in his cross-examination added that the PW1 assaulted the accused appellant by her sandal by beating adducing ó õAvmvgxi i ,xg evw` bx KZU AvmvgxX hLb RzV gwvi X vWL ZLb i ,xg evw` bxi m/gx wQj |ö This evidence signifies that

but the FIR is silent about the said fact. The President of the Managing Committee of the School as PW12 added in his cross-examination ~~विवेक~~ मयंकवि किमर अंग मन कि बिबीö During examining the accused appellant under section 342 of the Code of Criminal Procedure the accused's attention was not drawn upon that extra judicial confessional statement. There is no reference of extrajudicial confessional statement in the first information report. Had there been any statement written and signed by the accused appellant on 9.4.06, the FIR lodged on 22.4.06 would have certainly contained that fact of statement in the body of the FIR. Extra judicial confessional statement, written by the accused appellant is an importance piece of evidence. Since the first information report as well as the Investigating Officer's (PW14)

evidence did not support the existence of the exhibit-3 and since the examination of the accused appellant under section 342 of the Code of Criminal Procedure does not bear any reference of the said exhibit-3, it could be presumed that the prosecution with a view to embellish the prosecution case has made out a case of beating the accused appellant by the victim by her sandal on 9.4.2006 and also embellished the case by procuring exhibit-3. Embellishment of a prosecution case makes the whole case doubtful. The fact of assaulting the accused appellant by sandal on 9.4.2006 and bringing the fact of extra judicial confessional statement at the trial for the first time has made the prosecution case very very doubtful and made a departure from the FIR case. In the case of State óv- Azharul Islam, 3 BLD 387 it has been held

Material omission in the FIR and in the statement to the Investigating Officer makes their substantive evidence unreliable and the accused were acquitted. In the case of Gopal Chandra vs- State, 9 BLD 358, Nawsher Mollah vs- State, 11 BLD (HD) 295, 39 DLR 16 it has been held that if the witnesses depose differently on essential particulars of the FIR they are liable to be disbelieved. When the prosecution has a direct or positive case, it must prove the whole of it. Partial affects the credibility of the witness while a complete departure from the FIR case robs of their credibility.

45. I have gone through the examination made to the accused appellant under section 342 of the Code of Criminal Procedure. Upon perusal of the said examination it appears that all the incriminating

evidence and the circumstances appearing against the accused appellant was not brought to his notice and he was not asked to give his own explanation as regards those evidence and circumstances. The accused appellant was not even asked about the alleged extra judicial confessional statement (exhibit-3). It is now well settled that incriminating evidence or the circumstances sought to be proved by the prosecution must be put to the accused during examining an accused under section 342 of the Code of Criminal Procedure failing which there causes miscarriage of justice. This view finds support from the case law of state óv- Manu Miah, 54 DLR (AD) 60 Abu Taher óv- State, 1991 BLD (AD) 81.

From the facts and circumstances and the discussions as made above I have reason to believe that the

prosecution hopelessly failed to prove the case beyond doubt and by embellishing the case and making a departure from the FIR case and non-examining the accused appellant properly under section 342 of the Code of Criminal Procedure there has been caused a miscarriage of justice in convicting the accused appellant relying upon exhibit-3 which was inadmissible in evidence. The Tribunal measurably failed to discuss and consider the important and vital evidences of the prosecution witnesses.

46. **Let us take up issue No. iii, whether it is probable on the part of the accused appellant to commit offence punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 in the alleged**

place of occurrence and in the alleged manner as stated in the FIR.

The place of occurrence is the office of Headmaster of the Ghantaghar Adarsha Balika Bidhalaya. The time of occurrence is 10.30 A.M while national anthem was going on or soon after finishing the national anthem. It is not the case of the FIR that the accused petitioner with a view to fulfill his evil desire without shutting the door of his office caught hold of the victim. As per the first information report the accused was aged about 39 years old on the date of lodging FIR and the victim was aged about 33 years. From the evidence of PW1 we have seen that the accused appellant's sister was married with the father of the victim. We have also seen from the evidence of PW13 (husband of PW1) that the accused is the

founder Head master of the school. It is also admitted by the PW1 that the accused's daughter is a student of class vii of the school. It is also admitted by the prosecution witness that 200/250 students were present in the school on 6.4.2006. It is also in the evidence that accused appellant, the computer teacher and the victim (PW1) usually sit in the same office room. On 6.4.2006 and 9.4.2006 the alleged immoral proposal was offered to the Pw1 keeping the door of the office room open and keeping the PW3 outside the door. We have also got from the evidence of PWs that the national anthem on 9.4.2006 was being taking place only at a distance of 20 cubits away from the office room of the Headmaster. Whether it is humanly possible on the part of the founder Headmaster of the school to catch hold of a

33 years old woman who is related to the accused as like as daughter as the sister of the accused was married to the father of the victim and keeping open the door of the office for allowing others to see the occurrence and to be an witness to the occurrence. The school was open on both the days. The teachers who were examined as PWs mostly contradicted the occurrence as stated in the FIR and some of them have denied the occurrence dated 6.4.2006. Moreover the witnesses saw the dress of the victim in order just after the alleged occurrence. usually one after being a victim of sexual attempt would put her whole strength to get released and there would be succffling between the victim and offender and the dress of the victim is not supposed to remain in order. It is the usual tendency of sex-offender that they would shut

the door of the room and thereafter would take attempt for sexual offence. It is also not practicable that a founder headmaster, aged about 39 years would take attempt to commit sexual offence during school hour. In view of the above I am led to hold that it was not probable or practicable on the part of the accused appellant to commit any offence punishable under section 10 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 or in the alleged manner and in the alleged place, time and date as stated in the FIR.

47. Whether the impugned judgment and order of conviction is sustainable in law?
48. From the facts and circumstances and the discussion made above it has been proved beyond doubt that the prosecution hopelessly failed to prove the case punishable under section 10 of the Nari-O-Shishu

Nirjatan Daman Ain. Accordingly the appeal is allowed and the impugned judgment and order dated 14.10.2009 passed by the Nari-O-Shishu Nirjatan Daman Tribunal, Dinajpur in Nari-O-Shishu Nirjatan Case No. 276 of 2009 is set aside. The accused appellant is found not guilty of the offence punishable under section 10 of the said Ain and he is acquitted from the charge leveled against him. He is therefore discharged from his bail bond as he is on bail by order of this Court dated 26.10.2009.

49. The office is directed to send down the lower Court record.