

Present:

Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Misc. Case No. 10245 of 2005

Nobendu Das alias Ronju

... Petitioner

-Versus-

The State

... Opposite Party

No one appears for the petitioner

Mrs. Syeda Rabia Begum, A.A.G.

õ for the opposite party

Judgment on 29.2.2012

Md. Ruhul Quddus, J:

This Rule at the instance of a convict was issued on an application under section 561A of the Code of Criminal Procedure for quashment of judgment and order dated 26.5.2003 passed by the Nari-o-Shishu Nirjatan Damon Tribunal, Moulvibazar in Nari-Shishu Nirjatan Case No. 48 of 2003 convicting the petitioner under section 10(2) of the Nari-o-Shishu Nirjatan Damon (Bisheh Bidhan) Ain, 1995 and sentencing him thereunder to suffer imprisonment for life.

Informant, Sanjoy Kumar Das (P.W.5) lodged an *ejahar* with Moulvibazar Police Station on 22.4.1998 against the petitioner and two others bringing allegation of torturing his aunty Shipra Rani Das for dowry on 19.4.1998.

Police recorded the case as Moulvibazar Police Station Case No.16 dated 22.4.1998 and after investigation submitted charge sheet on 8.12.1998 against all the accused under sections 10(2) and 14 of the

Nari-o-Shishu Nirjatan Damon (Bisheh Bidhan) Ain, 1995 (hereinafter called the Ain).

The case, after being ready for trial, was sent to the Nari-o-Shishu Nirjatan Damon Tribunal, Moulvibazar and was registered as Nari-o-Shishu Nirjatan Case No.5 of 1999. Thereafter it was sent to the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Moulvibazar for hearing and disposal. Learned Judge of Tribunal No.2 framed charge against the petitioner in absentia under section 10(2) of the Ain and two others under sections 10(2) and 14 by order dated 2.7.2000 and proceeded with trial. In course of trial seven prosecution witnesses were examined. At that stage, the learned District and Sessions Judge, and Senior Nari-o-Shishu Nirjatan Damon Tribunal, Moulvibazar by his order dated 9.2.2003 transferred the case for disposal in his own Court.

Prosecution examined nine witnesses including the Informant, Investigating Officer, Victim and the Doctor who examined her immediately after the occurrence. Of them P.W.5 Sanjoy Kumar Das, the informant stated that at the time of occurrence he was at his house. He heard about the occurrence firstly from his friend Shahin (P.W.2) and secondly from Ranjit Kumar Das (P.W.1). He along with his two friends namely, Kanai Pal (P.W.4) and Shahin rushed to the house of occurrence and saw the victim lying on the ground with abrasive injuries on her person. On inquiry she disclosed that the petitioner had demanded dowry of Taka 50,000/- (fifty thousand) to bring from her mother and as she declined, he (petitioner) along with the two co-accused beat her. The informant, with the help of a local Commissioner named Yahia (P.W.3), took her for treatment at Moulvibazar hospital.

This P.W.5, in his petty long deposition, did not explain as to why there was delay of three days in lodgment of the *ejahar*.

P.W.6, Victim Shipra Rani Das stated that on the date of occurrence, the petitioner demanded dowry of Taka 50,000/- (fifty thousand) only to bring from her mother. As she refused, all the three accused beat her. She did not specifically mention any overt act on the part of the petitioner or any other accused.

P.W.7 Dr. Padmo Mohan Sinha, who examined the victim at Moulvibazar hospital, stated that he found some bruises on her person. He described the said injuries to be simple in nature and proved the medical certificate and his signature thereon as exhibits 2 and 2/1 respectively. In cross-examination he stated that on 19.4.1998 he did not admit the victim at hospital

P.W.1 Ranjit Kumar Das stated that he saw the petitioner to beat the victim with a stick and also to kick her. In cross-examination he stated that he is a neighbour to the petitioner having no good relation with him. P.W.2 Shahin Khan also claimed himself as an eyewitness to the occurrence and stated that at the relevant time, he was going by the side of the house of occurrence and heard the victim to cry. He rushed to there and saw the petitioner to throttle the victim, while co-accused Runu Das kicked her. In cross-examination he stated that he did not see Mr. Ranjit (meaning P.W.1) on the spot.

Other prosecution witnesses, namely, P.Ws.3-4 Shahin Khan and Kanai Lal are two hearsay witnesses. They supported the prosecution case to the extent that immediately after commission of the occurrence, they went to the petitioner's house on different pretexts, when the victim narrated them the manner of occurrence in details. P.W.9 Arshad Ullah,

another hearsay witness stated that he saw Asid Mia, Balai and Shahin to take the victim to the house of Advocate Sunil, wherefrom she was taken to hospital.

P.W.8 Aftab Uddin Chowdhury, one of the Investigating Officers stated that he conducted further investigation of the case in compliance with an order of the Tribunal. He had examined the victim under section 161 of the Code of Criminal Procedure on 6.12.1998, when she stated that in course of an altercation arising out of feeding their child, her husband beat her.

After conclusion of trial, learned Judge of the Tribunal found the appellant guilty of offence under section 10(2) of the Ain and convicted and sentenced him as aforesaid by the impugned judgment and order, while acquitted the two co-accused. As the trial was held in absentia, the petitioner could not prefer any appeal within time. Police arrested him on 9.4.2005 and sent him in jail. Thereafter, he moved in this Court with the present miscellaneous case under section 561A of the Code of Criminal Procedure for quashment of the judgment an order of conviction and sentence.

This case has been appearing in the cause list for several days with name of the Advocate for the petitioner. Today it is called for hearing, but no one for the petitioner appears. In view of its long pendency, we take it up for disposal and allow the Assistant Attorney General to make her submissions.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General submits that there is specific allegation of brutal physical torture on an innocent housewife. The prosecution witnesses including two

eyewitnesses, informant, victim and the doctor clearly proved the case by their respective evidence. The learned Judge rightly passed the judgment and order of conviction and sentence. There is nothing to interfere with by this Court in exercise of its inherent power under section 561A of the Code.

We have considered the submissions of learned Assistant Attorney General, examined the evidence and other materials on record. The informant is a hearsay witness and the victim herself did not state anything specific regarding physical torture on her person. P.W.1 Ranjit Kumar Das admittedly had no good relation with the petitioner. P.W.2 Shahin Khan, another eyewitness stated that he did not see him (P.W.1 Ranjit Kumar Das) on the spot. We also find some other material contradictions in their evidence. The other prosecution witnesses are hearsay. On critical sifting, their evidenc also appear to be contradictory and do not sufficiently corroborate each other.

P.W.7 Dr. Padmo Mohan Sinha is the most reliable witness in the present case. There is no reason to disbelieve his evidence in order to ascertain the nature of injuries inflicted on the victim. According to him, the injuries were simple in nature. His evidence lends support from the medical report, which was duly proved in course of his deposition. So it has been proved that the injuries inflicted on the victim were of simple nature.

Learned Judge of the Tribunal found the petitioner guilty of offence under section 10 (2) of the Ain, which provides punishment for attempting to murder on demand of dowry. We have carefully examined all other provisions of the Nari-o-Shishu Nirjatan Damon (Bishesh Bidhan) Ain, 1995. Section 11 of the same provides punishment only for

infliction of grievous injury on demand of dowry, but the Ain does not provide anywhere any punishment for infliction of simple injury on demand of dowry. It is the cardinal principle of interpretation of statute that provisions of any penal law or that of any special law should be construed strictly. Since the Nari-o-Shishu Nirjatan Damon (Bishesh Bidhan) Ain, 1995 is a special penal law and it provides no punishment for infliction of simple injury on demand of dowry, the Tribunal constituted under the said Ain, therefore, had no jurisdiction to try the present case. It could at best be tried by an ordinary criminal court.

The petitioner has already undergone the trial and served out imprisonment for nearly seven years. We do not think it just and proper to remand the case to be tried by a court conferred with jurisdiction.

For the reasons stated above, we find substance in the Rule. The impugned judgment and order of conviction and sentence having been passed without jurisdiction, is liable to be quashed.

Accordingly, the Rule is made absolute. The judgment and order dated 26.5.2003 passed by the Nari-o-Shishu Nirjatan Damon Tribunal, Moulvibazar in Nari-Shishu Nirjatan Case No.48 of 2003 is hereby quashed. The petitioner Nobendu Das alias Ronju is acquitted of the charge and be set at liberty forthwith, if otherwise not wanted.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.