

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

Jail Appeal No.1285 of 2005

Ikhtiar Rahman
...Appellant
-Versus-
The State
...Respondent
with

Jail Appeal No.1286 of 2005

Anesa Begum
... Appellant
-Versus-
The State
...Respondent

Mr. Md. Aminur Rashid, Advocate
... for the appellants in both the appeals

Mr. Yousuf Mahmud Morshed, A.A.G.
í for the respondent in both the appeals

Judgment on 12.1.2012

Md. Ruhul Quddus, J:

These two appeals under section 420 of the Code of Criminal Procedure are directed against judgment and order dated 27.9.2005 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Jhenaidah in Nari-o-Shishu Nirjatan Damon

Case No.79 of 2002 convicting the appellants in both the appeals under section 6(1) of the Nari-o-Shishu Nirjatan Damon Ain, 2000 and sentencing each of them thereunder to suffer imprisonment for life with a fine of Taka 5,000/- (five thousand) only in default to suffer rigorous imprisonment for another one year. Since both the appeals have arisen out of same judgment and have been heard together, these are being disposed of by one judgment.

Informant Mst. Renu Begum produced Anesa Begum (appellant in Jail Appeal No.1286 of 2005) to Jhenaidah Police Station on 9.3.2002 and lodged an *ejahar* alleging, *inter alia*, that Ikhtiar Rahman (appellant in Jail Appeal No.1285 of 2005) had requested her on 7.3.2002 to manage a job in the *chatal* where she was working. She took him to her employer and managed him to work in the *chatal*. As he had no shelter, she allowed him to stay at a room adjacent to her. In the following morning she went to *chatal* leaving her two years old son Shanto and eight years old daughter Lipy at her room. Taking advantage of her absence, the appellant Ikhtiar Rahman took away her son Shanto alluring him to give biscuit. After an hour, she received the information that her son was kidnapped. She

made an exhaustive search, but could not find him (her son) out. Lastly she along with others rushed to Ikhtiar's rented house at Byapari para, Jhenaidah and rescued her son Shanto from custody of his (Ikhtiar's) wife Anesa Begum. Immediately they confined the said Anesa Begum, produced her to the police station and lodged the *ejahar*. At the time of rescuing her son, the informant was accompanied by Jahanara Begum, Jhantu and some others.

The *ejahar* gave rise to Jhenaidah Police Station Case No.10 dated 9.3.2002. Police, after investigation, submitted charge sheet on 7.5.2002 against both the appellants under sections 6 (1) of the Nari-o-Shishu Nirjatan Damon Ain, 2000 (hereinafter called the Ain).

The case, after being ready for trial, was sent to the Nari-o-Shishu Nirjatan Damon Tribunal, Jhenaidah and was registered as Nari-o-Shishu Nirjatan Tribunal Case No.79 of 2002. Subsequently the case was sent to the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Jhenaidah for hearing and disposal. Learned Judge of the Tribunal framed charge against both the appellants under section 6(1) of the Ain to which they pleaded not guilty and claimed to be tried.

Prosecution examined five witnesses out of fourteen, who were named in the charge sheet. Of them P.W.1 Mst. Renu Begum is the informant and mother of the victim. P.W.2 Shirina Begum is her (informant's) colleague working at the same *chatal*. P.W. 3 Lipy Khatun is her neighbor. P.W.4 Minu Begum is the wife of Jokar driver, at whose rented house the appellants were residing. P.W.5 Md. Rezaul Karim is a Sub-Inspector of Police and the Investigating Officer.

Learned Judge of the Tribunal, after closing the prosecution, examined the appellants under section 342 of the Code of Criminal Procedure to which they reiterated their innocence, but did not examine any witness in defense. After conclusion of trial, the learned Judge convicted and sentenced them as aforesaid by his judgment and order dated 27.9.2005, challenging which the convict-appellants filed these two jail appeals separately.

Mr. Md. Aminur Rashid, a panel lawyer appointed by the Ministry of Law, Justice and Parliamentary Affairs to provide legal aid to the appellants in jail appeals, submits that the case against the appellants have not been proved by any eyewitness. After the alleged kidnap, the informant did not record any

General Diary and the story of rescue of the child was not proved by the witnesses whose names were cited in the *ejahar*. At the time of rescuing the child, no aid of police was sought for. All these weaknesses make the prosecution case unworthy to believe and the *ejahar* story of kidnapping and rescuing the victim-child having not been proved at minimum level, the impugned judgment and order is liable to be set aside.

On the other hand, Mr. Md. Yousuf Mahmud Morshed, learned Assistant Attorney General appearing for the State-respondent, submits that P.W.2 Shirina Begum is the eyewitness, who saw the appellant Ikhtiar Rahman to kidnap the victim-child, while P.W.1 herself is an eyewitness to his (victim's) rescue. There is no reason to disbelieve their evidence and therefore, the learned Judge rightly passed the judgment and order of conviction and sentence.

We have considered the submissions of learned Advocates of both the sides and gone through the evidence on record. For better appreciation of fact, the entire evidence of the informant (P.W.1) and that of her colleague Shirina Begum (P.W.2), the only eyewitness examined are quoted below:

P.W.1:

õ Avgvi bvg vjQvt vly vllg| eqm 30 eQi | Avgg ewi` bx| wFKuJg kv%eqm 2 eQi, eZgvx 3 eQi | Avgvgx BLwZqvi wbx wMqwiQj | cxi w` b cvl qv wll | Avgvgx gwuj v AvbQv BLwZqvxi `x| _vbvq wll KxiQ| GBxB GRvni | cll 1 Dnvx Avgvi 1 Uv wJc| Avgvgxi v Wx Dcw`E| Iiv wki cvPviKvix| GK eQi 3 gvm Avx NUbv| NUbv i`mevi w`x 10 Uvq|

x x x

õ evfv wbx hvI qv Avgg wll bvB| Avgvgxi v PvZvx KvR Kx bv| mZ` bq wv Avgg Av`vj x wj wLZfvx RvbvBqwiQ wv GB Avgvgxixi wei ,x Avgvi wvb Avf xvm bvB| mZ` bq wv GB Avgvi bvg wly xMg| Rvnbvri v Avgvi wvb| mZ` bq wv GB Avgvgxi v Avgvi evfv AcniY Kx bvB| mZ` bq wv Avgg wq_v mvq|x w` j vg| ö

P.W.2:

õ Avgvi bvg wki v vllg| `vgx Avāj AvwRR| eqm 30 eQi | NUbv vvo eQi Avx| Hw` b euúwZevi | Avgg ewi` bxK wPwb| Avgg Ges ewi` bx wvcvj cj evRvx GKB PvZvx KvR Kwi | Avgvgx Wx Dcw`E| Avgvgx NUbvi Avxi w` b mü`vq PvZvx Avx Gx PvZvx KvR Ki x Pvq| KvR Kx Hw` b ivx wvPvZvx _v`| cxi w` b mKv wFKuJg kv%wj wci Kv x vuk ewi` bx KvR hvq| NŠLvK c` Gx kv% cvl qv hvq bv| vj e` GB wv GB Avgvgx kv% wbx wll | Zvi ci

vvRvLjR Kx kv%6 cvl qv hvq bvB | iµevx nwi x hvq kibevx
kv%6 cvl qv hvq GB Avmgxi xi Kvx |

x x x

kv%6 wbx hvl qv Avng vukwQ | D×vi Kiv vukwQ | D×vi Kivi Zvs
Rwb bv | evfv wvvi Zvs Rwb bv | Avmgxiv vqg xi | xo eQi Avx
Zvxi mvx cwiPq | Avng PvZvx KvR Kwi | GB Avmgxiv I Lvxi
PvZvx KvR Kx | mZ bq wv Avng wgv mvq|x w j vg | ewi bx wv
I Lvxi PvZvx KvR Kx | 00

It appears that both the witnesses deposed in very brief and abstract manner without mentioning the names of the appellants or specifying the time, space and manner of occurrence. The informant stated only that the occurrence took place on Friday at about 10 o'clock, and did not state anything about rescuing her son from the custody of Anesa Begum or from the rented house of the appellants. In cross-examination she stated that she did not see to kidnap her child, and therefore, she is a hearsay witness. P.W.2 Shirina Begum stated that the occurrence took place on Thursday. In her examination-in-chief she did not state anything whether she saw occurrence, but in cross-examination stated in a vague and indefinite manner that she saw to kidnap the child and also to rescue him.

P.W.3 Lipy Khatun stated that on 8.3.2002 she heard that somebody had taken away the informant's son and on the following day he was rescued. In cross-examination she stated that she herself did not see to kidnap the child or to rescue him. P.W. 4 Minu Begum, the land lady of the House from where the victim child was rescued, flatly denied the case and stated that nothing happened at her house on the date of occurrence. At that stage, she was declared hostile, but the prosecution did not cross-examine her. P.W. 5 Md. Rezaul Karim stated that at the relevant time he was posted at Jhenaidah Police Station. After being assigned for investigation, he had visited the place of occurrence, prepared the sketch map with index and recorded statements of the witnesses under section 161 of the Code. As he found prima facie case against the accused, submitted charge sheet under section 6(1) of the Ain. He further stated that there was overwriting on the time and date of occurrence in the first information report and further stated that there is no initial signature.

The first information report lying with record shows that the day of occurrence is overwritten by superimposing 'Friday' in place of 'Thursday'. The occurrence allegedly took place in

morning on 8.3.2002, but the *ejahar* was lodged at 8.30 p.m on 9.3.2002. The informant (P.W.1) did not explain as to why she had not lodged the *ejahar* or made entry of a General Diary immediately after the occurrence. It is also not clear why she did not take any help of police at the time of rescuing her son. She herself did not see Ikhtiar to kidnap her child, but mentioned in *ejahar* the name of her daughter Lipy, who was present at the time of alleged kidnap. The said Lipy was not examined. Names of two other persons, namely, Jahanara and Jhantu are mentioned in *ejahar* to be present at the time of rescuing the victim, they were also not examined.

Learned Judge of the Tribunal in arriving at the finding of guilt against the appellants observed that P.W.2 saw the appellant to kidnap the child. From her (P.W.2's) evidence it appears that she did not assert it in her examination-in-chief, but incidentally replied in cross-examination in an indefinite and vague manner. Even in so replying, she did not mention the names of the appellants or specify the time, place and manner of occurrence. On the basis of such a vague and indefinite statement of a witness, sentence for life imprisonment does not appear to be convincing.

On critical sifting of the evidence on record, we are of the view that there is insufficiency of evidence. The poor number of prosecution witnesses who are examined also failed to prove the allegation against the appellants in terms of time, space, manner and person, and there are contradictions in their evidence as well. Therefore, their evidence cannot form the basis of any conviction and sentence. Learned Judge of the Tribunal without considering the insufficiency and contradictions in evidence, passed the impugned judgment and order of conviction, which should not sustain in law.

In the result, both the Jail Appeals are allowed. The impugned judgment and order dated 27.9.2005 passed by the Nari-o-Shishu Nirjatan Damon Tribunal No.2, Jhenaidah in Nari-o-Shishu Nirjatan Damon Case No.79 of 2002 is hereby set aside. The appellants Ikhtiar Rahman and Anesa Begum are acquitted of the charge and be set at liberty forthwith, if otherwise are not wanted.

Send down the lower Court's record.

Mohammad Marzi-ul-Huq, J:

I agree.