In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)

Present:
Mr. Justice Md. Badruzzaman
and
Mr. Justice S.M. Masud Hossain Dolon

Criminal Miscellaneous Case No. 12716 of 2006.

Md. Safikul Islam.
.... Accused-Petitioner.

-Versus-

The State
.... Opposite party.

Mr. Azaher Ullah Bhiyan, with
Mr. Md. Rezaul Karim Advocate
..... for the petitioner

Mr. Apurbo Kumar Bhattarcharjo, D.A.G. with
Mr. Mohammad Abdul Aziz A.A.G. with
Mr. Md. Mizanur Rahman, A.A.G
.... for the state

Heard on 19.01.2023 &
Judgment on: 23.02.2023

S.M. Masud Hossain Dolon, J:

On an application under section 561A of the Code of Criminal Procedure, 1898, the Rule was issued calling upon the Deputy Commissioner, Gopalgonj to show cause as to why judgment and order dated 19.09.2005 passed by learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal, Gopalgonj in Nari-O-Shishu Nirjatan Daman Case No. 39 of 2002

corresponding to G.R. No. 104 of 2001, arising out of Muksedpur P.S. Case No. 11(9)2001 convicting the petitioner under Section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him to suffer rigorous imprisonment for life with fine of Tk. 20,000/- in default to suffer rigorous imprisonment for 6(six) months should not be quashed and/or pass such other or further order or orders as to this court may seem fit and proper.

The case was sent by the Hon'ble Chief Justice for disposal.

Facts, for disposal of the Rule, are that one Razia Begum, mother of the victim, as informant lodged the FIR on 23.09.2001 with Muksedpur Police Station alleging, inter alia, that on 01.08.2001 the FIR named accused Kokela Khatun, Sandha Rani Roy, Fayek, Aklas and Khorshed took her daughter for visiting their residence and subsequently the informant suspected that her daughter might be sold or used illegal work or accused Fayek and Aklas might commit rape on her or kill her upon which the case was started against the accused persons under sections 7/9/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

After concluding investigation the police submitted Charge Sheet against the accused petitioner under section 7/9 of the Nari-O-Shishu Nirjaton Damon Ain, 2000 and not sent up F.I.R. named 5(five) accused-persons. The learned Judge of Nari-O-Shishu Nirjaton Damon Tribunal, Gopalgonj after taking cognizance of the offence, framed charge under the same section against the accused petitioner. But the charge so framed could not be read over and explained to the accused as he was absconding at the time of framing charge. The case was concluded in *absentia*.

During trial, 7 witnesses were examined by the prosecution while the defence examined none and no state defence was engaged for the accused petitioner.

After concluding trial, the learned Judge of Nari-O-Shishu Nirjaton Damon Tribunal, Gopalgonj found the accused petitioner guilty of the offence punishable under section 7 of the Nari-O-Shishu Nirjaton Damon Ain, 2000 and vide judgment and order dated 19.09.2005 convicted and sentenced him to suffer imprisonment for life with a fine Tk.

20,000/- in default to suffer rigorous imprisonment for 6(six) months more.

The petitioner was arrested on 28.06.2006 and sent to jail. Thereafter, he moved this Court with the instant criminal miscellaneous case under section 561A of the Code for quashment of the judgment and order, and obtained the Rule. Subsequently this Court enlarged him to go on bail.

Mr. Azaher Ullah Bhiyan, the learned advocate appearing on behalf of the petitioner submits that, it is a case of no evidence and the petitioner was not aware of the case. Despite, learned Tribunal was manifestly wrong in convicting and sentencing the petitioner without properly weighing and shifting the evidence as required by law and the same occasioned failure of justice. Learned Advocate further submits that the victim made a statement under section 164 of the Code of Criminal Procedure and she mentioned that she willingly to go Dhaka with Safik and she also married Safik willingly and accordingly, no offence was disclosed against the petitioner. The victim as P.W. 4 testified that one Kokela Khatun, who is her maternal Aunt, took her to Dhaka and

Safik did intercourse with her forcefully, so no offence was disclosed against the convict petitioner under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and as such impugned Judgment and order of conviction and sentence is liable to be set aside. Learned Advocate further submitted that the informant (P.W. 1) is the mother of the victim, who testified that she heard the incident of kidnap orally from man to man, so the informant is not an eye witness, as such the evidential value of the "hearsay" witness is almost nil in the eye of law. Learned Advocate finally submits that the petitioner has been falsely implicated in the case out of previous enmity.

Mr. Apurbo Kumar Bhattacharjee, the learned Deputy Attorney General appearing on behalf of the State submits that the learned Tribunal upon citing the prosecution witnesses, rightly convicted the petitioner. Since there is no misreading or non-reading of the evidence, impugned judgment contains no illegality and the Rule contains no merits, it may be discharged.

We have heard the learned Advocates for both the

sides and perused the oral and documentary evidences adduced by the prosecution.

P.W. 1 Razia Begum Informant is the mother of victim. She stated in her testimony that victim Rohima alias Shamoli is her daughter. On the day of incident, her daughter went to study in madrasa but she did not return home. She searched her daughter Rohima but she could not found her. Convict Safik kidnapped her daughter Rohima with the intention of marrying her. At the time of abduction Rohima was 16 and half years old. She suspects that convict Safik could kidnap her daughter and use her for illegal activities. Convict Safik might be 30 years old. She was searching her girl in different places, which caused delay in filing of the case. She heard about kidnapping through people. She signed the FIR.

P.W. 2, 3 & 5 were tendered and the defence declined to cross examine them.

P.W. 4 Rohima Begum is the victim. She testified that convict Kokela Khatun misled her and took her to Dhaka and thereafter kept her in Panchabati in Narayanganj. After showing her marriage to Safik, Safik forcefully intercoursed

with her and her mother could not find her and lodged this case. After the case was lodged the police rescued her and police wanted to do her medical examination but she refused. She gave her statement to Magistrate.

P.W.6 Md. Rafiqul Islam, investigating officer testified that Recording Officer of the Mukshedpur Police station had filled up column of the first information report. He proved the F.I.R form which was marked as Exhibit-2 and signature of the recording officer was also marked as Exhibit-2/1. Having been appointed as investigating officer of this case, he visited the place of occurrence and drew up a sketch map with index. He also proved the sketch map and index. He made arrangement to record the confessional statement of the victim Rohima by a Magistrate of 1st Class under Section 164 of the Code of Criminal Procedure, 1898. Victim was present before the medical board for medical examination. The victim refused her medical examination.

P.W. 7 Ram Proshed Vokto is another investigation officer of this case. Due to transfer of earlier investigating officer, he took over the assigned investigation. He reviewed

cases and verified the name and address of the accused. After conclusion of the investigation he submitted charge sheet against the petitioner under section 7/9 of the Nari-O-Shisu Nirjaton Daman Ain, 2000. He was not cross examined by the accused.

Our Apex Court decided that scope of quashment of a judgment and order of conviction under section 561A of the Code is very narrow and limited. In the present case informant P.W. 1 mother of the victim is not an eye witnesses of this case. P.W.2,3,5 were declared hostile. P.W. 6 and P.W. 7 are the investigating officers of this case who wrote FIR and investigated the case and made arrangement to record the statement of the victim by Magistrate under section 164 of the Code of Criminal Procedure.

Confessional statement of victim under section 164 of the Code of Criminal Procedure runs as follows:

> "আমার নাম রহিমা বেগম, পিতা হবু সেখ, সাং টেংরা খোলা, মুকসুদপুর, গোপালগঞ্জ। বয়স-১৮ বৎসর।
>
> আমার সাথে শফিকের ২ মাস পূর্বে বিয়ে হয়। শফিকের সাথে আমি নিজের ইচ্ছায় ঢাকা গিয়াছিলাম ২ মাস আগে। আমরা নিজরাই বিয়ে করে স্বামী-স্ত্রীরুপে সংসার করছি। আমরা যে চলে গেছি তা

আসামীরা কিছু জানে না। আমি নিজের ইচ্ছায় শফিককে বিয়ে করি। বাবা-মা সবাই জানতো। আমাকে না পেয়ে আমার মা মামলা করেছে। আমি মুকসুদপুর আলিয়া মাদ্রাসায় নবম শ্রেণীতে পড়তাম। আমি এখন শফিকের সাথেই যেতে চাই।”

The victim Rohima as P.W. 4 stated as follows:

“এজাহারকারী আমার মা। আমি মামলার ভিকটিম। ঘটনার তারিখ ০১.০৮.২০০১ তারিখ সকাল ১০.০০/১১.০০ টা আসামী কোকেলা খাতুন আমার খালা। আসামী কোকেলা খাতুন আমাকে ভুল বুঝাইয়া প্ররোচনা করিয়া ঢাকায় নিয়া যায়। কোকেলা আমাকে নারায়নগঞ্জ পঞ্চবটিতে রাখে এবং শফিকের সাথে আমার বিয়ে দেখাইয়া শফিক আমার সাথে জোর করে সহবাস করে। আমার মা আমাকে খুজে না পাইয়া এই মামলা করে। মামলার পর পুলিশ আমাকে উদ্ধার করে। পুলিশ আমার মেডিকেল করাইতে চায়। আমি রাজি হই নাই। আমি ম্যাজিষ্ট্রেটের কাছে জবানবন্দি করি।”

We have carefully perused the Judgment and order of conviction and sentence passed by learned Judge of Tribunal, statement of victim recorded under section 164 of the Code of Criminal Procedure and testimony of victim as P.W. 4. As per the statement of victim recorded under section 164 of the Code of Criminal Procedure she went out of her house at her free will along with the convict petitioner and got married with him and she was willingly living with him. Whereas, as P.W. 4 she mentioned that one Kokela Khatun, who is her

maternal aunt, took her to Dhaka and after showing marriage Safik did intercourse with her by forcefully. It appears from her testimony that she went out of her house with Kokela Khatun to Narayangonj. It also appears that the prosecution witnesses failed to prove beyond reasonable doubt that convict petitioner kidnapped the victim, Rohima Begum and as such, the charge kidnapping against the petitioner has not been proved by way of any legal evidence.

From the above mentioned facts and circumstances, we find substance in the submissions of the learned Advocate for the petitioner that this absolutely a case of no evidence. Accordingly, the accused petitioner is entitled to be acquitted. The impugned judgment and order of conviction and sentence passed by the learned Judge of Tribunal cannot be sustained in the eye of law.

We thus find merit in this Rule.

In the result, the Rule is made absolute and the judgment and order dated 19.09.2005 passed by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal, Gopalgonj in Nari-O-Shishu Nirjatan Daman Case No. 39 of 2002

corresponding to G.R. No. 104 of 2001 arising out of Muksedpur P.S. Case No. 11(9)2001 is hereby quashed. The accused petitioner be acquitted from charge leveled against him and he be released from his bail bond.

Let the petitioner be set at liberty at once if not been wanted in connection with any other case.

Send down the L.C.R. along with a copy of this judgment to the concerned Court at once.

Md. Badruzzaman, J

I agree

Asad/B.O