

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 1242 of 2014

Khadiza

.....Convict-appellant.

-Versus-

The State

.....Respondent.

Mr Md. Abu Hanif, Advocate

.....For the convict- appellant.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

.... For the respondent.

Heard and Judgment on 06.05.2024.

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellant, Khadiza is directed against the judgment and order of conviction and sentence dated 03.03.2014 passed by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narshingdi in Nari-O-Shishu Case No. 41 of 2012 convicting the appellant under section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing her thereunder to suffer rigorous imprisonment for a period of 01(one) year and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer rigorous imprisonment for 01(one) month more.

The prosecution case, in short, is that one, Majibar Rahman filed a petition of complaint before the Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi against the accused, Khadiza and 2 others stating, inter-alia, that accused No. 1, Khadiza Begum on 11.11.2010 filed a case before this Court under section 9(4) Kha of the Nari-O-Shishu Nirjatan Daman Ain, 2000 being Nari-O-Shishu case No. 955 of 2010 stating-inter, alia that the complainant and accused Khadiza used to reside adjacent house and the complainant used to give bad proposal to accused Khadiza and at one stage the complainant tried to rape on Khadiza and on receipt that petition of complaint the learned Tribunal Judge sent the same to the officer in charge, Shibpur police station with a direction to treat the same as FIR and accordingly, Shibpur Police Station Case No. 24(1) of 2010 was started against the present complainant Majibar Rahman and police after completion of investigation having found the allegation of petition of complaint is false and thus submitted final report praying to draw action under section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against Khadiza for lodging false case and thereafter, accused Khadiza as complainant again filed Nari-O-Shihu case No. 613 of 2011 on 15.06.2011 against the complainant and the learned Tribunal Judge

after examining the complaint Khadiza was pleased to ask for enquiry report and S.I. Selim Ahmed on completion of enquiry found the allegations made in the petition of complaint are false and accordingly, submitted his report. In this way the accused Khadiza with the help of other accused filed false cases one after another against the complainant, Majibar Rahman and hence, the case for an offence under section 17 of the Nari-O-Shishu Nirjatan Daman Ain,2000 against accused Khadiza.

On receipt of the petition of complaint, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narshingdi took cognizance under section 17 of the Nari-O-Shishu Nirjatan Daman Ain,2000 and issued summon against the accused-appellant and discharging accused Badal Mia and Ayesha Begum from the case by his order dated 04.01.2012 fixing next date on 05.03.2012.

Ultimately, the accused appellant was put on trial before the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narshingdi to answer a charge under section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 to which the accused-appellant pleaded not guilty and claimed to be tried stating that she has been falsely implicated in the case.

At the trial, the complainant examined in all 3(three) witnesses and also exhibited some document to prove the case, while the defence examined none.

On conclusion of trial, the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narshingdi by the impugned judgment and order dated 03.03.2014 found the accused-appellant guilty under section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced her thereunder to suffer rigorous imprisonment for a period of 01(one) year and to pay fine of Tk. 10,000/ (ten thousand) in default to suffer rigorous imprisonment for 01(one) month more.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 03.03.2014 the accused-appellant, Khadiza preferred this criminal appeal.

Mr. Md. Abu Hanif, the learned Advocate appearing for the convict appellant at the very outset submits that the accused appellant is an illiterate village woman, who after being miss leaded by some persons in the locality filed the cases. The learned Advocate further submits that appellant is a poor lady, in future she will never do such type of offence and she has already suffered her sentence to some extent and her rest

sentence may kindly be undergone for the ends of justice.

Ms. Kohenoor Akter, the learned Assistant Attorney General, on the other hand, submits that the allegations are serious in nature, the appellant is a lady filed false cases again and again in order to victimize the innocent complainant, Majibar Rahman.

Having heard the learned Advocate and the learned Assistant Attorney General, perused the memo of Appeal, deposition of witnesses and other materials on record including the impugned judgment and order, the only question that calls for consideration in this appeal is whether the trial Judge committed any error in finding the accused-appellant guilty of the offence section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

On scrutiny of the record, it appears that one Majibar Rahman filed a petition of complaint before the Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi against the accused, Khadiza and 2 others stating, inter-alia, that accused Khadiza filed 2 criminal cases under section 9(4) kha of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and in both the cases police after full-fledged of investigation submitted final report and thereafter, the

complainant Majibar Rahman filed this case under section 17 of the Nari-O-Shishu Nirjatan Daman Ain,2000 against the convict-appellant Khadiza. It further appears that to prove the case the complainant examined in all 3 witnesses out of which PW-1, Majibur Rahman , complainant himself stated in his deposition that-"আমি সরকারী শহীদ আসাদ কলেজে এম, এল,এস,এস, পদে চাকুরী করি। আসামী- খাদিজার বোনের কাছ হতে বাড়ী করার জন্য ২ খন্ড জমি কিনেছি। জমির বিরোধ নিয়া আসামী খাদিজা ও তার আত্মীয়রা আমার স্ত্রীকে মারপিট করিলে আমার স্ত্রী বাদী হইয়া শিবপুর থানায় মামলা করেন। খাদিজার স্বামী বাদল মিয়া ঐ মামলার জামিনে গিয়া আমাকে হত্যার হুমকি দেয়। আমি ঐ ঋয়কৃত বাড়ী হতে স্ত্রী সন্তান নিয়া কলেজে বসবাস করিতাম। আসামী খাদিজা ঐ আক্রোশে আমাকে হয়রানি ও ক্ষতি করার জন্য মিথ্যা অপবাদ দিয়া আমাকে চাকুরী চ্যুতির জন্য মিথ্যা মামলা করে। আমি ক্ষতিগ্রস্ত হইয়াছি। আমার একটি মেয়ে ৯ম শ্রেণীতে পড়ে। আমি মিথ্যা অপবাদের কারণে সামাজিকভাবে হয় প্রতিপন্ন হইয়াছি। আমার বিরুদ্ধে দায়েরী ২টি মামলাই মিথ্যা প্রমানিত হইয়াছে। আমি শাস্তি চাই। অদ্য ডকে আসামী খাদিজা আছে। এই সেই আমার অভিযোগ প্রদঃ-১ হোক, আমার স্বাক্ষর প্রঃ ১/১-৬ হোক। আমার বিরুদ্ধে দায়েরী আসামী খাদিজার মিথ্যা নাঃ শিঃ মামলাটির নং ৯৫৫/১০ এর অভিযোগ ও ফাইনাল রিপোর্ট, আদেশ এর জাবেদা নকল , নাঃ শিঃ ৬১৩/১১ এর অভিযোগ ও অনুসন্ধান প্রতিবেদন ও আদেশের জাবেদা নকল দিলাম। এগুলি প্রদঃ ২ সিরিজ হোক "

This witness in cross-examination stated that on 2 occasions accused Khadiza filed 2 cases against him and she did not appear before the Court in both the cases. PW-2, Piara Begum wife of complainant, Majibar Rahman and PW-3, A. Samad, both of them in their respective evidence categorically stated that accused Khadiza

earlier filed 2 false rape cases against the complainant Majibar Rahman.

From the above quoted evidence together with the petition of complaint, it appears that accused appellant Khadiza earlier on 2 occasions filed 2 false rape cases being Nari-O-Shishu case No. 955 of 2010 and 613 of 2011 under section 9(4)Kha of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against the complainant Majibar Rahman and in those cases police after completion of full-fledged investigation submitted final report. It further appears that the trial Judge on due consideration of the entire evidence and materials on record came to its conclusion that-

“উপরিউক্ত সাক্ষীদের সাক্ষ্য পর্যালোচনায় তাহাদের কারও সাক্ষ্যকে আবিশ্বাস করিবার মত সংগত ও গ্রহনযোগ্য সামান্যতম কারণ ও সন্দেহ এবং দ্বন্দ্ব বিদ্যমান থাকা প্রতীয়মান হয় না। আসামীপক্ষ কর্তৃক এই সাক্ষীদেরকে জেরা করেও তাদের জবানবন্দীর মাঝে বিন্দুমাত্র দ্বন্দ্ব ও সন্দেহ সৃষ্টি করতে সক্ষম হয় নাই।

এমতাবস্থায় উপরিউক্ত সকল আলোচনার আলোকে এবং এই মামলায় সংগৃহীত সাক্ষীদের সাক্ষ্য এবং দাখিলী কাগজাদীসহ পারিপার্শ্বিক ও অবস্থানগত সাক্ষ্য প্রমাণ একযোগে বিচার বিশেষণ করে বলা যাইতে পারে অত্র মামলার আসামী খাদিজা অত্র মামলার বাদীর বিরুদ্ধে মিথ্যা হয়রানীমূলক মামলা করে তাকে সামাজিকভাবে হেয় ও ক্ষতিগ্রস্ত করার অভিযোগ রাষ্ট্রপক্ষ সম্ভব্য যুক্তিসংগত সন্দেহের উর্দে প্রমাণ করিতে সক্ষম হইয়াছেন।”

This finding certainly indicates that the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal,

Narsingdi considered all aspects of the matter and thereafter, recorded the order of conviction.

The learned Advocate appearing for the convict-appellant could not show any error or any legal infirmity in the impugned judgment whatsoever. He simply prays that the appellant has already suffered her sentence to some extent and her rest period of sentence may kindly be undergone.

On an analysis of the impugned judgment, it appears that the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narshingdi on due consideration of the entire evidence and materials on record justly came to the conclusion that in the facts and circumstances of the case the complainant has been succeeded to prove his case beyond doubts.

However, considering the law, facts and circumstances of the case and the submission of the learned Advocate, particularly the fact that the accused appellant has already been faced the agony of the protected prosecution and suffered mental harassment for a long period and also having suffered her sentence to some extent, I think that, the ends of justice, will be met in the facts and circumstances of the case if the Sentence of fine is, enhanced to Tk. 20,000/-(twenty

thousand) instead of Tk. 10,000/-(ten thousand) and the substantive sentence is reduced to the period already undergone, as prayed for.

Learned Assistant Attorney General, has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the appellant is concerned.

The appeal is, consequently, dismissed with modification of sentence that the sentence of appellant for the offence under section 17 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 is reduced to the period of sentence already undergone. However, sentence of fine is enhanced to Tk. 20,000/-(twenty thousand) instead Tk. 10,000/-(ten thousand). The same shall be deposited within a period of 4 (four) months from today. In the facts and circumstances of the case, the complainant, Majibar Rahman is permitted to withdraw the amount of fine from the Trial Court, if the convict deposits the same.

In case, the fine is not deposited, the benefit of reduction in sentence shall not accrue to the accused appellant.

Send down the lower Court records at once.