

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Appeal No. 7069 of 2014

In the matter of:

A petition of appeal under section 28 of the Nari-O-Shishu Nirjatan Daman Ain, 2000

In the matter of:

Shahin Chowdhury

...Convict- Appellant

Versus

The State

... Respondent

Ms. Salina Akter, Advocate

...For the Convict-Appellant

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Judgment on: 07.05.2024

Md. Riaz Uddin Khan, J:

The appellant along with another stood trial upon charge under section 7/9(1)/30 of the Nari-O-Shishu Niratan Daman Ain, 2000.

The prosecution in total examined 6 (six) witnesses and the defence examined none.

After conclusion of trial the Judge of the Nari-O-Shishu Nirjatan Daman Tribunal found the

appellant guilty under section 9(1) of the Nari-O-Shishu Nirjatan Daman Ain while acquitted the appellant from the charge leveled against him under section 7 of the Nari-O-Shishu Nirjatan Daman Ain and also acquitted another accused from the charge.

Brief facts for disposal of this appeal is that one Md. Alamin Chowdhury (PW-1) lodged an ejahar with Demra Police Station on 07.06.2002 bringing allegation against 05 persons including the present appellant under section 7 and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 stating *inter alia* that the victim i.e. Mst. Shibli Chowdhury was 13 years old and was reading in Class-V in Qutubkhali Government Primary School. On 03.06.2002 at about 10.00 am when she was going to school in the midway the FIR named accused No. 1 namely Shahin Chowdhury threatening her forcibly push in a taxi cab and brought her in a hotel room which is situated in Cumilla. At night Shahin entered in the room and forcibly rapped her by threatening of throwing acid on her face. Thereafter the sister of the informant i.e. victim wanted to leave the said place and the accused brought the victim in Dhaka on the next day at about 12.00. Then accused Shahin tried to marry her

but the victim refused. Thereafter the victim was brought to a hotel room situated in Brahmanbaria and the accused wanted to marry her again but she refused failing which the accused No. 1 brought the victim at Temohani under Madhobpur Police Station of Hobigonj District. At one stage when accused Shahin went to hire a taxi, the victim shouted loudly for help on which neighbours came forward and the accused Shahin and another fled away. Thereafter the victim was brought to one of her relative's house. Earlier father of accused Shahin gave a proposal for marriage between the victim and accused Shahin which they denied and out of that grudge the accused persons committed the crime. The informant heard above facts from his sister after taking her home from the relative's house. Hence the case.

PW-1 Md. Alamin Chowdhury stated in his deposition that the victim Shibli Chowdhury aged 13 is his younger sister. At the time of occurrence she was a student of class-V of Qutubkhali Government Primary School under Demra police station. On 03.06.02 in the morning around 10 o'clock his sister Shibli Chowdhury left home for school as usual. On that day, he went to the side of the school and

saw accused Shahin Chowdhury, Nooruddin and Sagar Shams and others standing there. At one point the accused Shahin exchanged pleasantries with his sister. At one stage in the conversation, accused Nooruddin hailed a taxi cab and accused Shahin asked his sister Shibli to get into the cab which she refused. Then accused Shahin threatened to burn her with acid but she still did not want to get in, accused Sagar Shams grabbed her hand and accused Nooruddin and Shahin pushed her into the taxi cab. The accused took his sister Shibli to Cumilla and locked her in a residential hotel named Hotel Mainamati in Cumilla Race Course area. Later in the evening the accused tried to physically torture his sister and fed her something like coke. At around 12.00 pm when his sister regained consciousness, she realized that she had been raped. Then accused Shahin said that her chastity is over and no one will marry her. The next morning accused Shahin, Nooruddin, Sagar Shams brought his sister to Dhaka and took her to Ramana Park and tried to have a court marriage on which his sister did not agree. Then on the next day they took her to B'Baria in a hotel called Hotel Al-Arafat and kept her one night there and tried to

convince her for marriage which she denied. Accused Shahin and Nooruddin took his sister to Chatian Temulia bus stand under Madhavpur police station in Habiganj and when the accused went to call another taxi his sister started shouting at that time and as people gathered there who rescuing his sister handed over to his brother-in-law Ruman Talukdar who was present there at that time and the accused fled away. His brother-in-law Ruman Talukdar brought his sister to Dhaka. Then he lodged the ejahar with Demra police station. His sister gave a statement before the Magistrate and she was medically examined.

In his cross-examination he stated that among his sisters, the victim Shibli Chowdhury is the youngest. Accused Shahin Chowdhury and they live in the same village. The distance between their two houses would be 200 yards. He knew Shahin Chowdhury since childhood. His sister was kidnapped on 03.06.02 and he filed the case on 07.06.02. He couldn't remember the date of his sister's medical examination. At the time of occurrence he and his younger sister were staying at their elder sister's house. He cannot say whether Shahin ever visited his sister's house in his absence. He

saw his sister Shibli's name written in the register of that hotel Mainamati at Cumilla. He read the statement his sister gave before the Magistrate. He lodged the case after hearing the facts from his sister and other witnesses. He denied the suggestion that her sister did not mention about rape in her statement or that he filed a false case to grab Shahin Chowdhury's property or that Shahin did not abduct his sister or that his sister was not a minor or that he gave false testimony against the accused.

PW-2 Roman Mia Talukder stated in his deposition that the occurrence took place on 03.06.02 at 10/11 am. The victim Shibli is his sister-in-law who was a 5th grade student at Qutubkhali Primary School and her age was 12/13 at the time of occurrence. The accused Shahin, Abdul Awal took the victim to Cumilla in a yellow taxi. They spent the night there. He has come to know that the victim was raped by Shahin. As the victim did not agree to the marriage proposal, the accused brought the victim to Dhaka and later took her to B'Baria. When the accused took her to a place called Temulia under Madhavpur police station, he was going to Dhaka through that place and saw the

victim who said that Shahin had kidnapped her. Then he took the victim to his house and informed the informant who filed the case. In his cross-examination he stated that Shahin's house and his father-in-law's house are 10 km away. He knows Shahin since his marriage. Shahin's father do business in Dhaka and Shahin lived with his father at Shahjahanpur in Dhaka. He was testified by the I.O. on 05.06.02. The victim got married after the occurrence and is living abroad (Italy) with her husband. He was not present at the time of the abduction of the victim from school. He denied the suggestion that the victim was 19 years old at the time of occurrence or that the accused did not abduct the victim or that the victim was not in Dhaka at the time of the incident or was at home in the village or because there was a case with Shahin regarding his father-in-law's land, Shahin was implicated in a false case. He saw the accused Shahin along with the victim at Chaitan Temulia in Brahmanbaria. The victim told about the rape in Cumilla. It is not true that the victim was not raped or kidnapped. It is not true that he gave a false testimony as told by the informant.

PW-3 Shibli Chowdhury stated in her deposition that she is the victim of this case. The complainant is her elder brother. The date of the occurrence was 03.06.02 at 10.00 am on her way to school. Shahin Chowdhury, the accused No. 1 of the case called her and Nooruddin and Sagar asked her to get into a yellow taxi cab. Then the accused took her to the hotel Mainamati at cumilla. After that, the accused left her alone in the hotel room. After half an hour, Shahin returned and forcibly raped her several times during the day and night and at one point she became faint and regain her sense in the morning. On 04.06.02 Shahin and others brought her to Dhaka and at 1:00 pm the accused took her to Ramana Park and proposed her to marry Shahin which she rejected. Then the accused took her to B'Baria by the same taxi and kept her at Hotel Arafat for one night. In the evening at the hotel room, Shahin gave her juice to drink and she became unconscious after consuming it and regained consciousness in the morning. She can't tell what Shahin did to her in the hotel room all night as in the morning she found her undress. Then Shahin told his father on mobile phone that Shibli is not agreeing to the

marriage and his father asked him to take her to their village home. On the way, when she wanted to drink water, Shahin got down from the car to fetch water she shouted for help and the accused left her and she got down from the car and people around came forward. After some time her sister's husband Roman Talukdar came there and brought her to her village home. Then next day on 05.06.02 she went to Demra police station with her brother from their village home and his brother filed this case. On 08.06.02 police brought her before the Magistrate and she gave the statement under section 22 before the Magistrate and signed on it. Her medical examination was done at Salimullah Medical College Hospital. She identified accused Shahin and Nooruddin on the dock.

In her cross-examination she stated that she was 13 years old when she was kidnapped. On 08.06.02 she gave her statement to the Magistrate. While giving her statement to the Magistrate she mentioned her age as 13 years. It is not true that she mentioned her age as 16 years while giving statement before the Magistrate. 7/8 days after abduction she went for medical examination to Salimullah Medical

College. She did not read the medical report. It is not true that according to the medical report she was 19 years old at the time of medical examination. She is currently 22 years old. It is not true that she did not tell the Magistrate about being raped by Shahin. She couldn't remember whether she gave any statement that Shahin had not done anything wrong with her while giving statement to the Magistrate. It is not true that she did not tell the Magistrate that after abduction she was kept at Mainamati Hotel in Cumilla or that later she was taken to a hotel at B'Baria or that there was acid in the bottle or that she couldn't shout when the accused took her to different places and threatened her with acid or that when she got down from Hotel Arafat in B'baria and was taken to the house of the accused Shahin, she shouted for help at a place called Satkahan when Shahin went to fetch water and then her brother-in-law Roman Talukdar came and rescued her and took her to his house (brother-in-law's house). Their house and accused Shahin Chowdhury's house are side by side. Shaheen's father is a rich man. It is not true that when her brother and relatives wanted to marry her with the accused Shahin, as

Shahin's guardians did not agree, the case was filed on false allegations. It is not true that the story of Hotel Mainamati in Cumilla, Hotel Arafat in B'Baria and Ramna Park in Dhaka was completely a cooked up story. It is not true that she gave false testimony.

PW-4 Dr. Md. Jubaidur Rahman stated in his deposition that on 15.06.2002 while working as a lecturer in the Department of Forensic Medicine at Salimullah Medical College, the victim Shibli Chowdhury was brought to him and after examining the victim he found the following:

Hymen: Ruptured 6'clock position, congested.

Vaginal Canal: One and half finger dilated with pain.

Opinion: On considering the above physical, pathological and radiological examination, I am of the opinion that the age of the victim is about 19 (nineteen) years old. Sign of sexual intercourse found on her body.

In his cross-examination he stated that the victim mentioned to him that Shakil, Nooruddin, Sagar and 5/6 people who were unknown to her were with them. The victim did not say anything to him to the effect that anyone raped her. The victim told him that on 03.06.2002 she was

abducted. The victim was brought to him on 15.06.2002 and he examined the victim on that date. It is not possible to say for sure how long the sign of rape might be present if anyone is raped. The victim did not mention to him that anyone raped her. It is not true that he issued false M/C for profit.

PW-5 Khandoker Md. Mizanur Rahman is the Investigating Officer who stated in his deposition that on 07.06.02 while he was working as SI in Demra Police Station received a written ejahar from Md. Al-Amin Chowdhury. The officer in charge of the police station appointed him as the investigating officer. After receiving the case for investigation, he recorded the statement of the witnesses under section 161 of the Cr.PC and took step for recording statement of the victim under section 22 and sent the victim to the forensic medicine department of S.S.M.C.H and then collected and reviewed those. He collected the photocopy of relevant pages of Boarder Register of Hotel Mainamati at Cumilla and Hotel Arafat at B'Baria dated 03.06.02 (01 page of both the hotels). Upon investigation finding prima facie case against FIR named accused (1) Shahin Chowdhury (2) Abdul Awal Chowdhury and (3) Noor

Uddin alias Ashraf he submitted charge sheet no.411 dated 26.08.02 under section 7/9(1)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. In his cross-examination he stated that on 08.06.02 he took charge of the investigation of the case. He didn't rescue the victim. The victim and the informant came to the police station together from their house. On 08.06.02 at 12.30 hours he got the charge for investigation and talked to the victim at 08.30 am. The victim did not say anything about being raped by the accused Shahin in his statement. He sent the victim to the medical college for examination before receiving statement under section 22 and on 08.06.02 he sent the victim to the court to record the statement under section 22 and on the same date sent her to the medical office. However, the victim's medical examination was done on 15.06.02 and he is unaware why it was not done on 08.06.02 and in this regard there is no explanation in the C/S. In the Photocopy of the boarder register of the hotel names of accused Shahin Chowdhury and Shibli Chowdhury (victim) as wife are there but in that boarder register does not have volume number. Boarder register's photocopy of Hotel Arafat in Brahmanbaria shows names of Md Rocky

and Suma Akhtar as his wife. According to the statement of the informant, he understood that Rocky and Suma Akhtar were Shahin and Shibli Chowdhury respectively. It is not true that he filed the C/S as per the desire of the informant without any investigation. He did not visit Hotel Mainamati and Hotel Arafat for the purpose of investigating the case. It is not true that the photocopies of the boarder register have made by him. He didn't record the statement of any neutral witness under Section 161 of the Cr.PC. He did not draw sketch map of Hotel Mainamati and Hotel Arafat but prepared sketch map of the place of occurrence (Qutubkhali under Demra police station). He didn't interrogate anyone from Qutubkhali School. It is not true that he didn't go anywhere and submitted C/S at his whims inside the police station. It is not true that the victim was not abducted or he submitted a false charge sheet as desired by the informant without proper investigation of the case.

PW-6 Salim Ahmmed stated in his deposition that he was working as a manager in Hotel Mainamati which is residential. The names of all the boarders who come to the hotel are recorded in the register. Shahin and Shilpi

Akhter were staying as husband and wife on 03.06.02. At that time he was in India for treatment. Someone else was in charge in his place. Later he could know by checking the register that they stayed as husband and wife on that date. In his cross-examination he stated that it is not true that the statement that a woman named Shilpi Akhtar stayed at the hotel on the said date was false. The police didn't interrogate him.

The alleged victim PW-3 Mst. Shibli Chowdhury on 08.06.02 made a statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain before the learned Magistrate wherein she stated that on 03.06.02 at 10.30 am in front of her school Shahin called her, Nooruddin and Sagar were with him who asked her to get into a yellow car putting fear of throwing acid. They took her to a boarding at cumilla. After that, except Shahin other accused left the room. Shahin asked for court marriage which she refused. At night she didn't eat but consumed a coke and went to sleep. At 12 at night she woke up and cried for return to home. At 10.00 in the morning she was brought to Dhaka at Ramana Park and Shahin proposed her to marry. She wanted to go home but Shahin said she would be

brought to the village. Then she was taken to B'Baria and kept her in a Hotel and stayed there for one day. It was a air-condition room having calling bell. Next day at 10.00 am she was brought to Telipara and then to satian Temunia station by a taxi. Shahin keeping her standing there went to hire a car. Suddenly she found her brother-in-law and cried for help and meanwhile Shahin and Nooruddin fled away. Her brother-in-law rescued her and informed her brother who brought her to her village home through another man. Later she came to know that Shahin's father gave a proposal to her mother for marriage between Shahin and her which her mother refused and out of that grudge Shahin done this. She had no relationship with Shahin. He didn't do any wrong behavior with her though tried. She can't say whether any harm was done to her at the hotel in Cumilla by feeding coke during her unconsciousness. The boy took her forcibly against her will.

These are the evidences of this case upon which the Tribunal convicted the appellant under section 9(1) of the Nari-O-Shishu Ain and sentenced him to suffer imprisonment for life with fine.

Ms. Salina Akter, the learned Advocate appearing for the appellant submits that the victim is not the informant and FIR was lodged by her elder brother on 07.06.2002 and in the FIR the informant stated that his sister was raped by the appellant but on 08.06.2002 in her statement under 22 of the Nari-O-Shishu Nirjaton Damon Ain before the Magistrate the victim categorically stated that the appellant did not rape her or did any harm to her. However, after long laps of 9 years while on the dock as PW-3, she stated that she was raped by the appellant. So, it is crystal clear that the subsequent statement which was delivered before the Tribunal standing in the witness box is consequence of subsequent embellishment and as such a doubt has been arisen. The deposition of PW-3, is made up and subsequent embellishment which made the whole prosecution case shaken and doubtful. The cardinal principle of Criminal Justice is that the benefit of doubt should be extended in favor of the accused.

The learned advocate then submits that it is well settled principle of law that the prosecution has to prove its own case beyond all reasonable doubt. But in the instant case

we find major contradictions of statements of the victim which was recorded as PW-3, with her statements made under section 22 of the Nari-O-Shishu Nirjaton Damon Ain and because of their major contradictions the appellant is entitled to be acquitted from the charge. Under section 145 of the Evidence Act, the appellant is entitled to get benefit of doubt and hence the appellant should be acquitted from the charge.

Ms. Salina next submits that in the FIR the age of victim has been shown as 13 years, but during recording statements of the victim under section 22 of the Nari-O-Shishu Damon Ain, her age was mentioned as 16 years. In the medical examination the doctor determined her age as 19 years. According to the learned advocate regarding determination of age of a person the opinion of a doctor should prevail over statements of others. Because, the doctor used to determine the actual age of a person by radiological examination of some physical parts of the body. Radiology plays an indispensable role in human age determination. Radiological images are utilized in the process of age estimation. No document was produced by the prosecution either from academic institutions or from the parents or any competent authority

to prove the age of the victim. Moreover, the prosecution did not raise any question regarding the age mentioned in Medical report before the court. It is well settled principle of law that the documentary evidence should prevail over the oral evidence.

The learned advocate further submits that by plain reading of the statements of victim recorded under section 22 of the Nari-o-Shishu Nirjatan Damon Ain it is crystal clear that the victim went with the appellant voluntarily and visited 4 different districts namely Cumilla, Dhaka, B'Baria and Hobigonj and stayed in several residential hotels and open park and hence the question of abduction of victim does not arise which was rightly found by the Tribunal.

Ms. Salina finally submits that the victim was 19 years age at the time of alleged occurrence and the circumstances as revealed from the evidence on record that she being an adult person went with the accused and if there was any sexual intercourse that was at her consent. At the relevant time consent could be given at the age of 14 years and above according to section 9(1) of Nari-O-Shishu Nirjatan Ain, 2000. Since the tribunal found

that the alleged victim was not abducted rather went at her own volition, the tribunal should have decided that there was consented sexual intercourse, if any, and in that view no offence of rape was committed. As there is no eye witness and even the circumstances do not justify drawing an inference of the guilt of the appellant and the prosecution witnesses did not corroborate each other and as such conviction cannot be sustained for want of material corroboration. There are many contradictions in the evidence of the prosecution witnesses in between the statement made in the FIR as well as in the statement of the victim and in the evidence as adduced in Tribunal.

In support of her submissions the learned advocate cited a series of decisions of this Court including the Appellate Division reported in 69 DLR 235, 71 DRL 7, 57 DLR 591, 23 DLR 91, 4 L & J 256, 1 LM(AD)(2016) 562 and 13 BLC 483.

On the other hand Mr. S.M. Asraful Hoque, the learned Deputy Attorney General appearing for the state submits that the victim was a minor girl of 13 years of age reading in class-V who was abducted in front of her school. She was taken to at first Cumilla and then to

Dhaka, Brahmanbaria and then to Hobigonj where from she was recovered. The victim in her statement under section 22 of the Nari-O-Shishu Nirjatan Daman Ain though did not mention the commission of rape but she stated that she was asleep in a unconscious condition when rape may be committed but when she was examined as witness she categorically brought allegation against the appellant of committing rape upon her.

The learned DAG then submits that the prosecution witnesses in a single voice brought allegation that the victim was abducted and raped and the Medical Report also supports the prosecution case. In such view the learned DAG prayed for dismissal of the appeal.

We have heard the learned Advocates of both the parties, perused the FIR, depositions of the witnesses, the impugned judgment and other materials on record.

It appears from the impugned judgment that on analysis of evidence on record the learned Judge of the trial Tribunal found the allegation of abduction under section 7 of the Nari-o-Shishu Nirjatan Daman Ain not proved and acquitted the appellant from that charge. It further appears from the impugned that the

learned judge in his finding opined “ইতিপূর্বের আলোচনায় ইহা প্রমানিত হইয়াছে যে ভিকটিমের আত্ম রক্ষার জন্য ইতিপূর্বে বিভিন্ন সময় তাহার চিৎকার দেওয়ার সুযোগ থাকা স্বত্বেও সে চিৎকার দেয় নাই। অত্র মামলায় স্বাক্ষীদের বক্তব্যের ধরণ, শৃংখলা এবং স্বাক্ষীদের স্বাক্ষে প্রকাশিত ঘটনার পারিপার্শ্বিক অবস্থা দ্বারা ইহা প্রমানিত হয় না যে, ভিকটিম তাহার ইচ্ছার বিরুদ্ধে ও সমর্থন ব্যতিরেকে আসামী শাহীন কর্তৃক বারবার ধর্ষিতা হওয়ায় সে শেষ পর্যন্ত আত্মরক্ষা করিবার জন্য হবিগত তেমুনিয়া নামক স্থানে চিৎকার দিয়াছিলেন এবং তদপ্রেক্ষিতে লোকজন আসিয়া ভিকটিমকে উদ্ধার করে ও রাষ্ট্রপক্ষের ২ নং স্বাক্ষী রোমান মিয়া তালুকদার এর নিকট হস্তান্তর করে।” But on the contrary the learned judge came to the conclusion that “উপরোক্ত সার্বিক আলোচনার আলোকে এবং স্বাক্ষীগণের স্বাক্ষ্য ও দালিলিক প্রমানাদি বিশ্লেষণে ইহা সন্দেহাতীতভাবে প্রমানিত হয় যে, আসামী শাহীন ইং ০৩/৬/০২ তারিখের পর ভিকটিমকে বিভিন্ন স্থানে নিয়া গিয়া ধর্ষন করিয়াছে।” These contrary findings of the trial Tribunal cannot be sustained. However, we have gone through the statement of the victim made under section 22 of the Nari-O-Shishu Nirjatan Daman Ain which has been recorded just after her recovery. In that statement the victim though stated that she was abducted and could not raise her voice due to fear of throwing acid by the accused but described all the incidents of taking her infront of her school to Cumilla and then to Dhaka Ramna Park, from there to Brahmanbaria, and at last to Hobigonj but she did not make any allegation of rape. Both PW-4, the doctor and PW-5, the IO stated that the alleged victim didn't make any allegation of rape to them and

even she didn't named the present appellant to PW-4. So, the prosecution has failed to prove beyond shadow of doubt that the alleged victim was raped forcefully or without her consent. We have also gone through the Medical examination report where from it appears that the doctor opined that the victim was of about 19 years of age and found sign of sexual intercourse. The victim was medically examined on 15.06.2002 after 8 days of her recovery. Regarding her age though the informant PW-1, the brother of the victim stated that she was 13 years old but in the statement under section 22 she mentioned her age as 16 while the Medical Report says that her age was about 19 years. In such circumstances the prosecution did not take any endeavor to prove the age of the victim by submitting her birth registration certificate or any school certificate or any other document. The evidence suggests that there may be of sexual intercourse but may not be any rape in the eye of law because the evidence further suggests that the alleged victim went with the appellant at her free will. If the victim was below the age of 14 at the relevant time then the sexual intercourse even with consent would amount to rape. Sexual

intercourse without consent of a woman of above 14 years of age at the relevant time was amount to rape. Since there is doubt regarding her age and the Medical Report and 22 statement shows that she was above 14 years at the relevant time and in that view of the matter we are of the opinion that the prosecution has failed to prove the age of the victim for which also has failed to prove the allegation of rape. The subsequent allegation of rape for for several times in day and night as stated by the prosecutrix as PW-3 long after 9 years is subsequent embellishment as because just after the alleged occurrence the prosecutrix was not sure that she might be raped when she was asleep as she stated in her statement recorded by the Magistrate. This statement of PW-3 creates serious doubt in our mind. Our considered view is that with the tainted evidence produced by the prosecution it would not be proper to come to a conclusion of conviction against the appellant rather the appellant is entitled to get benefit of doubt.

Considering the facts and circumstance of the case and the position of law discussed above the appeal is allowed and the judgment and order of conviction and sentence dated

12.08.2014 passed by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal No. 5, Dhaka in Nari-O-Shishu Nirjatan Daman Case No. 64 of 2012 is hereby set-aside. The appellant who is on bail is discharged from his bail bond.

Send down the lower court's record along with a copy of this judgment at once.

Ashish Ranjan Das, J:

I agree.