

Criminal-Question No-04 (Criminal Part):

Arfan was convicted by the Nari-O-Shishu Nirjatan Daman Tribunal No. 1, Comilla by the impugned judgment and order dated 03.07.2011 / 05.05.2021 on a charge of rape on Rahima, a girl of 17/18 years. Arfan was sentenced to suffer imprisonment for life and to pay a fine of Tk 5,000/-, in default, to suffer rigorous imprisonment for further period of 1 (one) year. The occurrence took place at dead of night. The FIR was lodged after 7/2 days of the occurrence without any convincing explanation. The Tribunal based its decision on the uncorroborated solitary testimony of Rahima.

Prepare a petition of appeal mentioning the relevant provision of law in the cause- title of appeal on setting forth the grounds of appeal. Also prepare an application for bail on behalf of the convict-appellant Arfan mentioning the grounds therefor. [25th May 2007, 15th July 2011, 9th January 2016]

(প্রশ্নটি বাংলায় (ফৌজদারী) ঃ আরফান নারী ও শিশু নির্যাতন দমন ট্রাইব্যুনাল নং-১, কুমিল্লা কর্তৃক তর্কিত রায় ও আদেশ তাং- ০৩.০৭.২০১১ / ০৫.০৫.২০২১ ইং দ্বারা ১৬/১৮ বৎসর বয়স্কা বালিকা রহিমাকে ধর্ষণের দায়ে দোষী সাব্যস্ত হয়। আরফানকে যাবজ্জীবন কারাদন্ড এবং জরিমানা ৫০০০/- টাকা অনাদায়ে আরও ১ (এক) বৎসরের সশ্রম কারাদন্ডের আদেশ দেওয়া হয়। ঘটনাটি ঘটে গভীর রাত্রে। ঘটনার ৭(সাত)/২ (দুই) দিন পর এজাহার দায়ের করা হয় কোনরূপ বোধগম্য ব্যাখ্যা ছাড়াই। রহিমার অসমর্থিত একক সাক্ষ্যের উপর ভিত্তি করিয়া ট্রাইব্যুনাল উহার সিদ্ধান্ত গ্রহণ করেন। সংশ্লিষ্ট আইনের বিধান উল্লেখ করিয়া এবং সঠিক হেতুসমূহ উল্লেখ পূর্বক। আপীলের একটি দরখাস্তের খসড়া তৈরী করুন। দোষী সাব্যস্ত কৃত সাজাপ্রাপ্ত আপীলকারীর জন্য হেতু উল্লেখ পূর্বক একটি জামিনের দরখাস্তের খসড়া প্রস্তুত করুন। (২৫শে মে ২০০৭, ১৫ই জুলাই ২০১১, ৯ই জানুয়ারী ২০১৬)

Answer to the question No. 04(a)

DISTRICT: COMILLA

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION (CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. OF 2022

IN

THE MATTER OF: An appeal under section 28 of Nari-O- Shishu Nirjatan Daman Ain-2000.

AND

IN THE MATTER OF:

Arfan

Son of of village-Monipur Para Police
Station: Comilla Sadar:: District- Comilla.

Convict-Appellant (In Jail Hajat)

VERSUS

The State

.....Respondent

AND

IN THE MATTER OF: Judgment and order dated 05.05.2021 passed by the learned Nari-O-Shishu Nirjatan Daman Tribunal-1, Comilla in Nari-O Shishu Nirjatan Case No. 125 of 2021 convicting the appellant under section 9(1) of Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Tk. 5,000/-in default to suffer rigorous imprisonment for a further period of 1 (One) year.

To

Mr. Justice Hasan Foez Siddique, the Hon'ble Chief Justice of Bangladesh and his Companion Justices of the said Hon'ble Court.

The humble petition of the petitioner above named most respectfully.

SHEWETH:

1. That one Md. Imran Ali father of the victim Rahimā being informant lodged an FIR with Comilla Sadar Police Station vide Comilla Police Station Case No. 33 dated 11.12.2020 against the accused appellant under section 9(1) of Nari-O- Shishu Nirjatan Daman Ain, 2000. That the prosecution case in short is that one Rahima.

2. daughter of Md. Imran Ali lodged an F.I.R with the Comilla Sadar Police Station, Comilla on 11.12.2020 alleging inter alia that she is a college going girl of 17/18 years and when she was sleeping in her father's house the convict-appellant Arfan etnered into the said house at night and raped her against her will. Hence the F.I.R.

3. That on the basis of the FIR the Police arrested the accused on 15.12.2020 and after completion of investigation Investigating officer submitted the charge sheet against the accused- appellant under section 9(1) of Nari-O-Shishu Nirjatan Daman Ain, 2000 and in due course the case record was transmitted to the Nari-O Shishu Nirjatan Daman Tribunal No. 1, Comilla for holding trial.
4. That the police made/completion investigation into the case and submitted charge-sheet against the convict-appellant under section 9(1) of the Nari-O-Shishu Nirjaton Damain Ain, 2000 (Amended 2003) being charge sheet No. 66 dated 02.02.2021.
5. That after receiving the record the learned tribunal framed the charge against the convict-appellant under section 9(1) of Nari-O-Shishu Nirjatan Daman Ain, 2000 and the defence pleaded not guilty to the charge and claimed to be tried.
6. That the convict appellant pleaded not guilty and claimed to be tried stating that he is innocent and he has been falsely implicated in this case. He did not commit any offence as alleged in the F.I.R.
7. That at the time of trial the prosecution examined 7 witnesses and defence examined none.
8. That it is humbly submitted that there is no eye witness of the occurrence and the occurrence took place in the house at night on dated 05.12.2020 according to story of the FIR.
9. That it is humbly submitted that the FIR was lodged after 7 days of the occurrence without any satisfactory/convincing explanation.
10. That it is submitted that the informant did not mention anything specifically against the convict appellant which creates strong doubt as to the commission of the alleged offence by the convict appellant and as such the order of conviction and sentence is illegal and liable to be set aside.
11. That it is further submitted that the learned Tribunal based his decision on the un-corroborated solitary testimony of the victim Rahima and as such the order of conviction and sentence is illegal and liable to be set aside.
12. That being aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence the convict- appellant begs to prefer this criminal appeal before your Lordships on the following amongst other-

GROUND

1. For that the judgment and order of conviction and sentence is bad in law as well as facts and circumstances of the case.

II. For that the prosecution miserably failed to prove its case against this appellant.

III. For that the prosecution could not prove the place, manner and time of occurrence and as such the order of conviction and sentence is illegal and liable to be set aside.

IV. For that all the prosecution witnesses were closely related to each other and they were very much interested in the prosecution case.

V. For that there is every chance of acquittal of the appellant in the appeal.

VI. For that the accused appellant had been falsely implicated in this case out of previous enmity with the informant

VII. For that as many as 7 prosecution witnesses deposed in this case but none of them saw the occurrence in their own eyes. They merely deposed on the basis of hearsay evidence which is not reliable for giving punishment.

VIII. For that in view of the F.I.R, charge-sheet, charge and deposition of P.Ws the sentence is illegal and it is liable to be set aside.

IX. For that the order of conviction and sentence not being based on reliable facts and circumstances and evidence on record, but on mere surmise and conjecture, it is not sustainable in law.

X. For that the learned Tribunal failed to consider a vital point of law as to place of occurrence and manner of incident and in the absence of such findings led an error of law and the order of conviction and sentence is not sustainable in law and the same is liable to be set aside.

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to admit this appeal, call for the record, notify the respondent and on perusal of the record and after hearing the parties allow this appeal and acquit the convict appellant from the charge and set aside the Judgment and order dated 05.05.2021 passed by the learned Nari-O-Shishu Nirjatan Daman Tribunal-1, Comilla in Nari-O Shishu Nirjatan Case No. 125 of 2021 convicting the appellant under section 9(1) of Nari-O-Shishu Nirjatan Daman Ain,

2000 and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Tk. 5,000/- in default to suffer rigorous imprisonment for a further period of 1 (One) year and or/pass such other or further order or orders as to your Lordships may deem fit and proper.

AND

Wherefore, it is most humbly prayed that your Lordships would graciously be pleased to admit the appeal, notify the respondents, call for the records and on perusal of the evidences on record and hearing the parties allow the appeal and set aside the judgment and order of conviction and sentence complained of and after hearing the parties, and perusal of the records, allow the appeal and acquit the convict appellant from the charge and pending disposal of the appeal enlarge the accused appellant bail and stay the realization of fine on and or pass such other or further order or orders as your Lordships may deem fit and proper.

-AND-

Your Lordships would further be pleased to enlarge the convict-appellant on ad-interim bail till disposal of the appeal.

And for this act of kindness, your humble appellant as in duty bound shall ever pray.

AFFIDAVIT

I, Shahnawaz, son of Kamal Hossain and Most Hasna Begum, of 15 Free School Road, Police Station-Dhanmondi, District- Dhaka, aged about 35 years, by Faith-Muslim, by Profession Business, by Nationality- Bangladeshi by birth, ID No. 111222333444 do hereby solemnly affirm and say as follows :-

- 1. That I am the cousin/brother of the accused petitioner and Tadbirkar of this case and am fully acquainted /conversant with the facts and circumstances of the case and am competent to swear this affidavit.
- 2. That the statements of facts made in this petition are true to my knowledge and matters of records which I verily believe to be true and the resets are submissions before this hon’ble court.

(Md. WXYWXYXYXY)

Advocate

EPONENT

The deponent is known to me and identified by me.

Md. XYXYXYXY

Solemnly affirmed before me by the said deponent on this the 07th day of July, 2022 at 11 AM.

Advocate

Membership No.

Room No

COMMISSIONER OF AFFIDAVIT
SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA.