

Bench:

Mr. Justice Md. Ruhul Quddus
and

Mr. Justice ASM Abdul Mobin

Criminal Appeal No. 1654 of 2004

Siddique Farazi

...Appellant

-Versus-

The State

...Respondent

Mr. Khandker Mahbub Hossain, Senior Advocate
with Mr. Mohammad Shishir Manir and Mr.
Masud Rana, Advocates

...for the appellant

Mr. Md. Moniruzzaman (Rubel), Deputy
Attorney General with Mr. Abul Kalam Azad
Khan and Mr. Abdur Rokib, Assistant Attorney
Generals

... for the State

Judgment on 23.04.2019

Md. Ruhul Quddus, J:

This criminal appeal under section 410 of the Code of
Criminal Procedure is directed against judgment and order
dated 13.03.2004 passed by the Sessions Judge, Barguna in
Session Case No. 18 of 2003 convicting the appellant under

section 302 of the Penal Code and sentencing him thereunder to suffer imprisonment for life with a fine of Taka 1,000/- in default to suffer rigorous imprisonment for one month more.

Informant Sunil Chowdhury, a Sub-Inspector of Police posted at Bamna police station, Barguna at the material time lodged a first information report (FIR) on 02.04.2003 against the appellant bringing allegation of murder of his wife Mst. Golapi Begum. It was stated in the FIR that on 11.02.2003 at about 10:35 am Chowkider Monirul Islam communicated Bamna police with information that victim Golapi Begum had committed suicide by hanging. Accordingly, an unnatural death case being UD Case No. 01 of 2003 was recorded. The Officer-in-charge of the police station assigned him (informant) with investigation of the UD case. On such assignment, the informant Sunil Chowdhury rushed to the house of occurrence and made an inquest on the dead body of the victim and thereafter sent the dead body to Barguna General Hospital for conducting autopsy. After receiving the autopsy report, he perused the same and found that the victim's cause of death was asphyxia by throttling, which was antemortem and homicidal in nature. He thus arrived at a

prima-facie finding that the victim was killed and on further investigation came to know that the victim had a quarrel with her husband at about 15:00/16:00 hours on 10.02.2003. At one stage, she was beaten by her husband. Before two/three days she was beaten once again and went to her parents' house. It was further revealed that the accused Siddique Farazi used to torture his wife. In the night of occurrence, nobody was in the house except the accused and their two minor children Shahin Farazi (PW 4) and Tania (PW 10). Under the circumstances, it was logically presumed that accused Siddique Farazi had killed his wife by throttling and in order to escape the liability, fabricated and published the news of suicide and in order to make an impression of truthfulness of the said news, he hanged the dead body of his wife by a rope and thereafter fled away.

The same Police Officer was assigned with investigation of the case. During investigation, he arrested accused Siddique Farazi on 03.04.2003 and produced him to the Court on 04.04.2003, where he made a confessional statement under section 164 of the Code of Criminal Procedure. The minor son of the accused also made a

statement before the Magistrate. However, after completion of investigation, the Investigating Officer (IO) submitted charge sheet under sections 302 and 201 of the Penal Code against three persons including the principal accused Siddique Farazi.

Eventually the case was sent to the Sessions Judge, Barguna for trial. Learned Sessions Judge framed charge against the principal accused Siddique Farazi under section 302 and against two co-accused Barek Farazi and Siddique Sikder under sections 302 and 201 of the Penal Code by order dated 05.07.2003. The charge was read over to them, to which they pleaded not guilty and claimed justice.

In trial, the informant deposed as PW 1 stating that on the day of occurrence he was posted at Bamna police station. At 10:35 am Chowkider Sheikh Monirul Islam (PW 5) communicated the police and informed that a house wife named Golapi Begum had committed suicide. On receipt of the said information, Sub-Inspector Habibur Rahman being the Duty Officer recorded UD Case No. 01 of 2003. He (PW 1) was assigned to investigate the case. On that very day at about 11:15 am he rushed to the place of occurrence (PO), conducted inquest on the dead body, prepared an inquest

report, took signature of the witnesses there and sent it for conducting autopsy. He received the autopsy report on 02.04.2003 and on perusal of the same he found that the victim was actually killed by throttling. He further came to know that accused Siddique Farazi used to torture and beat his wife Golapi Begum. Before two/three days of occurrence he also beat her, for which she went to her parents' house. She came back after one or two days. Accused Siddique Farazi planted some saplings of Brinjal at his courtyard, which was destroyed by his pet hen. Thereafter, Golapi Begum uprooted those plants to which accused Siddique Farazi became furious and beat her again. Consequently the victim Golapi stopped eating and cooking. On 10.02.2003 Siddique Farazi went to participate in a *waz mahfil*. He came back home at about 12:00 at night. As his wife did not cook any food, they were engaged in a quarrel and at one stage he knocked her down and consequently she died.

PW 1 proved his signature on the FIR and also proved the sketch map, index, seizure list and his signatures there and further proved the seized cotton *saree*, blouse and petticoat of the victim as material exhibits.

In cross-examination PW 1 denied the defence suggestion that being influenced by the enemies of Siddique Farazi, he had initiated the case falsely or that he extracted confession from the accused on physical torture.

PW 2 Doctor Harunur Rashid, a Medical Officer of Barguna Civil Surgeon's Office stated that at the material time he was posted at Barguna General Hospital. He conducted autopsy on the dead body of victim Golapi Begum on 12.03.2003 at about 2:30 pm. It was identified by two police constables Abdul Mannan and Rustam. At the time of conducting autopsy he found ecchymosis (গোলাকৃতির কাল দাগ) on her neck, which was created by rope and postmortem in nature. He also found a swelling injury on the right side of her face and front of right leg. He opined that her death was due to asphyxia as a result of throttling, which was antemortem and homicidal.

In cross-examination PW 2 stated that the above mentioned injuries were not likely to cause if someone had knocked down the victim from her front side, but if someone pressed her neck for a petty longer period, it would cause

asphyxia. He denied the defence suggestion that he did not properly conduct the autopsy.

PW 3 Abul Kalam Azad, the then Officer-in-charge of Bamna police station stated that on receipt of the *ejahar* lodged by Sub-Inspector Sunil Chowdhury, he recorded the case, made a note on its margin and filled up the FIR form. He assigned him (Sunil Chowdhury) to investigate the case. He proved the FIR form and his signature there.

In cross-examination PW 3 stated that earlier a UD case was filed on the selfsame occurrence. It was not correct to say that he himself filed the UD case. The local Chowkider Monirul Islam gave the information and Sub-Inspector Habibur Rahman recorded the case. In course of investigation of that UD case, it was found that the victim was killed.

PW 4 Shahin Farazi, a student of class VI and son of the accused as well as of the victim stated that he and his father were present at the *waz mahfil* at about 12:00 o'clock in the night of occurrence, when his mother died. He went to join the mahfil at the afternoon and came back home before his father. After coming back home he called his mother, but she did not

respond. As he was tired, he fell asleep. Thereafter, his father came home and called him. After waking up he noticed that dead body of his mother was hanging with a rope. His father brought down the dead body. Earlier he made a different statement as being influenced by the informant, his maternal grandfather Satter Bepary and one Bazlur. His father never killed his mother. At this stage he was declared hostile and cross-examined by the prosecution as well as by the accused.

In cross-examination by the prosecution PW 4 stated that after the death of their mother he and his sister Tania were staying at the house of their maternal grandfather. He, however, proved his signature on his statement made under section 164 of the Code of Criminal Procedure, but stated that being tutored by his maternal grandfather, uncle and informant he had recorded that statement to the Magistrate. The IO had given him Taka 100/- and convinced him to record the statement. He denied the defence suggestion that he had seen his father to kill his mother by throttling.

PW 5 Monirul Islam, Chowkider of Bamna Union Parisad Office stated that on the day of occurrence Alam Farazi and Barek Farazi informed him about the suicidal death

of Golapi Begum. On receipt of the news, he rushed to the house of occurrence and saw her dead body lying on a bamboo made platform. He then gave information to Bamna police station by filing an application. He proved the said application and his signature there.

PW 6 Alam Farazi, cousin of accused Siddique Farazi stated that in the night of occurrence he also joined the *waz mahfil*. He came back therefrom along with Shahin Farazi. Thereafter, he went to river for fishing and subsequently came to know that Golapi Begum had passed away. On request of all, he communicated the Chowkider (PW 5). At this stage he was declared hostile and cross-examined by the prosecution.

PW 7 Md. Hazrat Ali, brother of the victim stated that in the night of occurrence at about 3:00 am Alam Farazi gave him the news of Golapi's death. Alam Farazi also told him that Golapi was suffering from strong diarrhoea. At about 4:00 am he rushed to the house of occurrence and saw her dead body. He noticed finger impression on the neck of her dead body and presumed that she was killed by throttling. His brother-in-law accused Siddique Farazi told him that Golapi had committed suicide by hanging with a rope. In the morning

his nephew Shahin informed him that his father Siddique Farazi had killed her by throttling and he himself saw it.

In cross-examination PW 7 denied the defence suggestion that PW 4 Shahin did not tell him about killing of his mother by throttling or that it was not correct to say that Alam Farazi communicated him with the news that victim Golapi was suffering from diarrhoea.

PW 8 Md. Shmim Al-Razi, the then Magistrate of First Class, Barguna Collectorate stated that accused Siddique Farazi made a confession to him on 04.04.2003. In recording his confession, he had observed the legal formalities by providing him all necessary information about his (PW 8's) identity and consequence of making such confession. He also assured him that if he did not make any confession, he would not be sent back to the police. He (accused) was also given two hours time for reflection. After recording the confession it was read over to him and on clear understanding of its contents he put his signature there. From all tests, he believed that the confession was true and voluntary. He proved the confession, his signatures there and that of the accused.

PW 8 further stated that Shahin Farazi had also made a statement to him on 09.04.2003, which he recorded. He read over this statement to Shahin Farazi, whereon he put his signature. He (PW 8) also proved the said statement and his signature there and that of Shahin Farazi.

In cross-examination PW 8 stated that before recording the confession accused Siddique Farazi was sitting in his chamber. He followed the procedure as provided in the General Rules and Circular Orders, Chapter-1, Vol-1, (Criminal). He asserted that the statement of Shahin Farazi (PW 4) was also made voluntarily.

PW 9 Abdus Sattar, father of the victim deposed in similar line of PW 7. In addition, he stated that Shahin Farazi was staying with him since commission of the occurrence. Before fifteen days, accused Barek took him away from his custody on false hope. At the time of recording evidence Shahin Farazi was staying with the accused.

PW 10 Tania, a minor girl of four years of age was produced before the Court for recording her deposition, but the trial Judge did not find her competent to be a witness.

After closing the prosecution evidence, the accused were examined under section 342 of the Code when they reiterated their innocence but did not examine any witness in defence.

Learned Sessions Judge on conclusion of the trial convicted the appellant under section 302 of the Penal Code and sentenced him to suffer imprisonment for life with a fine of Taka 1,000/- in default to suffer rigorous imprisonment for another one month and acquitted the two others by pronouncing the impugned judgment and order, challenging which, the accused-appellant preferred this appeal and obtained bail from this Division on 11.01.2018 after serving out more than fourteen years.

Mr. Khandker Mahbub Hossain, Senior Advocate appearing for the appellant submits that the evidence of PW 4 Shahin Farazi, the only eyewitness to the occurrence and son of the victim who stated that his father did not kill his mother and in fact she had committed suicide, clearly falsified the prosecution case. When there is clear evidence of an eyewitness who is none but the victim's son, there is no reason to rely on the evidence of the doctor and confession of the

accused which is extracted on torture. Even if the confession made by the accused is taken to be true in its entirety, it would come out that the accused had no intention to kill the victim and the occurrence was an unplanned one, which constitutes at best an offence of culpable homicide not amounting to murder as defined in section 304 of the Penal Code. Mr. Hossain then takes us through the confession made by accused Siddique Farazi and submits that an uneducated villager being unfed condition came back from a *waz mahfil* and did not get any food after returning home. This situation was followed by a quarrel receiving information about destruction of Brinjal saplings planted at his courtyard. All the circumstances and inaction of the victim in cooking food made a sudden provocation to the accused, out of which the occurrence took place. Mr. Hossian refers to the cases of *Muhammad Saleh vs State*, 17 DLR (SC) 420; *Devku Bhikha vs State of Gujarat*, AIR 1995 (SC) 2171 and *Nawaz vs State* 2019(1) SCALE, 718 in support of his submission.

Mr. Md. Moniruzzaman, learned Deputy Attorney General appearing for the State on the other hand submits that in the fateful night there was no other person in the house of

occurrence except the accused-appellant. In such a position it was his duty to explain the cause of death of his wife, which he totally failed. This is correct that he did not explain the cause of death while made confession before the Magistrate. Nevertheless, it would be clear from the evidence of the expert witness, namely, PW 2 Dr. Harunur Rashid that the cause of her death was asphyxia due to throttling which was antemortem and homicidal in nature. The ecchymosis (গোলাকৃতির কাল দাগ) as stated by the Doctor was postmortem and if this part of his evidence and confession of the accused are read together, it would be crystal clear that the accused-appellant killed his wife by throttling. Such throttling took a reasonable time to continue with the pressure on her neck, which by any test of reasonableness cannot be construed as an offence of culpable homicide as made punishable in section 304 of the Penal Code. PW 2 Dr. Harunur Rashid, the expert witness stated in a clear language that the injuries found on the dead body were not likely to be caused if the accused knocked down the victim from front side as stated in the confession. It further shows that in order to save himself and escape the liability of murder, the accused tried to camouflage the mode

of occurrence mentioning just one knock to be the cause of her death, which is very unlikely even in view of common sense. From the facts and circumstance of the present case it has also become clear that the statement of PW 4 Shahin Farazi, which he made before the Magistrate was true and which he deposed on the dock was not correct. It further appears from the evidence of PWs 7 and 9 that there was finger impression on the neck of the victim and PW 4 Shahin Farazi at the earliest point of time disclosed that his father killed his mother by throttling. If all the facts and circumstances and the above discussed evidences are considered together, it would establish the allegation of murder against the accused. Learned Sessions Judge considered all the evidences and found the accused guilty under section 302 of the Penal Code and rightly convicted and sentenced him. The decisions of Pakistan Supreme Court before Emergence of Bangladesh and the other decisions of different States of India may have persuasive value, but not binding upon this Division. In some cases our High Court Division decided otherwise. On all the counts, the appeal is liable to be dismissed.

In turn of reply, Mr. Hossain argues that in view of the Laws Continuance Enforcement Order, 1971 read with article 149 of the Constitution, the pre-liberation decisions of Pakistan Supreme Court has binding effect on the High Court Division of the Supreme Court of Bangladesh. In support, Mr. Hossain refers to *Constitutional Law of Bangladesh*, Third Addition by Mahmudul Islam; *Unwritten Constitution of Bangladesh* by Justice M A Matin and the case of *Ahmed Nazir vs Bangladesh*, 27 DLR 199.

Mr. Hossain further submits that even if for the sake of argument the evidence of PW 2 Dr. Harunur Rashid is relied on and the autopsy report (exhibit-4) is taken to be correctly prepared and on that basis it is held that the victim was throttled to death by her husband, the limit or duration of provocation is to be considered, which always varies from man to man, culture to culture and class to class and depends on the facts and circumstances of a particular case. In the present case the appellant was an uneducated villager whose duration of provocation may continue for a bit longer period and cause the death of the victim under throttling. This continuation of provocation for a bit longer period would not

make the accused liable for murder, if it is not intended and premeditated. Mr. Hossain further refers to the case of *Atma Ram vs The State*, 1967 CrLJ (Vol 73 N.469) 1697 to support the above contention.

We have gone through the evidence and considered the submissions of the learned Advocates. Mr. Hossain has argued that in view of the evidence of PW 4, the allegation of murder against the accused-appellant has not been proved and it has been established that the victim had committed suicide, but if the facts and circumstances of the present case and evidence of other witnesses are considered together, it would be clear that at a later stage PW 4 was taken in the custody of his father from that of his maternal grandfather. It was quite usual that being a child he was influenced by his father, with whom he was currently staying and therefore, did not depose against him.

PW 2 Dr. Harunur Rashid and PW 8 Magistrate Shamim Al-Razi appear to be independent witnesses and there is no reason to disbelieve their evidence. PW 2 by his evidence established that the victim was killed by throttling and PW 8 proved that the confession of the accused was true

and voluntary and the statement of PW 4 was also voluntary. If we consider the evidences of PWs 1, 2, 7 and 8 with the confession of the accused and the circumstances that the victim died in the house of her husband while he himself was present there and his attempt to camouflage the occurrence as a suicidal death, there would be no doubt that at some point of time in the night following 10.02.2003 accused Siddique Farazi (herein appellant) in course of quarrel with his wife killed her by throttling.

We have also gone through the decisions cited. In the case of *Muhammad Saleh* (*ibid*), accused Muhammad Saleh woke up in the night of occurrence for observing fast and did not find his sister Mst. Gulen on her cot. He went outside and found her having intercourse with one Loung Khaskheli in a wheat field. Instantly he killed both of them by repeated hatchet blows. Then he approached the police station and stated the whole incident to a Sub-Inspector of Police. On the following day at about 10:00 am he made a confession before the Magistrate of First class. At trial he reiterated the occurrence to have been done by him and affirmed the confession. In evidence it was also found that Gulen's whole

neck was cut through and her partner Loung had received five blows, one on head, another on neck, two on left arm and one over the fore-arm. Trial Court convicted the accused under section 302 of the Penal Code rejecting the plea of grave and sudden provocation. The High Court of West Pakistan affirmed the conviction, challenging which the accused-appellant took the matter to the then Supreme Court of Pakistan. The Supreme Court altered the conviction to section 304 part 1 of the Penal Code. In the said case Cornelius, CJ speaking for the Court observed:

“Under village conditions and even in many other parts of society in this country, the right of the male members of a family to control the actions of their woman-folk, particularly in the field of sexual relations, is fully recognised and is forcefully maintained. The idea that a young unmarried girl in a village family is entitled to leave her bed during the night and go where she pleases, and that a male member of the family going in search of her is only asking for provocation if he finds her misbehaving in a sexual way, simply cannot be entertained. The taking of a hatchet can be explained by

the fact that it was still dark, that is, for self-protection, and it may be the accused expected to have to chastise his sister for misbehavior if that was found. But upon the admissible evidence in this case, there is no ground for thinking that the appellant expected to find his sister in an act of intimacy with a stranger. He must be allowed, on the evidence, the benefit of a shock, on making the discovery, such as is fully recognized in law as furnishing grave and sudden provocation within the meaning of exception 1 to section 300 of the P.P.C. sufficient to cause loss of self control.” (Paragraph 5)

In the case of Devku Bhikha (*ibid*), the appellant had killed the victim inflicting 5/6 knife blows in quick succession. He was convicted under section 302 of the Indian Penal Code, which was upheld on appeal. Ultimately the Supreme Court of India altered the conviction to section 304 part 1 of the Indian Penal Code on the reasons:

“...It stands out prominently that the deceased was a member of a high caste and the appellant of a low caste. Unfortunately the appellant was subjected to repeated insults at the end which, when his tolerance broke

down, he made use of the knife and inflicted repeated injuries on the deceased who had unabashedly and lecherously asked the appellant to make available his wife to him for immoral purpose. This part of the statement of the appellant cannot be doubted. It is also in evidence that there was a job available in the school of the “deceased head master and that the appellant wanted to apply for the same to the head master. This may have provided enough opportunity to the deceased to exploit the situation, as the appellant was unemployed in those days when the occurrence took place. Thus, from this analysis it becomes abundantly clear that the appellant was driven to the crime which was not premeditated and the occasion had sprung up at the moment, gradually leading to the point when the appellant lost his self-control, and due to grave and sudden provocation, inflicted the injuries on the deceased, successively within seconds.” (Paragraph 3)

In *Nawaz vs The State* (*ibid*), accused Nawaz had illicit relation with Ragila, wife of the murder victim. He quarreled with her and called her a ‘prostitute’ and told that she had

converted their daughter also into a prostitute. The appellant asked him to stop quarreling. As he did not stop, the appellant slapped his face and both the accused throttled him to death, burnt the dead body to camouflage the occurrence and abandoned it elsewhere. After two days, the dead body was recovered and after about forty days, accused No.1 Ragila made an extra-judicial confession, which was recorded by a local school teacher. During the forty days, she tried to hide the offence by giving false explanation about the whereabouts of her husband. The accused were convicted under section 302 of the Indian Penal Code, which was affirmed in appeal. Ultimately the Supreme Court of India altered the sentence on the grounds:

“...Since the Accused, because of the aforesaid conduct of the deceased calling Accused No. 1 and her daughter as prostitute, was deprived of the power of self-control. The sudden provocation by the deceased has resulted in the incident in question.

“The deceased provoked the Accused No. 1 by uttering the word ‘prostitute’. In our society, no lady would like to hear such a word from her husband. Most

importantly, she would not be ready to hear such a word against her daughters. The incident is a result of a sudden and grave provocation by the deceased..."

(Paragraphs 12 and 13)

In *Atma Ram vs The State* (*ibid*), Atma Ram was charged for murder of his wife Parsini. Fact in brief was that on an unusual demand of her husband for overtur cohabitation, victim Parsini sharply reacted by saying that he (accused) should satisfy his lust with his own sister. On hearing those words the accused gave a blow with the wrong side of a *kulhari* (a sort of weapon) on the left side of her neck bringing her low on the cot lying nearby. Thereafter, he gave several blows near her left ear in the same way. Their neighbor Dev Raj came there and saw the occurrence. Their son Giana aged 7/8 years was also present. Victim Parsini instantly died and accused Atma Ram left the house concealing the *kulhari*. Subsequently, the bloodstained *kulhari* was recovered at the instance of Giana, who was examined as an eyewitness, but did not choose to support the prosecution case. In autopsy nine injuries were found on the dead body, six of those were incised, two contusions and one lacerated

wound. Victim's left temporal bone was broken into ten pieces. There was rupture and laceration of left internal carotid artery and the nerves were cut on the way to carotid.

Learned Sessions Judge convicted and sentenced the accused under section 302 of the Indian Penal Code. On appeal, the High Court of Punjab and Haryana converted the offence to section 304 part 1 of the Indian Penal Code and altered the sentence accordingly. In so doing, Shamsher Bahadur, J observed:

"It is the central point in the prosecution case that the sudden assault was preceded by an abuse uttered by Parsini which would be regarded on all hands as foul and contemptible. The innuendo which it contained would enrage and infuriate any husband and the words per se would amount to grave and sudden provocation causing deprivation of the power of self-control of a husband. It is important to emphasise that the impact of provocation on human frailty is to be judged in the context of the social position and environments of the person concerned. The restraint which is generally shown by sophisticated persons used to modern living is

hardly to be expected in the case of a villager who still regards a wife as his personal property and chattel amenable at all times to his desire for sexual intercourse. The standard exacted by Courts in England in this respect is quite different from that what has been laid for the guidance of Indian Courts."(Paragraph 17)

In all the above cases, grave and sudden provocation and absence of any prior intention or premeditation were common. In spite of taking a longer period in commission of the occurrence by infliction of several injuries or throttling, the Supreme Courts of India and Pakistan and the High Court of Punjab and Haryana converted the offence and altered the sentence.

The determining features of those cases, namely, grave and sudden provocation and taking a longer period in commission of the occurrence by infliction of several injuries or throttling, absence of any prior intention or premeditation and attempt to camouflage the occurrence are also present in the case in hand. The women's condition as reflected in those cases is remaining the same in our rural society even after laps of decades together.

One of the above cited cases, namely, *Muhammad Saleh vs State* was decided by Pakistan Supreme Court in 1965 i.e before independence of Bangladesh. Learned Deputy Attorney General raises objection about the binding effect of such decision on the High Court Division of the Supreme Court of Bangladesh. Let us consider his objection.

In the case of *Ahmed Nazir vs Bangladesh*, a writ of habeas corpus in nature, S M Husain, J while concurring with his brother judge made specific observation:

"The language of the relevant provision of article 98 of the Constitution of Pakistan, 1962 is almost similar to the language of the relevant provisions of Article 102 of the Constitution of Bangladesh, 1972 and as such there is nothing to warrant any departure from the aforesaid principles laid down in the aforesaid decisions of the Supreme Court of Pakistan. In the absence of any availability of any contrary decision on this legal position from the Appellate Division of the Supreme Court of Bangladesh, the aforesaid decisions of the Supreme Court of Pakistan are still binding on the High

Court Division of the Supreme Court of Bangladesh.”
 (Paragraph 65)

Late lamented Mahmudul Islam referred the above cited case of Ahmed Nazir in his well appreciated book *Constitutional Laws of Bangladesh*, 3rd Edition, page 915 and dealt the issue as under:

“5.215 Judgments of the Privy Council, Federal Court and Supreme Court of Pakistan: Now the question is whether the laws declared by the Privy Council, Federal Court and the Supreme Court of Pakistan before the liberation of Bangladesh are binding precedents. Because of the then existing constitutional dispensation the statements of law by these courts formed part of the corpus juris of this country and were continued as existing laws by virtue of the Laws Continuance Enforcement Order, 1971 and art. 149 of the Constitution and are as such binding on the High Court Division and the subordinate courts until the Appellate Division renders any contrary decision.”

Justice M A Matin in his recently published book *Unwritten Constitution of Bangladesh*, page 10 echoed the same principle of law, though in other words that read as follows:

“... all laws which were in force at the commencement of the Constitution were continued and have the force of law under the Constitution. But the condition is that law must be valid law. These great body of law in the form of statute, ordinance, rules or laws declared by the court, that is all the decisions of the erstwhile federal court of Pakistan and the Supreme Court of Pakistan shall also form part of our unwritten constitution.”

We are in full agreement with the above quoted views. The Laws Continuance Enforcement Order, 1971 read with article 149 of the Constitution of Bangladesh and the views as quoted above make it clear that the decisions of the erstwhile Federal Court of Pakistan and the Supreme Court of Pakistan prior to emergence of Bangladesh have binding effect on the High Court Division of the Supreme Court of Bangladesh until its Appellate Division decides otherwise.

Let us revert to the case in hand. From a combined reading of the FIR, evidence of PW 1 and statement made in the confession by the accused himself it appears that there had been an extreme unhappy relation existing between the victim wife and accused husband. The accused husband was a common villager having no educational background and cultural accomplishment. It does also not appear that his mental condition was stable. Such a man came back home at midnight in unfed condition and came to know that his wife did not cook any food. He further learnt that she had uprooted the saplings from the courtyard which he had planted earlier. Resultantly they were engaged in a hot altercation and at one stage the accused throttled the victim out of sudden provocation. Such provocation may continue for a longer period to cool down a person like the accused, but we do not find any other evidence or material on record to show that he had killed her with a motive or in a preplanned way. The offence thus falls under the 1st exception to section 300 of the Penal Code and it is not a murder but culpable homicide not amounting to murder. Considering the facts and circumstances, long imprisonment of the accused, his old age

and clean previous record, we are of the view that justice would be met if he is sentenced to imprisonment for the period already undergone.

Accordingly, the appeal is dismissed with alteration of conviction of the accused Siddique Farazi to section 304 part 1 of the Penal Code and he is sentenced to imprisonment for the period already undergone.

Send down the lower Court's record.

ASM Abdul Mobin, J:

I agree.