

Present:  
Ms. Justice Naima Haider  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.5489 of 1991

Jalal Ahammad Boyati  
...Appellant

-Versus-

The State  
...Respondent

No one appears for the appellant

Ms. Promila Biswas, D.A.G.  
... for the respondent

Judgment on 18.4.2011

*Md. Ruhul Quddus, J:*

This appeal under section 410 of the Code of Criminal Procedure is directed against judgment and order dated 29.3.1989 passed by the Additional Sessions Judge, Patuakhali in Session Case No.25 of 1988 convicting the appellant under section 302 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for life with a fine of Taka five thousand in default to suffer imprisonment for one year more. It appears that at the time of admission of the appeal a suo-moto Rule was issued upon the appellant for enhancement of the sentence. The Rule is not registered with a separate number, but has been served upon the appellant. Since both the appeal and Rule have been heard together, these are being disposed of by one judgment.

Facts relevant for disposal of the appeal as well as of the Rule, in brief, are that one Md. Kadam Ali Madbar as informant lodged an *ejahar* with Patuakhali Police Station on 25.4.1988 against the appellant alleging *inter alia* that his sister Alekjan Bibi was given in marriage with the appellant before fifteen years. Out of their wed-lock two children named Meher Nessa and Abu Taher were born. At one stage, the appellant approached his wife, the said Alekjan Bibi for permission of second marriage, which she refused. Because of such refusal, the appellant had become seriously annoyed with her and used to beat her very often. On 21.4.1988 the appellant beat his wife causing grievous injuries on her person, which she communicated to the informant. As the informant had asked the appellant about the reason of such assault, he became furious and assaulted him as well. He (informant) took up the matter to the local Union Parisad Chairman who arranged a *shalish* to be held on 24.4.1988. Accordingly, he went to the Union Parisad at about 2.45 p.m. on 24.4.1988 to attend the *shalish*. While sitting at the office of Union Parisad, he received information that the appellant had beaten his wife Alekjan Bibi once again and kept her lying at his house in a critical condition. Instantly he (informant) rushed to the house of the appellant and saw the victim unconscious. He came to learn from Meher Nessa and Abu Taher his niece and nephew respectively that at about 9 a.m. their father (meaning the appellant) had beaten their mother (meaning the victim), for which she lost her sense. The informant communicated the Union Parishad Chairman about the occurrence. At about 8 o'clock in the night following 24.4.1988 he came to know that the victim died in the

evening. He rushed again to the Chairman and informed him about the death of the victim. Thereafter he along with one Kalam, son of the Chairman went to the house of occurrence at 9 p.m. and saw her dead body lying inside the appellant's bed-room. He also noticed so many injuries on her person.

The said *ejahar* gave raise to Patuakhali Police Station Case No.10 dated 25.4.1988. The police, after investigation submitted charge sheet on 9.6.1988 against the sole appellant under section 302 of the Penal Code. The case after being ready for trial, was sent to the Court of Sessions Judge, Patuakhali, wherein it was registered as Session Case No.25 of 1988. The learned Sessions Judge framed charge against the appellant under section 302 of the Penal Code by his order dated 23.8.1988, to which he pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the Court of Additional Sessions Judge, Patuakhali for hearing and disposal.

The prosecution in support of its case examined thirteen witnesses. After the prosecution was closed, the learned Additional Sessions Judge examined the appellant under section 342 of the Code of Criminal Procedure, to which he reiterated his innocence, but did not adduce any evidence in defense. After conclusion of trial the learned Additional Sessions Judge found the appellant guilty of offence under section 302 of the Penal Code for killing the victim Alekjan Bibi and accordingly pronounced his judgment and order on 29.3.1989 convicting and sentencing him as aforesaid.

The appeal has been appearing in the cause list since 4.4.2011 i.e. before six days of starting the vacation. Yesterday it was taken up for hearing, but no one appeared to press the appeal. Record shows that the appeal was filed on 21.5.1989 and initially it was numbered as Criminal Appeal No.49 of 1989. Subsequently it was renumbered with the present number, possibly on transfer from Barisal Bench, though the reason of such renumbering is not recorded. In view of its pendency for nearly twenty-two years, we took it up for disposal even in absence of the appellant and allowed the learned Deputy Attorney General to make her submissions.

Ms. Pramila Biswas, learned Deputy Attorney General has submitted that admittedly the deceased victim Alekjan Bibi died at the house of her husband, who failed to explain the circumstances under which his wife met the death. In absence of any such explanation on the part of the husband, he will be held liable for killing his wife. Moreover, the prosecution case has been proved by the evidence of the prosecution witnesses particularly P.Ws.1, 3-4, 6-7, 9-10 and 12. The learned Additional Sessions Judge considered all the evidence and other materials on records and passed the judgment and order of conviction. There is no illegality calling for any interference from this Court. She, however, found it difficult to support the enhancement Rule.

We have examined the evidence and other materials on records. It appears that P.Ws.1, 7, 9-10 Md. Kadam Ali Madbar, Abdul Salam, Robejan Bibi and Abdul Bashir Madbar respectively are full brothers and sister of the victim. P.Ws.3-4 and 6 Abdul Khaleque Molla, Samsheer

Payada and Khorshed Alam respectively are neighbors of the appellant. P.W.12 Md. Habibur Rahman is the doctor, who held post-mortem on the dead body of the victim. All the said witnesses deposed in full support of the prosecution case, and disclosed nothing adverse in spite of exhaustive cross-examination.

P.Ws.2, 8 and 11 Mst. Nurjahan Bibi, Peara Begum (declared hostile) and Halima Begum (declared hostile) respectively in their depositions stated more or less in a common language that on the fateful day the victim Alekjan Bibi went to bring water with a pitcher from a nearby river. She fell down on the quay and received injuries, to which she succumbed.

P.W.5 was tendered by the prosecution and the defense declined to cross-examine him. P. W.13 Abdul Quddus, the Investigating Officer being a formal witness deposed in support of the investigation and submission of the charge sheet.

It further appears from the evidence of P.W. 12 read with the inquest and post-mortem reports that there were as many as nine injuries on the person of the victim. P.W.12 Dr. Md. Habibur Rahman stated in his deposition that the death of the victim was due to shock and hemorrhage as a result of the said injuries, which were antemortem and homicidal in nature. There is no reason to disbelieve the evidence of P.W.12 and if his evidence is believed, the evidence of P. Ws.2, 8 and 11 can be discarded. More over, it is very unlikely that the victim had received as many as nine injuries because of her falling down on the

quay. It also appears that P.Ws.2, 8 and 11 were the sister-in-law, close door neighbour and niece respectively of the appellant. There is reason to believe that these witnesses distorted the facts to save the appellant.

The evidence of P.Ws.1, 4, 6, 7, 9 and 10 prove that the dead body of the victim was lying inside the appellant's bed-room, but he failed to offer any explanation of her death. The defense case as it transpires from the trend of cross-examination and the other hypothesis that the victim died of injuries, which she received because of falling down on the quay, is absurd.

Under the facts and circumstances and on perusal of the evidence on records, it has been proved beyond reasonable doubt that the appellant had beaten his wife to death. The learned Additional Sessions Judge on considering the evidence rightly passed the judgment and order of conviction and sentence. The appellant has two minor children, considering which, the learned Additional Sessions Judge awarded lesser punishment upon the appellant. We do not find any reason to enhance the sentence and therefore we are inclined to discharge the enhancement Rule at the same time.

In the result, the appeal is dismissed and the suo-moto enhancement Rule is discharged.

Send down the lower Court records.

Naima Haider, J:

I agree.

