

In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

And

Mr. Justice Md. Jahangir Hossain

Death Reference No. 11 of 2011

The State

-Versus-

Md. Mazed and others

.....Condemned Prisoners

With

Criminal Appeal No. 1301 of 2011

(along with Jail Appeal No. 77 of 2011)

Abdul @ Abidur

-Versus-

The State

Mr. Md. Anowarul Islam Shaheen, Adv.

.....for the appellant

Criminal Appeal No. 1303 of 2011

(along with Jail Appeal No. 78 of 2011)

Anwar Hossain

-Versus-

The State

Mr. Md. Anowarul Islam Shaheen, Adv.

.....for the appellant

Criminal Appeal No. 1345 of 2011

(along with Jail Appeal Nos. 76 and 79 of 2011)

Md. Mazed and another

-Versus-

The State

Mr. Khandker Mahbub Hossain with

Mr. Sheikh Mohammad Ali, Advocates

.....for the appellants

Criminal Appeal No. 1335 of 2011

Ranju @ Abdul Khaleque

-Versus-

The State

Mr. Md. Anowarul Islam Shaheen, Adv.

.....for the appellant

Criminal Appeal No. 2373 of 2011

Majnu Miah

-Versus-

The State

Mr. Md. Anowarul Islam Shaheen, Adv.

.....for the appellant

Criminal Appeal No. 1577 of 2011

Jewel and another

-Versus-

The State

Mr. Md. Ruhul Quddus with

Mr. Md. Kamal Parvez, Advocates

.....for the appellants

-Govt. Lawyer-

Mr. Zahirul Haque Zahir, D.A.G with

Mr. Md. Atiqul Haque [Selim], A.A.G

Mr. Nizamul Haque [Nizam], A.A.G

.....for the State

Heard on

**17.07.2017, 18.07.2017, 23.07.2017, 24.07.2017,
30.07.2017 and 31.07.2017**

Judgment on 29.10.2017

Jahangir Hossain, J

This Death Reference No. 11 of 2011 is the outcome of judgment and order of conviction and sentence dated 07.03.2011 referred to the High Court Division by the learned 3rd Additional Sessions Judge, Bogra for confirmation under section 374 of the Code of Criminal Procedure [briefly Cr.P.C].

Challenging the said judgment and order of conviction and sentence, Md. Mazed, Abdul Matin @ Moti, Abdul @ Abidur and Anwar Hossain filed three separate petitions of appeals being numbered as Criminal Appeal Nos. 1301 of 2011, 1345 of 2011 and 1303 of 2011 and all of them also filed four separate Jail Appeals vide Nos.76 of 2011, 77 of 2011, 78 of 2011 and 79 of 2011 respectively. And convicts, Ranju @ Abdul Khaleque, Jewel, Md. Bokul and

Majnu Miah filed three separate petitions of appeals being numbered as Criminal Appeal Nos. 1335 of 2011, 1577 of 2011 and 2373 of 2011 respectively while convicts, Ripon and Shafiqul did not file any petition of appeal against the said judgment and order of conviction and sentence.

Death Reference and all Criminal Appeals including Jail Appeals have been heard together and are disposed of by this common judgment.

The prosecution case is briefly described as under:

One Sree Nittanonda Das being informant lodged an FIR with Majhira [Shajahanpur] police station on 11.11.2003 implicating sixteen persons including condemned prisoners and other convicts alleging inter alia that his brother Ramananda Das [deceased] had a tussle with the said accused persons as he stood up against an eve teasing incident made by the accused persons to one

Damajani College student Topu few days ago. On 09.11.2003 at about 09:00 pm while the victim after having done with his business activities was returning home, the accused persons in an organized manner with knife, chinese axe, ramdao, stick etc. stopped the victim in front of a tea stall and surrounded with an ulterior motive to kill him.

Apel, one of the accused persons, ordered to kill the victim. Then, accused Matin stabbed the victim with the Chinese axe on his head, accused Mazed stabbed the victim with knife on his chest, accused Abdul stabbed the victim with knife on his right hand, accused Ranju stabbed the victim on his left hand, accused Anwar stabbed the victim on his chest and accused Ripon, Rafiqul, Monju and Jewel stabbed the victim on his legs while accused Shahidul beat the victim with a stick. Having heard the

hue and cry for help of the victim, the informant along with several witnesses rushed to the scene but they were threatened by the accused persons. Thereafter, the victim was taken to hospital where the doctor declared him dead. Police started a case being Majhira [Shajahanpur] Police Station Case No. 14 dated 11.11.2003 against the aforesaid accused persons under sections 147/148/149/323/302/114 of the Penal Code.

After completion of investigation police submitted charge-sheet No. 46 dated 04.06.2004 against 11[eleven] persons under sections 147/148/149/323/302/114 of the Penal Code excluding condemned prisoner Abdul and others.

On the basis of Naraji Petition Sub-Inspector of CID further investigated the case and submitted charge sheet No. 206 dated 11.11.2007 against 20[twenty] accused

persons including condemned prisoner Abdul and others under aforesaid sections and they were put on trial and the charge was framed under sections 302/34 of the Penal Code and duly explained to them present in the dock, on which they pleaded not guilty and claimed to be acquitted. The prosecution examined as many as 10[ten] witnesses while defence examined none. The accused persons were also examined under section 342 of the Cr.P.C and pleaded not guilty.

Having considered the evidence and facts and circumstances of the case learned Additional Sessions Judge, Bogra found 10[ten] out of 20[twenty] accused persons guilty of the offence punishable under sections 302/34 of the Penal Code and sentenced Md. Mazed, Abdul Matin @ Moti, Abdul @ Abidur and Anwar Hossain to death with a fine of Tk. 20,000/-[twenty thousand]

each while sentenced Ranju @ Abdul Khaleque, Ripon Saha, Jewel, Majnu Miah, Shafiqul Islam and Bokul to imprisonment for life with a fine of Tk. 20,000/-[twenty thousand] each, in default, to suffer rigorous imprisonment for 02[two] years more. Learned Trial Judge also acquitted accused Apel Mahmud, Biman, Arjun Pal, Goutum Pal, Pintu Saha, Shahidul Islam, Rafiqul Islam, Shajahan Ali, Abdul Motaleb and Monowar Hossain.

In this case pw-10 Sub-Inspector Md. Ayub Ali Khan was on duty in Majhira Police Station when he received information of killing of Ramananda Das on 11.11.2003 and he went to the place of occurrence according to Majhira Police Station G.D.E No. 341 and held inquest report of the dead body, marked as exhibit-02 and also seized blood stained apparels of the victim and also drew up a map of place of occurrence, prepared

a sketch map with index and recorded statements of the witnesses. Subsequently, he submitted charge sheet No. 46. From the inquest report it is revealed that many sharp cutting marks of injuries appeared on the body of the victim including the right side of his head, left chest and right shoulder. It is also revealed from the sketch map, marked as exhibit-04 by pw-09 that the occurrence took place in front of tea stall of one Abdul on 09.11.2003 at 21:00 hours as disclosed in the FIR [exhibit-01] and the evidence of pw-01, informant of the case.

Subsequently, pw-08 Md. Manzil Morshed Bhuiyan, Sub-Inspector of C.I.D, further investigated the case. During his investigation he found the sketch map along with index and other documents correct. So the place and time of occurrence has been proved and found correct without any dispute and the defence also did not raise any

voice at the time of examination of the prosecution witnesses that the occurrence had not taken place at the relevant time in front of the tea stall.

It is evident that the victim was killed as he stood up against an eve teasing incident made by the accused persons particularly accused Ripon as narrated in both the charge sheets. Ripon often used to eve tease Topu, a female student of Damajani College on her way to college or home. Ripon was also a student of that college. He along with other accused persons organized the mission to attack the victim as he prevented them from eve teasing Topu. From the evidence of pw-04 Md. Sohel it appears that before occurrence took place Ramananda had a talk with the accused persons sitting in the field of college where accused Ripon and Matin were not satisfied with the

amicable settlement rather both of them became enraged and that subsequently led to the killing of the victim.

In this case victim's fault was that he raised voice against a group of miscreants including the condemned prisoners because of their eve teasing to one Topu, female student. Pw-01 Sree Nitta Chandra Das, brother of the victim, stated in the FIR that accused Moti Mia @ Matin on the date of occurrence at 09:00 pm in front of tea stall gave a blow with Chinese axe on the right head while accused Mazed dealt a dagger blow on the right chest of the victim. Accused Abdul gave a knife blow in the elbow while accused Anwar gave a blow with Chinese axe on the right hand of the victim and accused Ripon and others made fatal blows on the right leg of the victim with knife. Similar depositions he has given in his evidence in court. Defence tried to impeach his evidence to be

unworthy but in vain with regard of the involvement to the said accused persons.

This witness along with others including pw-03 reached the place of occurrence when they heard hue and cry of the victim which proves that they directly saw some of the acts of the perpetrators. The evidence of pw-02 Sree Gouranga Chandra Das, brother of the informant and the deceased, supported the evidence of pw-01 that he received the facts of incident from pw-03 who told him that accused Mazed along with many others started beating and stabbing his brother victim with dao and axe. Although this witness has close relationship with the victim and the informant as advanced by defence but he provided evidence in a case of murder supporting the evidence of pw-01 and getting information from pw-03 he went to the spot and saw the accused persons beating his brother

Ramananda indiscriminately and he along with others took the victim from the spot to the hospital. So his evidence as relative has no scope of disbelieve.

Pw-03 Md. Liton, has no relationship with the informant party. He is absolutely an impartial witness in this case. He narrated in his evidence that accused Mazed having knife in hand gave a blow on the right chest of the victim when accused Matin with Chinese axe struck on the right head of victim Ramananda. Thereafter, accused Abdul with knife stabbed on the right hand under elbow and other accused persons beat the victim with Chinese axe, rod, ramdao etc. indiscriminately. He also came forward and pushed accused Mazed and Anwar at the place of occurrence. From the evidence of this witness it is clear that he is a very prudent witness. At the time of occurrence he was having a cup of tea in the tea stall

and pw-05 dropped the victim at the spot from 'Noya Myle' before occurrence took place. This witness also offered the victim to have a cup of tea which clearly indicates that he was very much present at the time of occurrence and his evidence is very much significant to prove the prosecution case. Although, pw-04 Md. Sohail did not see the occurrence but he knew about the eve teasing made by the accused persons and the accused persons agreed with the settlement not to further irritate Topu, daughter of Tapon Duktar but they started doing so again. Subsequently, victim Ramananda had a talk with the accused persons in the college field where accused Ripon and Matin encountered the victim and had been enraged. These facts took place prior to the incident and he was one of the persons who tried to settle the matter without any further bigger incident/consequence but he heard that

accused persons including Mazed, Matin, Anwar, Abdul and Ripon along with others killed the victim jointly. Hearing killing incident occurred by the accused persons may be hearsay evidence of this witness but he had knowledge about the previous eve teasing and subsequent excitement made by accused Ripon and Matin, cannot be brushed aside. It has evidential value as he was connected with the aforesaid facts prior to the occurrence.

Pw-06 is also brother of the informant and the victim of the case. Pw-03 informed him about the attack made by the accused persons on his brother. Soon after getting information he went to the spot and saw his brother-informant shouting and the accused persons including condemned prisoners along with Ripon and others made attack on his brother-Ramananda with knives and Chinese axe. He also shouted when the accused left the

spot. So his evidence has also corroborated the evidence of earlier witnesses as to the cause of attack on the victim and the involvement of the accused persons. Pw-07 doctor Sheikh Md. Rezaul Amin, who was an Assistant Professor of Pabna Medical College, examined the dead body of the victim and found the following injuries,

[1] There is one penetrating injury 2"X ½ "X Chest Cavity at right side of chest at 6th intercostal space,

[2] There is one incised injury 2"X ½ "X scalp at right parietal area.

[3] There is one incised injury 1"X ½ "X scalp at left parietal area.

[4] There is one penetrating injury 1½"X ½"X2" at left axilla.

[5] There is one abrasion 2"X¼" at left arm [deltoid area].

[6] There is one penetrating injury 3" \times $\frac{3}{4}$ " \times 4"
at medial side of upper part of right forearm.

[7] There is one incised injury 1 $\frac{1}{2}$ " \times $\frac{1}{4}$ " \times 1 $\frac{1}{2}$ "
at lateral side of right forearm.

[8] There is one incised wound $\frac{1}{2}$ " \times 1 $\frac{1}{8}$ " \times 1 $\frac{1}{2}$ "
at the dorsal aspect of right hand.

[9] There is one penetrating injury 1" \times $\frac{1}{4}$ " \times 1"
just above left knee.

[10] One incised injury 1" \times 1 $\frac{1}{8}$ " \times bone at
dorsal aspect of right foot.

[11] There is one incised injury 2" \times $\frac{1}{4}$ " \times $\frac{1}{4}$ " at
anterior aspect of right thigh.

[12] There is one lacerated injury $\frac{1}{2}$ " \times 1 $\frac{1}{2}$ " at
right leg anterior aspect.

[13] There are two incised injury one above
another at lateral side of right thigh above the knee
measuring $\frac{3}{4}$ " \times $\frac{1}{4}$ " \times 1 $\frac{1}{2}$ " and $\frac{1}{2}$ " \times $\frac{1}{4}$ " \times 1 $\frac{1}{2}$ " respectively.

[14] There are multiple bruise and abrasion present at the back of chest measuring 2"X1/8" to 4"X1/8".

On detailed dissection: ante mortem blood clot found in and around the above mentioned injuries. Cut fracture found on the 6th costal cartilage of right side. One penetrating injury was found on the anterior surface of right lobe of liver measuring 1"X1/16"X2½". One perforating injury was found on the middle lobe of right lung. Huge volume of ante mortem blood clot found within chest and abdominal cavity.

Death in his opinion, was due to hemorrhage and shock as a result of above mentioned injuries which were ante mortem and homicidal in nature.

It appears from the findings of the post mortem report that there are as many as 14[fourteen] injuries found on the dead body of the victim. But learned

Advocate contends that 10[ten] injuries appeared in the inquest report. Question is which report is correct and is to be considered as evidential value. The maker of the inquest report is not an expert who abruptly stated the injuries following the external condition of the dead body but the doctor, who examined the dead body following external and internal condition of the dead body. So the injuries the doctor found are to be considered as correct. Moreover, it is evident that many accused persons made attack on the person of the victim which caused fourteen injuries and prompted the death of the victim. From the evidence it finds that accused Mazed dealt a knife blow on the right chest of the victim which has been supported by injury No. 01 and accused Matin dealt a Chinese axe blow on the right head of the victim which has been supported by injury No. 02. Accused Abdul dealt blows on the right

forearm which has been supported by injury Nos. 06 and 07. Accused Anwar dealt a blow with Chinese axe which hit at the dorsal aspect of right hand supported by injury No. 08. Accused Ripon and others dealt blows with knife on knee and other parts of body of the victim which has been supported particularly by injury Nos. 13 and 14.

In support of the appeals filed by the condemned prisoners and convicts as mentioned earlier Mr. Khandker Mahbub Hossain, Mr. Fazlul Haque Khan Farid, Mr. Md. Ruhul Quddus and Md. Anowarul Islam Shaheen, learned Advocates contend that in this case the motive of the murder is absent and the prosecution also failed to prove the same. The FIR was lodged two days after the alleged occurrence. No proper explanation for delay in lodging the FIR has been mentioned. It is further contended that it was very difficult on the part of the witnesses to identify

the accused as well as their role for the killing of the victim in the darkness. The investigating officer failed to recover blood stained earth of the victim from the place of occurrence and the prosecution failed to examine all the witnesses cited in the police report.

In support of their arguments they have cited some decisions namely Kadir -Vs- The State, reported in 1987 CRL, L.J, 101 on non-recovery of blood stained earth from the spot, Alkas Miah and others -Vs- the State, reported in 25 DLR, 398, upon non-examination of witnesses and Abdul Karim -Vs- the State, reported in 41 DLR (AD), 152 on inconsistent of evidence [omission and contradiction] respectively.

On the other hand, Mr. Zahirul Haque Zahir, learned Deputy Attorney General along with Mr. Md. Atiqul Haque Selim and Mr. Md. Nizamul Haque Nizam, learned

Assistant Attorney General citing some decisions contends that it is a pre-planned murder committed by all the convicts including the condemned prisoners. The victim had no previous enmity with the convicts but he was liquidated only because of preventing the convicts from eve teasing one Topu. The witnesses, who have given evidence in support of the prosecution case, were very competent persons to witness the occurrence.

Learned Deputy Attorney General finally submits that the prosecution has been able to prove the case beyond reasonable doubt and the trial court rightly found the convicts guilty of the offence and sentenced them accordingly as stated earlier.

On perusal of the evidence and hearing of the contentions of the learned Advocates it finds that the alleged occurrence took place in front of a tea stall of one

Abdul at the alleged time in Damajani Bazar area. There is no contradictory statement given by the witnesses as to the place of occurrence and time of occurrence and the investigating officer also supported by annexing sketch map along with index, marked as exhibit-04 and 05 respectively. It appears from FIR that the informant stated that the occurrence took place because the victim made an attempt to prevent the accused persons from further eve teasing Topu. And the accused persons subsequently being enraged killed him which has been supported by the evidence of the prosecution witnesses as discussed earlier. The reason of attack made on the victim was that he prevented the accused persons from eve teasing to one Topu. So the object of the accused persons is clearly present for killing the victim. Nevertheless, our Apex Court held that, it is not necessary to prove the motive of the

murder. It is enough if the killing incident is proved beyond reasonable doubt. In this regard it finds support from the case of Ershad Ali Sikdar (Md) -Vs-State, reported in, 57 DLR (AD) 75 where it was held that,

“For lack of motive, the ocular evidence of injured witnesses and other eye-witnesses should not be discarded specially in view of the fact that their evidence has not at all been shaken in the cross-examination.”

Pw-04 supported by giving evidence that Topu was irritated by these convicts. For that reason victim Ramananda took a step to stop such eve teasing. As a result, he became hostile of the convicts. It also reveals from the inquest report, marked as exhibit-02 that the inquest report was prepared upon a G.D. entry before lodging the FIR in which the informant explained the

reason for delay that it took some time for autopsy report and burial of the dead body. In this regard it finds support from the case of The State-Vs- Fazal and others, reported in 39 DLR(AD) 166 where it has been held that,

“The delay is to be understood in the light of the plausibility of the explanation and must depend for consideration on all the facts and circumstances of a given case- here it is the fear of the accused assassins.”

In the evidence it is also found that at the time of occurrence electricity was available around the place of occurrence. It is also evident by investigating officer in course of cross-examination that the place of occurrence was washed erasing the blood stained of the victim soon after the occurrence. Since the killing incident has been proved by the evidence of prosecution witnesses and no

denial of killing has been given in this case, the question of blood stained earth from the spot is not so important in this case.

When there are eye witnesses of the occurrence and if they provide evidence, there is no need to take more evidence by excessive witnesses. No particular number of witnesses is necessary to prove the case. Conviction can be given upon the offender based on evidence of a solitary witness if his evidence is found to be reliable and trustworthy. In this case we find some relatives of the victim have given evidence in support of the prosecution case. In a case of murder relationship of the witnesses with a party cannot be the sole ground of disbelieving unless there are sufficient contradictions found in their evidence. In this regard it finds support from the decision held in a case of Zahed Ali Foreman [Driver] and others

-Vs- State, reported in 9 BLC (AD)122 which is run as follows,

“The law is now settled that mere relationship of the witnesses inter se or relationship with the victim do not make them unreliable or, in other words, their evidence is not worthy of consideration. The Court can very much rely on the evidence of a witness who is related to the victim or to other witnesses if the witness is considered by the Court reliable and such evidence of the witness is corroborated by other reliable witnesses who are not related to the victim.”

It reveals from evidence that initially convict Ripon eve teased Topu from where the dispute had developed and led to the death of the victim. Although Ripon committed an offence by eve teasing a college going student, he did not stop there rather he made a plan

along with others in the field of the college to make an attack on the victim who prevented them from further eve teasing the above college going student. It is also evident that he along with two others dealt knife blows in the right knee of the victim in order to kill him.

From the evidence of prosecution witnesses it is clear that this convict Ripon got interest in the irritating of a college going student and taking grievance as the victim made attempt to resist them from their wrong doing. It appears from FIR as well as evidence of the some witnesses that the condemned prisoners [four persons] played significant roles in the killing of the victim and some activities had taken place under leadership of convict, Ripon before occurrence took place. Though it is difficult to say definitely that all the accused persons shared the common intention of each other whose acts resulted in the

death of the victim, but from the evidence it has been proved that the victim mainly died of severe injuries inflicted by the condemned prisoners and others convicts where convict Ripon was present and played some role with other accused persons whose involvement of eve teasing was not proved by evidence.

Having considered the aforesaid evaluation and discussions we are constrained to hold that the allegations placed through investigation reports after being found prima face case and subsequent charge brought by the prosecution has been proved against the condemned prisoners and convict Ripon under sections 302/34 of the Penal Code beyond reasonable doubt. However as the convicts Ripon and Shafiqul Islam did not prefer any petition of appeal, on being absconded, we are restrained ourselves from passing any order in respect of them.

Under section 302 of the Penal Code, a discretion has been conferred upon the court to award two types of sentence either death or imprisonment for life to which fine shall be added. It appears from the connected documents on record that condemned prisoner Mazed was arrested in connection with this case on 12.01.2010 and since then he has been in prison. Condemned prisoner Abdul Matin @ Moti surrendered on 13.03.2011 and since then he has been in prison. Condemned prisoner Abdul @ Abidur has been in prison since delivery of the judgment dated 07.03.2011. The condemned prisoner Anwar was arrested on 12.01.2010 and he obtained bail on 26.07.2010, he has been in prison since his surrender dated 10.03.2011 which indicates that they all four have suffered a long pangs of death in the condemned cells around seven years. Long suffering in the condemned cell as well as

normal cell may sometime be considered the punishment to be commuted depending on facts and circumstances of the case as our Apex Court opined in the case of Manik-Vs-the State, reported in, 35 BLD(AD) 63.

However, we have given our anxious thought over the duration of suffering in normal cell as well as condemned cell and facts and circumstances of the case it is our considered view that the ends of justice will be met if condemned prisoners are sentenced to imprisonment for life instead of awarding them sentence to death with a fine of Tk. 5000/- each.

Out of these awarded sentences, the quantum of sentences they have already served out and period of custody before impugned judgment shall also be deducted on the application of provision of section 35A of the Cr.P.C.

Since the prosecution has failed to prove the allegation against convicts namely Ranju @ Abdul Khaleque, Jewel, Bokul and Majnu Miah to be acquitted from the charge leveled against them and be released from the prison if they are not wanted in connection with any other cases and be released from bonds, if they are on bail.

In the result, the Death Reference No. 11 of 2011 is, hereby, rejected with the said modification in awarding sentence. Abdul @ Abidur in Criminal Appeal No. 1301 of 2011 along with Jail Appeal No. 77 of 2011, Anwar Hossain in Criminal Appeal No. 1303 of 2011 along with Jail Appeal No. 78 of 2011, Md. Mazed and Md. Abdul Matin @ Moti in Criminal Appeal No. 1345 of 2011 along with Jail Appeal Nos. 76 of 2011 and 79 of 2011 respectively are also dismissed.

Accordingly, the condemned prisoners namely Abdul @ Abidur, Md. Mazed, Md. Abdul Matin @ Moti and Anwar Hossain are sentenced to imprisonment for life with a fine of Tk. 5000/- each as stated above and be shifted from the condemned cells to normal cell meant for similar convicts at once.

Let a copy of this judgment and order along with lower court's records be transmitted to the Additional Sessions Judge, 3rd Court, Bogra expeditiously for necessary measures.

Md. Jahangir Hossain, J

I agree