13 SCOB [2020] AD

APPELLATE DIVISION

PRESENT:
Mr. Justice Surendra Kumar Sinha
Chief Justice.
Mr. Justice Syed Mahmud Hossain.
Mr. Justice Mirza Hussain Haider.

Criminal Appeal No. 23 OF 2009.

(From the judgment and order dated 19.11.2006, passed by the High Court Division in Criminal Appeal No. 3129 of 2002.

State ..... Appellant. : .....Petitioners.

-Versus-

Abu Hanifa @ Hanif Uddin son of Md. Musa Ali, Village- Barak, PS-Haluaghat, District-Mymensing. : .....Respondent.

For the Appellant : Mr. Khondaker Diliruzzaman, D.A.G., instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For the Respondent. : Mr. Chowdhury Md. Zahangir, Advocate-On-Record.

Date of Hearing and Judgment. : The 11th July, 2017.

Section 84 of the Penal Code and plea of unsoundness of mind;
On a plain reading of the aforesaid provisions of law and on scrutinizing the materials on record, specifically the Medical reports (Exhibits-A,B,C and D), submitted by the DWs we have already found that the defence has been able to prove that the accused-respondent was of unsound mind from 22.6.1999 i.e. 8(eight) months after the date of occurrence (13.10.1998) but failed to prove the same, prior to that date. Since the defence failed to prove its plea of unsoundness of mind of the accused-respondent, at the time of commission of the offence on 13.10.1998, as required under section 84 of the Penal Code and section 105 of the Evidence Act by providing sufficient evidence, he cannot get any benefit under section 84 of the Penal Code nor under Chapter XXXIV of the Criminal Procedure Code. Plea of insanity or of unsoundness of mind of the accused-respondent being not prima facie found, the Court is not obligated to take recourse to the provisions as laid down in Chapter XXXIV of the Criminal Procedure Code. ... (Para 39)

J U D G M E N T

MIRZA HUSSAIN HAIDER, J.

1. This criminal appeal, by leave, is directed against the judgment and order dated 19.11.2006, passed by a Division Bench of the High Court Division in Criminal Appeal No. 3129 of 2002 allowing the appeal and acquitting the present respondent of the charge levelled against him.

2. Facts leading to this criminal appeal in short are that on 14.10.1998 at around 23.35 hours, one Md. Bazlur Rahman, as informant, lodged First Information Report (F.I.R.) with Haluaghat Police Station, Mymensingh, alleging that his younger sister Shahanaz Begum was married to accused Abu Hanifa 11 years back and from that marriage, she gave birth to three children. From the very beginning of their marriage, Abu Hanif, a man of questionable character often used to torture her physically. Shahanaz Begum tried to rectify him but in vain which led their relationship to more bitterness. On 13.10.1998 at 11.00 P.M. the informant came to know from his brother, Md. Nazrul Islam, and others that the accused Abu Hanifa, (respondent herein), Musa Ali, Siddiqur Rahman and Sarwar have beaten up his sister, Shahanaz Begum. The next morning i.e. on 14.10.1998, the informant started for Barak village where the accused used to live with his wife Shahnaz Begum and on his way he came to know that the accused persons including the present respondent in collusion with each other inflicted indiscriminate sharp weapon blows on his sister Shahanaz Begum causing severe bleeding injuries and they took her to Halua Ghat Hospital and upon keeping her there they fled away. Then the informant rushed to the said Hospital and came to know from the doctor that his sister succumbed to her injuries. He saw the dead body and the injuries inflicted on her body. Subsequently, the informant went to the place of occurrence along with Md. Yakub Ali and Momtazuddin, the former and sitting Chairman respectively of Dhobaura Union, Professor Md. Abdul Motalib Akanda of Dhobaura College and Ijjat Ali, the former member of Baghber Union and came to know from the surrounding people that at the relevant time the accused respondent being instigated by other accused persons dealt dao and dagger blows indiscriminately on Shahnaz Begum's head and other parts of her body. At one stage she fell down on the ground and the accused respondent dealt several blows and eventually murdered her which was witnessed by Aiton, Amena Khatun, Tofi Miah and Sakina. Whereupon Haluaghat P.S. Case No. 5 dated 14.10.1998 was started.

3. Police, after investigation submitted charged-sheet No. 10 dated 31.01.1999 only against the accused respondent under section 302 of the Penal Code showing 17(seventeen) persons as witnesses.

4. At course of trial, the prosecution examined as many as 13 (thirteen) witnesses to prove the charge brought against the accused respondent, who have been cross examined by the defence and the defence examined as many as 7(seven) witnesses to prove his innocence.

5. After conclusion of examination of the witnesses, the accused person was examined under section 342 of the Criminal Procedure Code.

6. The defence case, as derived from the trend of cross-examination of P.Ws and evidence of DWs., in short was that the accused Abu Hanifa was insane at the relevant time and he was not capable of understanding the consequence of his act and did not know that his wife would die as a result of such act.

7. The trial Court upon considering the materials on record found the convict-respondent guilty under section 302 of the Penal Code and sentenced him to suffer imprisonment for life and to pay fine of TK. 5,000/= in default to suffer rigorous imprisonment for 2(two) years more by its judgment and order of conviction and sentence dated 27.08.2002.

8. Against the said judgement and order of conviction and sentence the convict-respondent preferred Criminal Appeal No. 3129 of 2002 before the High Court Division which has been allowed by a Division Bench of the said Division after hearing the parties and thereby set aside the judgment and order of conviction and sentence dated 27.08.2002 passed by the learned Sessions Judge, Mymensingh and acquitted the accused respondent of the charge levelled against him in Sessions Case No. 49 of 1999 arising out of Haluaghat Police Station Case No. 5 dated 14.10.1998, by the impugned judgment and order dated 14.11.2006.

9. Hence, the State as appellant filed Criminal Petition for Leave to Appeal No. 425 of 2007 and obtained leave giving rise to this criminal appeal.

10. Mr. Khondker Diliruzzaman, the learned Deputy Attorney General appearing on behalf of the appellant, State, submits that the High Court Division erred in relying on the evidence of D.Ws. on the point of insanity of the accused inasmuch as those witnesses were not competent witness to prove that the accused was insane and as such they are not proper witnesses to prove insanity in the eye of law. He submits that when the defence has miserably failed to prove by proper and competent witness that at the time of commission of the offence the accused respondent was insane and the evidence adduced in respect of his mental disorder being not proper as contemplated in section 105 of the Evidence Act, showing the state of the mental health of the accused at the time of occurrence, the impugned judgment and order of acquittal passed by the High Court Division is liable to be set aside. He lastly submits that the instant case is a wife killing case and the evidence of P.W.5 is most vital in this respect but the High Court Division without giving due consideration on the evidence of the said PW relied upon the non tenable evidence of DWs and allowed the appeal on misappreciation of evidence on record and thereby acquitted the accused. Thus the impugned judgment and order of the High Court Division is liable to be set aside.

11. Mr. Chowdhury Md. Zahangir, the learned Advocate-on-record appearing on behalf of the accused respondent submits that the trial court erred in law in shifting the onus of proof upon the defence. The prosecution failed to prove the case by giving any tangible evidence beyond any reasonable doubt. In order to prove the charge of murder none of the witnesses deposed that the murder was committed by the accused respondent in their presence nor could they prove that the accused respondent was of sound mind at the time of commission of the alleged murder. Moreover, the optimum witnesses examined on the part of the prosecution categorically deposed in support of the insanity of the accused-respondent during the course of offence and that has not been weighed at all by the trial court and as such the finding and decision of the trial court is neither sustainable nor tenable in the eye of law which the High Court Division rightly considered and as such the impugned judgment and order of the High Court Division is liable to be affirmed for ends of justice. He also submits that the trial court erred in law in not considering the fact that in the present case there is no circumstantial evidence which could lead to convict the accused respondent for the charge nor there is any ingredient which could lead the Court to find him guilty for the offence he was charge and as such in such a case motive and mens rea of the accused respondent was required to be proved by the prosecution side but they totally failed to do so. Moreover, in the

present case the ingredients which are necessary for proving commission of an offence under section 302 of the Penal Code are totally absent which has been clearly reflected in the judgment and order of the High Court Division and as such the same is liable to be affirmed for ends of justice. He finally submitted that for securing conviction in a criminal case, the individual liability of the accused person must be proved beyond all reasonable doubt but the prosecution side has totally failed to prove the same in the instant case. The prosecution also totally failed to prove that at the time of occurrence the accused-respondent was of sound mind and he committed the murder in a pre-planned way. On the contrary, it is proved that at the time of alleged occurrence the accused respondent, without any provocation penetrated a knife into his own body and brought out his entire belly which clearly indicates that how much insane he was at the time of commission of the alleged offence that he was unaware about the consequence of his action because of his insanity at the time of commission of the alleged offence. Therefore, there is nothing to interfere with the findings and decision of the High Court Division, as claimed by the prosecution side, and as such the High Court Division rightly passed the judgment and order of acquittal. Hence, the instant appeal should be dismissed.

12. Heard the learned advocates appearing on behalf of both the parties, perused the judgment and order passed by the trial court, the impugned judgment and order passed by the High Court Division and also other materials available on record. On perusal of the same it appears that it is a wife killing case without any eye witness of the actual occurrence.

13. In this case in order to arrive at a conclusive decision two questions are to be solved, they are whether the accused-respondent Abu Hanifa @ Hanif Uddin killed his wife Shahnaj Begum and whether the accused-respondent was of unsound mind at the time of committing such murder as claimed by the defence witnesses. If we find the answer to the first question in the negative form, then it would not be necessary to proceed with the second question. Now let us come to the first question.

14. The informant stated in his FIR that on 13.10.1998 at about 11.00 p.m. he got information from his younger brother, Nazrul Islam and another person that the accused respondent and others beat up his sister, Shahnaj Begum, but on the next morning, on his way to the accused's house he came to know that his sister died due to indiscriminate chopping by the accused respondent and other persons. When he along with some other persons went to accused's house he came to know that the accused-respondent in provocation of other accused persons killed the victim by inflicting indiscriminate chopping blows by a sharp cutting weapon. The informant deposed as PW-1 supporting FIR case and remained unimpeached during his cross examination. He stated that he did not see anybody to kill his sister but he heard that the accused-respondent and other accused persons killed his sister. PW-2, Ayatannessa, stated that she went to Shahanaz's house at about 'Asar' prayer time to purchase one kilogram rice when she saw Shahanaz Begum(victim) exclaimed and came out of her hut holding her cheek. Having seen such condition PW-2 rushed to Siddique's house but having not found Siddique at home she returned to Shahanaz's house and saw Shahanaz was being carried to a pushcart for taking her to hospital. PW-3, Amena Khatun, stated that the victim was killed at 3.30 P.M. but she did not see who killed the victim. In reply to a suggestion by the defence she stated that 'আমি জানি না ঘটনার সময় হানিফা পাগল ছিল কিনা। আমি জানি না হানিফা ৭/৮ বৎসর যাবৎ ডাক পাগল ছিল কিনা এবং তাকে ঢাকা, পাবনা ও ময়মনসিংহে চিকিৎসা করানো হয়েছিল কিনা।' PW-4, Sakhina Khatun, was tendered. PW-5, Tofi Miah, stated that hearing hue and cry he came to Hanifa's house, the place of occurrence, and saw Hanifa's mother, brother and sister standing outside the house and were raising hue and cry. When the hue and cry came to an

end, he entered inside the house and found the victim lying on the ground with severe bleeding injuries on her body and the accused-respondent standing beside her holding a dagger in his hand. PW-6, Md. Shamsul Hoque, stated that he came after the occurrence and saw the blood stained body of the victim lying on the ground and the convict was also injured. PW-7, Zamir Ali, stated that the victim was murdered at about 3.00/4.00 pm; upon hearing hue and cry he went to the place of occurrence and saw that the parents of accused Hanifa pouring water on the victim's head. PW-8, A. Rahman, was tendered. PW-9 to 13 are official witnesses.

15. None of these witnesses saw the occurrence but they depicted the picture that had been seen by them immediately after the occurrence took place. PWs-3 and 7 used the word ÔLyb nqÕ (was murdered) in their deposition which transpires that somebody killed the victim. PWs. 2 and 6 deposed that they saw the victim being injured lying on the ground. PWs. 4 and 8 were tendered. Among those witnesses PW-5 first entered the house of the accused-respondent and found the sanguinary body of the victim lying on the ground and none else but the accused respondent standing on her right side with a dagger in his hand.

16. From the evidence of the aforesaid witnesses it appears that at the time of occurrence only the victim and the accused-respondent were inside the room wherefrom the victim came out exclaiming and holding her cheek with profuse bleeding from the injuries she sustained on different parts of her body. Thus duty cast upon the accused-respondent to explain as to how the victim, his wife, sustains such bleeding injuries which resulted in her death. In the case of ***Ilias Hussain vs. the State 54 DLR (AD) 78*** it has been held:

> "It is well settled that when a wife met with unnatural death while in custody of the husband and also while in his house the husband is to explain under what circumstances she met with her death.'

17. Here in this case the accused-respondent failed to explain as to how his wife sustained such bleeding injuries which was the cause of her death. During trial the defence took the plea that the victim died due to quarrel with the accused respondent, who was of unsound mind, which they tried to prove by adducing defence witnesses. From the above it is clear that the accused did not deny the charge of killing his wife and rather the defence took the plea that the accused was a person of unsound mind. Thus it is clear that the accused killed his wife, the victim. So, the answer to question No. 1 is in the affirmative.

18. As the answer to question No.1 is in the affirmative we need to answer the second question as to whether the accused was a person of unsound mind. The defence during cross examination of the prosecution witnesses and in examining the defence witnesses took the plea of right of private defence as well as of unsoundness of mind and as such the accused is entitled to get benefit of section 84 of the Penal Code. To substantiate this plea the defence adduced 7 (seven) defence witnesses.

19. The plea of unsoundness of mind of the accused- respondent falls within the general exceptions of the Penal Code and the burden to prove such fact lies completely on the defence under section 105 of the Evidence Act, 1872 which provides:

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him and the court shall presume the absence of such circumstances".

20. In the case of ***Md. Abdul Majid Sarkar vs. State, 40 DLR (AD) 83*** this Division held "Section 105 of the Evidence Ac, 1872 casts a burden upon the accused to prove the existence of circumstances bringing the case within any special exception or proviso contained in other part of the Penal Code, 1860". Such view has also been reiterated in the case of ***Shah Alam vs. State, 42 DLR (AD) 31***.

21. On this perspective on scrutinizing the evidence on record it appears that PWs. 2, 4, 6 and 8 stated that the accused was a person of unsound mind. Although, PW. 7 also stated that the accused-respondent was of unsound mind but he did not clarify whether he was of unsound mind at the time of occurrence. PW-2 stated that the accused was of unsound mind for about 7/8 years but she could not say that he was of unsound mind at the time of occurrence. PWs. 3 and 5 stated that they do not know whether at the time of occurrence the accused was of unsound mind. The house of PWs. 3, 5 and 7 are located within 100, 50/60 and 200/300 yards respectively but only PW.7 stated that he knew accused-respondent was of unsound mind whereas PWs. 3 and 5 stated that they did not know whether the accused was of unsound mind. Practically, in a locality if a person is of unsound mind and remains so for a period of 7/8 years people residing nearby would be aware of his mental condition. So in this case if the accused-respondent would have been actually a man of unsound mind then all the PWs residing nearby would know the same and would specifically mention the duration or length of unsoundness of mind.

22. Actually mental condition of a person as to whether he is of unsound mind cannot be specifically proved only by oral evidence. Such fact must be proved by oral as well as medical evidence. In this respect the defence examined Dr. Sayed Anwarul Hoque as DW-1, who stated that when he was serving as Assistant Surgeon at Mymensingh Central Jail he examined the accused-respondent on 22.06.99 and 21.10.99 and issued two reports (Exhibits A and B) wherein it is stated that the accused-respondent was suffering from 'schizophrenia'. DW-2, Md. Hemayet Uddin, Deputy Inspector General (Prisons), stated that when he was serving as Senior Jail Super in Mysensingh Jail he sent two medical certificates, which were issued by the Medical Board, to the court on 12-09-1999 and 21-10-1999 (Exhibits-A/1 and B/1). DW- 3, Dr. Md. Waziul Alam Chowdhury, stated that when he was serving as Assistant Professor, Department of Mental Health at Mymensingh Medical College Hospital he was a member of the medical board in which the accused-respondent was examined on 21.03.1999 and 11.07.2000 whereupon two certificates (Exhibit C and D) were issued stating that the accused-respondent was suffering from 'schizophrenia' disease. Dr. Khandkar Mahbubur Rahman, Medical Officer, Mymensingh Medical College and Hospital, while deposing as DW-4 recognized his signature in the Medical Certificate. But none of the aforesaid DWs stated that the accused-respondent was of unsound mind at the time of occurrence. Rather DW-3 in reply to a suggestion expressed his inability to say as to whether the accused-respondent was of unsound mind in 1998.

23. DW-7, Dr. Waezuddin Faraji, Medical Officer, Haluaghat Thana Health Complex, stated that he examined the accused-respondent on 22.09.98 and advised some medicine and subsequently on 07.10.98 he re-examined him and having found no progress he advised the accused-respondent to have further treatment from Dhaka or Mymensingh. On perusal of the prescription given by DW-7 the trial court observed that he did not give such prescription on any prescribed paper but on his personal pad. However the accused-respondent neither took any treatment from any of those places nor was admitted in any hospital pursuant to such advice clearly proves that such prescription was false, fabricated and antedated and

manufactured for the purpose of this case. The defence tried to make the court believe that the accused-respondent was suffering from mental illness for 7/8 years but they failed to produce any medical certificate in support of such plea by producing any other medical prescription or receiving any medical attendance/ treatment in those 7/8 years.

24. It appears that DWs. 3, 5 and 7 are medical experts who in their cross examinations stated that a 'schizophrenia' patient sometimes may behave rationally or sometimes may not know what they are doing. From their evidence it is clear that a 'schizophrenia' patient does not always remain in unsound mind. So in this situation the burden of proof always falls upon the defence to prove that the accused-respondent was of unsound mind at the time of occurrence but they failed to prove the same by adducing proper evidence. Apart from the evidence of above medical experts the defence also examined Dr. ABM Muzaharul Islam, Medical Officer, Mymensingh Medical College and Hospital, as D.W.6 who examined the accused-respondent at the emergency ward of the said Hospital on the date of occurrence, i.e. on 13-10-1998 and gave him necessary treatments. Subsequently on 12-06-1999 after eight months, he issued a certificate disclosing that there was no fatal injury on his body which might cause death. Moreover, there is no indication in the said certificate that at the time of occurrence i.e. on 13.10.1998 the accused was of unsound mind.

25. Neither of the prosecution nor the defence witnesses stated that due to unsoundness of his mind the accused ever attacked anybody at any time or behaved violently/irrationally. If the accused would have been of unsound mind for 7/8 years he would have attacked or would try to attack anybody or would behave violently or irrationally during that period. Thus it is not clear as to how can he be deemed to be a person of so unsound mind at the time of occurrence which led to kill his wife who was married to him for 11 years and gave birth to three of his children. Besides, had the accused-respondent be a person of unsound mind then he could have applied to the court for being dealt with the procedures mentioned in Chapter xxxiv of the Code of Criminal Procedure. But no such step has ever been taken from the defence side. In the case of ***Dahybhai Chhaganavhai Thakkar vs. the State of Gujrat, AIR 1964 SC 1563*** it was held:

> "the crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of section 84 of the Penal Code can only be established from the circumstances which preceded, attended and followed the crime."

26. After assessing all the evidence on record and discussions made hereinabove it is clear that the defence have been able to prove that the accused-respondent was of unsound mind from 22.06.1999 and thereafter only. But they completely failed to prove that he was of unsound mind before or at the time of occurrence and as such for the act done on 13.10.1998 he cannot get the benefit of section 84 of the Penal Code.

27. Thus the trial court rightly assessed all the evidence on record and found that the accused-respondent is guilty of killing his wife and as such convicted and sentenced him to suffer imprisonment for life but the High Court Division failed to assess the facts and circumstances and the evidence as placed by both the parties and particularly the fact that the defence totally failed to prove that the accused-respondent was of unsound mind at the time of occurrence or since before such occurrence.

28. So the High Court Division was wrong in acquitting the accused respondent giving benefit of section 84 of the Penal Code. Section 84 reads as follows:

"**84. Act of a person of unsound mind**.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

29. The main ingredient of section 84 of the Penal Code is: the defence is to prove that the accused was of unsound mind at the time of occurrence which the defence failed to prove in this case. Thus as the plea of insanity or unsoundness of mind of the accused respondent at the time of occurrence(underlined for emphasis) is not clearly and distinctly proved, the accused respondent, thus cannot get benefit of the same nor benefit as provided under sections 469 and 470 of the Criminal Procedure Code. Moreover on acquitting the accused respondent the High Court Division erred in law in not taking appropriate step under section 471 of the said Code.

30. We have already discussed earlier that the defence has totally failed to prove its plea that the accused respondent was of unsound mind at the time of occurrence by oral evidence adduced by some of the PWs and all the DWs which are actually not sufficient to prove such plea. Unsoundness of mind is the medical condition of a human being which can only be proved by adducing medical examination by experts. Here in this case the DWs adduced medical experts who could only prove that the accused respondent was of unsound mind from 22.6.1999 to 11.7.2000. Not prior or after that period. So he cannot get the benefit of Chapter XXXIV of the Criminal Procedure Code.

31. Sections 469, 470 and 471 of the Criminal Procedure Code read as follows:

"469. **When accused appears to have been insane**.- When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate or, as the case may be, the Court is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was, at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate or, as the case may be, the Court shall proceed with the case.

470. **Judgment of acquittal on ground of Lunacy.**- Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

471. **Person acquitted on such ground to be detained in safe custody.**-(1) Whenever the finding states that the accused person committed the act alleged the Magistrate or the Court before whom or which the trial has been held, shall, if such act would, but for the incapacity found, have constituted an offence, or such person to be detained in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the action taken to the Government;

32. Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the Government may have made under the Lunacy Act, 1912.

33. (2)**Power of Government to relieve Inspector General of certain functions.-** The Government may empower the officer in-charge of the jail in which a person is confined under the provisions of section 46 of this section, to discharge all or any of the functions of the Inspector General of Prisons under section 473 or section 474."

34. On a plain reading of the aforesaid provisions of law and on scrutinizing the materials on record, specifically the Medical reports (Exhibits-A,B,C and D), submitted by the DWs we have already found that the defence has been able to prove that the accused-respondent was of unsound mind from 22.6.1999 i.e. 8(eight) months after the date of occurrence (13.10.1998) but failed to prove the same, prior to that date. Since the defence failed to prove its plea of unsoundness of mind of the accused-respondent, at the time of commission of the offence on 13.10.1998, as required under section 84 of the Penal Code and section 105 of the Evidence Act by providing sufficient evidence, he cannot get any benefit under section 84 of the Penal Code nor under Chapter XXXIV of the Criminal Procedure Code. Plea of insanity or of unsoundness of mind of the accused-respondent being not prima facie found, the Court is not obligated to take recourse to the provisions as laid down in Chapter XXXIV of the Criminal Procedure Code.

35. Accordingly, we hold that the submissions of the learned advocate for the appellant have substance.

36. Thus, this criminal appeal is allowed. The impugned judgment and order of acquittal passed by the High Court Division is hereby set aside and the judgment and order of conviction and sentence passed by the trial court is hereby affirmed. The convict-respondent Abu Hanifa alias Hanif Uddin, son of Md. Musa Ali, of Village-Barak, Police Station-Haluaghat, District-Mymensingh, is directed to surrender to his bail bond within 30 (thirty) days from the date of receipt of this judgment, in default the learned Sessions Judge, Mymensingh is directed to secure arrest of the convict-respondent Abu Hanifa @ Hanif Uddin, in connection with the instant Criminal Appeal No. 23 of 2009 filed against the judgment and order dated 19.11.2006 passed by the High Court Division in Criminal Appeal No. 3129 of 2002 arising out of Sessions Case No. 49 of 1999 of the Court of Sessions, Mymensingh corresponding to Haluaghat Police station Case No. 5 dated 14.10.1998 to serve out the sentence as awarded against him in accordance with law.