

1 SCOB [2015] HCD 59**HIGH COURT DIVISION**

(Criminal Appellate Jurisdiction)

Criminal Appeal No. 4103 of 2012

Md. Muslim Uddin and another

... Convict-Appellants

-Vs-

The State

... Respondent

Mr. Prabir Halder

... For the Appellants

Md. Moniruzzaman (Rubel), D.A.G with

Mr. Md. Abdul Bari, A.A.G with

Md. Abul Kalam Azad Khan, A.A.G

... For the State

Heard on 16.03.2015, 10.05.2015, 12.05.2015,
13.05.2015, 19.05.2015, 20.05.2015 and Judgment
on 26.05.2015.

Bench:**Justice Md. Abdul Hye****And****Justice Krishna Debnath****Penal Code, 1860:****Section 304 Part II**

Prosecution failed to prove any motive, pre-meditation, pre-plan or any conspiracy on the part of accused-appellant Muslim to kill victim Rajibul. In the absence of any motive, conspiracy, pre-plan or pre-meditation on the part of accused-appellant Muslim while inflicting injuries resulting the death of the victim 7 days after the occurrence, we find that the accused-appellant Muslim had no intention to commit murder but he committed the offence of culpable homicide not amounting to murder. ... (23)

Judgment**Krishna Debnath, J:**

1. This Criminal Appeal is directed against the judgment and order of conviction and sentence dated 03.06.2012 passed by the learned Sessions Judge, Panchagarh, in Sessions Case No. 58 of 2010 arising out of Panchagarh Police Station Case No. 13 dated 19.09.2009 corresponding to G.R Case No. 196 of 2009, convicting the appellants under Sections 302/114/34 of the Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Taka 10,000/- (ten thousand) each in default to suffer rigorous imprisonment for 4 (four) months more.

2. The case of the Prosecution in brief, is that on 12.09.2009 at about 8.30 p.m. Rajibul Islam heard shouting from his neighbouring house of Farid and found that the accused persons were beating Fulbanu, wife of Farid. Rajibul Islam tried to quiet them by saying to settle the matter after Tarabi prayer. But accused-appellant Taslim Uddin became furious and ordered to kill Rajibul Islam. At that time accused-appellant Muslim Uddin inflicted Ramdao blow on the head of Rajibul Islam, causing injury to the left side of the head. Injured Rajibul Islam was taken to Panchagarh Hospital and the Doctor of Panchagarh Hospital referred him to Rangpur Medical College Hospital where victim Rajibul Islam succumbed to his injuries on 18.09.2009.

3. Md. Sahirul Islam, nephew of the deceased, lodged First Information Report with Panchagarh Police Station. After investigation of the Case, Investigating Officer submitted charge sheet against the convict-appellants and others under Section 143/448/323/302/114/34 of the Penal Code. After observing legal formalities the case record was transferred to the Sessions Judge, Panchagarh. Sessions Judge, Panchagarh, took cognizance of offence and framed charge against the accused-appellants and others under Section 302/114/34 of the Penal Code. The charge was read over and explained to the convict-appellants and others to which they pleaded not guilty and claimed to be tried.

4. Prosecution examined 12 witnesses in support of the case but the Defence examined none. Learned Trial Court on consideration of the evidence on record, convicted and sentenced the accused-appellants as aforesaid.

5. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 03.06.2012 the accused-appellants preferred this appeal.

6. In this appeal only point for determination is whether the learned Judge was justified in passing the impugned judgment.

7. P.W- 1 Shahirul Islam stated that, on 12.09.2009 at about 8.30 p.m. he heard shouting in the house of Farid. He went there and found that the accused-persons were beating Fulbanu, wife of Farid. He further stated that Rajibul Islam tried to quiet them and told them to settle the matter after Tarabi prayer. But accused-appellant Taslim Uddin became furious and told “শালাকে ধর”. At that time accused Muslim Uddin inflicted Ramdao blow on the head of Rajibul Islam. Rajibul Islam being injured, fell down on the ground. Rajibul Islam was taken to Panchagarh Hospital and then to Rangpur Medical College Hospital where he succumbed to his injuries on 18.09.2009. He lodged First Information Report which is marked Exhibit-1 and his signature is marked Exhibit-1/1. He also proved the inquest report Exhibit-2 and seizure list Exhibit-3.

8. P.W- 2 Md. Farid stated that, on 12.09.2009 at about 8.00 p.m. Rajibul came to his house to see his wife Fulbanu. At that time Taslim Uddin ordered “রাজিবুল এখানে দেওয়ানী করতে এসেছে, ওরে ধর।” Then accused Muslim inflicted Ramdao blow on the head of victim Rajibul Islam who fell down. Rajibul was carried to Panchagarh Hospital and thereafter to Rangpur Medical College Hospital where he succumbed to his injuries.

9. P.W- 3 Abdur Rahman stated that, on 12.09.2009 at about 8.00 p.m he came to the place of occurrence and found that Taslim, Muslim and other accuseds were in quarrel with his son-in-law P.W-2 Farid. At that time victim Rajibul came to that place and tried to quiet them. Taslim said that, “শালা রাজিবুল তুমি দেওয়ানী হয়ে গেছ”. Then accused Muslim inflicted Ramdao blow on the head of victim Rajibul. Rajibul fell down on the ground. He was carried to Panchagarh Hospital and then to Rangpur Medical College Hospital where he succumbed to his injuries.

10. P.W-4 Md. Bashir Alam stated that, a quarrel held in Farid’s house between the parties on 12.09.2009 at about 8.00 p.m. Rajibul was going for Tarabi prayer and he tried to stop the quarrel by saying that the matter would be solved after Tarabi prayer. Then accused Taslim said “দেওয়ানী করছে শালা ওকে ধর”. Thereafter Muslim inflicted Ramdao blow on the head of victim Rajibul. Rajibul has fallen down on the ground and he succumbed to his injuries at Hospital.

11. P.W- 5 Fulbanu stated that, a quarrel held between Sakil and her daughter Laboni. In the night again quarrel started. Taslim ordered and Muslim inflicted Dao blow on the head of Rajibul. Later on Rajibul died.

12. P.W- 6 Tahmina Akhter stated that, her husband victim Rajibul was going to Mosque for Tarabi prayer. On hearing hue and cry he went to the house of Farid. At that time Muslim inflicted Dao blow on the head of her husband victim Rajibul. Her husband Rajibul fell down on the ground. Subsequently her husband died in the hospital.

13. P.W- 7 Md. Jahirul Islam stated that, he and Rajibul were going to Mosque for Tarabi prayer. On hearing the quarrel they went to the house of Farid. Taslim said “তুমি কি দেওয়ানী মারাতে আসছো” “শালাকে ধর”. At that time Muslim inflicted Dao blow on the head of Rajibul. Rajibul lost his sense.

14. P.W- 8 Tauhidul Islam stated that, there was a quarrel amongst Farid, Taslim and Muslim. Rajibul told them to settle the matter after Tarabi prayer. Taslim told “শালা দেওয়ানীগিরি করে ওকে ধর।” At that time Muslim inflicted Ramdao blow on the head of Rajibul. Rajibul fell down on the spot.

15. P.W- 9 Most. Regina stated that, on 12.09.2009 at about 8.00 p.m. victim Rajibul tried to stop the quarrel. Taslim told “ব্যটাক ধর”. Muslim inflicted *Ramdao* blow on the head of victim Rajibul.

16. P.W- 10 Md. Mahinul Islam, Sub-inspector of Police, is a formal witness. He is the Investigating Officer of the case. He stated that, during investigation he visited the place of occurrence, prepared sketch map, seizure list of the *alamat* and recorded the statement of witnesses under Section 161 of the Code of Criminal Procedure and having found prima-facie case against the convict-appellants and others, submitted charge sheet under Section 448/323/302/114/34 of the Penal Code. He proved the sketch map as Exhibit-4, his signature thereon as Exhibit-4/1, Index as Exhibit-5, his signature thereon as Exhibit-5/1, seizure list as Exhibit-6 and his signature thereon as Exhibit-6/1 and *alamat* as Material Exhibit-I.

17. P.W- 11 Sub-Inspector of Police Md. Mizanur Rahman stated that, he received the case docket for further investigation of the case by the order of the Court. He visited the place of occurrence and gone through

the investigation report of previous Investigating Officer and submitted supplementary charge sheet under Section 143/138/323/302/114/34 of the Penal Code.

18. P.W- 12 Dr. Abdul Jalil, Associate Professor of Forensic Department, Dinajpur Medical College, stated that, on 18.09.2009 when he was attached to Rangpur Medical College Hospital, he held the Post Mortem of the dead body of deceased Rajibul Islam, and the Report is as under:-

“Incised wound found on the left parieto temporal region, which was stitched up.....another abrasion and bruises present in the right elbow joint.

On dissection-Left parieto temporal found...few fractured, extravasations of blood and blood clotted found...”

Opinion:- as the death was due to shock and haemorrhage following head injury which was antimortem and homicidal in nature.

In his cross-examination he replied that the hit was by a sharp weapon.

19. Mr. Prabir Halder, learned Advocate appearing on behalf of the convict-appellants place the papers and documents on record and submits that the F.I.R was lodged after 6(six) days of the occurrence. He further submits that the Prosecution failed to prove any previous plan on the part of the accused to attack the victim. He submits that there is no direct or circumstantial evidence against convict Md. Taslim Uddin that he ordered to kill victim Rajibul. On the other hand, he submits that convict- appellant Md. Muslim Uddin blew so-called *Ramdao* in absence of any conspiracy, pre-plan or pre-meditation and as such the impugned judgment and order of conviction is liable to be set-aside. Learned Advocate for the convict-appellants referred the case of Dalilur Rahman and others Vs. The State reported in 44 DLR(AD) page 379, Nibir Chandra Chowdhury and others Vs. The State, 21 BLD(AD)2001 page 121, Government of Bangladesh Vs. Siddique Ahmed 31 DLR(AD)1979 page 29, Lal Miah alias Lalu Vs. The State BCR 1988(AD) page 147.

20. Mr. Md. Moniruzzaman (Rubel), learned Deputy Attorney General with Mr. Md. Abdul Bari, learned Assistant Attorney General with Abul Kalam Azad Khan, learned Assistant Attorney General appearing on behalf of the State submit that, the learned Trial Court rightly relied upon the statements of 12 witnesses with other circumstances and arrived at a correct decision in convicting the convict-appellants.

21. Now, in view of the submission and counter submissions of the learned Deputy Attorney General and Assistant Attorney General for the State and learned Advocate for the convict-appellants as above, let us review the relevant evidence and materials on record and scan the attending circumstance of the case to arrive at a correct decision as to whether the learned Judge was justified in passing the impugned judgment and order of sentence.

22. It appears from record that P.W-1 Shahirul Islam, P.W-2 Md. Farid, P.W-3 Abdur Rahman, P.W-4 Md. Bashir Alam, P.W- 5 Fulbanu, P.W-6 Tahmina Akhter, P.W-7 Md. Jahirul Islam, P.W-8 Tauhidul Islam and P.W-9 Most. Regina in one voice stated that, at the time of occurrence accused Taslim did not order to kill Rajibul. All the aforesaid witnesses in one voice stated that, Taslim said “শালাকে ধর”, “ রাজিবুল এখানে দেওয়ানী করতে এসেছে, ওরে ধর”, “শালা রাজিবুল তুমি দেওয়ানী হয়ে গেছ”, “দেওয়ানী করছে শালা, ওকে ধর”, “তুমি কি দেওয়ানী মারাত্তে আসছো’, শালাকে ধর”, “শালা দেওয়ানীগিরি করে ওকে ধর”। None of them stated that Taslim ordered to kill Rajibul. It further appears from record that convict-appellant Taslim Uddin has been implicated in this case simply as a so-called order-giver as stated above and excepting this there is no other allegation against him. We find that accused-appellant Taslim Uddin did not give any order to kill Rajibul Islam. It is unfortunate that the learned Judge awarded imprisonment for life to accused-appellant Md. Taslim Uddin without any credible evidence against him and as such accused-appellant Md. Taslim Uddin is entitled to be acquitted.

23. It appears from the record that all the witnesses in a voice stated that, accused-appellant Muslim inflicted *Ramdao* blow on the head of Rajibul. Death of victim Rajibul on 18.09.2009 at Rangpur Medical College Hospital for his sustaining injuries on 12.09.2009 at the house of P.W-2 Farid, is not disputed. Death of victim Rajibul has been proved by the evidence of witnesses including P.W-12 Dr. Abdul Jalil who held the Post-Mortem examination on the dead body of the victim. But it appears from the evidence on record that prosecution failed to prove any motive, pre-meditation, pre-plan or any conspiracy on the part of accused-appellant Muslim to kill victim Rajibul. In the absence of any motive, conspiracy, pre-plan or pre-meditation on the part of accused-appellant Muslim while inflicting injuries resulting the death of the victim 7 days after the occurrence, we find that the accused-appellant Muslim had no intention to commit murder but he committed the offence of culpable homicide not amounting to murder.

24. From the facts and circumstances of the case, evidence on record and discussions made above we are of the view that accused-appellant Muslim is guilty of the offence under Section 304 Part II of the Penal Code.

25. In the result, the appeal is **allowed in part** and appellant Md. Taslim Uddin is acquitted and the sentence of accused- appellant Muslim Uddin is altered from Section 302/34/114 of the Penal Code to that of under Section 304 part II of the Penal Code and thereby he is sentenced to 10 (ten) years rigorous imprisonment. Accused-appellant Md. Taslim Uddin be released forthwith if not wanted in connection with any other case.

26. Send down the Lower Court's Record at once along with a copy of judgment.

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