

Present:

Mr. Justice S.M. Emdadul Hoque
and
Mr. Justice Ashish Ranjan Das

Death Reference No. 57 of 2016.

With

Criminal Appeal No.5326 of 2017.

(arising out of Jail Appeal No.106 of 2017).

The State

..... Petitioner

-Versus-

Md. Mahmudul Alam Sikder

.....Condemned-Prisoner

Mr. Md. Fazlur Rahman Khan, D.A.G with

Mr. Md. Rezaul Karim, D.A.G with

Dr. Md. Sharifuzzaman Majumder, A.A.G

Mr. Ashikuzzaman Bablu, A.A.G

Mr. Abu Naser (Swapon), A.A.G

..... for the State.

Mr. Md. Monsurul Haque, Advocate, with

Mr. Md. Fazlul Haque Khan, Advocate, with

Mr. S.M. Shahjahan, Advocate, with

Mr. Mohammad Shafikul Islam Ripon,
Advocate

..... for the condemned-Prisoner

Heard on: 03.04.2022, 04.04.2022,

05.04.2022, 06.04.2022&07.04.2022

Judgment on: 11.04.2022.

Ashish Ranjan Das, J:

This death reference under Section 374 of the Code of Criminal Procedure (for short the Code) was submitted by the learned Sessions Judge, Bagerhat for conformation of the death penalty inflicted on the sole accused condemned convict Md. Mahmudul Alam Sikder by judgment and order dated 12.05.2016 passed in Session Case No. 21 of 2014 arising out of Mollahat police station case No.08 dated 14.05.2013 corresponding to G.R. no. 71 of 2013 under section 302 of the Penal Code.

Besides the condemned prisoner preferred criminal appeal No.5326 of 2017 coupled with Jail Appeal No.106 of 2017 those have been obviously heard together.

We have heard the learned Deputy Attorney General assisted by the Assistant Attorney General and the learned Advocates for the convict Md. Mahmudul Alam Sikder (for short Mahmudul) and perused the entire records including the L.C. records.

Prosecution case as projected in brief that could be gathered from the file is that: The informant Md. Abu Daud Sheikh of village Udaypur Doibokandi police station Mollahat, district Bagerhat had a daughter Sarifa Begum @ Putul (for

short Putul). She was given in marriage with Md. Mahmudul Alam Sikder, son of late Shamsul Alam Sikder of the same village on 10.05.2013. That day the girl was taken to the house of the husband. Only 3 nights after on 13.05.2013 after 10 P.M having had their dinner both Putul and Mahmudul went to the adjacent bed room. Deep at night at about 2.00 a.m Mahmudul rushed to the nearby Mollahat police station and disclosed that a moment before he had committed murder of wife Putul. He further requested the police officer to record his statement and take legal actions against himself. Mahmudul was seen vomiting and he further disclosed that he has taken poison. The police forces rushed to the place of occurrence which was only a mile away. Victim's father was the informant. He also rushed to the police station. Written FIR was recorded in the next evening at about 8 P.M with the signature of the informant father. Accordingly Mollahat police station case no. 08-71 dated 14.05.2013 was set on motion.

Before recording of the case in the police station immediately after as Mahmudul disclosed the deadly fact to Sub-Inspector Mr. Md. Refayatul Islam he recorded a G.D.E being No.503 dated 14.05.2013 and rushed to the place of occurrence with his forces. Before he left the police station he

had kept Mahmudul under police custody. Refatul Islam P.W.11 found the dead body of Putul lying on the bed of her own bed room soaked with blood. Her throat was found almost totally cut. Her wearing apparels and the bed sheet were also found soaked with blood. The police officer could also recover a bloodstained cut weapon, locally known as chapatti. He could also recover a personal diary from the room where Mahmudul seems to have noted that he had committed murder of his wife Putul and also by himself took poison. All these things were seized by the police officer Refatul Islam P.W.10, under a list with the presence and signatures of the witnesses. Next he prepared an inquest report and dispatched the body in the morning to Bagerhat Sadar hospital for holding autopsy. All these actions of the police officer were taken on the basis of the G.D No. 503 dated 14.05.2013. In the following evening, the father of the deceased registered the above F.I.R. Next day Mahmudul was produced before a magistrate for recording his judicial confession which he finally disagreed. After investigation the police submitted charge sheet against the sole accused Md. Mahmudul Alam Sikder alias Mahmudul finding him primarily guilty of the offence calling for a penalty under section 302 of the Penal Code. In the meantime, Mahmudul was enlarged on bail but he did not abscond till the end of trial.

A formal charge under section 302 of the Penal Code was mounted against the sole accused by the Sessions Judge, Bagerhat to which Mahmudul however pleaded innocence. Next the prosecution produced as many as 14 witnesses, they were examined and cross-examined by the defence. The P.Ws were the informant father Md. Abu Daud Sheikh(P.W.1), brother of the deceased, Yasin Sheikh and Sohag Sheikh and mother and elder sister who were inmates of the same house that is the place of occurrence, Sultana Sagorika alias Chand Sultana sister (P.W.6) and other witnesses including the doctor and the police officer. After conclusion of examination of the P.Ws. the sole accused Mahmudul was found absent with an adjournment prayer on the ground of heart ailment. The prayer was allowed and on the next date also Mahmudul did not appear once again he pressed an application for adjournment on the ground of high blood pressure. From the accused an application was also pressed for adducing few DWs. But as the accused was found repeatedly absent, adjournment prayer was rejected, examination of the accused under section 342 of the Code was dispensed with and the matter was forwarded for hearing arguments upon appointment of State defence who had been however by the time defending the sole accused as a regular advocate. As the hearing of argument was concluded,

the Sessions Judge forwarded the matter for delivery of judgment 8 days after . On that date however the sole accused did not turn up. Finally by judgment dated 12.05.2016 the Sessions Judge Bagerhat found the sole accused Mahmudul guilty of the offence punishable under section 302 of the Penal Code and sentenced him to death. However, no fine was imposed. Next this death reference was forwarded.

Some 10 months after on 14.03.2017 the convict Mahmudul could be apprehended and produced before the court and since then he has been in condemned Cell.

The learned Deputy Attorney General took us through the record including the evidence. He was assisted by the Assistant Attornies General. The learned Deputy Attorney General submitted that so far as the charge is concerned the story was nothing complicated. Only 3 days after marriage Mahmudul was found to have committed murder of his newly married wife Putul when she was in the bed room with the husband convict alone. He summed up evidence and circumstances. The learned Deputy Attorney General categorically submitted that:-

Firstly as it happened deep at night in the bed room apart from the husband there could be none else to commit the crime.

Secondly, Mahmudul himself immediately after the occurrence rushed to the nearby Mollahat police station and disclosed that he had just before committed murder of his wife Putul.

Thirdly, his plain paper admission was noted down by a police officer that has been produced and proved as Ext. 10.

Fourthly, in the said bed room of the sole accused a diary was found that was containing a note written and signed by Mahmudul wherein also admission of the crime was recorded there.

Fifthly, blood soaked Lungi which the sole convict was putting on at that time of sleeping was recovered and it cannot be imagined that the blood soaked lungi was somebody else's apparel.

And finally although there was no eye witness of the occurrence as it may happen when a man committs murder of his wife in the bed room deep at night but the witnesses stated

that immediately after the occurrence they have heard about it as they rushed to the place of occurrence. Significant is that no inmate near and dear ones of Mahmudul gave a hint that somebody else and not Mahmudul committed the murder.

However, while cross-examining the pws, the defence attempted to take an alibi that at the relevant time deep at night Mahmudul was not at home. He went to visit his brick field located at some distance. So he cannot be held responsible. The learned advocate for the condemned prisoner Mr. Munsurul Haq Chowdhury particularly invited our attention to the statement of elder brother of the sole accused, Saiful (P.W.13) that a night a guard of the local bazar Harun-or-Rashid (P.W.14) stated that after 10 o'clock both of them saw Mahmudul in the bazar and he also disclosed that he was going to visit his Brick field.

Besides, the learned advocate for the convict prisoner pointed out that allegedly written admission of guilt of Mahmudul recorded by the police officer could not be admitted as an evidence, since it was an admission before a police officer. Besides according to the prosecution Mahmudul reached the police station that night at about 2.00 A.M and made such a blank admission in his diary. But the G.D.E.

recorded at about 2.35 a.m being No. 503 dated 14.05.2013 there is no clue that Mahmudul left any such written admission in his diary. So, in our view the alleged written admission Ext. 10 under law should be kept out of consideration.

Mr. Chowdhury further argued that the said admission otherwise a small piece of paper was seized and that in the personal diary it appears to have been signed by Mahmudul. However, the investigation officer P.W.11 frankly admitted that signature of the Mahmudul was not examined by an expert in order to prove its bonafide.

In gist those were all that about evidence for the prosecution as has been mentioned above the sole accused who remained absent towards the end of trial. Hence he could not be examined under Section 342 of the Code of Criminal Procedure nor his version could be known apart from the trend of cross-examination nor he adduced any D.Ws.

Admitted standing is that the victim girl Sharifa Begum @ Putul was formally married to the convict. I. and brought to latter's house only some 3 days before. II. At the relevant time that is at about 10.00 P.M. on 13.05.2013 after dinner she was resting in her bed room where only the convict was supposed to

remain with her. III. Deep at night Putul was found dead on her bed with a cut throat injury. 4. Her husband convict was arrested as the sole culprit within a few hours.

The learned Deputy Attorney General raised that in that fateful night after a few hours with a blood stained knife used for the purpose of this deadly murder was recovered. A diary was also found inside the room that was seized as an almat. The dairy contained a note where the convict is said to have written that he himself committed the murder.

Mr. Md. Monsurul Haque Chowdhury, the learned Advocate for the condemned accused raised quoting the investigating officer (P.W.1) that the handwriting of the note was not examined nor was there any constructive evidence to conclude that the convict himself left the note in the diary meaning his admission of guilt. If the note is not given by the condemned prisoner himself, then either it was created or the convict was for the moment so much carried away by emotion or remorse in that critical situation that he felt the necessity to leave such a note to mean his guilt. Finding this note in the diary of the condemned petitioner it can not be branded as a written admission.

Prosecution case is that, as the learned Deputy Attorney General raised immediately after the occurrence the convict rushed to the nearby Mollah Hat Police Station located some 01 (one) Kilometer away and made a voluntary confession to the police officer on duty that was about 2.00 A.M. at night admitting his guilt. Here also we can not but discard this prosecution allegation on the ground that such an admission to the police officer does not amount to a judicial confession nor it was reduced to writing not any such document was brought before the court. Thus this plea of the prosecution also holds no water.

But the prosecution case that as the sole convict himself reached the police station at about 2.00 A.M. and admitted his guilt he was taken into custody. The police officer and his forces then and there rushed to the place of occurrence. Here the defence plea was that as P.W. 13 the elder brother of the convict raised in the evidence. That after having had his dinner at about 10.00 P.M. he left home for his brick field located at some distance. That is to say the elder brother of the convict tried to raise an alibi that at the relevant time the condemned prisoner was not present in his bed room that is the place of

occurrence. It is true that it was prosecution evidence but it was an evidence of a full brother of the condemned prisoner can easily be suspected to have been made with an intent to shield his brother convict. P.W.13 as we see was a defence witness in disguise. Besides according to the prosecution evidences the sole convict himself reached the police station towards the end of that night and kept himself detained under police custody. Here the defence had no case nor one can fancy that the sole convict was arrested and brought by the police from somewhere else or at some different time. Thus in our view in the matter the prosecution argument should be accepted.

It remained undenied that in the fateful night with the victim quite at about 10.00 P.M. the condemned prisoner alone entered her bed room. Next the police discovered Putul dead, with his throat cut. The knife used for the purpose was also recovered by the police from the room and the wearing apparels of the victim girl was found soaked with blood. Even they wearing Lungi of the killer was also soaked with blood and there was no denial that this was the lungi which the condemned prisoner was wearing at the time of committing the offence.

So, from the entire evidence and circumstances it can not be fancied that someone else and not this condemned prisoner committed the murder. So the conclusion of guilt of committing murder by the condemned prisoner by the learned trial court seems quite fortified.

However the learned Advocate for the condemned prisoner Mr. Md. Monsurul Haque Chowdhury as the last straw argued that admittedly the condemned prisoner had married Putul only three nights before. There was a courtship between the two. Hence, as the learned Advocate submitted, that had there been no instant cause excitement or provocation the husband is not expected to have slaughtered the wife. In that exigency this can not be branded as a cold blooded or calculated murder with a condemnable motive.

In the case there was no evidence of provocation. The settled principle in the matter is that where there be a strong evidence of committing murder whether it was motiveless or not is of no consequence. The same view was expressed in a series of decisions by the superior courts of the sub-continent.

However, we are of the view that the submission serged forward by the learned advocate for the condemned prisoner should not be cursorily brushed aside. Cutting throat of a newly married wife without cause of course is not a routine phenomenon in our society.

It is the case of the prosecution that immediately after the occurrence the killer husband rushed to the police station and verbally admitted his guilt however before a police officer. The prosecution however made no endeavor to prove its details. But it is also in the F.I.R. recorded not much later with an intent to commit suicide the killer husband himself took poison and he was seen vomiting in the Thana premises. This fact also remained overlooked in prosecution evidence. But rushing to the police station immediately after, admission of guilt however before a police officer noting of commission of the crime in his private diary and taking poison collectively have figured out a pathetic scenario that the killer instantly after committing the crime was suffering from strong remorse.

We have already observed that in the case there is very strong circumstantial evidence of committing murder of Putul by her husband and no motive behind the commission of crime

was proved in evidence. It has been also resolved that absence of motive where the charge is proved has no bearing upon the verdict. Yet considering the whole situation we hold the view that in one hand the guilt of the convict prisoner calling for a punishment under section 302 of the Penal Code has been proved to the hilt, on the other hand the prosecution produced no material to presume that the condemned prisoner committed murder of his wife with a known animosity. In the situation we are of the view that maximum punishment could not meet the demand of justice. So we are going to conclude that the learned trial court was justified in holding the condemned prisoner guilty of the charge punishable under section 302 of the Penal Code but as has been discussed above a death penalty would be not proportionate.

Thus, he should not be sentenced to death rather a sentence of imprisonment for life as we see is going to meet the demand of justice.

In the result, the Death Reference is rejected and the appeal is dismissed with modification and the Jail and Criminal Appeals are disposed of. The sentence of death awarded upon the condemned-prisoner Md. Mahmudul Alam Shikder in

Sessions Case No.21 of 2014 is hereby modified and commuted to imprisonment for life. The concerned authority is directed to shift him from the condemned cell to the cell for the prisoners of like nature.

Communicate the judgment and send down the lower Court records.

S.M. Emdadul Hoque, J:

I agree.

Bashar B.O