

Present:
Mr. Justice Mohammad Marzi-ul-Huq
and
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.413 of 2006

Md. Saiful Islam alias Maznu

... Appellant

-Versus-

The State

...Respondent

Mr. Dewan Abdun Naser with Mr. Abdul Awal,
Advocates

... for the appellant

Mr. Khizir Hayat, D.A.G. with Mr. Yousuf
Mahmud Morshed and Ms. Syeda Rabia
Begum, A.A.Gs.

...for the respondent

Judgment on 27.5.2012

Md. Ruhul Quddus, J:

This appeal is directed against judgment and order dated 23.1.2006 passed by the Sessions Judge, Tangail in Session Case No.232 of 2004 (arising out of Kalihati Police Station Case No.3 dated 8.7.2004 corresponding to G. R. No.331 of 2004) convicting the appellant under section 302 of the Penal Code and sentencing him thereunder to suffer imprisonment for life with a fine of Taka 5000/-, in default to suffer rigorous imprisonment for one year more.

Informant Haji Abdul Gafur Talukder lodged an *ejahar* with Kalihati Police Station alleging, *inter alia*, that he had given his daughter Jotsna Begum in marriage with the appellant Md. Saiful Islam alias Maznu three and half years back. On the date of occurrence i.e 8.7.2004 at about 11.00 a.m. the informant had gone to his (appellant's) house and invited him along with his wife to his (informant's) house for having summer fruits, which the appellant refused arrogantly. As his (appellant's) wife Jotsna Begum was willing to go with her father, he abused her. Still she started going with the informant taking her apparels in a briefcase, when the appellant took away the briefcase and attempted to deal her with the same, but missed the target. Then he caught hold of her, pushed her inside a room and started beating her. The appellant and other inmates of the house threatened the informant and asked him to leave the house at once. Seeing them very arrogant, the informant left the house. He informed about the occurrence to the appellant's uncle and thereafter, rushed to the house of his another son-in-law Quddus at village Charnagarbari. He went to Palima Bus stand therefrom and came to know that his daughter Jotsna Begum had died. He made a phone call to his house and conveyed the news. Then he rushed to the appellant's house and saw the dead body of his daughter. The inmates of the house informed him that she had committed suicide by hanging, but as a matter of fact, the appellant in collusion with the inmates of his house had killed his daughter.

The *ejahar* gave rise to Kalihati Police Station Case No.3 dated 8.7.2004. Police, after investigation, submitted charge sheet on 9.10.2004 under sections 302 and 201 of the Penal Code against the appellant and his mother Setara Begum.

The case having been ready for trial was sent to the Sessions Judge, Tangail and was registered as Session Case No.232 of 2005. Learned Sessions Judge by his order dated 22.11.2004 framed charge against both the accused under sections 302 and 34 of the Penal Code, to which they pleaded not guilty and claimed to be tried.

Prosecution examined as many as twenty one witnesses in support of its case. After closing the prosecution, learned Judge examined the appellant under section 342 of the Code of Criminal Procedure, when he reiterated his innocence, but did not examine any witnesses in defense or made any explanation as to how the victim had died.

After conclusion of trial, learned Judge found the appellant guilty of offence under section 302 of the Penal Code and convicted and sentenced him as aforesaid, while acquitted co-accused Setara Begum by the impugned judgment and order dated 23.1.2006, against which the convict-appellant moved in this Court with the instant criminal appeal and subsequently obtained bail.

Mr. Dewan Abdun Naser, learned Advocate appearing for the appellant submits that out of emotion originated from refusal of her husband to go with her father, the victim Jotsna Begum actually had

committed suicide by hanging. P.Ws.7 and 8 did not support the prosecution case, while P.W.11 Rina Begum stated that she herself saw the victim's dead body in hanging position. The evidence of other witnesses, who supported the prosecution case were also contradictory. The abrasions and bruises as mentioned in the postmortem report are unlikely in a case of throttling. Continuous ligature mark encircling the neck and shoulder is an important indication of throttling, which is absent in the present case. Some abrasions were found at the upper part of her neck, which strongly suggest that she had committed suicide by hanging. In view of the above, alleged murder of the victim by way of throttling having not been proved beyond reasonable doubt, the appellant is entitled to be acquitted on benefit of doubt, learned Advocate concludes.

Mrs. Syeda Rabia Begum, learned Assistant Attorney General appearing for the State-respondent takes us through the postmortem report, evidence on record including that of P.Ws.1, 19 and 20 and submits that in a case of wife killing, if the wife dies at her husband's house, it is incumbent upon him to explain the cause of her death. In the present case the appellant did not explain the cause of death of his wife by adducing any evidence in defense or in his statement made under section 342 of the Code of Criminal Procedure. Only by way of putting questions during cross-examinations of some prosecution witnesses, he has not been able to make out a case that the victim committed suicide by hanging. Even he has not been able to cast a

shadow of doubt over the prosecution case. Learned Sessions Judge discussed each and every piece of evidence and arrived at a finding that the appellant Md. Saiful Islam alias Maznu had killed his wife Jotsna Begum by beating and strangulation. There is nothing illegal to interfere with the impugned judgment and order of conviction.

We have carefully examined the evidence and other materials on record, and considered of the submissions of learned Advocates of both the sides. P.W.1 Haji Abdul Gafur Talukder, the informant and father of the victim Jotsna Begum stated that the occurrence took place on 8.7.2004 at about 11 a.m. He had given his daughter Jotsna Begum in marriage with the appellant Md. Saiful Islam alias Maznu three and half years back. Earlier the appellant had refused his invitation three times. He went there again on the date of occurrence and invited the appellant with his wife to his (informant's) house. The appellant refused the invitation. As his daughter started going with him taking her apparels in a briefcase, the appellant took away the briefcase and dealt her on head. Then he caught hold of her and started beating her taking inside a room. The appellant's parents and siblings were there, but did not prevent him from doing so, rather drove the informant away from the house. Getting no way, he rushed to the house of the appellant's uncle and informed about the occurrence. Thereafter, he went to the house of his another son-in-law Quddus at village Charnagarbari and conveyed the news. He went to Palima Bus stand therefrom and came to know that his daughter had died. He made a phone call to his son Babul

Talukder. After arrival of his son and wife, they rushed to the appellant's house and saw the dead body of his daughter lying on floor. The inmates of the house informed him that she had committed suicide by hanging. He along with his cousin A. Majid went to Kalihati Police Station and lodged the *ejahar*.

P.W.2 Md. Babul Talukder, brother of the victim stated that on the date of occurrence his father made a phone call to him at about 4.40 p.m. telling that the appellant had killed Jotsna Begum. Then he conveyed the message to his mother and brother, and all of them rushed to the house of occurrence at village Bilpalima. He saw the dead body of his sister inside a room there. He denied the defense suggestion that the victim was not killed by throttling.

P.W.3 A. Majid Miah, a local Union Parisad Member stated that the occurrence took place on 8.7.2004 at about 11.00 a.m. at the house of appellant. Victim's father (Informant Haji Abdul Gafur Talukder) went there to bring her, but was refused. In cross-examination he stated that he heard about the occurrence from the informant at about 6.00 p.m. at the house of occurrence.

P.W.4 A. Karim Talukder, another brother of victim deposed in support of prosecution case and stated that on receipt of the news, he rushed to the house of occurrence and saw the dead body of his sister there. In cross-examination he stated that he received the news at about 4 p.m.

P.W.5 Md. Abdul Kudus, brother-in-law of the victim also supported the prosecution case. In cross-examination he stated that his father-in-law (Informant Haji Abdul Gafur Talukder) communicated him the news at about 3 p.m. He denied the defense suggestion that the informant did not communicate him the news.

P.W.6 A. Karim, a local witness stated that on the date of occurrence he was staying at Palima Bazar. At about 2 p.m. he heard from local people that Maznu had killed his wife. Instantly he rushed to the house of occurrence and saw the victim's dead body lying inside a room. In cross-examination he stated that so many people including the appellant Maznu were there. He further stated that particularly he had heard the news from one van puller of village Bilpalima, but could not remember his name. He denied the suggestion that he had stated to the Investigating Officer about the death of victim by hanging.

P.W.7 Fazilatun Nessa, another local witness stated that Jotsna Begum died at her husband's house, but could not say the cause of her death. At this stage, she was declared hostile. In cross-examination she stated that the younger brother of the appellant brought her along with Lal Mahmud (P.W.8) and other witnesses to the Court for recording their evidence.

P.W.8 Lal Mahmud could not state as to how the victim died. He did not see any injuries on her person. At this stage he was also declared hostile.

P.Ws.9-12 and 15-17 were tendered by the prosecution and the defense declined to cross-examine them except P.W.11 Rina Begum. She stated in cross-examination that on hearing of a cry she rushed to the house of occurrence and saw the dead body of victim in hanging position. Police asked the people to bring the dead body into her husband's room. The appellant was not present at that time. On query by the Court, she replied that the appellant arrived at home after two and half hours. She further stated that the appellant was her brother-in-law (elder brother of her husband).

P.W.13 Kislumiah stated that Jotsna Begum died at the house of appellant. He had gone there and found her dead. A quarrel took place at the house before her death. P.W.14 Taslim Uddin, a local seizure list witness stated that the Investigating Officer seized one *shari* and prepared a seizure list. He proved the seizure list and his signature thereon. He also proved the *shari* as a material exhibit. But in contrary, he stated in cross-examination that two *sharis* were seized, of which the victim was wearing one and her neck was wrapped with another.

P.W.18 Kazi Ataur Rahman, the Principal of Alenga College stated that on 8.7.2004 accused Bazlur Rashid Talukder sat in an examination held at his college from ten to thirteen hours.

P.W.19 Rekha Rani Bala, a Magistrate of first class stated that at the relevant time she was posted in Tangail. In course of investigation of the case, she recorded statement of one Iman Ali under section 164 of the Code. She proved the said statement and her signature thereon.

P.W.20 Dr. Hafizur Rahman, an Assistant Surgeon, who conducted the postmortem of the victim's dead body, stated that he found following injuries on her person:

1. Blood from nose and mouth
2. Abrasions $\frac{1}{2} \times \frac{1}{3}$ on left side of upper part of neck
3. Multiple small abrasions found on both sides of neck
4. Bruises $\frac{1}{2} \times \frac{1}{2}$ and $\frac{1}{2} \times \frac{1}{2}$ on left arm
5. Bruises $\frac{1}{2} \times \frac{1}{2}$ on right elbow
6. Bruises $\frac{1}{2} \times \frac{1}{2}$ on right leg.

On deep dissection, thyroid cartilages were found fractured. Both side neck muscles and the bruises areas were congested. P.W.20 further stated that in his opinion the death was due to asphyxia as a result of throttling which was antemortem and homicidal in nature. He proved the postmortem report and his signature thereon. His evidence lends full support from the postmortem report.

P.W.21 Md. Akram Hossain, a Sub-Inspector of police and the Investigating Officer stated that after he was assigned for investigation of the case, he visited the place of occurrence, prepared the inquest report, sketch map with index and recorded statements of the witnesses under section 161 of the Code. He also seized the *alamats* and prepared a seizure list. He proved the sketch map, index, seizure list and his signatures thereon, and also proved the briefcase, printed *shari*, blouse as material exhibits. In cross-examination he stated that some of

the witnesses present at the place of occurrence told him that the victim had committed suicide.

It appears that P.W.1 fully supported the *ejahar* and disclosed nothing adverse in spite of exhaustive cross-examination. In his evidence there is no departure from the *ejahar*. The *ejahar* was lodged at 6.45 p.m on the date of occurrence i.e. without any delay. P. Ws.2, 3, 4, 5 and 6 supported the prosecution case and corroborated P.W.1 so far it relates to receiving the information by them, their appearance at the house of occurrence and seeing the dead body there.

P.Ws.7 and 8 though were declared hostile, stated in their evidence that the victim died at the house of appellant. P.W.13 stated that there was a quarrel before the death of victim and that she had died at the house of her husband. P.W.19 Rekha Rani Bala, a Magistrate of first class proved the statement of a quack Iman Ali recorded under section 164 of the Code, wherefrom it transpires that on the date of occurrence at about 1.30 p.m., the said Iman Ali visited the house of occurrence on call and saw the victim was lying in senseless condition. He examined her, but did not get any pulse. He, however, advised the inmates of the house to take her to a good doctor. P.W.20 Dr. Hafizur Rahman, the doctor who conducted the postmortem, proved the postmortem report and stated that her death was due to asphyxia as a result of throttling, which was antemortem and homicidal in nature

P.W.11 in her cross-examination stated that she saw the hanging dead body of victim and it was taken inside of her husband's room at

the instance of police. She, however, did not mention at what point of time she saw the hanging body. It appears from the inquest report that the police found the dead body lying inside a room. P.W.11 admitted the appellant to be her brother-in-law. P.Ws.7 and 8 stated in their evidence that they did not know as to how the victim had died. Of them, P.W.7 stated that younger brother of the appellant brought her along with Lal Mahmud (P.W.8) and other witnesses to the Court for recording their evidence. Under the facts and circumstances their evidence cannot be relied upon, and it cannot also be said that these evidence cast a doubt over the prosecution case. We are therefore, not convinced with the argument of learned Advocate for the appellant that in view of the evidence of P.Ws.7, 8 and 11, the case has not been proved beyond reasonable doubt.

It further appears from the postmortem report as well as from the evidence of P.W.20 that blood was found from nose and mouth of the victim, multiple small abrasions were found on both sides of her neck. The thyroid cartilages were found fractured. The neck muscles of both sides and the bruises areas were congested. All these are indications of murder by throttling. There were marks of injuries on her right elbow, left arm and leg as well, which are indications of her struggle at the time of throttling. Being an expert on the subject matter, the Doctor found that the mode of killing was throttling. There was no mention in the postmortem report, inquest report, evidence of P.W.20 or any other witness that any saliva was dribbling from the mouth of victim or that

her neck was stretched and elongated or that her body was fresh or there was any dislocation or fracture of the cervical vertebrae. In any view of the matter, it cannot be said that the victim had committed suicide by hanging.

In view of the evidence as discussed above, the prosecution has been able to prove that the appellant had killed the victim at his own house by beating and throttling. On the other hand the appellant failed to offer any explanation as to the cause of the death of his wife, who admittedly died at his house except putting some suggestions that the victim had committed suicide, which could not cast any shadow of doubt over the prosecution case.

By this time it has been settled in number of cases that in a case of wife killing, onus is on the shoulder of husband to explain the cause of death, if any wife dies at her husband's house. In the absence of any explanation from the husband, irresistible presumption is that the husband is responsible for her death. [reliance placed on Sudhir Kumar Das alias Khudi Vs. The State, 60 DLR 261; Shah Alam Vs. The State, 5 BLC 492; Gouranga Kumar Saha Vs. State, 2 BLC (AD) 126; Abdul Motaleb Howlader Vs. State, 5 MLR (AD) 362; Dipak Kumar Sarker Vs. State, 40 DLR (AD) 139].

Learned Sessions Judge considered and discussed each and every piece of evidence and found the appellant guilty of offence of murder of the victim and accordingly sentenced him for life with fine. We

do not find any illegality in the judgment and order of conviction and sentence.

In the result, the appeal is dismissed. The impugned judgment and order dated 23.1.2006 passed by the Sessions Judge, Tangail in Session Case No.232 of 2004 is hereby maintained. The appellant Md. Saiful Islam alias Maznu is directed to surrender before the trial Court to serve out the remaining period of his sentence. The period of his imprisonment in custody during the trial will be deducted under section 35A of the Code.

Send down the lower Courts records.

Mohammad Marzi-ul-Huq, J.

I agree.