

Present:  
 Ms. Justice Naima Haider  
 and  
 Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.936 of 1990

Abdul Jalil alias Jalil Mia  
 ...Appellant

-Versus-

The State  
 ...Respondent

No one appears for the appellant

Ms. Promila Biswas, D.A.G.  
 ... for the respondent

Judgment on 17.4.2011

*Md. Ruhul Quddus, J:*

This appeal under section 410 of the Code of Criminal Procedure is directed against judgment and order dated 26.8.1990 passed by the Additional Sessions Judge, Jhenaidah convicting the appellant under sections 302/34 of the Penal Code and sentencing him thereunder to suffer rigorous imprisonment for life with a fine of Taka five thousand in default to suffer imprisonment for one year more. The appeal has been appearing in the cause list from 4.4.2011 i.e. before six days of starting the vacation. Today it is taken up for hearing, but no one appears to press the appeal. In view of its long pendency for nearly twenty-one years, we take it up for disposal even in absence of the appellant.

Facts relevant for disposal of the appeal, in brief, are that the informant Md. Arshed Ali Mondal lodged an *ejahar* with Chuadanga

Police Station on 9.1.1984 against the appellant alleging *inter alia* that his cousin Badar Uddin Kha alias Budhai (hereinafter called as 'Budhai') along with him (informant) went to Bowdanga cattle market to purchase a cow on 3.1.1984. The said Budhai was carrying Taka 1635/- in cash with him. In spite of their best efforts, they could not choose any cow to purchase. At 4.00 o'clock in the afternoon they were still in search of a cow, when the appellant voluntarily joined them and started assisting them in searching a suitable cow. At one stage, the said Budhai disclosed that he would go to the house of his father-in-law at village Madhabpur as his wife and children were there. The appellant also wanted to go with him (Budhai). Ultimately they (Budhai and the appellant) started going together by a baby-taxi at about 5 p.m. His (Budhai's) nephews Abdus Salam and Matiar Rahman, who went to the cattle market to sell a goat, saw them to go together. After going back to home, the said Salam and Matiar informed his (Budhai's) mother that he had gone to his in-law's house. On 5.1.1984 the informant came to learn from his (Budhai's) father-in-law Jaban Mallik that he had not gone to his (Jaban Mallik's) house. The informant and his relations searched at all possible places, but could not trace him. On 8.1.1984 the informant along with Monir Uddin and and Lutfor Rahman (brother and nephew respectively of Budhai) went to Dakbangla Hat and came to know that a beheaded dead body was lying at village Depree within the police station of Chuadanga. Instantly they rushed to Chuadanga Police Station and on enquiry came to know that the police had

recovered a dead body on 5.1.1984 and held post-mortem on the same. They identified the dead body to be of Budhai by his shirt, vest and a photograph taken by the police. It was also mentioned in the *ejahar* that the money kept with the victim and his wrist watch were not available, when the police had recovered the dead body. In the said *ejahar* the informant suspected the appellant to be the killer of Budhai. On receipt of the said *ejahar* written on plain paper, Chuadanga police forwarded the same to the Officer-in-charge of Jhenaidah Police Station, which gave raise to Jhenaidah Police Station Case No.5 dated 9.1.1984.

The police, after investigation submitted charge sheet on 30.4.1984 against the appellant and six others under sections 364 and 302 of the Penal Code. In course of investigation the police arrested the appellant and he made statement under section 164 of the Code of Criminal Procedure before the Magistrate of first class, Jhenaidah.

The case after being ready for trial, was sent to the Sessions Judge, Jhenaidah, wherein it was registered as Session Case No.15 of 1988. Thereafter, the learned Sessions Judge framed charge against the accused persons including the appellant under sections 302/34 of the Penal Code by his order dated 30.5.1988, to which they pleaded not guilty and claimed to be tried. Thereafter, the case was transferred to the Court of Additional Sessions Judge, Jhenaidah for hearing and disposal.

The prosecution in support of its case examined seven witnesses. After the prosecution was closed, the learned Additional Sessions

Judge examined the appellant under section 342 of the Code of Criminal Procedure, to which he reiterated his innocence, but did not adduce any evidence in defense. After conclusion of trial the learned Judge found the appellant guilty of murder and accordingly pronounced his judgment and order on 26.8.1990 convicting and sentencing him as aforesaid, while acquitted six others as there was no evidence against them.

P.W.1 Md. Arshed Ali Mondal, the informant deposed fully supporting the *ejahar*. He was exhaustively cross-examined but disclosed nothing adverse and specifically denied the prosecution suggestion that the appellant did not accompany the victim Budhai, when he left the cattle market by a baby-taxi.

P.W.2 Matiar Rahman, nephew of the victim Budhai, who was present at the cattle market on 3.1.1984 to sell a goat, stated that he saw his uncle Budhai along with the appellant to leave the market and to go towards Chuadanga by a baby-taxi.

P.W.3 Abdus Salam, another nephew, who accompanied his brother Matiar Rahman (P.W.2) in selling a goat at the cattle market on 3.1.1984 stated that he also saw his uncle Budhai along with the appellant to go towards Chuadanga by a baby-taxi.

P.W.4 K. R. Bagchi, Magistrate of first class stated that on 11.1.1984 he had recorded statement of the appellant under section 164 of the Code of Criminal Procedure and that he did it in accordance

with law. He proved the statement and his signature thereon. He denied the prosecution suggestion that the statement was not made voluntarily.

P.W.5 Md. Monir Uddin stated that he gave Taka 1635/- to his brother Budhai before he went to the cattle market on the fateful day. P.Ws.6-7 Jaban Mallik and Sundari Bibi, father-in-law and wife respectively of the deceased victim Budhai also deposed in support of the prosecution case.

It appears from the statement of the appellant made under section 164 of the Code of Criminal Procedure that he confessed his guilt to the effect that at the instance of accused Shajahan, he had called Budhai out from the cattle market and the accused persons namely Babul, Shajahan, Shona killed him in a nearby paddy field ignoring his interdiction. He took a plea that the said co-accused detained him and compelled him to keep silent on threat of his life. But after being released from their grips, he did not disclose the occurrence at his own instance. Under the facts and circumstances, the learned Additional Sessions Judge partly believed his confessional statement and disbelieved that part of the statement, by which he cleverly tried to escape the liability. It was also proved by the evidence of P.Ws.1, 2 and 3 that the victim Budhai was last seen in the company of the appellant and thereafter he was found dead. The appellant himself confessed that at the instance of accused Shajahan he had called Budhai out from the cattle market and thereafter the accused persons killed him in his presence. Since, there was no evidence against the co-accused, the

learned Additional Sessions Judge acquitted them, but convicted and sentenced the appellant as the charge of killing was proved against him beyond reasonable doubt.

In view of the discussion made above we do not find any illegality in the impugned judgment and order of conviction and sentence. Accordingly, the appeal is dismissed.

Send down the lower Court records.

Naima Haider, J:

I agree.