

Present:

Ms. Justice Naima Haider

and

Mr. Justice Md. Ruhul Quddus

Criminal Appeal No.4786 of 1991

Md. Humayun Shaikh

...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 3.2.1990 passed by the Additional Sessions Judge, Second Court, Barisal in Session Case No.48 of 1988 convicting the appellant and two others under sections 302 and 34 of the Penal Code and sentencing them thereunder to suffer rigorous imprisonment for life with a fine of Taka five thousand for each in default to suffer simple imprisonment for six months more. The appeal has been appearing in the cause list since 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. Record shows that the appeal was filed on 3.4.1990 and initially it was numbered as Criminal Appeal No.17 of 1990. Subsequently it was renumbered as Criminal Appeal No.4786 of 1991, possibly on transfer from Barisal Bench, though the reason of such

renumbering is not recorded. In view of its long pendency for more than 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. Azmain Hossain, Officer-in-charge of Gournadi Police Station, Barisal lodged an *ejahar* on 24.2.1988 against the appellant and two others alleging *inter alia* that he had gone to Gournadi hospital on 18.1.1988 to see one Md. Humayun Shaikh (herein the appellant), who was injured in an occurrence on the previous day and was admitted in the hospital. Finding him as Officer-in-charge of Gournadi Police Station, the appellant made allegation that on the previous day after evening he and his mother-in-law Rabeya Begum went to the house of one Habibur Rahman Kha of the same village to bring a via-deed in respect of a piece of land, which his father-in-law had purchased 10/12 years back. On the way of coming back, they had reached at a field near to the house of his uncle Khabir Kha, when one Jalil Sikder along with his accomplices held and tied him, and thereafter started kicking him laying on the ground. His mother-in-law, the said Rabeya Begum had come forward and requested them not to kill him, when the said Jalil Sikder dealt a *dao* blow on her back. One of them named Mozammel dealt another *dao* blow on her neck, while the others inflicted her series of blows with cutting weapons and beat her indiscriminately. Somehow he fled away to the house of Khabir Kha and after informing the inmates of the house about the occurrence, he lost his sense. In the next morning his uncle Adam Ali took him to Gournadi hospital and got him admitted

there. On the said allegation, the Officer-in-charge recorded Gournadi Police Station Case No.3 dated 18.1.1988 under sections 302 and 34 of the Penal Code and assigned Sub-Inspector Haripada Biswas to investigate the case. In course of investigation, the Investigating Officer, said Haripada Biswas suspected the appellant to be the actual killer. At one stage the Officer-in-charge himself took up the case for investigation at instruction of his superior authority. Thereafter on 28.1.1988, he interrogated the appellant who confessed that out of greed for the property of his mother-in-law, he had hatched up a conspiracy along with his two friends namely, Sunil Debnath and Jalal Howlader to kill her. Accordingly he (appellant) along with his two friends killed her on 17.1.1988 at 11.00 p.m in a field near to the house of Khabir Kha.

On disclosure of the above facts, the police arrested the appellant and his two friends and produced them before the Court. The police also recovered the *dao*, by which the appellant had slaughtered the victim Rabeya Begum. On finding of the above facts, the informant submitted final report in the aforesaid Gournadi Police Station Case No.3 dated 18.1.1988 and lodged the present *ejahar* against the appellant and his two friends, which gave rise to Gournadi Police Station Case No.17 dated 24.2.1988.

The police, after investigation submitted charge sheet on 17.3.1988 against the appellant and five others co-accused under sections 302, 34 and 109 of the Penal Code. During investigation the appellant and his two friends made statements under section 164 of the Code of Criminal

Procedure confessing their direct involvement with the occurrence before the Upazila Magistrate, Gournadi on 30.1.1988.

The case after being ready for trial, was sent to the Sessions Judge, Barisal, wherein it was registered as Session Case No.48 of 1988. The learned Sessions Judge by order dated 22.12.1988 framed charge against the accused under the said sections of law, to which they pleaded not guilty and claimed to be tried. Thereafter the case was transferred to the Additional Sessions Judge, Second Court, Barisal for hearing and disposal.

The prosecution in support of its case examined as many as thirteen witnesses out of twenty-five, who were named as such in the charge sheet. After closing the prosecution, 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 nor he did retract his confessional statement.

After conclusion of trial, the learned Additional Sessions Judge found the appellant and two others guilty of offence under sections 302 and 34 of the Penal Code and accordingly pronounced his judgment on 3.2.1990 convicting and sentencing them as aforesaid, while acquitted three others as the case was not proved against them. The appellant moved in this Court with the instant criminal appeal against the said judgment and order of his conviction and sentence.

Ms. Promila Biswas, learned Deputy Attorney General appearing for the State submits that the prosecution witnesses proved the case against the appellant beyond all reasonable doubt. The learned Additional Sessions Judge after considering the evidence on records found the appellant guilty and rightly passed the judgment and order of conviction and sentence. There is nothing to interfere with the judgment and order and as such the appeal is liable to be dismissed.

It appears that P.W.1 Md. Azmain Hossain, the Informant and Investigating Officer in his deposition fully supported the prosecution case and disclosed nothing adverse in spite of exhaustive cross-examination. P.Ws.2-6 the neighbors, uncle, daughter and son respectively of the deceased victim Rabeya Begum stated that they saw the victim Rabeya Begum and the appellant with a lantern in his hand to go to the house of Habibur Rahman Kha after the evening on 17.1.1988. At about 11/11.30 p.m they heard that she had been killed. In their evidence there is no contradiction in material particulars. All of them were also exhaustively cross-examined, but disclosed nothing adverse. In addition P.W.5 stated that while she met the appellant at Gournadi hospital, did not find any injury on his person.

P.W.7 Dr. Nirmal Bodya, a village-doctor stated that on 17.1.1988 at about 11/11.30 p.m one Makbul and Gani had called him and informed about the occurrence. Instantly he rushed to the house of Khabir Master where the appellant was lying. He had examined the appellant and did not find any injury on his person, but saw him to breathe very fast.

P.W.8 Haripada Biswas, one of the Investigating Officers in Gournadi Police Station Case No.3 dated 18.1.1988 lodged by the appellant, stated that he had visited the place of occurrence with constables Yousub Ali, Younus, Golam Rasul and Hanif and prepared the inquest report on the dead body of victim Rabeya Begum. He sent the dead body to Barisal Medical College Hospital Morgue for holding post-mortem, and seized the *alamats* including a *dao* used in commission of the occurrence from the house of co-accused Jalal. P.W.9 Yousub Ali, a Constable of Police stated that on 18.1.1988 he accompanied Sub-Inspector Haripada Biswas in visiting the place of occurrence. He had escorted the dead body to Morgue and identified the same before the doctor. P.W.10 Younus Ali, another Constable of Police was tendered by the prosecution and the defense declined to cross-examine him.

P.W.11, Md. Motahar Hossain, a local seizure list witness stated that Sub-Inspector Haripada Biswas had seized a *dao* in the night following 28.1.1988 from the house of co-accused Jalal in his front. He identified and proved the said *dao* produced before the Court and also proved his signature on the seizure list.

P.W.12 Shudeb Chandra Sarker, Magistrate of first class stated that at the relevant time he was Upazila Magistrate at Gournadi, Barisal. He recorded the statements of the appellant and two others namely, Sunil Debnath and Jalal under section 164 of the Code of Criminal Procedure on 30.1.1988. He did it in accordance with law and the statements recorded at their dictation and after recording those were

read over to them, and they voluntarily put their respective signatures on the statements. He proved the said statements and his signatures thereon. He was cross-examined by the defense, but disclosed nothing adverse.

P.W.13 Dr. Abdul Barek stated that he had held post-mortem on the dead body of the victim on 19.1.1988. Police constable Yousub Ali brought and identified the dead body. He found so many injuries on her person, such as (1) 7" x 3" incised wound on her neck, (2) 3" x 1½" stab wound into the lung from her back, (3) 2 ½" x ½" x 1" wound on the upper part of her back, (4) 2" x ½" x 1" wound on the middle part of her back. He further stated that the death in his opinion was due to shock and hemorrhage as a result of the above injuries especially injury No.1 and that the injuries were antemortem and homicidal in nature.

It further appears that the appellant in his statement under section 164 of the Code of Criminal Procedure confessed that he along with his two friends namely, Sunil Debnath and Jalal Howlader had killed the victim. He gave a detail description of the occurrence with background. The said Sunil and Jalal also made statements under section 164 of the Code corroborating his statement. All those statements were proved by the Magistrate, who recorded the same. The learned Additional Sessions Judge while examined them under section 342 of the Code, brought the said statements into their notices, but none of them retracted the same.

A careful reading of the evidence and other materials on records including the confessional statements, inquest and post-mortem reports

clearly prove that in the night of occurrence the appellant and his two friends namely Sunil and Jalal brutally killed his mother-in-law Rabeya Begum by inflicting several *dao* blows on her neck and back in a cruel manner laying her in a field near to the house of Khabir Kha.

The learned Sessions Judge upon consideration of the evidence and other materials on records rightly passed the impugned judgment and order of conviction and sentence. We do not find any reason to interfere with the same. Accordingly the appeal, having no merit, is dismissed.

Send down the lower Court records.

Naima Haider, J:

I agree.