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

Criminal Appeal No.4942 of 1991

Hamidur Rahman

…Appellant

-Versus-

The State

…Respondent

No one appears for the appellant

Ms. Promila Biswas, D.A.G. with
Mr. Gopal Chandra Saha, A. 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 26.5.1985 passed by the Sessions Judge, Nilphamari in Session Trial Case No.49 of 1985 convicting the appellant under section 302 of the Penal Code and sentencing him thereunder to transportation for life. 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 for the appellant appears to press the appeal. Record shows that the appeal was filed on 20.7.1985 and was numbered as Criminal Appeal No.167 of 1985. Thereafter it was renumbered as Criminal Appeal No.4942 of 1991 possibly on transfer from Rangpur Bench, though the reason of such renumbering is not recorded. In view of its long pendency for nearly twenty-six 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. Fool Mia, a Sub-Inspector of Police lodged an *ejahar* with Jaldhaka Police Station, Rangpur (now Nilphamari) on 17.5.1984 against the appellant and six others alleging *inter alia* that in course of investigation in Unnatural Death Case No.4 dated 5.5.19984 he was preparing inquest report on dead body of the deceased victim Nasrin Begum (wife of the appellant) and found several injuries on her person. It created doubt that she might be beaten to death. On receipt of the post-mortem report on 17.5.1984, he found the doctor's opinion that she died of injuries inflicted on her. The informant also learnt that the appellant used to beat her very often. The appellant had seriously beaten her causing injuries, to which she succumbed at 4 o'clock in the night following 5.5.1984. After her death, the appellant and other inmates of his house had tried to conceal her dead body, but failed and thereafter disappeared from the house.

The said *ejahar*, gave rise to Jaldhaka Police Station Case No.4 dated 17.5.1984. The police, after investigation submitted charge sheet on 21.6.1984 against the sole appellant under section 302 of the Penal Code, while proposed release of six others as no prima-facie case was found against them. The case after being ready for trial, was sent to the Sessions Judge, Rangpur, wherein it was registered as Session Trial Case No.125 of 1984. After creation of Sessions Division at Nilphamari, it was transferred to the Court of Sessions Judge, Nilphamari for disposal and was renumbered as Session Trial Case No.49 of 1985. The learned Sessions Judge, Nilphamari by his order dated 6.3.1985 framed charge against the appellant under the said section of law, to which he pleaded not guilty and claimed to be tried.

The prosecution in support of its case examined thirteen witnesses out of seventeen, who were named as such in the charge sheet. After closing the prosecution, the learned Sessions Judge examined the appellant under section 342 of the Code of Criminal Procedure, to which he furnished a written statement stating that his wife (victim Nasrin Begum) had illicit love affairs with her cousin Abdul Majid. In the night of occurrence they were caught red-handed in embracing position, when the appellant had tried to catch hold of the said Abdul Majid, but he fled away. During his (appellant's) scuffle with him, she fell on the corner of a wooden *chowki* and received injury. The appellant himself also dealt her blows with a cattle-stick and thereafter left the house out of shame and disgrace.

After conclusion of trial, the learned Sessions Judge found the appellant guilty of offence under section 302 of the Penal Code and accordingly pronounced his judgment on 26.5.1985 convicting and sentencing him as aforesaid. The appellant moved in this Court with the instant criminal appeal against the said judgment and order of 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 Sessions Judge, Nilphamari after considering the evidence on records found the appellant guilty and rightly passed his judgment and order of conviction and sentence. There is nothing to interfere with the impugned judgment and as such the appeal is liable to be dismissed.

It appears that P.W.1 Md. Fool Mia, the Informant and Investigating Officer stated that he had found several injuries on different parts of the dead body of Nasrin Begum and sent it to Nilphamari Morgue for holding post-mortem. On receipt of the post-mortem report he found that the victim died of the injuries inflicted on her. A maid-servant at the house of the appellant named Nosiran told him that the appellant killed the victim by rod blows. No male member was found at the house of occurrence on 5.5.1984. The dead body was found on a *ckowki* inside the house. After he was assigned by the Officer-in-charge of Jaldhaka Police Station to investigate the case he visited the place of occurrence, prepared the sketch map with index and recorded statements of witnesses under section 161 of the Code of Criminal Procedure. He disclosed nothing adverse in spite of exhaustive cross-examination.

P.Ws.2-5 and 7 are the father, sister, uncle, brother and mother respectively of the deceased victim Nasrin Begum. They fully supported the prosecution case. In their evidence there is no contradiction in material particulars. All of them were exhaustively cross-examined, but disclosed nothing adverse.

P.W.6 Ibrahim, a local elite and neighbor of the appellant stated that he heard an alarm at about 12/1 o'clock in the night of occurrence from the appellant's house. Next morning he went there and found the appellant's wife dead. He did not find any male-member at the house. In cross-examination he stated that some of the people present there told him that the appellant had killed the victim, while some others told that she died of diarrhea. He denied the

suggestion that he had ever heard of any illicit relation of the victim with her cousin.

P.W.8 Nosiran, a maid-servant at the appellant's house did not support the prosecution case and deposed at the tune of defense. But her mistaken narration of fact, demeanour as noticed by the trial Judge and reply to the Court clearly suggest that being a servant at the appellant's house, she was subsequently influenced by the defense, and has concealed and distorted the facts.

P.W.9 Mst. Kulsum, a neighbor of the appellant stated nothing in her examination-in-chief. In cross-examination she stated that in the night of occurrence or on the next day she did not visit the house of occurrence. She heard that Abdul Majid had come to the house of occurrence. P.Ws.10 and 11, two other neighbors of the appellant were tendered, but in cross-examination stated that they heard of illicit relation between the victim Nasrin Begum and her cousin Abdul Majid, and also heard that in the night of occurrence the said Abdul Majid had entered into the house of occurrence. All of these hearsay witnesses did not disclose from whom they heard about their illicit relation and as such this part of their evidence was not admissible. P.W.12 was tendered by the prosecution and the defense declined to cross-examine him.

P.W.13 Dr. Jasimuddin, the doctor stated that he had held post-mortem on the dead body of the victim on 6.5.1984. She was 18 years old and identified by constables Brozendra Nath and Ahmed Ali. He found so many injuries on her person, such as (1) one bruise 5″ x 2″ with swelling on the left temporal region including the left ear; (2) one bruise 5″ x 1½″ on the lateral aspect of left arm; (3) one bruise 3″ x 1½″ on the anterior aspect of left elbow joint; (4) one bruise

3″ x 2½″ with diffused swelling on the nose including upper lip; (5) one bruise 3″ x 1½″ on back left side of the spiral lumber region; (6) one bruise 2½″ x 2½″ of the frontal region (left side); and (7) Labia Majora and Labia Minora and hymen are swollen and lacerated. He further stated that on dissection it was found that the soft tissues under the injuries were stained with extravaseted blood. The left temporal bone was found fractured, depressed with injury to the brain matter and clot of blood is found under the scalp and into the brain substance. The anterior and posterior wall of vagina was lacerated and highly congested. The cervix with its fornixs were lacerated and swollen. Lastly he 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 7. The injuries were antemortem and homicidal in nature. He denied the prosecution suggestion that injury No.1 might be caused because of fall on any hard substance. He asserted that such injury would cause only by a forceful blow with a hard substance.

The appellant in his statement under section 342 of the Code of Criminal Procedure tried to make out a case of incidental fall of the victim on a *chowki* causing injury No.1, inflicting some other blows on her person by him out of sudden provocation, and his disappearance from the house because of shame and disgrace. There were as many as seven injuries on her person, out of which injury Nos.1 and 7 were fatal. The said injuries cannot be inflicted out of sudden provocation. His statement was also not complete with any definite explanation as to how the victim died, and why all the male members including him were absent from the house, even after her death. P.W.13, a vital and an independent witness clearly proved that injury No.1 would cause only by a forceful blow

with a hard substance. Therefore his (appellant's) statement about her incidental fall in course of his scuffle with Abdul Majid does not stand, rather it proved that in the fateful night he had beaten the victim with a cattle-stick. His absence at the house of occurrence in the next morning is also an incriminating circumstance that speaks against him.

A careful reading of the evidence and other materials on records especially the evidence of P.Ws.1-7 and 13, the inquest and post mortem reports clearly prove that in the night of occurrence, the appellant brutally killed his wife Nasrin Begum, a newly married girl of 18 years by inflicting series of injuries on her person in a cruel manner at his own house.

The learned Sessions Judge upon consideration of the evidence on records rightly passed the impugned judgment and order of conviction and sentence. We do not find any merit in the appeal. Accordingly, the appeal is dismissed.

Send down the lower Court records.

Naima Haider, J.

I agree.