

IN THE SUPREME COURT OF BANGLADESH

Appellate Division

PRESENT

Mr. Justice Md. Abdul Wahhab Miah
Madam Justice Nazmun Ara Sultana
Mr. Justice Syed Mahmud Hossain
Mr. Justice Muhammad Imman Ali

JAIL PETITION NO. 15 OF 2010

(From the judgment and order dated 30th October, 2007 passed by the High Court Division in Death Reference No.74 of 2004 with Jail Appeal No.521 of 2004)

Rahmat Ali alias Shukkur ... Petitioner

= Versus =

The State ... Respondent

For the Petitioner :Mr. Helal Uddin Mollah,
Advocate

For Respondents :Mr. Md. Shohrowardi, Deputy
Attorney General

Date of hearing :The 26th November, 2012

J U D G M E N T

MUHAMMAD IMMAN ALI, J:-

This jail petition for leave to appeal at the instance of the condemned petitioner Rahmat Ali alias Shukkur is directed against the judgment and order dated 30.10.2007 passed by the High Court Division in Death Reference No.74 of 2004, which was heard along with Jail Appeal No.521 of 2004 accepting the reference and dismissing the jail appeal.

The prosecution case, in brief, is that on 14.05.2003 at about 10.00 a.m. in the morning when Rumi, the niece of the informant Khairul Bashar went to the neighbouring house of accused Rahmat Ali alias Shukkur for plucking henna (মেহেদি)- leaves, the accused

abused her in filthy language. The informant heard about the incident with his niece Rumi and on that day he, his mother Rokeya Begum and Husna Begum, his brother's wife asked the accused about the reason of abusing Rumi, whereupon, the accused abused them as well in filthy language and at one stage, he became furious and threatened to kill them. Then the informant along with his mother and sister-in-law came back to their house and informed about the occurrence to Milon Mia, the cousin of the informant. On 15.05.2003 at about 10.00 a.m. the accused sharpened a big sword which was seen by Husna Begum and neighbour Ahid Miah with other local people who told the informant. On 16.05.2003 at about 12.45 p.m. when the mother of the informant Rokeya Begum went beside their dwelling house to call their servant Jabbar Ali, the accused abused Rokeya Begum in filthy language and at one stage, on the road near the courtyard situated in between the house of the informant and his cousin Nazrul Islam, due to previous enmity the accused dealt blow on the head of Rokeya Begum with a four feet long sharp sword causing severe bleeding injury and as a result, the brain-matter of Rokeya Begum came out forthwith and she fell down to the ground. The occurrence took place in presence of Milon Mia, Shahadat Hossain and Husna Begum. Victim Rokeya Begum was rushed to Chandiber Hospital by Ahid Miah and Nadir. The Doctor at the Emergency Department declared her dead. The persons present ran and caught the

accused with the blood stained sword in his hand while he was trying to flee and handed him over to the police. The informant having been informed over telephone returned home from the Bazar and heard the occurrence, went to hospital and saw the dead body of his mother with bleeding injury. Thereafter, the informant lodged the First Information Report (FIR) on 16.05.2003 at about 13.30 hours under section 302 of the Penal Code against the condemned petitioner. Accordingly, Bhairab Thana Case No. 20(5) 2003 corresponding to G.R. No.260(2)03 was started.

The Investigating Officer in the course of investigation visited the place of occurrence, prepared the sketch map with index, prepared inquest report and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure. After completion of investigation he submitted Charge-sheet No.143 dated 07.07.2003 under section 302 of the Penal Code against the condemned petitioner.

The case was transferred to the Court of Sessions Judge, Kishorganj where it was numbered as Sessions Case No.219 of 2003 for trial.

Charge was framed under section 302 of the Penal Code against the condemned prisoner and read over to him to which he pleaded not guilty and claimed to be tried. During trial the prosecution examined as many as thirteen P.Ws. who were cross-examined by the defence but the defence examined none. Five witnesses were tendered. The condemned petitioner was examined

under section 342 of the Code of Criminal Procedure when again he pleaded not guilty and repeated his claim of innocence and declined to adduce evidence.

The defence case as it transpires from the trend of cross-examination of the prosecution witnesses was that of innocence. Positive defence taken was that the deceased, an elderly lady and patient of hypertension accidentally fell on a tin and received injury on her head resulting in her death.

The learned Judge of the trial Court after hearing the parties and upon consideration of the evidence and materials on record convicted the condemned prisoner Rahmat Ali alias Shukkur under section 302 of the Penal Code and sentenced him to death by his judgement and order of conviction and sentence dated 18.05.2004.

Reference under section 374 of the Code of Criminal Procedure was made to the High Court Division for confirmation of the sentence of death, which was numbered as Death Reference No.74 of 2004.

Before the High Court Division the Jail Appeal No.521 of 2004 was preferred by the condemned petitioner, which was heard along with Death Reference. By the impugned judgment and order the High Court Division accepted the reference and dismissed the jail appeal. Hence, the condemned prisoner has filed the instant Jail Petition before this Division.

Mr. Helal Uddin Mollah, the learned Advocate appearing on behalf of the petitioner submits that in

view of the evidence on record he will not challenge the conviction of the petitioner but rather pray for commutation of the sentence of death. He points out that the petitioner has been in the condemned cell for about $8\frac{1}{2}$ years and has suffered the pangs of death throughout this period. He further submits that it is apparent from the evidence on record that the petitioner had a previous quarrel with the victim due to the alleged incident concerning the victim's granddaughter. He also submits that the petitioner acted in the way he did due to previous enmity, as mentioned in the FIR, and due to emotional pressure arising out of the earlier incident when he was taken to task by the victim and her family members. He finally submits that the petitioner is a young man aged about 25 years and should be treated with leniency. He therefore prays that the sentence of death may be modified to one of imprisonment for life.

Mr. Md. Shohrowardi, the learned Deputy Attorney General appearing on behalf of the State submits that the instant case is one of cold blooded murder where the accused took preparation by sharpening his sword and waiting for the opportunity to kill the victim. He therefore prays that the judgment and order of conviction and sentence be upheld.

We have considered the submissions of the learned Advocate for the parties concerned and perused the impugned judgment and order of the High Court Division and other connected papers on record.

We find from the evidence on record that the condemned prisoner-petitioner previously had an argument with the victim and other family members. The incident was witnessed by the victim's immediate family members as well as other independent witnesses. According to P.W.10 the petitioner having struck the victim with the sword ran into the Mosque, blood stained sword in hand saying "আমি খুন করিয়া আসিয়াছি আমাকে বাঁচান" whereupon people in the vicinity ran there and caught him. We do not find anything on record to disbelieve the witnesses and accordingly the trial Court's finding that the petitioner was guilty under section 302 of the Penal Code must be upheld.

However, from the record we find that the accused was aged 25 years when the statement under section 342 of the Code of Criminal Procedure was recorded on 08.05.2004. The occurrence took place on 16.05.2003 and therefore the accused was aged only 24 years at the time of occurrence. In this regard we may refer to the decision reported in 13 DLR 203 in the case of State Vs. Tasiruddin. That case was one where the death sentence was awarded by the trial Court. Murshed, J (as his Lordship then was) analysed the principle which a Court must follow in awarding sentence when convicting under section 302 of the Penal Code. While considering the aspect of age of the accused his Lordship looked at a number of cases decided by the higher Courts of the Subcontinent where the sentence of death had been modified and

substituted by transportation for life (now imprisonment for life). Their Lordships made it clear that they were not laying down any precedent which can be applied to every case when a question of commutation of death sentence was considered on account of age of the accused. Nevertheless, in that particular case where the accused was 25 years old and possibly influenced by his elder brother, the sentence of death was commuted to a sentence of transportation for life.

We note from the decision referred to in the above mentioned case that the death sentence imposed upon youthful offenders, even up to the age of 25 years was commuted to a sentence of transportation for life. We also note from the charge-sheet that the P.C.P.R. (previous conviction and previous record) do not disclose any previous criminal activity of the condemned petitioner which tends to show that his character is not inherently criminal in nature. We keep in mind also the fact that admittedly enmity and grudge had developed between the condemned petitioner and the victim and her family which has triggered the action of the accused.

In the case of Nalu Vs. State reported in 1 Apex Law Report's (AD) 222, where the facts were similar, with similar mitigating circumstances, this Division commuted the sentence of death to one of imprisonment for life.

In the facts and circumstances of the instant case, keeping in mind the youth the condemned petitioner, no previous criminal record, admitted previous enmity, the fact that he had languished in the condemned cell for more than $8\frac{1}{2}$ years, we are of the view that ends of justice will be sufficiently met if the sentence of death is commuted and altered to one of imprisonment for life.

Accordingly, the Jail Petition No.15 of 2010 is dismissed with modification of sentence of death as stated above.

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The 26th November, 2012
/H./B.R./ *Words 1,757*