

LEX/BDAD/0005/2010

Equivalent/Neutral Citation: 62 DLR(AD) (2010) 406

**IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)**

Criminal Petition for Leave to Appeal Nos. 17 and 38 of 2009

Decided On: 07.03.2010

State **Vs.** Azam Reza

Hon'ble Judges/Coram:

Mohammad Fazlul Karim, C.J., Md. Abdul Matin, B.K. Das and Md. Muzammel Hossain, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: AK Badrul Huq, Senior Advocate instructed by Sufia Khatun, Advocate-on-Record - For the Petitioner In Criminal Petition No. 17 of 2009, ASM Abdul Matin, Deputy Attorney-General, Mahfuza Begum, Assistant Attorney-General him instructed by ASM Khalequzzaman, Advocate-on-Record - For the Petitioner In Criminal Petition No. 38 of 2009

For Respondents/Defendant: ASM Abdul Mobin, Deputy Attorney-General, Mahfuza Begum, Assistant Attorney-General with him instructed by Sufia Khatun, Advocate-on-Record - For the Respondent In Criminal Petition No. 17 of 2009

JUDGMENT

Md. Abdul Matin, J.

1. The delay in Criminal Petition No. 38 of 2009 is condoned. These petitions for leave to appeal are directed against the judgment and order dated 20-7-2008 and 21-7-2008 passed by the High Court Division in Death Reference No. 6 of 2005 corresponding to Criminal Appeal No. 322 of 2005 and Jail Appeal No. 40 of 2005 sentencing the petitioner to life imprisonment.

2. Criminal Petition for Leave to Appeal No. 17 of 2009 has been filed by the accused petitioner whereas Criminal Petition for Leave to Appeal No. 38 of 2009 has been filed by the State on the ground of inadequacy of sentence and both the petitions having been head together are being disposed of by this judgment.

3. The short facts of the case are as under:-The deceased Joyanti Munshi daughter of informant Lusil Sadekin was an Architect and Senior Teacher of Australian International School at Gulshan, Dhaka. On 10-3-2000 her marriage with accused Azam Reza was solemnized. After marriage they had a happy conjugal life for 3 1/2 years. The deceased used to live in the house of the accused. She gave birth to a son named Turja by the accused. At the time of occurrence Turja was 2 1/2 years of age. In the meantime, illicit relationship developed between the accused and Afsana Mimi, an actress, in sequel of which the accused started misbehaving with and torturing the deceased. On the night following 8-1-2004 in the bedroom the accused assaulting the deceased intentionally caused her death.

4. On 9-1-2004 at 1-30 PM Shampa Reza, the sister of the accused, over telephone

informed Mr Mahbubur Rahman, husband of Dr Shati Munshi, the sister to the deceased had committed suicide by hanging. Dr Mahbubur Rahman and Dr Shati informed the matter to the mother of the deceased, the informant. Then they went to the house of the accused and found the dead body of the deceased lying in the bedroom on a cot with some injuries on the different parts of the body including one swelling on the back of the head.

5. On the same day at about 3-25 PM before arrival of the informant party the accused in writing informed Gulshan Police Station that the deceased committed suicide by hanging. On the basis of which Unnatural Death Case No. 2 of 2004 was recorded and SI Biman Kumar Das was entrusted with the investigation of the same, who went to the house of the accused and made inquest of the dead body of the deceased at 4-05 PM and sent the dead body to the morgue for post-mortem examination for ascertaining the cause of death. He seized one orna, a revolving chair and a cot as alamsats from the place of occurrence bedroom under a seizure list and recorded the statements of the maid servants, the first wife, sister and driver of the accused and others under section 161 of the Code of Criminal Procedure.

6. At about 8-25 PM the informant filed a written complaint with Gulshan Police Station against the accused alleging that he caused the death of the deceased, but the police did not record the case treating the written complaint as FIR. They recorded that written complaint as GD Entry No. 690 dated 9-1-2004 on the plea that an unnatural death case had already been recorded. A Medical Board held autopsy of the dead body of the deceased and reported that death of the deceased was due to the head injury, which was homicidal. Next day on 10-1-2004 at 11-15 PM the informant lodged another written complaint with Gulshan Police Station against the accused, on the basis of which a regular murder case was recorded. Accordingly final report was submitted in the Unnatural Death Case. After investigation of the murder case charge sheet was submitted against the accused, who eventually was put on trial in the Druto Bichar Tribunal No. 4, Dhaka, wherein charge under sections 302 and 201 of the Penal Code was framed against him to which he pleaded not guilty and claimed to be tried.

7. The defence case is that of innocence and false implication and that the deceased committed suicide by hanging.

8. At the trial in order to prove the charge the prosecution examined 13 witnesses, of whom PW 1 Lusil Sadekin is the informant and mother of the deceased, PW 2 Dr Shati Munshi is the sister of PW 6 Dr Mabubur Rahman is her husband. PW 3 Mofezzelatunnessa Doly and her sister PW 5 Fazilatunnessa are the relatives of the deceased. PW 4 Dr Mahbub Ahmed is the house physician of the accused. PW 12 Rabab Sultana is a seizure list witness and PW 13 Kanta Saadat is an office colleague of the deceased. They are the private witnesses. The remaining five are official witnesses, of whom PW 7 Dr Md Akhteruzzman is the Chairman of the Medical Board, held post mortem examination of the dead body of the deceased, PW 8 ASI Anjuman Akhtar is the police officer, recorded the Unnatural Death Case on the basis of informant in writing given by the accused, PW 9 Abdur Rab Sarder is the constable escorted the dead body of the deceased to the morgue for post mortem examination, PW 10 SI Biman Kumar Das is the investigating officer of the Unnatural Death Case and the first investigating officer of the present case and PW 11 Munshi Ruhul Kuddus, a Police Inspector attached to detective branch of Dhaka Metropolitan Police is the second and last investigating officer, who took up investigation of the case on 17-1-2004 and after conclusion of investigation submitted charge sheet against the accused.

9. After closing of the prosecution evidence the accused was examined under section 342 of the Code of Criminal Procedure, when he submitted a written statement contending that the deceased committed suicide by hanging. He filed some documents including the certified copies of the statements of his domestic helps Alpana, Nurunnahar, Nayantara and Sabina Begum, his first wife Atia Sultana and sister Shampa Reza recorded under section 161 of the Code of Criminal Procedure in connection with the Unnatural Death Case by PW 10 SI Biman Kumar Das on 9-1-2004 and also the statements of his domestic helps Nayantara, Alpana, Nurunnahar and driver Khorshed Alam, Shahadat Hossain, a key maker, the security guards and supervisor of apartment building where he lived, recorded under sections 161 and 164 of the Code of Criminal Procedure in the present case and also some papers of Ramna Police Station Case No. 24-1-2004, arose out of the incident of road accident the ambulance carrying the dead body of the deceased to the morgue faced.

10. The learned Judge on consideration of the evidences on record and the facts and circumstances of the case convicted and sentenced the accused as foresaid and made the reference under section 374 of the Code of Criminal Procedure for confirmation of the sentence of death awarded to the accused. Being aggrieved by and dissatisfied with that judgment and order of conviction and sentence he convict preferred the above regular appeal as well as the jail appeal.

11. The High Court Division after hearing the reference and the appeal and the jail appeal held as under:

The above evidence of PWs 1-6 as to presence of marks of hurt on the person of the deceased her normal eyes, nose etc and absence of any the symptoms of death by hanging are not tainted and do not suffer from any infirmity. Moreover their such evidence had gone unchallenged. Therefore, there is no reason to discard the same.

12. The High Court Division further held that the death of the deceased could not be attributed to hanging as under:

In the instant case besides the ligature mark other signs and symptoms of death due to hanging like (1) petichial haemorrhage and ecchymoses anterior around the ligature mark, (2) mark of dribbled saliva, (3) tear of the intima of carotid arteries with extravasations of blood with their walks, (4) congested and hemorrhage in the lymph nodes above and below the ligature mark, (5) fracture or dislocation of cervical vertebra and both external and internal injuries on head were present. So in the present case the death of the deceased could not be attributed to hanging.

13. The High Court Division after considering the medical evidence about the haematoma held as under:

In view of the authorities of medical jurisprudence quoted above without any fracture of the skull and injury on the meanings hemorrhage may be occurred on the brain resulting instantaneous death. The haematoma on the right parieto-occipital area and a subarachnoid hemorrhage in the right parietal and both frontal lobes clearly show that a blow with hard substance was given on the parieto-occipital region resulted sub-arachnoid hemorrhage on the right parietal and both the frontal lobes and such sub-arachnoids hemorrhage caused cerebral failure resulting death of the deceased. So there is no reason to discard the medical evidence as to cause of death. The doctors rightly opined

that the death of the deceased was due to head injuries, which was ante-mortem and homicidal in nature. In this way we are unable to agree with above submission of Mr. Khandker Mahbub Hossain. Thus it is well established that the deceased was done to death. After intentionally causing the death of the deceased, in order to colour such homicidal death as suicidal one the dead body was hanged. Thus the prosecution could prove beyond all reasonable doubt that the offence of murder was committed.

14. In the instant case, the death of the deceased Joyanti Munshi in the bedroom of her husband accused Azam Reza is not disputed. According to the prosecution she was assaulted to death. On the other hand, the defence is that she committed suicide by hanging. The deceased was the wife of the accused who met with death in the bedroom of the accused, while she was living with the accused. The presence of the accused in the house at the material time is not disputed rather is supported and proved by evidence on record and the death of the deceased was within the special knowledge of the accused. The accused came out with the story of suicide by hanging which he failed to prove and as such the High Court Division rightly held the accused guilty of murder.

15. As to sentence the High Court Division held as under:

The accused is not a hardened criminal. The death of the deceased was caused by him in sequel of bitter matrimonial relationship. He caused the haematoma with any hard substance on the occipital region on the head of the deceased which resulted her instantaneous death. The accused has three minor children and an invalid first wife. In view of these facts and circumstances, we are of the view that justice will be met if the sentence of death awarded to the accused is commuted to imprisonment for life.

16. Heard Mr AK Badrul Huq, the learned Counsel appearing for the petitioner in Criminal Petition for Leave to appeal No. 17 of 2009 and Mr ASM Abdul Mobin, the learned Deputy Attorney-General (Mrs Mahfuza Begum, the learned Assistant with him) appearing for the petitioner in Criminal Petition for Leave to Appeal No. 38 of 2009 and Mr ASM Abdul Mobin, the learned Deputy Attorney-General (Mrs Mahfuza Begum, the learned Assistant Attorney-General with him) appearing for the respondent in Criminal Petition for Leave to Appeal No. 17 of 2009 and perused the petition and the impugned judgment and order of the High Court Division and other papers on record. It appears that the High Court Division correctly followed the principle laid down in the case of Nausher Ali Sarder vs State reported in 39 DLR (AD) 194 and in the case of Dipok Kumar Sarker vs State reported in 40 DLR (AD) 139 and therefore no injustice has been committed by the High Court Division in commuting the sentence.

In view of the discussions, as above, we find nothing to interfere with the judgment of the High Court Division and accordingly both the petitions are dismissed.

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