

4 SCOB [2015] AD 11

APPELLATE DIVISION

PRESENT

Ms. Justice Nazmun Ara Sultana
Mr. Justice Muhammad Imman Ali
Mr. Justice Mohammad Anwarul Haque
Mr. Justice Hasan Foez Siddique

JAIL PETITION NO.8 of 2011

From the judgment and order dated 31.01.2011 passed by the High Court Division in Death Reference No.170 of 2005 with Jail Appeal Nos.1430 of 2005, 1431 of 2005 and 1432 of 2005.)

Shahid Ullah @ Shahid and others:Petitioners

=Versus=

The State:Respondent

For the Petitioners : Mr. A. B. M. Bayezid, Advocate.
For the Respondent : Mr. Md. Salim, Deputy Attorney General.
Date of hearing : 07.04.2013.

Section 302 of Penal Code,1860

Justification for death sentence:

The offence which these two condemned prisoners committed is most heinous and brutal. These two condemned prisoners along with other accused Mir Hossain, with cool brain, made a plan to hijack a baby taxi by killing the driver and according to that pre-plan they hired the C.N.G. baby taxi of the deceased as passengers and took the baby taxi to a lonely place and thereafter they murdered the baby taxi driver brutally. This type of crime is on the increase in our society. For hijacking a baby taxi or any other vehicle the hijackers do not hesitate for a moment to take the life of the innocent driver of the vehicle which is very much precious for the near and dear ones of that poor driver. This type of killers/murderers cannot and should not get any mercy from the court of law. There is no reason for showing any leniency or mercy to this type of offenders who are enemy for the whole society. So we are unable to accept the submission of the learned advocate for the condemned prisoners to reduce the sentence of death to life imprisonment. In our opinion this is a fit case for imposing death sentence on killers.

...(Para 15)

J U D G M E N T

Nazmun Ara Sultana, J.

1. Condemned prisoner Md. Shahid Ullah @ Shahid and Md. Saiful Islam @ Shahid have filed this jail petition against the judgment and order dated 31.01.2011 passed by the High

Court Division in Death Reference No.170 of 2005 with Jail Appeal Nos.1430 of 2005, 1431 of 2005 and 1432 of 2005.

2. These two condemned prisoner-petitioners along with another accused named Mir Hossain were put on trial in Sessions Case No.597 of 2004, corresponding to G. R. Case No.81 of 2004 and Fatikchhari Police Station Case No.8(9) of 2004 under sections 302/34 of the Penal Code before the learned Sessions Judge, Chittagong.

3. The prosecution case, in short, was that deceased Reazul Karim @ Azim, the brother of the informant was a baby taxi driver. He used to ply C.N.G. vehicle bearing No.Chhatta-Metro-Tha-11-4571. On 19.05.2004 he went out with that vehicle from his house but did not come back. On 20.05.2004 the informant got information from Miraswarai Police Station that the dead body of his brother was recovered from the Datmara Takia Jalanti Rubber Plantation Garden by police. Receiving that news, the informant along with some other people went to that place and identified the dead body of his brother. He saw there 2 accused persons also in apprehended condition. At that time those 2 apprehended accused persons confessed before him and others that they along with accused Mir Hossain hired the C.N.G. baby taxi of the deceased with the intention to hijack the same and took the same along with the deceased-driver to the place of occurrence and there they brutally killed him and after killing while the accused persons were changing their blood-stained wearing clothes, the people of nearby market apprehended the present two condemned petitioners and interrogated them and the accused persons confessed that they murdered the brother of the informant. The other accused Mir Hossain managed to flee away. Being informed by the local people the police came to that place and as per showing of the apprehended accused persons they recovered the dead body of the deceased. The informant, thereafter, lodged the First Information Report on the basis of which the case was started. The police took up investigation of the case and after completion of investigation submitted charge sheet against all the three accused persons under sections 392/302/34 of the Penal Code. The trial court framed charge against all the three accused persons under sections 302/34 of the Penal Code. The charge so framed was read over and explained to the accused persons who pleaded not guilty and claimed to be tried. The prosecution examined 11 witnesses and tendered two witnesses. The defence adduced no witness. The accused persons were examined under section 342 of the Code of Criminal Procedure and that time also they pleaded innocence only and informed the court that they would not adduce any witness. The trial court, on consideration of the evidence adduced by the prosecution and the confessional statements of all the three accused persons recorded by a Magistrate, 1st class, found all the three accused persons guilty of the charges levelled against them and convicted them thereunder and sentenced these two present condemned prisoners to death and the other accused Mir Hossain to imprisonment for life along with fine.

4. On a reference made by the trial court for confirmation of the death sentences of these two condemned prisoners Death Reference No.170 of 2005 was registered. All the three accused persons also preferred three separate jail appeals as already mentioned above. A Division Bench of the High Court Division heard the death reference and all the three jail appeals analogously and by the impugned judgment accepted the death reference and dismissed all the three jail appeals affirming the judgment and order of conviction and sentence passed by the trial court.

5. The condemned prisoner Md. Saiful Islam @ Shahid in his jail petition has stated that they were entangled in this case falsely on mere suspicion by some terrorist of their locality

who beat them mercilessly causing bleeding injuries on their persons and thereafter handed them over to the police and the police also tortured them inhumanly and thus obtained the so-called confessional statements from them against their will. That the confessional statements are not voluntary and true. The other condemned prisoner Shahid Ullah @ Shahid also in his petition, has stated a same story and has stated further that he is physically handicapped- his right leg is crippled and he is not able to move normally.

6. Mr. A. B. M. Bayzid, the learned advocate for the condemned prisoner-petitioners has made argument focusing mainly on these two petitions of the condemned prisoners. The learned advocate has argued to the effect only that both these two condemned prisoners, in fact, were not at all involved in the alleged murder of the deceased and that they were caught by local people on suspicion only and were beaten mercilessly causing bleeding injuries on their persons and that the police also tortured them inhumanly and compelled them to make the so-called confessional statements as per the dictation of the police and that these confessional statements are not at all voluntary and true. The learned advocate has submitted also that the condemned prisoner Shahid Ullah @ Shaid is physically handicapped whose right leg is crippled and he is unable to move normally and has argued that it is not believable at all that such physically handicapped man could murder any person in the manner as stated by the prosecution. The learned advocate for the condemned prisoners has argued also that the death sentences imposed on these two petitioners have been too harsh and that for the ends of justice this Division may reduce the sentence of these condemned prisoners.

7. Mr. Md. Salim, the learned Deputy Attorney General, on the other hand, has made submissions to the effect that this is a very heinous crime and in this case the commission of this heinous crime by these two condemned prisoners have been proved beyond all reasonable doubt by overwhelming evidence adduced by the prosecution and that considering the very nature and gravity of this offence no lenient view can be taken and no mercy can be shown to these condemned prisoners by reducing their sentences to imprisonment for life even.

8. We have considered the submissions of the learned advocates of both the sides and gone through the impugned judgment, that of the trial court and the evidence on record.

9. The prosecution case as it appears from the F.I.R., the evidence of the prosecution witnesses and also the 164 statements of all the three accused persons is that the deceased Reazul Karim @ Azim was a baby taxi driver and he used to ply a C.N.G. vehicle. That on 19.05.2004 he went out of his house with that C.N.G. vehicle and the three accused persons hired his vehicle with intention of hijacking the same after murdering the driver Reazul Karim @ Azim and accordingly, after going some distance they stopped that vehicle at Datmara Takia Jalanti Rubber Plantation Garden and these two condemned prisoners took the deceased Reazul Karim @ Azim inside that Rubber Plantation Garden and there they brutally murdered Reazul Karim @ Azim by inflicting knife blows indiscriminately on his persons causing grievous bleeding injuries on various parts of his body including some vital parts and as a result Reazul Karim @ Azim died there. Thereafter while these accused persons were about to flee away with that baby taxi the local people saw them with their blood stained clothes and on suspicion they caught these 2 present condemned-petitioners and thereafter, on their asking, these condemned-petitioners confessed that they murdered the driver of that C.N.G. baby taxi. The local people then informed the police and the police came and thereafter as per showing of these condemned-petitioners the police along with the local people recovered the dead body of Reazul Karim from that Rubber Plantation Garden.

10. It appears that the above prosecution case has been proved by sufficient reliable and convincing evidence including the confessional statements of all the three accused persons. Both the trial court and the High Court Division have discussed all these evidence and the confessional statements of all the three accused persons elaborately in their respective judgment.

11. It appears that among the 11 prosecution witnesses the P.W.1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.7 and P.W.8 have deposed before the court to the effect that both the accused condemned prisoners Md. Saiful Islam @ Shahid and Md. Shahid Ullah @ Shahid made extra judicial confessional statements before them stating that they and the other accused Mir Hossain, with an intention to hijack the baby taxi of the deceased, hired that baby taxi as passengers and went with that baby taxi near the Datmara Takia Jalanti Rubber Plantation Garden and took the deceased driver inside that Rubber Plantation Garden and there they brutally murdered him by inflicting knife blows indiscriminately causing grievous bleeding injuries on his person. From the evidence of these prosecution witnesses it has also been proved beyond all reasonable doubt that as per these extra judicial confessional statements of these two accused condemned prisoners and also as per their showing the dead body of the deceased was recovered from that Rubber Plantation Garden. Besides these evidence of the prosecution witnesses the judicial confessional statements of all the three accused persons under section 164 of the Code of Criminal Procedure also have corroborated this prosecution case fully. In their judicial confessional statements all the three accused persons have corroborated the above stated prosecution case entirely, In their judicial confessional statements these 2 condemn-petitioners have stated that they all made a pre-plan to hijack a baby taxi and according to that pre-plan, they on the night of occurrence, hired the baby taxi of the deceased as passengers and took the baby taxi to Datmara Takia Jalanti Rubber Plantation Garden and there they asked the driver to stop the baby taxi and took the driver inside that Rubber Plantation Garden and murdered him there brutally by inflicting knife blows on his person indiscriminately. The other accused Mir Hossain also has made confessional statement supporting the prosecution case and also the confessional statements of these two condemned prisoners. It appears that both the trial court and the High Court Division, on meticulous examination of all aspects and the facts and circumstances and other evidence on record found all the 3 confessional statements of the accused persons voluntary and true.

12. Mr. A. B. M. Bayezid, the learned advocate for the accused petitioners though has alleged before us that these confessional statements were not voluntary at all, these were extracted by inhuman torture, but he could not point out anything before us in support of this argument. Rather, it appears that during the whole trial of the case these condemned accused petitioners or the other accused Mir Hossain did not make any prayer even for retraction of their confessional statements making allegations that those were not voluntary and were extracted from them under tortured. During examination under section 342 of the Code of Criminal Procedure also they did not deny the voluntariness or truth of these confessional statements though these were specifically brought to their notice by the trial Judge at that time also. The learned Magistrate who recorded the confessional statements of the accused persons, also was examined by the prosecution as P.W.12 and it appears that to this recording magistrate also, from side of these accused persons, no suggestion even was put to the effect that these confessional statements were not voluntary and true. The learned advocate for the condemned-petitioners has drawn our attention to the jail petition submitted by the condemned prisoners and argued that in fact these accused petitioners were caught by local

terrorists from their houses and they were beaten mercilessly by those terrorists and thereafter were entangled in this case falsely on suspicion. But it appears that during the whole trial of the case and even before the High Court Division no such case was put forward from any of the accused persons. During cross-examination of the prosecution witnesses also no such suggestion even was put to any of the witnesses, nor during examination under section 342 of the Code of Criminal Procedure any single statement alleging any such plea was made by any of the accused persons except the plea of innocence only. So in the circumstances we are unable to put any reliance on the mere statements made in the jail petition by the condemned-petitioners.

13. However, we find that in this case there are overwhelming evidence from the side of the prosecution to prove its case. The evidence of the prosecution witnesses have proved sufficiently that immediately after the murder of the deceased both these condemned prisoners were caught by the local people with their blood stained wearing clothes and at that time, on their asking, both these condemned prisoners confessed that they with an intention to hijack a C.N.G. baby taxi murdered the driver of that baby taxi and thereafter as per showing of these condemned prisoners the dead body of the deceased driver was recovered. The evidence of the prosecution witnesses have been corroborated fully by the own confessional statements of these condemned prisoners which have been found voluntary and true by both the trial court and the appellate court.

14. We also do not see anything to find the confessional statements of these two accused condemned prisoners not voluntary and true. We do not find anything else also to differ with the findings of the trial court and the appellate court as to guilt of these two condemned prisoners. In our opinion also the charges against these two condemned prisoners have been proved beyond all reasonable doubt.

15. The offence which these two condemned prisoners committed is most heinous and brutal. These two condemned prisoners along with other accused Mir Hossain, with cool brain, made a plan to hijack a baby taxi by killing the driver and according to that pre-plan they hired the C.N.G. baby taxi of the deceased as passengers and took the baby taxi to a lonely place and thereafter they murdered the baby taxi driver brutally. This type of crime is on the increase in our society. For hijacking a baby taxi or any other vehicle the hijackers do not hesitate for a moment to take the life of the innocent driver of the vehicle which is very much precious for the near and dear ones of that poor driver. This type of killers/murderers cannot and should not get any mercy from the court of law. There is no reason for showing any leniency or mercy to this type of offenders who are enemy for the whole society. So we are unable to accept the submission of the learned advocate for the condemned prisoners to reduce the sentence of death to life imprisonment. In our opinion this is a fit case for imposing death sentence on killers. The trial court rightly imposed the death penalty on these two condemned prisoners and the High Court Division also rightly affirmed the sentences of death of these two condemned prisoners.

16. In the circumstances this jail petition is dismissed.