

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice.

Mr. Justice Syed Mahmud Hossain.

Mr. Justice Hasan Foez Siddique.

CRIMINAL REVIEW PETITION NOS.14 AND 10 OF 2017.

(From the judgment and order dated 07.12.2016 passed by the High Court Division in Criminal Appeal No.81 of 2016.)

Mufti Abdul Hannan Munshi alias Abul
Kalam and another.

Petitioner.
(In CrI.R.P.No.14 of 2017)

Md. Delwar Hossain Ripon

Petitioner
(In CrI.R.P.No.10 of 2017)

=Versus=

The State:

Respondent.
(In both the cases)

For the Petitioner:
(In both the cases)

Mr. Nikhil Kumar Saha, Senior Advocate
instructed by Mrs. Nahid Sultana, Advocate-
on Record.

For the Respondents:
(In CrI.R.P. No.14 of 2017)

Mr. Mahbubey Alam, Attorney General, (with
Mr. Murad Reza, Additional Attorney
General) instructed by Mr. Haridas Paul,
Advocate-on-Record.

For the Respondents:
(In CrI.R.P. No.10 of 2017)

Not Represented.

Date of hearing : ***The 19th March, 2017.***

O R D E R

These petitions are directed for review of the judgment of this court. Petitioners had faced trial before the trial court to face charge under sections 302/120B with other counts of the Penal Code.

The incident took place on 21st May, 2004 at noon near the gate of Hazrat Shahjalal (R) Shrine in which the convicts attempted to kill Mr.

Anwar Chowdhury, the then High Commissioner for U.K. in Bangladesh, who was returning back on the fateful day after saying prayer. In the incident 3(three) persons died by bomb explosions. The case is based upon inculpatory confessional statements as well as strong circumstantial evidence. The trial court found the accused-petitioners guilty of the charge and sentenced to death. The High Court Division confirmed the death sentence. On appeal of the said judgment this court altered the charge of the accused Md. Delwar Hossain @ Ripon to one under section 302 of the Penal Code and accused Mufti Abdul Hannan Munshi under section 302/109 of the Penal Code but maintained the sentence.

Mr. Nikil Kumar Saha, learned counsel appearing for the petitioners press the petitions on the ground of commutation of sentence only. According to him, the petitioners have been suffering for about 10 (ten) years in condemned cell and as they have suffered a lot both physically and mentally, their sentence should be commuted to imprisonment for life for ends of justice. No other ground has been urged by the learned Counsel.

From the submission of the learned Counsel it is clear that the petitioners have no grievance against their conviction and they having realised that their conviction is based on strong unimpeachable evidence

and this court has maintained their conviction and sentence on assigning proper reasons, argued on the question of sentence. It is now settled that merely because of delay in confirming the sentence is not a legal ground to commute the sentence. The delay may cause due to various reasons. If the accused tries to delay in the disposal of the case, he will not get any benefit out of his act. There is nothing to show that this delay is caused due to the laches of the prosecution. Moreso, this court has settled that even if there is delay, it is not a legal ground for commutation of the sentence unless and until it is found that there are extraneous circumstances to commute the sentence. This court in *Abul Khair V. State*, 44 DLR (AD) 225 held that ‘Delay by itself in the execution of sentence of death is by no means an extenuating circumstance for commuting the sentence of death to imprisonment for life’.

Under the prevailing law under section 367 (5) of the Code of Criminal Procedure, a sentence of death is the rule and imprisonment for life is an exception in respect of offences punishable with death or imprisonment for life. The trial court has assigned proper reasons in awarding the sentence of death of the accused. The High Court Division as well as this court has also assigned reasons in maintaining the sentence of death. The incident is a very sensational one in which the accused wanted

to kill the then High Commissioner of England in the Hazrat Sha-Jalal (R) Shrine by exploding bombs which killed 3(three) innocent persons including police officer on duty. The High Commissioner, the Deputy Commissioner Sylhet and huge number of persons sustained grievous hurt. The manner in which the accused mercilessly detonated bomb in the crowd killing three innocent persons repels any consideration of reduction of sentence. There are evidence on record that the petitioner Mufti Abdul Hannan is a hard-core terrorist who master-minded the terrorist activities and supplied the bombs, and other accused directly participated in the incident. It is one of the deadliest incidents in Bangladesh and a fit case to award a sentence of death.

The incident was so brutal that none could harbour any doubt that the accused had not intended to kill the High Commissioner. But incidentally he survived with grievous injury and other persons who accompanied him succumbed to injuries of explosions. While maintaining the conviction, this court was of the view that clause 'Fourthly' of section 300 of the Penal Code attracted in the case, that is to say, the accused committed the incident which was so imminently dangerous that it must in all probability may cause death. The learned counsel fails to point out any

error of law in the judgment of this court. We find no merit in these petitions.

These review petitions are dismissed.

C.J.

J.

J.

The 19th March, 2017.