

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Surendra Kumar Sinha, Chief Justice

Ms. Justice Nazmun Ara Sultana

Mr. Justice Syed Mahmud Hossain

Mr. Justice Hasan Foez Siddique

CRIMINAL REVIEW PETITION NO.63 OF 2015.

(From the judgment and order dated 29.7.2015 passed by the Appellate Division in Criminal Appeal No.122 of 2013.)

Salauddin Qader Chowdhury:

Petitioner.

=Versus=

The Chief Prosecutor, International
Crimes Tribunal, Dhaka, Bangladesh:

Respondent.

For the Petitioner:

Mr. Khondaker Mahbub Hossain, Senior
Advocate (with Mr. S.M. Shahjahan,
Advocate), instructed by Mr. Zainul
Abedin, Advocate-on-Record.

For the Respondent:

Mr. Mahbubey Alam, Attorney General
(with Mr. Murad Reza, Additional
Attorney General, Mr. Momtazuddin Fakir,
Additional Attorney General, Mr.
Biswajit Debnath, D.A.G., Mr. Ekramul
Hoque, D.A.G., Mr. Masud Hasan
Chowdhury, D.A.G., Mr. Khondaker
Diliruzzaman, D.A.G. and Mr. Bashir
Ahmed, A.A.G.), instructed by Mrs.
Mahmuda Parveen, Advocate-on-Record.

Date of hearing: 18th November, 2015.

Date of Judgment: 18th November, 2015.

J U D G M E N T

Surendra Kumar Sinha, CJ. : This review petition

at the instance of convict Salauddin Quader Chowdhury

is from a judgment of this Division in Criminal

Appeal No.122 of 2013. By this judgment this Division

allowed the appeal in part and the petitioner was

found not guilty in respect of charge No.7, while his conviction and sentences in respect of charge Nos.2, 3, 5, 6, 8, 17 and 18 have been maintained. In respect of charge Nos.3, 5, 6 and 8 the Tribunal sentenced him to death. The sentences of death have been maintained by this Division.

This Division held that the incidents were brutal and diabolical; that there are strong evidence on record that the convict was not only physically present in those incidents but he had also actively participated in those killing; that he showed no repentance or remorse for his conduct at any point of time rather he expressed disdain towards the process of the trial; that under such circumstances, the tribunal recorded his demeanour observing that he was arrogant, violated the decorum of the tribunal by shouting and continued to such conduct throughout the process of the trial despite warnings given to him; that even he did not show any respect to the members of the tribunal and disregarded the authority

of the tribunal; that the brutality exerted in those incidents was comparable with none and that awarding of death sentences was proportionate to the gravity of those crimes.

Accused petitioner took a plea of alibi before the tribunal. The tribunal disbelieved the plea and in course of hearing of the appeal, the learned Counsel argued on the plea for days together. This Division considered each and every papers, documents and evidence submitted in support of the plea and held that those documents were created subsequently in order to avoid his conviction. According to the defence, the accused went to West Pakistan towards the end of March, 1971 and underwent higher studies at Punjab University throughout the period of occurrences and that the case was instituted for political victimisation. In support of his claim, he produced a testimonial allegedly issued by a professor of the department of Political Science, University of Punjab on 24th January, 2013. This

Division disbelieved it observing that the petitioner could not bring any certificate from the University in support of his claim of undergoing studies. It was further held that if he could collect affidavits and a testimony from Pakistan, what prevented him to collect a certificate from the Punjab University in support of his claim has not been explained. This Division further held that there are strong oral and documentary evidence in support of the charges. Prosecution has been able to prove by adducing strong reliable evidence that the petitioner was physically present and committed killing and atrocities in his locality and that the documentary evidence of 1971 in support of his direct participation in those crimes would prevail over the oral evidence deposed on his behalf and that the documents produced by him are forged documents. This Division further held that the accused has utterly failed to prove that he had studied Punjab University in 1971.

After filing of the review petition, the petitioner has filed an application for issuing summons upon Mr. Md. Osman Siddique, Mr. Muneeb Arjamand Khan, Mr. Ishaq Khan Khakwani, Mr. Riaz Ahmed Noon, Mr. Mohammedmian Soomro and Mrs. Amber Haroon Saigol, Justice Shamim Hasnain and Zinnat Ara Begum to testifying as defence witnesses on the ground that if those witnesses are examined, the defence plea of alibi could have been substantiated. This Division rejected the same by order dated 2nd November, 2015, on the reasoning that if he had at all underwent education in Punjab University, he could have produced authentic documents from the University concerned. This date, he has filed another application for recording additional evidence in respect of the documents mentioned in paragraph 13 of the petition which are as under:

- “(i) Duplicate Certificate dated 22.05.2012 issued by the University of Punjab in the name of the Appellant/Petitioner

certifying that he obtained Bachelor of Arts Degree from the Department of Political Science passing the examination held in August, 1971;

(ii) Attested copy of the 'Duplicate Certificate' of the Appellant/Petitioner attested by the Vice Chancellor and Registrar of the University of Punjab and the Chairperson of the Department of Political Science (Dr. Umbreen Javaid) of the University, which was further authenticated by the concerned officer of the Ministry of Foreign Affairs, Pakistan and the Deputy Director (Attestation) Higher Education Commission, Regional Centre, Lahore, Pakistan.

(iii) Letter dated 06.11.2015 issued by Prof. Dr. Liakat Ali, the Registrar of

the University of Punjab certifying that the Appellant/Petitioner had been a regular student of the Department of Political Science, University of the Punjab, Lahore, for the academic session 1970-71.

(iv) Recent Video interview of the Registrar of the University of Punjab confirming that he is ready to show the records of the Appellant/Petitioner lying with the University regarding his admission, graduation, examination and issuance of the degree and also that he is ready to answer any question in this regard.

(v) News report of the Daily Star dated 03.11.2015 with heading "Review hearing now Nov. 17".

(vi) News report of the Daily New Age dated 03.11.2015 with heading "SC defers hearing to Nov 17".

(vii) News report of the Daily Janakantha dated 03.11.2015 with heading "সাকা ও মুজাহিদের রিভিউর গুনানি ১৭ নভেম্বর".

(viii) News report of the Daily Ittefaq dated 03.11.2015 with heading "সালাউদ্দিন কাদেরের সাফাই সাক্ষ্যের আবেদন নাকচ".

(ix) News report of the Daily Kaler Kontho dated 03.11.2015 with heading "সাকা ও মুজাহিদের রিভিউর গুনানি ১৭ নভেম্বর".

(x) News report of the Daily Jugantor dated 03.11.2015 with heading "সাকার সাফাই সাক্ষ্য নেয়ার আবেদন খারিজ".

(xi) News report of the Daily Shomokal dated 03.11.2015 with heading "সাকা ও মুজাহিদের রিভিউর গুনানি ১৭ নভেম্বর".

Of the said documents the basic documents the learned Counsel has tried to impress upon this Court are a duplicate certificate allegedly issued by the University of Punjab certifying that the petitioner has obtained Bachelor of Arts with honors in

political science in August, 1971 and the duplicate certificate duly attested by the Vice-Chancellor of the Punjab University and the Registrar of the said University. We have noticed that this duplicate certificate was issued on 22nd May, 2012, and the same was attested by the alleged Vice-Chancellor of the Punjab University and the Registrar on 5th and 4th November 2015, respectively. We fail to understand why the petitioner did not produce this certificate before the tribunal or in the appellate Court in course of hearing of the appeal, although he had filed good number of documents which he procured in 2013. If he could produce those documents, there was no reason for him not to produce these duplicate certificates. When this point was drawn to his attention, the learned Counsel finds it difficult to repel the doubt. He, however, submits that for ends of justice these papers may be admitted in evidence. More so, in these certificates the academic session has been mentioned as '1971'.

Learned Attorney General pointed out that if the petitioner had at all studied at Punjab University in honors course, his examination allegedly held in August 1971 his academic session ought to have been 1968 - 1971, inasmuch as, the honors course during that period was for three years. Learned Counsel submitted, the petitioner studied at Dhaka University earlier and then he transferred his credit to Punjab University in 1971. In support of this claim, the petitioner did not produce any paper. Therefore, facts reveal that in May, the petitioner admitted to Punjab University in honors and obtained graduation in August in political science from the Punjab University which is totally an absurd story to believe. The fact that the certificate was issued in 2012, which could not have been produced sufficiently proved that this certificate was a spurious document and this is apparent from the fact that he could not produce this certificate at the trial stage nor in

the appellate stage nor on the first occasion when the review petition was filed.

Learned Counsel wanted to give an explanation to the effect that the petitioner applied for a duplicate copy earlier but he did not receive the same until November, 2015. This claim has no basis at all since the alleged certificate was issued in 2012. More so, there is no statement at all in this regard in his application. Assuming that he applied earlier for duplicate copy of the certificate it was allegedly issued on 22nd May, 2012. There was no explanation why he did not produce it prior to 16th November, on which date, he filed it in the section. Therefore, no reliance could at all be attached on this certificate - it is a forged document which is apparently created for confusing this Court. Further, the authenticity of the certificate has not been certified by an authorised officer of the High Commission Office of Bangladesh stationed in Pakistan.

In the original review petition, the petitioner has taken 16 grounds but in course of the hearing, the learned Counsel did not press any of the grounds and even he did not argue on merit of the case. According to him, if the plea of alibi taken by the petitioner is accepted he need not make any argument on merit. We have rejected the plea on assigning reasons and the learned Counsel could not show any error in the decision in arriving at the conclusion that the plea of alibi has not been substituted or that the reasons assigned by this Division are contrary to the evidence on record or that there are error apparent on the face of the record. No review lies in this court except on ground of error apparent on the face of the record or miscarriage of justice. The basic philosophy inherent in it is the universal acceptance of human fallibility. The learned Counsel fails to point out any error which has been cropped up on analysis of the evidence on record. Since the learned Counsel did not argue on the merit of the

matter, and stresses upon the plea of alibi, which has been rejected on a full flagged hearing, at the late stage the petitioner has renewed the plea by producing a spurious document. Further, the learned Counsel having not argued on merit pointing any error in the impugned judgment, it is apparent that there is no error of law in the impugned judgment for our interference. We find no cogent ground to review our judgment. The review petition is accordingly dismissed.

CJ.
J.
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J.

The 18th November, 2015
Mahbub Hossain

APPROVED FOR REPORTING