



RIGHTS corner



CHINA  
Making prison life beautiful



RONG JIAOJIAO & WEN CHIHUA

Kang Yuefei, serving three years for embezzlement, did not expect that one day she would be a beautician to fellow inmates at the Nanjing Women's Prison in eastern China.

The 28-year-old even has a certificate, which qualifies her for the beauty job. She is among the 12 inmates who were chosen, after they scored above average for their good behaviour, for a two-month beautician's training within the jail. "I feel appreciated and respected when my clients say 'thank you' to me," says Yuefei. "Although I have done wrong, I feel I have not been deprived of my dignity." In this jail, which houses 1,300 women prisoners, those who behave well are entitled to a facial or body massage once a week. Consistent high scorers are provided with vocational training. The jail started this scheme in 2003 as part of a jail reform programme attempting to re-educate and rehabilitate women prisoners.

The key role in the reform programme has to be played by jail wardens, who in the past have often been accused of violating the human rights of inmates. About 27 per cent of the women in this jail have been sentenced for prostitution, while 19 per cent have been convicted of felony, including murder, according to head warden Mao Jun. There are also a number of economic criminals involved in cases ranging from fraud, embezzlement to bribery, she says.

According to the Beijing-based Legal Daily, 29,000 women in China have been convicted with crimes related to drug trafficking, robbery and murder in the past five years. Female prisoners are very sensitive, says Jun. The most trivial thing, like the hue and style of the jail uniform, can set them off. Therefore, "They should be treated differently. This prison gives us female wardens a stage to work out special methods to redeem women prisoners."

In 2003, the jail authorities decided to change the uniform after hearing how uncomfortable the women felt inside it in Nanjing's hot and humid summer. The women are now happy with their new uniform - a white polo shirt and cream-coloured, knee-high baggy pants. The women are also allowed to put on light make-up when they meet family members. "This enables them to see the hope in themselves and come to terms with their situation better," says Wu Xiaofeng, deputy head warden at the prison.

Thirty two-year-old Di Huiyu, imprisoned for committing fraud, says, "When I try the skin care products in the salon and wear make-up to see my parents, I feel I am a real woman, and still have a tomorrow." She says her aged parents feel relieved each time. "They see me in high spirits. All of this urges me to better abide by the law and discipline myself so as to re-enter society soon."

To avoid cutting off the women completely from society, the prison has also involves some of them as community workers. During weekends, the inmates go to a local nursing home to help old people needing care. The prisoners need not wear their uniforms for such visits. "We don't want them to feel inferior to other people. They could return to a normal life once they are 'reshaped' and released," says Jun. The prison also mobilises social groups and members from the local community to participate in the correction process. Psychologists are also invited to talk to the inmates. A series of lectures on women's body and spiritual growth have also been regularised in the prison.

"The social contacts help in awakening their conscience and human nature," says Jun. "It's important to give the prisoners a proper social training so that they could become useful again to society." One major contribution of the recent reforms has been the legal education each prisoner gets. The first thing they are required to do when they enter the jail is to spend two months studying various laws. This exercise not only helps them realise why they were put in jail but also makes them conscious of their rights as individuals.

Zhou Jing, a 29-year-old serving a life sentence, had until very recently, no idea that a prisoner has the right to refuse being photographed. "I rejected a foreign journalist's request for photographs because I don't want my image to appear in the foreign press." For Jun, the biggest reward is a comment from a boy who said to his father after visiting his mother in the jail: "Mum's school is really good."

Courtesy: News Network

Star LAW report

External behaviors may identify the intention of the accused

High Court Division (Criminal Appellate Jurisdiction)  
Criminal Appeal No 703 of 1998  
Nasir Howlader  
v  
The State  
Before Mr. Justice Mohammad Anwarul Haque and Mr. Justice AKM Asaduzzaman,  
Date of Judgment: January 11, 2004  
Result : Appeal dismissed

Background

**Mohammad Anwarul Haque, J:** This appeal is directed against the judgement and order of conviction passed by the learned Sessions Judge, Begerhat on 06.04.1998. In Sessions Case No 38 of 1995 where the learned Session Judge has found the accused appellant guilty of the offence punishable under section 304(1) of the Penal Code and sentenced him to suffer rigorous imprisonment for life. Also to pay a fine of Tk 5,000/=; in default; to suffer for 6(six) months more. In short, the case of the prosecution is as follows: On 16.2.1995 at about 1.00 PM while deceased Moshir Rahman was preparing to take bath in the water of the camel. Keeping his working material spade on the bank in front of the house of Abdul Mannan Howlader, the accused Nasir Howlader and others were crossing on way to village Fulhata the deceased Moshir Rahman asked him why he has not given the paddy to his full brother which is due to him. On that issue there was hot exchange of words and ultimately accused Nasir Howlader took spade and gave two consecutive murderous blow on the occipital region of the head and quickly left the place of occurrence and took shelter in the house of one Delwar Hossain Howlader. Thereafter, deceased immediately was taken to the hospital for treatment but on the early part of following day victim succumbed to his injuries. In the meantime police with the help of local law enforcing agencies apprehended the accused person and took him into the custody from the house of Delwar Hossain Howlader. Narrating these, brother of the deceased lodged the FIR in the Morelganj Police Station. It was recorded punishable under section 302 of the Penal Code and handed over it to investigating officer who ultimately submitted a report with a recommendation to stand trial of the lone accused Nasir Uddin Howlader for committing the offence punishable under section 302 of the Penal Code. During the course of trial charge was so framed against the accused-appellant punishable under section 302 of the Penal Code which was duly read over and explained to the accused-appellant where he abjured his guilt and claimed to be tried. The defence case as it transpires from the trend of cross-examination and suggestion put that he has been falsely implicated in this case out of previous enmity. He has neither assaulted to the deceased on the date, time and manner nor he has caused the death of the deceased in any way as alleged by the prosecution. Considering the evidence the learned Sessions Judge has found the accused-appellant guilty of the offence of culpable homicide not amounting to murder. Thereby awarded sentence of imprisonment for life with fine of Tk 5,000/= in default to pay six months rigorous imprisonment more under section 304(1) of the Penal Code as it has attracted exception 4 of section 300 of the Penal Code.

Deliberation

After the decision of the learned Session Judge the accused go to the higher court with an appeal. Mr Md Khurshed Alam Khan the learned Advocate appearing on behalf of the accused-appellant submits that during the course of trial, prosecution has not examined the vital charge sheeted witnesses like Delwar Hossain Sikder. Though accused alleged to have been arrested from his house immediately after the occurrence and as such it has weaken the case of the prosecution ensuring benefit to the accused-appellant. The learned Advocate further submits that non-examination of the investigating officer has also equally given a fatal blow to the prosecution case which has also opened the path of the accused person to be acquitted of the charge brought against him. On the other hand Mr. SM Aminul Islam the learned Assistant Attorney General appearing on behalf of the respondent submits that prosecution has proved the case beyond any shadow of doubt with the help of credible evidence. The learned AAG further submits that non-examination of the investigation officer by itself is

with the evidence, given in the court on oath. Unless such act of prejudice is proved or alleged; mere non-examination of IO will not cause any harm to the prosecution case.

Dr. Md. Aatur Rahman, held the autopsy of the body of the deceased, has also proved the case of the prosecution in a verbatim manner. He has opined that the death of the deceased Moshir Rahman Khalifa was due to shock and haemorrhage as a result of injuries, which was antemortem and homicidal in nature.

The evidence so far adduced by the prosecution is found to have been credible, reliable and natural one because witnesses being co-workers, had sufficient opportunity to witness the occurrence from very close range, held in a broad day light. It is to be remembered that in the deposition of witness there are always normal discrepancies however honest and truthful. Taking this view in mind we are of opinion that so far prosecution evidence is concerned the same is adequate, trustworthy and does not suffer from any kind of infirmity in the form of contradiction as such has proved the case of the prosecution beyond any shadow of doubt. Also we opine that there is nothing of the record where defence has made out a case that he has been prejudiced for non-production of the I.O. As such non-production of the investigating officer cannot be considered as a fatal one, which has already been decided by the Apex Court in the judgment. The learned Session Judge relying on such evidence has decided the case in favour of the prosecution and found that the accused guilty of the offence punishable under section 304(1) of the Penal Code in place of section 302 alleging that it attracts exception 4 of the section 300 and accordingly it is a case of culpable homicide not amounting to murder punishable under section 304(1) of the Penal Code.



Mr. Khurshed Alam Khan the learned appellant submits that in order to bring the case within the ambit of section 304(1) the trial court must give a positive decision that the accused had intention to cause death and is also covered by any of the exception of section 300 of the Penal Code. No doubt, the intention, being mental act of the accused, cannot be the subject of proof with the help of oral evidence rather conduct and external behaviors of the accused person in performing the act to cause death will identify the intention of the accused. In the instant case it is evident that the accused used a dangerous weapon like spade and gave two consecutive murderous blows on the vital part of the body like occipital region of head. When an accused is found to use a dangerous weapon to cause fatal injury on the vital part of the body like head in a consecutive manner certainly it will prove his intention to cause such bodily injuries as is likely to cause his death. The above decisions of our Apex Court is absolutely befitting one for this case also because in this case the accused-appellant used dangerous weapon to blow one after another to cause such bodily injuries as were likely to cause death of the deceased. As such we find no other alternative but to say that the accused-appellant had intention at least to cause such bodily injuries as were likely to cause death of the deceased which comes within the mischief of first part of section 304 of the Penal Code.

Decision  
In the light of the above observation we are of opinion that in no way this case can be brought within the scope of second part of section 304 of the Penal Code and accordingly the decision given by the learned Sessions Judge cannot be interfered and the appeal is liable to be dismissed.

Mr Md Khurshed Alam Khan, Advocate for the appellant, Mr S M Aminul Haque, AAG for the respondent.

READER'S queries



Your Advocate



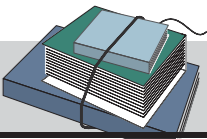
This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: It is a very common incident that a newly construction has a strong noise and passing through a constructing building often we have to suffer by water and other dirty particles which are flow from the building. Specially till late night the bustling noise annoyed the neighbours. Is there any law by which we can get rid off from the sufferings? What kind of remedy we can get from here?

Mizanur Rahman,  
Bohutola, Chittagong.

Your Advocate: Your question is a kind of question, which is arising and evaporating into the air every day particularly in the Dhaka city without any redress or answers. In a society where hardened criminals cannot be brought to justice and innumerable murders, rape, extortion are taking place and the criminals are on many occasions going escort-free you cannot expect much in terms of your rights and comfort as a citizen. Our slogans of life have now boiled down to one- "We want guarantee of dying a natural death." Law, however, is not silent. Section 133 of the Criminal Procedure Code confers jurisdiction on the Magistrates to take appropriate actions against the person-committing nuisance. But for the Metropolitan areas the Metropolitan Police Ordinances will apply. In addition suit for damages may be brought against the wrongdoer.

LAW lexicon



Res gestae

Latin for "things done." A peculiar rule, used mostly in criminal cases, which allows hearsay if the statement is made during the excitement of the litigated event. For example, the words "stick 'em up!" used during an armed robbery would be admissible in evidence under the res gestae rule. So, too, would spontaneous statements made by the defendant during or right after the crime. Some laws even allow res gestae statements to be introduced in evidence in special kinds of prosecutions. For example, in child sexual abuse cases, the statement made by a child to another person may be allowed as evidence even though, technically, it offends the rule against hearsay. This is to recognize the trauma of having a child testify in open court on the subject of her or his abuse. Res gestae evidence usually requires a voir dire hearing before it is admissible unless the defense allows it to be put on the trial record unchallenged.

Res ipsa loquitur

A word used in tort to refer to situations where negligence is presumed on the defendant since the object causing injury was in his or her control. This is a presumption which can be rebutted by showing that the event was an inevitable accident and had nothing to do with the defendant's responsibility of control or supervision. An example of res ipsa loquitur would be getting hit by a rock which flies off a passing dump truck. The event itself imputes negligence (res ipsa loquitur) and can only be defeated if the defendant can show that the event was a total and inevitable accident.

Respondent

The party that "responds to" a claim filed in court against them by a plaintiff. The more common term is defendant. The word is also used to refer to the party who wins at the first court level but who must then respond to an appeal launched by the party that lost the case at the first court level (upon appeal, this latter person is called the appellant).

Restitutio in integrum

Latin for restitution to the original position. In contract law, upon breach of contract, the injured party may ask the court to reverse the contract and revert the parties to their respective positions before the contract was accepted. But if the court finds that restitutio in integrum is not possible because of actions or events occurring since the date of acceptance, then the court may order that damages be paid instead.

LAW amusements



A judge, bored and frustrated by a lawyer's tedious arguments, had made numerous rulings to speed the trial along. The attorney had bristled at the judge's orders, and their tempers grew hot. Finally, frustrated with another repetition of arguments he had heard many times before, the judge pointed to his ear and said, "Counselor, you should be aware that at this point, what you are saying is just going in one ear and out the other." "Your honor," replied the lawyer, "That goes without saying. What is there to prevent it?"

What's the difference between a good lawyer and a great lawyer? A good lawyer knows the law. A great lawyer knows the judge.

What do you call a lawyer with an IQ of 10? A lawyer.  
What do you call a lawyer with an IQ of 15? Your honor.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email <dslawdesk@yahoo.co.uk>

LAW week

HC rule on judge's removal

The government was asked 15th May to show cause within four weeks as to why the removal of Syed Shahidur Rahman from the High Court Division should not be declared unlawful and illegal. A High Court Division bench of Justice Shah Abu Nayeem Mominur Rahman and Justice Zobayer Rahman Chowdhury passed the rule nisi on hearing a writ petition filed by the removed additional judge. President Iajuddin Ahmed ordered his removal on April 20 this year on recommendation from the Supreme Judicial Council that inquired into allegation of misconduct against Shahid. -New Age, 16 May 2004

JS passes Constitution amendment bill

Jatiya Sangsad (Parliament) on 16th May amended the country's Constitution introducing 45 women reserved seats in the assembly and making some new provisions. The House passed the Constitution (Fourteenth Amendment) Bill 2004. Law, Justice and Parliamentary Affairs Minister Moudud Ahmed piloted the bill, scrutinised by the Parliamentary Standing Committee. As there was no discussion on the bill, the Speaker in a quick move put the bill to division vote. In support of the bill, Law Minister Moudud Ahmed said all the provisions have been incorporated in it through scrutiny, retaining the basic spirit of the Constitution. - New Age, 17 May 2004

Sedition case against AL leader

Awami League leader and former state minister Mohiuddin Khan Alamgir and seven others were 16th May indicted in a sedition case popularly known as Janatar Mancha case of 1996. Seven out of eight accused in the dock pleaded not guilty when additional metropolitan judge Mohammad Rabul Hasan read out the charge to them. OC of Ramna police station filing the case three years ago said the accused persons had erected a Janatar Mancha in front of the press club in March 1996 and instigated the government officials and employees to join the agitation in a bid to topple the BNP government. -New Age, 17 May 2004

Trial of Vikhu Gyan Joteey case is opened

After two years the trial process of the much talked about Vikhu Gyan Joteey case is started. Sunday, 18th May, Chittagong District and Session Judge Abdur Rahman Patwary formally initiated the process by taking evidence. At the first day of the trial process younger brother of the accused was taken to the court where he described the incident in detail. - Bhorer Kagaj, 17 May 2004

Draft bill to amend Criminal Law finalised

The Government yesterday finalised a draft bill to amend the Criminal Law Amendment Act of 1958 with a view to bringing about changes in three clauses of the Act required for executing the Independent Anti-Graft

Commission Act passed by Parliament recently. Law, Justice and Parliamentary Affairs Minister Barrister Moudud Ahmed told yesterday that as per the Anti-Graft Commission Act, the existing Bureau of Anti-Corruption would automatically be abolished as soon as the Commission starts operation. Sources said according to the proposed draft bill, the Special Judges would dispose of the corruption cases under the Anti-Graft Commission Act. -The Independent, 18 May 2004

Barrister Rafiq to face trial

Former Housing and Public Works Minister Barrister Rafiqul Islam Mian is to face trial in the court on corruption charge as the High Court discharged the rule issued earlier upon a petition to quash the case, reports UNB. Bureau of Anti-Corruption filed the case in May 1997 accusing the former BNP minister. He was accused of allotting a government plot to four private firms. -The News Today, 18 May 2004

Direct election to women's seats in JS

Asking for direct election to women's reserved seats in parliament is not irrational, but it needs some time to meet that demand, said a government minister on Tuesday. "The introduction of 45 seats is one step forward towards meeting the demand of the women," Women and Children Affairs Minister Begum Khurshid Zahan Haque told at her office. Rebutting opposition criticism, she termed the introduction of 45 women's reserved seats in parliament as a great achievement towards women empowerment. "It's an historical step for the women of the country". -Bangladesh Observer, 19 May 2004

Yasmin murder case

Three policemen are to walk to the gallows for murder after rape of 19-year old Yasmin of Dinajpur in 1995 that had angered the nation and created problem for the then BNP government. The petition of condemned Assistant sub-inspectors Moinal Huq and Abdus Sattar and constable Amrita Lal Barman to review by the Supreme Court its verdict upholding the death penalty was rejected. - The News Today, 20 May 2004

Red alert in Naogaon

Police issued red alert in underground terrorist infested Atrai and Raninagar upazilas following the gruesome murder of two at Sarai on 19th May night. Heavy police force were deployed who launched combing operation for hunting down outlawed outfits that claimed slaughtering JMJ men Nazrul Islam and Abdur Rashid on the verandah of a mosque. -The News Today, 20 May 2004

Three to die for Trisha murder

The High Court yesterday rejected appeal and confirmed the death sentence to three young men awarded by the lower court for harrying to death a

10-year-old schoolgirl of Gaibandha in 2002. On September 30, 2002, District and sessions judge of Gaibandha handed down the death sentence to Mehdi Hassan Modern, 19, Mohammad Shahin, 20, and Ariful Islam Asha, 19, for murder of Sadia Sultana Trisha, a student of class four. -UNB, 20 May 2004

EC asks officials to act against code violators

The Election Commission (EC) yesterday asked returning officers responsible for next month's parliamentary by-polls to take stern action against people violating election code of conduct. Chief Election Commissioner MA Syed expressed dissatisfaction over frequent violation of the code and attacks on Bikalpa Dhara supporters. They would discuss deployment of army in the constituencies when it sits to review law and order on May 22. -The Daily Star, 20 May 2004

Official Secrecy Act to liberalise

Law, Justice and Parliamentary Affairs Minister Barrister Moudud Ahmed said that the government is examining the Official Secrecy Act to liberalise it as much as possible. The "Right to Information", another law is being scrutinised which would exclude some of harsh provisions of the Official Secrecy Act, the minister said. When it enacted, would enable the people and the media to get "quality and accurate" information. -The Independent, 20 May 2004

Waiting for justice for 12 years

After 27 hearings at the High Court (HC) Division and 21 at the Supreme Court (SC) Appellate Division, the Billal Hossain Bepari murder case filed more than 12 years ago is still awaiting verdict. During the course of trial, judges felt embarrassed, public prosecutors were transferred and 9 of the 34 prosecution witnesses declared hostile. The case remained suspended ever since the SC stayed its proceedings on October 22, 1998. After more than five years, the case finally resume after the SC vacated the stay order last week. -The Daily Star, 21 May 2004

Plan for prisoners to work in community

The government is planning to introduce community service for prisoners, who are convicted in criminal cases and sentenced to jail for a maximum of five years, would be freed on condition of giving prescribed community service and treated as community prisoners. Where they would be allowed to stay with their families and have to report regularly to an official assigned by the government apart from doing community service. The cabinet committee on jail reforms is working on the proposed system that is still on the drawing board. The United Nations Development Programme (UNDP) has already offered to provide the government with both technical and other assistance for introduction of the community prisoner system. -The Daily