

12 SCOB [2019] AD 34**APPELLATE DIVISION****PRESENT:**

Mr. Justice Surendra Kumar Sinha,
Chief Justice
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider

CRIMINAL APPEAL NO. 60 OF 2009

(From the judgment and order dated 29.11.2007 passed by the High Court Division in Death Reference No.52 of 2004 heard along with Criminal Appeal Nos.1164 of 2004, 1187 of 2004, 1231 of 2004, 1504 of 2004, 1887 of 2004 and Jail Appeal Nos. 393 of 2004 and 394 of 2004)

Rashed Appellant
=Versus=	
The State Respondent
For the Appellant	: Mr. Munsurul Huq Chowdhury, Senior Advocate instructed by Mrs. Madhumalati Chowdhury Barua, Advocate-on-Record.
For the Respondent	: Mr. Bashir Ahmed, Assistant Attorney General, instructed by Mr. Shamsul Alam, Advocate-on-Record
Date of hearing	: The 24 th January, 2017

Dying declaration, section 32(1) of the Evidence Act 1872;

Dying declaration cannot be considered as the sole basis for conviction and awarding sentence to the appellant, specifically in the absence of any of the witnesses who were present in the hospital during the time when the alleged dying declaration was made by such a critically injured person who was under intensive care and not supposed to be in conscious. As such the finding of the High Court Division that ‘the prosecution has clearly established the motive of the case and the oral dying declaration has also been supported by the medical evidence and other circumstances and materials on record’ is not sustainable in law.

J U D G M E N T**MIRZA HUSSAIN HAIDER, J:**

1. This criminal appeal, by leave, is directed against the judgment and order dated 29.11.2007 passed by the High Court Division in Death Reference No.52 of 2004 heard along with Criminal Appeal Nos.1164 of 2004, 1187 of 2004, 1231 of 2004, 1504 of 2004, 1887 of 2004 and Jail Appeal Nos. 393 of 2004 and 394 of 2004 rejecting the death reference with modification of sentence by commuting the death penalty to imprisonment for life and dismissing all the aforesaid appeals.

2. Facts leading to this criminal appeal in short are:

That on 8.5.1996 at about 10.00 in the morning victim Aminul Isalm @ Babu, son of the informant Hosne Ara, P.W 1, left his residence No. 558/C Khilgaon, Dhaka, to meet his elder brother, Md. Shafiqul Hossain,(PW.2), at his office and when he reached near the T&T Bhaban adjacent to Bishwa Road, the appellant along with accused Moinul alias Ripon, Shahed, Biddut and Mohammad Hossain Faruque @ Poka Babu, abducted him at gunpoint, and took him to Shahjanpur; at that time, one unknown boy was in front of the T&T Bhaban, who came and informed the informant about the said incident. On receiving such information the informant immediately rushed to the spot and came to know from the local people that the above mentioned accused persons had taken the victim to Amtala, Shahjanpur, then she rushed back to her residence and sent Badal, son of her neighbour Matiar Rahman, to the office of her elder son P.W.2, who upon receipt of such information, went to the Motijheel Police Station and then to Shabujbag Police Station where he came to know that the victim was in the Hospital. PW 2 then went to the Dhaka Medical College Hospital where the informant also sent Shiuli Begum, the wife of her elder son (PW 2) and one Parul, a neighbour along with some local people. All of them found the victim in seriously injured condition and was being treated by the doctors of the hospital. The victim then disclosed to P.W .2 that the appellant and accuseds, Ripon, Shahed, Biddut and Poka Babu tied him up with a date-tree whereupon accused Ripon dealt a chapati blow on the back of his head and the appellant shot him in his stomach while the other accused persons struck him indiscriminately. Thereafter at about 1.40 PM the victim died in the hospital. At 3.00 p.m. P.W.2 came back home and narrated everything to the informant what the victim disclosed to him. Then at 22.35 hours the informant lodged a written FIR narrating the incident and also stating that after the occurrence the local people and one autorickshaw driver had taken the victim to the hospital and that out of previous grudge and enmity the appellant and other accused persons murdered the victim. It is also stated that prior to the occurrence, she made a complaint to the Police Commissioner against the appellant and other accused persons which was registered a G.D. Entry No.318 dated 5.12.95. She also filed an extortion case against the elder brother of the appellant. On the basis of the FIR Shabujbag Police Station Case No.25 dated 8.5.1996 was started under section 364/302 of the Penal Code.

3. The police, after investigation, submitted Charge Sheet No. 469 dated 09.08.1996 against the five accused persons including the present appellant under sections 364/302/34 of the Penal Code. The case record was transmitted to the Court of Metropolitan Sessions Judge, Dhaka, for trial and was registered as Metro Sessions Case No. 188 of 1996, which was subsequently transferred to the 2nd Court of Metropolitan Additional Sessions Judge, Dhaka, for disposal who accordingly commenced the trial upon framing charge against five accused persons under sections 364/302/34 of the Penal Code. The charge was read over and explained to the accused persons who pleaded not guilty and claimed to be tried. The prosecution examined 11 prosecution witnesses while the defence examined none. The defence plea, as it transpires from the trend of cross-examination of the prosecution witnesses and the statement of the accused persons recorded under section 342 of the Code of Criminal Procedure, to be that of innocence and false implication and that the victim might have been killed by other assailants who were inimical to him.

4. The learned Metropolitan Additional Sessions Judge, after hearing the parties and on perusal of materials on record found the appellant and other accused persons, as aforesaid, guilty under sections 302/34 of the Penal Code and convicted and sentenced accused Moinul Huq @ Ripon and Rashed (appellant herein) to death penalty with fine of TK.30,000/= each and also sentenced Shahed, Saifur Rahman @ Biddut and Md. Hossain @ Faruque Ahmed @ Poka Babu to life imprisonment with fine of TK.30,000/- each in default to suffer three years rigorous imprisonment more, by judgment and order of conviction and sentence dated 11.04.2004.

5. A reference was sent to the High Court Division under section 374 of the Criminal Procedure Code seeking confirmation of the death sentence which was registered as Death Reference No. 52 of 2004. On the other hand, the appellant preferred Criminal Appeal No. 1164 of 2004 and Jail Appeal No.394 of 1994 and the other condemned prisoner Moinul Hoque alias Ripon preferred Criminal Appeal No. 1187 of 2004 with Jail Appeal No.393 of 2004. A Division Bench of the High Court Division, after hearing the aforesaid death Reference along with all the criminal appeals and jail appeals preferred by all the convicts, rejected the Death Reference and dismissed all the appeals upon modifying the sentence of the appellant and that of Moinul Haque @ Ripon from death to imprisonment for life, by the impugned judgment and order dated 29.11.2007.

6. Hence the present appellant preferred Criminal Petition for Leave to Appeal No. 291 of 2008 and obtained leave giving rise to this appeal.

7. Mr. Munsurul Hoq Chowdhury, the learned Counsel for the appellant submits that the High Court Division fell in error in not appreciating that the prosecution has miserably failed to establish a complete chain of circumstances and that no witness was examined regarding the alleged occurrence at Railway collony adjacent to Amtala, Shahjahanpur, nor the persons who took the victim to the Dhaka Medical College Hospital were examined. Apart from that, he submits that admittedly no eye witness to the occurrence has been produced and not a single independent witness has been examined to prove the prosecution case beyond reasonable doubt; Moreover P.W.8, Dr. Tajendra Chandra Das has clearly stated that after having sustained the injury marked as 'ka' to the post-mortem report, it was almost impossible for the victim to retain his consciousness and further the victim being shot at around 10.30 a.m. making the alleged dying declaration around 1.00 p.m. even after loosing huge amount of blood is absolutely unbelievable and thus the alleged dying declaration made by the victim at that state of health condition was out of question and accordingly, the trial court fell in an error in convicting the appellant relying solely on the said dying declaration which was not even corroborated by any independent witness. He submits that even if under such critical condition the victim made dying declaration to P.W.2 at about 1.00 PM before his death at 1.40 PM and then PW 2 having gone home at 3.00 PM narrating the same to his mother, the informant, lodging of the FIR after 7(seven) hours at 22.35 hours is totally a circuitous way of filing of the case relying on the alleged dying declaration raises doubt as to the veracity of the dying declaration. Thus the conviction and sentence handed down to the appellant wholly relying on such uncorroborated, doubtful dying declaration is not at all sustainable in law.

8. Mr. Bashir Ahmed, the learned Assistant Attorney General appearing on behalf of the respondent, state, supported the impugned judgment and without filing any concise statement he prayed for dismissal of this appeal.

9. On perusal of the materials on record including the impugned judgment and order it appears that the positive case of the prosecution is that on 08.05.1996 at about 10.00 in the morning the victim Amirul Islam @ Babu son of the informant (P.W. 1), came out of his house and on his way to meet his elder brother, Md. Shafiqul Hasan (PW 2) in his office, the accused persons forcibly abducted him at gun-point and took him to Shahjanpur where they tied him first with a date tree and then with a lamp post and caused multiple serious bleeding injuries by bullet shots and chapatti blows and left him in a profusely bleeding condition. Thereafter the local people took him to the Dhaka Medical College Hospital by a scooter in a critical condition where while he was being given medical attendance he made oral dying declaration to P.W. 2 at about 1 PM describing the manner as to how the accused persons took part in the occurrence causing/inflicting injuries upon his person and also disclosing the names of the accused persons. After making such statement the victim died in the hospital on the same day at about 1.40 pm. due to such severe injuries.

10. In support of the FIR story the prosecution examined 11 (eleven) witnesses amongst whom PW 1 is the informant of the case and mother of the victim. PW.2 is the elder brother of the victim who went to the hospital to whom the victim narrated the sequential occurrence disclosing the names of the accused persons and their role. PW 3 is the wife of PW 2. P.W. 4 is the seizure list witness. PW 5 is the hearsay witness. PW 6 is a witness who after 2/3 days of the occurrence went to the Gausul Azam Jame-Mosjid for saying Magrib prayer when he saw gathering of people in the place of occurrence and put his signature in a blank paper on being asked by the Daroga. P.W.7 is the uncle of the victim. P.W.8 is Dr. Tajendra Chandra Das, who held post mortem examination and prepared the report. PW 9 is Sub-Inspector of Police who lodged the case pursuant to the written Ejahar filed by the informant. PW 10 is the Sub-Inspector who conducted investigation and submitted charge sheet. PW 11 SI who prepared the inquest report of the body of the deceased.

11. The trial Court on consideration of the materials on record and the evidence adduced by the parties found the five accused persons guilty and sentenced, each one of them in the manner as stated above which the High Court Division on consideration of the materials on record sustained the conviction but modified the death sentence to imprisonment for life, for ends of justice.

12. In this appeal filed by the convict-appellant, Rashed, the points raised for determination are whether the High Court Division erred in law in not appreciating that the prosecution has miserably failed to establish a complete chain of circumstances and also failed to produce any witness regarding the occurrence at the Railway Collony adjacent to Amtala, Shahjahanpur and also failed to consider prosecution's failure to produce the persons who took the victim to the Dhaka Medical College Hospital, as witness. And whether there was any eye witness who could be produced to prove appellant's involvement in causing death of the victim and whether there was any single independent witness to corroborate the alleged dying declaration and/or to prove the prosecution case beyond all reasonable doubt. Lastly whether the dying declaration of the victim made at around 1.00 pm even after sustaining such grievances multiple injuries causing loss of huge amount of blood is true and if not whether the conviction and sentence awarded against the appellant basing on the sole uncorroborated dying declaration of the victim is justified.

13. To answer the aforesaid points, we need to examine the evidence of PWs 1, 2, 3, 8 who are not police personnel and the post mortem report.

14. P.W. 1, Hosne Ara Begum, mother of the victim and informant of the case narrated the prosecution story as described in the FIR. She stated that she went to the police station with her elder son, P.W. 2 who wrote the ejahar which has been read over and explained to her, she put her signature therein. She proved her signature in the FIR which has been marked as Exhibits 1 and 1/1. She also identified the accused persons on the dock. In cross examination, she denied all material suggestions put forward by the defence and asserted her statements what she stated in her examination in chief. She categorically denied defence suggestions that victim did not make any oral dying declaration as alleged and stated to her son P.W. 2 and also denied that out of enmity they implicated the accused persons falsely. She further denied that the victim was caused to death by some unknown assailants inimical to him.

15. P.W. 2. Md. Shafique Hasan, the elder brother of the victim and husband of P.W. 3, Shiuli Begum. The sum and substance of his evidence is that on 08.05.96 while he was in his office at about 11.30 am, his neighbour Badal came and informed him that accused Rashed and others had abducted his younger brother Aminul Islam @ Babu from T.N.T. Bhaban adjacent to Bishwa Road. Upon hearing the same he went to the Motijheel Police Station and then to Shabujbag Police Station and came to know from P.W. 5, Kabir that his brother was in the Hospital in a critical condition and then he went to the Dhaka Medical College Hospital where he saw his injured brother in ward No. 32 where his wife P.W.3, Shiuli Begum and another lady were present. Being asked by him (P.W. 2) as to what had happened, the victim replied in feeble voice that “accused Rashed, Poka Babu, Biddut, Ripon and Shahed abducted him forcibly at gunpoint from in front of the T.N.T. Bahaban and took him to the Shahjahanpur Amtala Road Colony and accused Ripon dealt a chapatti blow on the back of his head and then tied him up first with a date tree and later with a lamp post and accused Rashed shot him at his stomach (belly) and others shot him indiscriminately and left the place leaving him there. Then local people boarded him on a scooter and took him to the hospital.” The said PW also stated that at quarter to two pm his brother, victim Babu, died in the hospital. Then at around 2.15 pm he came back home and at about 3.00 in the afternoon he told his mother, P.W. 1, about the occurrence. He further stated that he wrote the ejahar as per statements of his deceased brother and then it was read over and explained to his mother and then she put her signature on the same.

16. He deposed that earlier on 05.12.95 his mother lodged G.D Entry No.318 against the accused persons and on 9.3.96 accused Rashed’s elder brother and 4 others attacked their house and demanded a sum of Tk.10 Lac as subscription for which his mother filed Shabujbag P.S Case No. 28(3)96. He believes that due to that grudge the accused persons killed his brother. He identified the accused persons present on the dock. In his cross examination he denied all material suggestions put to him by the defence and asserted what he had stated in his examination in chief, he further denied defence suggestions that the victim did not make any dying declaration to him as alleged and that he had deposed falsely and had implicated the accused persons due to enmity.

17. P.W.3, Shiuli Begum wife of PW 2, stated in a similar way as that of PW 1 and 2 on all matters particulars. In cross examination, she also denied all the material suggestions made to her and asserted her statements relating to the occurrence and oral dying declaration as she stated in examination in chief.

18. P.W.8, Dr. Tejendra Chandra Das, held post mortem examination on 08.05.96 upon the dead body of the victim Amirul Islam @ Babu, aged 28 years brought and identified by

constable No. 4812 Delwar Hossain and on examination he found several injuries on his body. Accordingly he opined that the death of the victim was due to the injuries mentioned in the post mortem report, which were ante-mortem and homicidal in nature. He proved the post mortem report Exhibit 4, his signature Exhibit 4(1) and the death certificate Exhibit 5 and his signature Exhibit 5/1. In his cross-examination he described the injuries caused by bullet (in total 11 injuries) and sharp cutting weapon and further stated that having sustained those injuries the victim was not supposed to remain conscious.

19. On scrutiny of the aforesaid evidence of the P.Ws and considering the nature of injuries, as reflected in the post-mortem report, it appears that P.W.2 in his evidence stated that on the date of occurrence upon receiving information from Badal, his neighbour to the effect that his brother has been abducted by some persons he rushed to the place of occurrence and then having come to know that his brother has been taken to the Hospital in a critical condition he went to the hospital and found him there with severe injuries. According to him the victim in such critical condition, in reply to the questions of PW 2, in a feeble voice gave a vivid description as to how the accused persons abducted him at gun-point and also who inflicted which blow with 'chapati' and gun shots indiscriminately and then how he was brought to the hospital by the local people. From the post-mortem report, it appears that the doctor found a number of injuries including one on the right side of the chest which pierced through the body injuring the entire right lungs, liver and stomach and also found a number of gun shot injuries on the right thigh, leg and ankle and toe/finger. He also found a severe cut injury at the occipital region which also cut the scalp of the head. The doctor in his report opined that the death was due to the aforementioned injuries causing severe bleedings paralyzing the nerves which were ante mortem and homicidal in nature.

20. Admittedly, the victim was brought to the hospital at 11.00 a.m. and he died at 1.40 pm. i.e. he was under treatment in the hospital for about 2½ hours. PW 8, the doctor, admitted in his cross examination that the injury caused in the head can cause death. He also admitted that a person upon receiving such injury is not supposed to remain conscious. He also admitted that there were bullets injuries all of which pierced through his body and one caused severe damage to right lung, liver and stomach and one is inside his body and such patient is required to be given intensive care treatment because such injury has caused profuse bleedings and his life was at high risk.

21. From the nature of injury as mentioned above and from the evidence of PW-8 it cannot be said that the victim had good conscious of giving a vivid description as to which accused person inflicted which blow. PW-2 had admitted in his deposition that his mother lodged a GD Entry against the accused persons earlier on 5.12.1995 and thereafter, on 09.03.1996, the elder brother of appellant, Rashed and four others attacked their house and demanded money from them which led their mother file Shabujbag Police Station Case No. 28(3)96. He thus believes that due to the grudge of such GD Entry and filing of criminal case, the accused persons killed his brother, the victim. Admittedly, there is no eye witness of the occurrence or killing the victim at the place of occurrence. Only Badol, a neighbour, who, informed PW-2 about the abduction of his brother the victim who is not a witness of murder. Thereafter, PW-2 rushed to the hospital, after looking for his brother at three places, and claimed that the victim gave a full description of the occurrence to him. PW 3, wife of PW-2, stated that the victim told the whole story in her presence and in presence of doctor, nurse and many other persons, but interestingly, none of the hospital staff nor anyone present there, including Parul or Badal has been produced as witness who could have been independent witness in the case so far the dying declaration is concern.

22. From the record it appears that the statement of the victim bearing 11 bullets injuries and one severe cut injury on the back of the head has been taken into consideration by both the Courts as an oral dying declaration of the victim, which, both the Courts believed to be true and trustworthy. The High Court Division observed that ‘the language of dying declaration need not be identical and of the same, but if substance of the same fulfills other conditions to act upon which such declaration, then it is admissible as evidence. A detail statement cannot necessarily lead to the inference that the statement is fabricated one. It is now well settled that a dying declaration, oral or written, when established as true can form the sole basis of conviction’. Taking the said dying declaration into consideration the High Court Division observed that ‘the same has been well proved by PWs 1 to 3 and the motive of the case has been established’. Although, the High Court Division has considered the oral dying declaration to be proved but one thing is required to be noted that the said dying declaration has been made by a person, who admittedly received 11 gun shot injuries on his body one of which pierced his body damaging his right lungs, liver and stomach and there was a severe cut injury damaging the skull on back side of the head, whereupon the doctor admitted that any person receiving such injury is not supposed to remain conscious and give a vivid description as to how and which of the accused inflicted such injury upon him.

23. On a close scrutiny of the post mortem report it appears that the injury (Ka) is a bullet injury which pierced through the right chest mid line and went out of the body through the back side creating 8” x ½” diameter hole between 9th and 10th rib of the right chest damaging the right lungs, liver and stomach and there are as many as 7 bullet injuries in the body of the victim and a cut injury on the occipital area creating 3” x ¾ “x ½”, bone injury 1½ x ¾ on the right side of the head creating blood clot with liquid blood below the occipital region.

24. As such from the above report and the evidence of PW 8, it appears that the injuries were so severe in nature that at least one of the aforesaid injuries which pierced through his body damaging right lungs and liver and the sharp cutting injury at the back of the head which according to the doctor, who prepared the post mortem report, in his cross examination stated ‘ভিকটিম বাবুলের ভর্তির সময় ও তারিখ মৃত্যু প্রতিবেদন অনুসারে তাং ৮/৫/৯৫ সময় সকাল ১১.১০ মিঃ এবং মৃত্যুর সময় দুপুর ১.৪০ মিঃ ভিকটিম বাবুল আমাদের হাসপাতালে ২ ঘন্টা ৩০ মিঃ চিকিৎসাধীন ছিলেন। কোন রোগীর মৃত্যু নিশ্চিত হইতে কোন ডাক্তারের রোগীকে পরীক্ষা করিতে ১ মিনিট বা ১৫ মিঃ বা ৩০ মিঃ সময় লাগিতে পারে ইহা ডাক্তারের অভিজ্ঞতার উপর নির্ভরশীল। (ক) injury দিয়েও লোক মারা যেতে পারে। ঐ injury হওয়ার পরে ভিকটিমের জ্ঞান থাকার কথা নয়। (ঙ)..... মৃত দেহে injury mark ১১ টি বুলেটের প্রবশ ও বাহির পথ মিলিয়া এবং ১টি বুলেট বাহির না হওয়ায় সর্ব মোট বুলেট injury ১১টি এই ধরনের injury নিয়া কোন লোক হাসপাতালে আসিলে ডাক্তারদের উচ্চৈঃ সার্বক্ষনিক রোগীর পাশে থাকা। এই injury গুলির সাথে সাথে প্রচুর রক্ত ক্ষরণ হয়েছে।’ Thus it is not believable that a person having received multiple injuries and who died after 40 minutes of making the alleged dying declaration can give a thorough description of the actions of his assailants. So the High Court Division erred in believing the uncorroborated dying declaration to be true and correct which from the nature of injuries and according to doctor’s opinion does not show that the deceased was in such physical condition that he could make such declaration. Moreover the said dying declaration has not been corroborated by any other or any independent witness as none of the hospital staff or the people present in the hospital at that time and people who brought him to the hospital having been examined.

25. It is true that a dying declaration to be admissible under section 32(1) of the Evidence Act, is not necessarily to be recorded in accordance with the provisions contained in Chapter XXV of the Code of Criminal Procedure which includes both oral and written statements i.e. it may not necessarily be only in writing. It can be treated as evidence if it is found to be free

from suspicion and believed to be genuine and true, only in that case it may be sufficient to form a material basis for conviction. The main tests for determining the genuineness of a dying declaration requires three criterions (I) whether intrinsically it rings true, (II) whether there is no chance of mistake on the part of the dying man in indentifying or naming his assailant and (III) whether it is free from prompting from any outside quarter and is not inconsistent with the other evidence and circumstances of the case.

26. In the case of **Alais Miah Vs. State reported in 20 BLC(AD)341** this Division held *“while considering dying declaration the Court is required to see whether the victim had the physical capability of making such a declaration whether witnesses who had heard the deceased making such statement heard it correctly. Whether they reproduced names of assailants correctly and whether the maker of the declaration had an opportunity to recognize the assailants. Value of dying declaration depends on the facts and circumstances of the case in which it was made. Unlike English law, for admissibility of a statement a person should not necessarily be in the expectation of death when he made the statement.”*

27. In the instant case, from the materials on record, it appears that other than the elder brother PW-2 and PW-3 wife of PW-2, none were produced at whose presence the victim made such dying declaration in the hospital. Admittedly, PW-2 stated that when he went to the hospital, he found Doctor and other staffs of the hospital were giving him treatment and medical attendance. He also found his wife and one lady with her beside the victim. He said that when he asked his younger brother, the victim in a feeble voice, stated the names of the accused persons and the blows inflicted by them. But, unfortunately, none of the hospital staffs or the lady named Parul was produced to prove making of such dying declaration by the victim, who heard the statement made by the victim. Moreover, PW-8, Doctor, who held the post mortem examination, in his cross examination clearly stated that the injuries found on the body of the victim, specifically the bullets which pierced through the right chest damaging the right lungs, lever and stomach and the injury cutting the scull of the victim at the back of the head along with other 11 bullet injuries, he was not suppose to be conscious and, such a patient requires intensive care treatment which was being given to him within 2½ hours time till his death. He also opined in his deposition that such patient is at the verge of meeting death because of such injuries and profuse bleedings.

28. From the above, it is clear that the victim was not in physical capability of making such declaration before 40 minutes of his death. It has already been stated that other than PW 2 who is the elder brother of the victim and PW 3 wife of PW 2 both being closely related to the victim and admittedly there were some enmity between the appellant’s family and the victim’s family the circumstances clearly show that the the three requirements as mentioned above to determine the genuinity of the dying declaration is absent in this particular case. Thus the same cannot be the basis for conviction and, as such, the same cannot be the sole basis for conviction.

29. Thus from the above facts and circumstances of the case, it appears that such dying declaration cannot be considered as the sole basis for conviction and awarding sentence to the appellant, specifically in the absence of any of the witnesses who were present in the hospital during the time when the alleged dying declaration was made by such a critically injured person who was under intensive care and not supposed to be in conscious. As such the finding of the High Court Division that ‘the prosecution has clearly established the motive of the case and the oral dying declaration has also been supported by the medical evidence and other circumstances and materials on record’ is not sustainable in law. Consequently, the

impugned judgment passed by the High Court Division basing on the such uncorroborated oral dying declaration against the present appellant is liable to be set aside.

30. Accordingly, this criminal appeal is allowed. The impugned judgment and order of conviction and sentence so far the present appellant, Rashed, is concerned, is set aside. The convict-appellant Rashed son of Formuj Ali Bhuiyan, Village-Rajapur, PS. Burichang, District-Comilla at present 517/C Khilgaon, PS. Sabujbag, District-Dhaka, be acquitted of the charge and be set at liberty forthwith if not wanted in connection with any other case.