

6 SCOB [2016] HCD 82**HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)**

Criminal Appeal No. 2126 of 2005

Abdus Salam & others

...Appellants

Versus

The State

....Respondent

Mr. Md. Nurul Islam with
Ms. Nur Jahan Begum

....For the Appellants

Mr. MA Mannan Mohan D.A.G with
Mr. Nizamul Haque Nizam A.A.G and
Mr. Atiqul Haque Salim A.A.G.

.....For the State.

Heard on 13.04.2015, 15.04.2015,
19.04.2015, 20.04.2015

and

Judgment on: 22.04.2015

Present:**Mr. Justice Shahidul Islam****And****Mr. Justice K. M. Kamrul Kader****The evidence of interested, inter-related and partisan witnesses must be closely scrutinized before it is accepted. ... (Para 58)****The ocular evidence of prosecution witnesses supported by post mortem report with regard to the injury no. 1 and 2 cannot be disbelieved. Further, the medical evidence is only corroborative in nature, in that view, the ocular evidence of the eye-witnesses, which substantially corroborates the injuries on the person of the deceased Rokshana, must be accepted. ... (Para 64)****Value of evidence by child witness:****The prosecution witness Nos. 6 and 7 are daughter and son of the victims and these two witnesses lost their parents in the alleged incident, they are most probable and natural witnesses of this alleged incident of murder and they narrated the vivid picture of what had happened on the alleged date of occurrence and how their parents had died by this unfortunate incident, though they are child witnesses, they witnessed the major part of the incident and having testified about the factum of the occurrence. They have not been shaken in cross examination. Their evidence can be relied upon as they are capable of understanding and replied the questions intelligently, which corroborated with the post mortem report and other evidence on record. ... (Para 70)****Judgment****K. M. Kamrul Kader, J:**

1. This appeal is directed against the judgment and order of conviction and sentence dated 22.03.2005 passed by the learned Additional Sessions Judge, 2nd Court, Rangpur in Sessions Case No. 283 of 2002 convicting the appellants under sections 302/34 of the Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Taka 5,000/- in default to suffer rigorous imprisonment for one year each and also convicting them under section 201 of the Penal Code and sentencing them to suffer rigorous imprisonment for

two years and to pay a fine of Taka 1,000/= in default to suffer rigorous imprisonment for two months each, both the sentences will run concurrently.

2. Prosecution case in short, are that, one Md. Younus Ali as informant lodged an *ejahar* with the Kotwali Police Station, Rangpur on 28.04.2002 at about 11.45 a.m. alleging *inter alia* that his elder brother Golam Mostafa borrowed an amount of Taka 1,000/= from accused Abdus Salam and his sister-in-law and wife of his brother namely Rokshana also borrowed an amount of Taka 420/= only from accused Salina, wife of accused Abdus Salam on condition to repay the loan amount with interest. Last year they paid an amount of Taka 6,000/= only against the said loan. But the accused persons further claimed an amount of Taka 20,000/= and with this regard, an altercation took place between the victims and accused persons. As a result, the accused persons blocked the pathway of his brother. On 24.04.2002, in the morning, accused Abdus Salam alongwith his two wives namely Shally and Rashida and his sons Rafiqul and Rashedul forcibly took the victims into their house, demand the said amount and assaulted them. The accused persons also threaten them, if the victims namely Mostafa and Rokshana failed to repay the said amount within 12 hours, then they have to transfer their land in the name of accused persons. Under such circumstances, the victim Rokshana went to the house one Abdus Salam, the ex-member of the Union Parishad and informed him about this incident, who assured her to hold a *salish* to resolve this matter at the afternoon on that day. On receipt of this information, the accused persons became very angry. While the victim Rokshana was returning home from the house of ex-member Abdus Salam and as she reached near the court-yard of her house, at that time, the accused persons being armed with lathes surrounded her and on the direction of accused Abdus Salam, other accused persons assaulted the victim Rokshana with the lathes in their hand. As a result, she fell down on the ground, at that stage accused Rafiqul and Rashedul indiscriminately kicked and punched her on the back side and she became senseless. The accused persons thought that the victim Rokshana met her death and as such, they carried the body of Rokshana inside her dwelling hut and hanged her body with a bar by her sari to show that the victim Rokshana committed suicide. Thereafter, they accused persons left the place of occurrence. Minor children of the victim namely Robiul and Muslama witnessed the incident and as they started hue and cry the neighbours came to the place of occurrence, but all of them are related to the accused as such, they did not take any step to rescue the victim. At that stage, victim Mostafa came to the place of occurrence; he became angry and shouted at them. At that time, the accused persons assaulted Mostafa and forcibly poured poison into his mouth. The victim tried to save himself and came out from his house but he became senseless and fell down on the road, due to reaction of the poison. Thereafter, the neighbouring people sent the victim Mostafa to the Rangpur Medical College Hospital for treatment, where he met his died. The instant *Ejehar* was registered as Kotwali Police Station Case No. 68 dated 28.04.2002 under sections 302/201/34 of the Penal Code.

3. In the meantime, 2 (two) G.D. Entry were filed one by Md. Amjad Hossain and the other by S. I. Nivaran Chandra Barman. Police went to the place of occurrence and prepared the inquest report of the victim Rokshana in presence of witnesses. The victim Mostafa died in the hospital and Sub-inspector Nivaran Chandra Barman held inquest over the dead body of the deceased Mostafa and prepared a report. Accordingly, 2 (two) U. D. cases were started being No. 121 dated 24.04.2002 for victim Mostafa and the other being No. 123 dated 24.04.2002 for victim Rokshana. Thereafter, the Police sent both the dead bodies to the morgue for autopsy.

4. Inspector Md. Ohiduzzaman Officer-in-Charge of Kotwali Police Station as Investigating Officer investigated the case alongwith two U.D. cases. During investigation he visited the place of occurrence, prepared the sketch map with separate index, recorded the statements of the prosecution witnesses under section 161 of the Code of Criminal Procedure and collected inquest reports and post mortem reports of both the victims. On conclusion of the investigation and finding *prima facie* case against the accused persons, he submitted the Charge Sheet being No. 669 dated 03.11.2002 under sections 302/201 of the Penal Code.

5. Thereafter, the case was transferred in the Court of Sessions Judge, Rangpur for trial, who took cognizance of the offence and the same was registered as Sessions Case No. 283 of 2002. The case was further transferred in the Court of Additional Sessions Judge, 2nd Court, Rangpur for trial. At the time of commencement of the trial, the learned Additional Sessions Judge framed charge against the accused persons under Sections 302/34/201 of the Penal Code to which they pleaded not guilty and claimed to be tried.

6. During trial prosecution examined as many as 19 (nineteen) witnesses to prove their case and the defence cross examined them but did not adduce any witness on his defence. However, the defence case as it appears from the trend of cross examination are that the appellants are innocent and they did not commit any offence as alleged against them and they were falsely implicated in this case. Their further case is that on the alleged date and place of occurrence there is an altercation took place between the husband and wife namely Rokshana and Golam Mostafa relating to personal loans taken by the victim Rokshana from various persons and she gave the said loan amount to their lodging master and due to the altercation, the victim Rokshana became angry and committed suicide by hanging herself with the bar by a sari and on getting that information her husband victim Golam Mostafa also committed suicide by drinking poison. The accused persons have been falsely implicated in the instant case out of previous enmity.

7. On conclusion of taking evidence, the accused persons were examined under section 342 of the Code of Criminal Procedure to which they reiterated their innocence and refused to adduce any evidence in their defence. After conclusion of the trial, learned Additional Sessions Judge, 2nd Court, Rangpur, by his judgment and order dated 22.03.2005 convicted these appellants as aforesaid.

8. Having aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 22.03.2005, the convict-appellants preferred the instant Appeal being criminal Appeal No. 2126 of 2005 before this court.

9. Mr. Md. Nurul Islam Sujon with Ms. Nur Jahan Begum, the learned advocates appearing on behalf of the convict-appellants at the very outset submits that in passing the impugned judgment and order the learned Additional Sessions Judge, seriously failed to consider that the prosecution totally failed to prove their case by adducing reliable oral and documentary evidence. The learned Additional Sessions Judge also failed to consider the defence case, which more probable that the victims were committed suicide, due to their internal family feud and the appellants were falsely implicated in the instant case. He further submits that the appellants are innocent and they are not involved in the alleged incident of murder. The learned Additional Sessions Judge convicted and sentenced these appellants on the basis of the evidence adduced by the prosecution witnesses Nos. 1, 2, 3, 6, 7, 9, 10, 11 and 12, however, none of these prosecution witnesses witnessed the incident as alleged in the Ejahar. The prosecution witnesses are near relations of the deceased and they failed to

corroborate each other on material points. He also submits that there is no eye witness of the alleged incident but the learned Additional Sessions Judge, relying upon the evidence of near relations and interested witnesses convicted these appellants. Other prosecution witnesses being Nos. 4, 5, 8, 12 and 14 did not support the prosecution case, rather they supported the defence case. As such, the convict-appellants are entitled to get benefit of doubt under section 114 (g) of the Evidence Act.

10. He next submits that the Informant and other prosecution witnesses are near relations of the victims but their belated disclosure that on the alleged date and time of occurrence, the appellants seriously assaulted the victim Rokshana, as a result, she fell down on the ground and became senseless. They thought that the victim Rokshana met her death and as such, they carried the body of Rokshana inside her house and hanged her body with a bar by her sari to show that the victim Rokshana committed suicide; thereafter they left the place of occurrence. On getting information, victim Mostafa came to the place of occurrence; he became angry and shouted at them. At that stage, the appellants assaulted him and forcibly poured poison into his mouth and due to reaction of the poison; he became senseless and fell down on the road. The neighbours sent him to the Hospital for treatment, where he met his died, which makes the prosecution case shaky and doubtful. He then submits that the alleged incident took place on 24.04.2002 and the informant lodged this instant Ejahar to the Officer-in-Charge of Kotwali Police Station on 27.04.2002. There is no explanation in the Ejahar as to the delay of 3 (three) days, which also makes the prosecution case shaky and doubtful. He further submits that before the lodgment of the instant Ejahar, there are 2 (two) G. D. entries were filed one by Amjad Hossain and the other by S. I. Nivaran Chandra Barman. Accordingly, 2 (two) U. D. cases were started. There are serious contradictions between the inquest report and post mortem report but the learned Judge failed to consider these G.D. Entries, inquest reports and the Unnatural Death cases, though these are primary documents of the prosecution case. The Ejahar was filed after a considerable lapse of time, which cast serious doubt on the prosecution story, because it's allowed the prosecution witnesses with ample opportunity for concoction and embellishment of the prosecution story. The learned Additional Sessions Judge most illegally and unlawfully convicted and sentenced the appellants and the same is liable to be set aside. The learned advocate for the appellants in support of his submission referred to the cases of *Zahed Ali Foreman (Driver) and others vs. State 9 BLC (AD) (2001) 122*, *The State vs. Nasir Ahmed @ Nasiruddin and another 6 MLR (AD) (2001) 194*, *Mazharul @ Bhulan vs. State 10 BLC (2005) 209*, *Haji Md. Jamal Uddin and others 14 BLD (1994) 33*, *Abdul Latif @ Bubu and 6 others vs. The State 44 DLR (1991) 492*, *Mujibor Rahman vs. The State 13 MLR(HC)88*, *The State vs. Ershad Ali Sikder and others 12 BLT (HC) 481* and *State vs. Liton Joarder and another 19 BLT (HC) 268*.

11. Mr. M. A. Mannan Mohan, the learned Deputy Attorney General alongwith Mr. Atiqul Haque Salim and Mr. Nizamul Haque Nizam, the learned Assistant Attorney Generals appearing for the state having taken us through the judgment and order, F.I.R, charge sheet, depositions of the prosecution witnesses and other materials on record make his submission supporting the conviction and sentence and opposing the appeal. He submits that all facts have been proved by the cogent, credible and reliable evidence of the prosecution witnesses. He also submits that the learned Additional Sessions Judge rightly found the appellants guilty under sections 302/34 and 201 of the Penal Code. So, the judgment and order of conviction and sentence do not call for any interference from this court. He further submits that the prosecution proved their case beyond reasonable doubt. There is no contradiction in their statements on any material point. The evidence of prosecution witnesses Nos. 1, 2, 3, 6, 7, 9, 10, 11 and 12 are material evidence, though they are close relatives of both the victims

Mostafa and Rokshana but cannot be considered as an interested witness. The term (interestedness) was postulated that witness must have some direct interest in having the accused somehow or other connected for some enemies or some other reason. There is no reason that the testimony of prosecution witnesses Nos. 1, 2, 3, 6, 7, 9, 10, 11 and 12 can be discarded or liable to be flung to the wind simply because they happened to be close relatives of both the victims Mostafa and Rokshana. The learned Additional Sessions Judge rightly and correctly put reliance on the testimony of the prosecution witnesses Nos. 1, 2, 3, 6, 7, 9, 10, 11 and 12 and convicted and sentenced these appellants as aforesaid. There is no illegality or irregularity in the said judgment and order of conviction and sentence, the prosecution witnesses corroborated with each other on material points and the judgment and order of conviction and sentence should be upheld by this Court.

12. He further submits that allegations against these accused appellants under section 302 read with section 34 and 201 of the Penal Code has been well proved by the prosecution as the chain of circumstantial evidence connects the convict appellants in killing of both the victims Mostafa and Rokshana and thereby appellants have committed offence under section 302 read with section 34 and 201 of the Penal Code. As there is no break in the chain of causation and chain or circumstances connecting these appellants with the killing of both the victims Mostafa and Rokshana and as circumstantial evidence is more cogent than the evidence of eye witness, the learned Judge after perusing the materials on record rightly convicted these appellants and as such, the appeal preferred by these appellants should be dismissed. The learned Deputy Attorney General in support of his submission referred to the cases of *Forkan @ Farhad and another vs. State 47 DLR 148* and *Abdul Quddus vs. The State 43 DLR (AD) 234*.

13. Before entering into the merit of the instant appeal, let us now scrutinize the evidence of the prosecution witnesses one after another.

14. P.W. No. 1 Md. Younus Ali is the informant and brother of the deceased Mostafa deposed that the deceased Golam Mostafa and Rokshana lived in Uttam Baromuda village. Due to their bad economic condition the victim Mostafa borrowed an amount of Taka 1,000/- from the accused No. 1 Salam and victim Rokshana also borrowed an amount of Taka 420/= from accused No. 2 Salina and they promised to pay certain amount of interest for that loan. The victims paid an amount of Taka 6,000/= for the last year. He also deposed that the accused persons demanded a further amount of Taka 20,000/- only. As such, an altercation took place between the victims and the accused persons. As a result, the accused persons blocked their pathway and on 24.04.2002 at about 7.00-7.30 a.m. further altercation took place between the accused and the victim Rokshana and they assaulted the victim Rokshana. At that stage, accused Abdus Salam threatened her that unless they paid the rest amount within 12 hours, then they have to transfer their household in their name. As such, victim Rokshana went to the member Abdus Salam and made complaint to him about this matter. He assured her (Rokshana) to hold a *salish* at the afternoon to resolve this matter. This witness heard that while victim Rokshana was returning home from the house of Abdus Salam at about 10.00 to 11.00 a.m. and as she reached near the courtyard of her house, at that time, accused Salam, Salina, Rashida and their two sons seriously assaulted her and they carried her body into the room of her husband and hanged the body with a bar by her sari. He also deposed that two children of victim Rokshana and others witnessed the incident. Thereafter, her son informed his father the victim Mostafa about the incident; he rushed to his house and protested about this incident. This witness also deposed that the accused persons namely Salam, Salina and Rashida assaulted his brother and forcibly poured poison into his mouth

and at that time, to save himself he run away towards the road and became senseless. Later, the neighbouring people sent him to Rangpur Medical College Hospital and where he met his death. Thereafter, police sent both the dead bodies for autopsy and next day they received the dead body from the police and after burial of the dead bodies, he lodged this Ejahar on 27.04.2002. He identified the Ejahar, which marked as exhibit-1 and his signature on it marked as exhibit 1/1. He identified the accused persons on dock.

15. During cross examination by the defence this witness admitted that he heard about this incident from his nephew. He came to the place of occurrence at about 10.00-11.00 O'clock, in the morning and he found 50/60 persons were present at the place of occurrence. This witness deposed that he saw his brother Mostafa was in front of Shahida's shop. Thereafter, he went to his mother's house, she lives in Moulabipara, which is situated at about 1 ½ kilometers away from the house of deceased Mostafa. During cross examination he deposed that he saw an injury mark at the right hand of deceased Mostafa. He denied the defence suggestion that his sister-in-law Rokshana has committed suicide and as his brother Mostafa saw that his wife Rokshana committed suicide and as such, his brother also committed suicide by drinking poison. This witness also admitted that Amjad is brother-in-law of this witnesses and Rokshana. This witness could not disclose whether or not Amjad informed the Police that his sister-in-law committed suicide by hanging herself. He deposed that he lodged this ejahar after getting information from son of victim Mostafa. He denied the suggestion that he deposed falsely in this case. He also denied that he borrowed an amount of Taka 3200/- from accused Salam and he did not pay the said amount and as such, he lodged this case on false allegations.

16. During cross examination by other accused this witness admitted that he get information about this alleged incident from the witness Ejajul. Thereafter, he came to the place of occurrence. His wife went to the place of occurrence before him and she became senseless. He denied the defence suggestion that he did not hear about this incident from Ejajul and his wife did not go to the place of occurrence and the children of the victim Mostafa were at their grandfather's house at the time of alleged incident and he lodged this case on false allegation to teach accused Salam and his family members.

17. P.W. No. 2 Ulfa Khatun is the wife of informant and sister of victim Rokshana, this witness deposed that the alleged occurrence took place at about 9.00-10.00 a.m. on 24.04.2002. She also deposed that: আসামীরা আমার বোনের বাড়ির খুলি থেকে বের হচ্ছে এবং আসামীদের খুলিতে গিয়া চিল্লাচিল্লী করিতেছে এবং আমার বোনকে দেখি বিছানায় শোয়া অবস্থায় গা ছাড়া অবস্থায় এবং তাহা নেস পেশা বা মৃত অবস্থায় এবং বোনের বাচ্চা দুটিকে সামনে পাই নাই এবং তখন আমি অজ্ঞান হয়ে যাই। আসামীদের বাড়ি আমার বোনের বাড়ির পাশেই অবস্থিত। পরবর্তীতে ডাক্তারের কাছে নেয় আমাকে এবং আমার বাড়িতে আমার জ্ঞান ফিরে। আমার স্বামীর (ইউনুছ) কাছে আমার বাড়িতে গুলাম বে, রোকসানার স্বামীকেও আসামীরা বাড়ির খুলিতে মারডাং করিয়াছে এবং মুখের মধ্যে কীটনাশক জোর পূর্বক ঢুকাইয়া দিয়াছে এবং সেমতে তাহার অবস্থা খারাপ হইলে রোকসানার স্বামীকে হাসপাতালে নেওয়া হয় এবং পরে রোকসানার স্বামীও হাসপাতালে মারা যায়।

18. During cross examination this witness admitted that her house is situated about 2-2 ½ Kilometer away from the place of occurrence. Her brother-in-law namely Ajajul informed her about the alleged incident. During cross examination this witness denied the suggestion that on the alleged date of occurrence Mostafa assaulted Roshana, shortly afterwards, her sister has committed suicide, thereafter her brother-in-law Mostafa came back to their house and saw the incident and as such, he also committed suicide by drinking poison. This witness admitted that she did not see the accused persons assaulted the victim Rokshana. She also denied the defence suggestion that the accused persons did not assault deceased Rokshana

and Mostafa and both the victims committed suicide. During cross examination she deposed that she saw Ejajul, Ahed and Baten at the place of occurrence, thereafter she became senseless. She denied the suggestion that she deposed falsely in this case at the instigation of her husband.

19. P.W. No. 3 Ajajul Haque is a college student and cousin of deceased Mostafa. This witness deposed that the alleged occurrence took place on 24.04.2002 at about 7.30 a.m. at that time, he was taking his breakfast and one Fatema Begum came to the house of deceased Mostafa and she demanded to return her loan amount. Thereafter Fatema Begum went out from the victim's house. He also deposed that: “আমার নিজ রুমে ছিলাম এবং এমন সময় রুম থেকে শুনি রোকসানা ও সালামের ২য় স্ত্রীর মধ্যে ঝগড়া ঝাটি শুরু হয় এবং আমি প্রকৃতির কাছে যাই। (পায়খানাটি ঘর থেকে কিছু দূরে হয়) এবং পায়খানা থেকে রোকসানা ও শেলীর জোরে জোরে কথা কাটাকাটি শুনতে পারি এবং পায়খানা থেকে এসে মোস্তফা ভাইয়ের বাড়িতে আসতে চাইলে রাস্তা বন্ধ থাকতে মোস্তফার বাড়িতে যেতে পারি নাই কারণ আবদুস সালাম মোস্তফার রাস্তা বাঁশের বেড়া দিয়ে বন্ধ করে দিয়েছিল এবং আমি একটু দূর থেকে দেখলাম রোকসানা ভাবীর গায়ে কাদা ও ব্লাউজ ছেড়া ও শেলীর মাথার চুলের মধ্যে কাদা দেখি” This witness also deposed that thereafter he went to the college and came back home at about 11.25 a.m. as he heard hue and cry he went to the place of occurrence and saw the dead body of Rokshana lying on the bed at that time victim Mostafa sought that accused Salam killed his wife. Thereafter, he heard that both the victim Rokshana and Mostafa had died.

20. During cross examination this witness admitted that as he went to the house of victim Mostafa, he did not see the children of the victims in their house. He could not disclose whether or not the victim Rokshana took loan from several persons and due to these loans altercation took place between them or the victim Mostafa used to assault his wife Rokshana. This witness denied the defence suggestion that both the victims Rokshana and Mostafa have committed suicide. He denied the suggestion that he deposed falsely in this case.

21. P.W. No. 4, Md. Mahbubur Rahman deposed that the occurrence took place on 24.04.2002 and he knew both the victims namely Mostafa and Rokshana as well as the accused persons on the dock. This witness deposed that on the alleged date of occurrence at about 07.30 a.m. in the morning, while he was on his way to the Madrasha at that time, he saw the victim Rokshana was crying by holding legs of member Abdus Salam and told him that the accused Salam put pressure on her to repay the loan amount. Thereafter, he went to his office. He also deposed that he came back home at about 04.30 p.m. and heard that both the victims Rokshana and Mustafa have committed suicide by hanging and drinking poison respectively.

22. During cross examination this witness deposed that he heard that the deceased Mostafa sold out his 19 decimals of land to repay the loan money. He also heard that deceased Mustafa has paid some of loan amount. He denied the suggestion that he deposed falsely in this case.

23. On recall by the prosecution this witness deposed that he does not know how the victim Rokshana and her husband Mostafa had died. He could not disclose the name of the person from whom he heard that both the victims Rokshana and Mostafa have committed suicide.

24. P. W. No.5 Abdul Baten was tendered by the prosecution.

25. During cross examination he deposed that আসামীদের বিরুদ্ধে কোন দোষ নাই এবং তাহারা কেন আসামী হয়েছে বলতে পারব না। রোকসানা ও স্বামী জীর মধ্যে দীর্ঘ দিনের ঝগড়া। ধীরে ধীরে রোকসানা ধার দেনা করে এবং মোস্তফা জানতো না এবং ৯০,০০০/- টাকা ধার দেনা হইয়াছিল রোকসানার। মোস্তফা আবেদ আলীর কাছে ৬০,০০০/- টাকা জমি বিক্রয় করিয়াছিল। জমি বিক্রয় করিয়া টাকা পরিশোধ করার পরও লোকজন টাকা পয়সা পাইত। ধারের টাকা নিয়া প্রতিদিন স্বামী-জীর মধ্যে ঝগড়া বিবাদ হইত। রোকসানার বাড়ির পাশেই আমার বাড়ি। সকাল বেলা মোস্তফা রোকসানাকে মারডাং করিয়াছিল। পূর্বেও মোস্তফা মারডাং করিয়া রোকসানাকে বাহির করিয়া দিয়াছিল ঘর হইতে এবং চেয়ারম্যান আপোষ নিষ্পত্তি করিয়া দিয়াছিল এবং সেখানে আমিও ছিলাম। ঘটনার দিন রোকসানাকে কেহ মারডাং করে নাই জানি। মোস্তফা রোকসানাকে আলাগা করে ধরে এবং আমি ও আহাদ আলীও ধরি এবং তারপর বিছানায় রোকসানাকে শোয়ানো হয়। ঘটনার পূর্বের দিন মোস্তফা তাহার ক্রীকে কুড়াল দিয়া মারিয়াছিল। ঘটনার দিন মোস্তফাকে কেহ মারডাং করে নাই। রোকসানার লাশ নামানো হলে এজাজুল আসে ও তারপর মহসিন আসে। মহসিন বলে মোস্তফা তোর বউ কে মারডাং করে মারলি এখন কি করবি। আমি ঘরের মধ্যে যাই এবং মোস্তফা ঘর থেকে বের হয়ে কোথায় কি বিষ খেয়ে মরলো তা আমি আর জানি না। মোস্তফাকে মেডিক্যালো আনা হয়েছিল সলিমুদ্দিন গোবর গুলায় প্রাস্টিকের বদনায় এবং মোস্তফা দৌড় মারে। মোস্তফা Poison খেয়েছিল বিধায় গোবর গুলানো হয়েছিল। উক্ত গোবর আর খাওয়ানো যাই নাই। আসামীরা রোকসানা ও মোস্তফাকে কোন মারডাং করে নাই জানি। আসামীদের বাড়ি ও রোকসানার বাড়ি পাশাপাশি অবস্থিত হয়।

26. P.W. No. 6 Muslama Khatun is the daughter of the victim Mostafa and Rokshana in her deposition deposed that: “এই মামলার মৃত রোকসানা আমার মাতা এবং মৃত মোস্তফা আমার বাবা। ঘটনার তারিখ ২৪/৪/২০০২ ইং এবং সেদিন আমি বাবা-মায়ের সাথে বাসায় ছিলাম। সকাল ৭.০০ টার দিকে আসামী সালাম, শেলী রশিদারা আমার মাকে গালাগালি করে কারণ আমরা তাহাদের খুলি দিয়া যাতায়াত করিতাম এবং যেদিক দিয়া আমার যাইতাম সেখানে বেড়া দিয়া বন্ধ করে দেয়। আসামীদের এহেন কাজে আমার মা প্রতিবাদ করিলে উল্লেখিত আসামীরা আমার মাকে মারধর করে এবং আমার মা মার খেয়ে সালাম মেস্বারের বাড়িতে বিচার দিতে যায় এবং মেস্বার আমার মায়ের সব কথা শুনে এবং বলে যে, তুমি এখন বাড়িতে যাও আমি বিকেলে বিচার করবো। সালাম মেস্বারের কাছ থেকে আমার মা বাড়িতে ফিরিয়া আসে এবং মা যখন আমাদের বাড়ির খুলিতে আসে তখন আসামী সালাম আমার মাকে খুব খারাপ ভাষায় গালাগালি করেছেন আমার মা সালাম মেস্বারের বাড়িতে যায় উল্লেখ্য এবং তারপর আসামী সালাম, শেলী ও রশিদা আমার মাকে খুব মারডাং করে এবং তখন আমি আমার মায়ের কাছে দৌড় দিয়া আসিতে চাইলে আসামী সালামের ছেলে রশিদুল আমাকে ধরে রাখে এবং তখন আসামীরা আমার মাকে মারতে মারতে আমাদের বাড়ির ভিতরে নিয়া যায় এবং আমার মাকে বাড়ির ভিতর নিয়া আবার মারধর করে এবং আমি তখন আমার খালাকে ডাকতে খালার বাড়িতে যাই। কিন্তু খালাকে পাই নাই এবং খালার বাড়ি থেকে ফিরে এসে আমার মাকে মৃত অবস্থায় খাটের উপর শোয়া দেখি এবং তারপর আমার আক্বা বাসায় আসে দোকান থেকে আমার আক্বা এসে আসামীদের গালিগালাজ করে ও প্রতিবাদ করে এবং আসামীরা আমার আক্বাকে ঘিরে রাখে এবং বলে যে, তোমার আক্বা বিষপান করেছে। আমাদের বাড়িতে কোন বিষ ছিল না। আমার আক্বা চিল্লাতে চিল্লাতে বাড়ির দক্ষিণ পশ্চিমের দিকে দৌড়াতে থাকে এবং পড়ে যায় এবং সেখান থেকে আমার আক্বাকে ধরে হাসপাতালে নেওয়া হয়। আমার মায়ের লাশ পুলিশ নিয়েছিল কিনা স্মরণ নাই। যারা আমার মাকে মারডাং করেছিল তাহারা অদ্য ডকে উপস্থিত এবং আমি তাহাদের চিনি। বর্তমানে খালার ও নানীর বাড়িতে থাকি। এই আমার জবানবন্দি।

27. During cross-examination she deposed that: “গত শক্রবারে আমার বিবাহ হইয়াছে, আমার শশুর বাড়ি রংপুর শহরে C.O. বাজারের কাছে। আমার স্বামী মাংস বিক্রয় করে। জনৈক ছফুর আমার নানার ভাই হয়। ছফুর তেলের ব্যবসা করে ঠিক নহে। আমার নানা তেলের ব্যবসা করে ও ছফুর কাঁচামালের ব্যবসা করে। আমার বাবা মা মারা যাবার অনেক পূর্বে আমার খালা (রীনা) বিবাহ হয়েছিল কিন্তু বিদায় হয় নাই। রীনার এখনও আনুষ্ঠানিক বিদায় হয় নাই। ইহা সত্য নহে যে, রীনা খালার আনুষ্ঠানিক বিদায় হইয়া গিয়াছে। গত শক্রবারের পূর্বে নানার বাড়ি, খালার বাড়ি ছিলাম, গত শক্রবারে আমার খালার বাড়িতে আমার বিবাহ হইয়াছিল। ইহা সত্য নহে যে, কথিত ঘটনার ২ (দুই) দিন পূর্ব থেকে আমি আমার খালার বাড়িতে ছিলাম। কথিত ঘটনার দিন কথিত মতে ঘটনার পূর্ব থেকেই আসামীদের সহিত আমাদের খারাপ সম্পর্ক ছিল কারণ আমরা আসামীদের খুলি দিয়া যাতায়াত করিতাম। আমাদের বাসার লজিং মাস্টারের নাম ছিল আশিদুল। আমার মাতা গ্রামে বিভিন্ন লোকজনের নিকট টাকা ধার নিত মর্মে আমি জানি না। এলাকার লোকদের নিকট হইতে টাকা পয়সা ধার করে নিয়ে এসে আমার মা কথিত লজিং মাস্টারকে দিত ইহা সত্য নহে। আমার বাবা-মা মারা যাবার করদিন পর লজিং মাস্টার আমাদের বাড়ি থেকে চলে যায়। আমার বাবা আমার মায়ের সহিত টাকা পয়সা হাওলাত নেবার জন্য রাগারাগি করিত ইহা সত্য নহে। ইহা সত্য নহে যে, আমার বাবা প্রায়ই আমার মাকে মারডাং করিত টাকা পয়সা হাওলাত নেবার কারণে। ইহা সত্য নহে, আমার বাবা আমার মাকে মারডাং করিয়া বাসা থেকে বের করিয়া দিয়াছিল এবং চেয়ারম্যান আপোষ করিয়া দিয়াছিল। আমাদের বাড়ির আশেপাশে আসামীদের বাড়ি আমাদের বাড়ি ও আরও ছয়/সাতটি বাসা বাড়ি আছে। আসামী সালামের বাড়ি আমাদের বাড়ির পাশাপাশি এবং আর সব বাড়ি ফাঁকে ফাঁকে। মা যখন সালাম মেস্বারের বাড়ি গিয়াছিল তখন আমি সাথে যাই নাই এবং আমি নিজ বাড়িতে ছিলাম এবং আমাদের বাড়ির খুলিতে বসা ছিলাম। কথিত আসামীদের হাতে কি কি ছিল তা আমার স্মরণ নাই এখন। সালাম মেস্বারের বাড়িতে কি কথা

হয়েছিল মায়ের সাথে তা আমি বলিতে পারিব না কারণ মায়ের সাথে আর আমার কথার সুযোগই হয় নাই কারণ সে মারা যায়। আমাদের বাসা থেকে খালার বাসায় যাইতে হেঁটে অনুমান ১৫ (পনের) মিনিট লাগে। যেদিন বাবা মারা যায় সেদিন পুলিশ এসেছিল কিনা আমি বলতে পারবো না কারণ আমি কান্নাকাটি করলে খালা আমাকে সেখান থেকে নিয়ে চলে যায়। ইহা সত্য নহে যে, অদ্য আদালতে এসে সত্য গোপন করে মিথ্যা সাক্ষী দিবার এবং ঘটনার তারিখের দুই দিন পূর্ব থেকে আমি আবার খালার বাড়িতে ছিলাম এবং ঘটনার দিন আমি আমার বাড়িতে ছিলাম না। কথিত মতে এজাজুলকে আমি চিনি এবং তাহার বাসা আমাদের বাড়ির পাশে। সাক্ষী এজাজুলের বাড়ি থেকে আমাদের বাড়িতে কথাবার্তা হলে সব শোনা যায় না তবে অল্প অল্প শোনা যায়। ঘটনার দিনের পরে পুলিশ আসিয়াছিল এবং আমাকে জিজ্ঞাসাবাদ করিয়াছিল। রশিদুল আমাকে ধরিয়া রাখিয়াছিল এ কথা আমি পুলিশকে বলি নাই। ইহা সত্য নহে যে, আমার বাবার অত্যাচারের কারণে আমার মা গলায় ফাঁস রাখিয়া মারা যায় এবং আমার মায়ের এই মৃত্যু দেখিয়া আমার বাবা বিষ খাইয়া মারা গিয়াছিল। ইহা সত্য নহে যে, আসামীদের সহিত পূর্ব শত্রুতা থাকায় আমার চাচা মিথ্যা মামলা করিয়াছে। যেদিন মামলার তারিখ থাকে সেদিনই কাচারিতে আসি। প্রত্যেক তারিখে তারিখে আমি আসি ঠিক। কাচারিতে এসে এসে সাক্ষী দিতে শিখে গিয়েছি ইহা ঠিক নহে। পূর্বের দেওয়া সাক্ষীদের কাছ থেকে শুনে শুনে এই মিথ্যা সাক্ষী দিলাম। ইহা সত্য নহে।

28. P.W. No. 7, Rabul Islam is the son of victim Mostafa and Rokshana deposed in his deposition that: “ আমি মোঃ রবিউল ইসলাম। পি ডব্লিউ-৬ আমার ছোট বোন। মৃত্যু রোকসানা আমার মা ও মোস্তফা আমার পিতা হন। ২৪/৪/২০০২ তারিখ ঘটনা এবং সকাল বেলা আমি আমার ছোট ভাইকে (ইনসানুল) মাদ্রাসায় দিয়ে আসতে যাই এবং মাদ্রাসায় দিয়ে ফিরে আসার সময় দেখি যে, আমার মা বিচার দিয়ে এসে কাঁদতে কাঁদতে ফিরে আসিতেছিল এবং মায়ের কাছে জিজ্ঞাসা করিলে বলে যে, আসামীদের খুলি দিয়ে হাঁটকে কেন্দ্র করে মারডাং করে আসামীরা আমার মাকে এবং তাই মেস্বারের কাছে বিচার দিয়ে এসেছে। বাড়ির খুলিতে পৌঁছাতে আসামী সালাম খারাপ বলে যে মেস্বার তোর ভাতার হয় তাই সেখানে বিচার দিতে গিয়েছিলি এবং তখন আসামী সালাম, রশিদা ও শেলী আমার মাকে মারধোর করিতে শুরু করে। মায়ের উক্ত অবস্থায় আন্কাকে সহিদারের দোকানের দিকে ডাকতে বাই। আমি আমার আন্কাকে বলি যে, আসামীরা মাকে মারিতেছে এবং বাবাকে নিয়ে বাড়িতে চলে আসি এবং এসে দেখি যে, আমার মাকে আমাদের ঘরের তীরের সাথে পড়নের শাড়ী দিয়ে বুলন্ত অবস্থায় মৃত। আমার বাবা নিজে আমার মাকে বুলন্ত অবস্থা থেকে নামায় এবং আমার বাবা রাগ হয় ও বলে যে পুলিশ কেস করবো ও আসামীদের গালি গালাজ করে এবং আমি আমার খালার বাড়িতে খালাকে ডাকিতে যাই। খালাকে ডাকিয়া আনিয়া দেখি যে বাবাকে বিষ খাওয়া অবস্থায় এবং বাবা বিষ খাওয়া অবস্থায় পশ্চিম পাশের রাস্তার দিকে যাইতেছে এবং তখন কি করে আমার বাবাকে মেডিক্যালো নেয়া হইয়াছিল এবং মেডিক্যালো আমার বাবা মারা গিয়াছে। পুলিশ এসে ঘটনার দিন আমার মায়ের লাশ নিয়া গিয়াছিল এই আমার জানা ঘটনা, বর্তমানে চাচা খালারা দেখাশুনা করে। এই আমার জবানবন্দি।

29. During cross-examination he deposed that: “ ইহা সত্য নহে যে, কথিত ঘটনার দিন আমি আমার ঘটনার বাড়িতে ছিলাম সকাল অনুমান ৭.০০ টার দিকে ঘটনার দিন ভাইকে নিয়া মাদ্রাসায় গিয়াছিলাম। ইহা সত্য নহে যে, জবানবন্দির কথামত মাদ্রাসায় যাওয়া আসামীদের কর্তৃক মাতাকে মারডাং করাও সকল বক্তব্য মিথ্যা ও শেখানো মতে অদ্য সাক্ষী দিলাম মিথ্যা। স্বখন বাবা-মা মারা যান তখন ৫ম শ্রেণীতে লেখাপড়া করিতাম এবং এখন লেখাপড়া করি না।

30. P. W. No. 8 Sabur Ali, in his deposition he deposed that deceased Rokshana is his sister-in-law and the deceased Golam Mostafa is his full brother. He could not recall the date of occurrence. This witness also deposed that on the alleged date of occurrence, he went to Rangpur town for business purpose and he returned from town at about 11.30-12.00 a.m. at that time, his niece namely Rina told him that Uncle Golam Mostafa has drink poison. On getting that information he started for the house of Mustafa, at that time, he saw 2/3 neighbouring people were carrying him and sent him to the Rangpur Hospital by van. He further deposed that his brother told him that he drink poison because yesterday an altercation took place with his wife and as such she committed suicide. At that stage, he was declared as hostile and cross examined him by the prosecution.

31. During cross examination by the prosecution he admitted that deceased Mostafa is his step brother and he did not see the incident. He denied the suggestion that he deposed falsely in this case, due to previous enmity with the informant relating to a monetary transaction between them. The defence declined to cross examine him.

32. P.W. No.9 Md. Abdur Rouf, deposed that the deceased Rokshana is his sister and he is Assistant Teacher of a High school. This witness deposed that on the alleged date of

occurrence at about 03.00 p.m. his nephew Soibual Alam informed him that accused Abdus Salam and his 2 wives namely Shali and Rashida assaulted his sister and killed her. They also poured poison into mouth of the deceased Mostafa and the neighbours sent him to the Rangpur Medical College Hospital for treatment. On getting information, he went to the place of occurrence. This witness also deposed that police prepared the inquest report in his presence and he put his signature on it however, he did not read the same. He deposed that he heard about this incident from the neighbours and children of the victims that on the alleged date of occurrence at about 8.00 O'clock in the morning, the accused persons assaulted his sister Rokshana, as such, she made complaint to the ex-member Abdus Salam and while she returning home at that time, the accused persons again assaulted her and she became senseless, thereafter, they hanged her body with a bar by her sari, thereafter, the deceased Golam Mostafa came back home and saw the dead body of his wife he protested about this incident, at that time, the accused persons assaulted his brother-in-law and forcibly poured poison into his month and he became senseless. Later, the neighbours sent him to the Hospital and where he met his death. He identified his signature on the inquest report, which marked as exhibit-2/2.

33. During cross examination he deposed that he went to the place of occurrence at about 3.30 p.m. and he saw police at the place of occurrence.

34. P.W. No.10 Md. Abdus Salam is the ex-member of Union Parishad deposed that he knows both the victims. The occurrence took place on 24.04.2002 and on that day, at about 7.30-9.00 a.m. he was at his home. He also deposed that at that time, deceased Rokshan came to his house and made a complaint that the accused Abdus Salam and his two wives namely Shali and Rashida assaulted her for loan amount. He further stated that he assured her to resolve this dispute through a *salish*. Thereafter, at about 1.00 p.m. while he was returning home from work, then he heard that the Rokshana had died in her house and Mostafa died in the hospital. Thereafter, he went to the house of victim and saw the dead body of the victim Rokshana lying on the bed and the police prepared the inquest report in his presence and he put his signature on it. He identified his signature on the inquest report, which marked as exhibit-2/3.

35. During cross examination this witness admitted that he put his signature on the inquest report however, he stated that police took his signature in a blank paper. He also admitted that deceased Rokshana and Mostafa borrowed an amount of Taka 24,000/- from the people of this area. He denied the suggestion that the victim Rokshana did not go to his house on the date of occurrence and he deposed falsely in this case.

36. P.W. No. 11 Jamila is the mother of deceased Mostafa and mother-in-law of deceased Rokshana. This witness deposed that her house is situated half an hour walk away from the house of Mostafa. She deposed that on the alleged date of occurrence, at about 8.00-9.00 a.m. the victim Rokshana was coming towards her house, at that time, she was crying and mud strained as she asked what had happened in reply she told her that the accused Salam, Sheli and Rashida assaulted her. Thereafter, Rokshana went to the house of member and she followed her there and the victim Rokshana made a complaint to the Member against the accused persons. At that time, the member Salam assured her that he will resolve the matter at the evening. Thereafter, her daughter-in-law went to her house. She also deposed that Ejajul informed her about this incident, on getting this information her son Younus went to the house of Mostafa and Rokshana and she followed her there and saw that Rabibul and Moslama were crying and told her that the accused persons killed their mother. She also

deposed that she saw the dead body of Rokshana was lying on the bed and her son Mostafa shouted at them and said he will file a case, after making complaint to the Chairman, then the accused persons caught hold the victim Mostafa and poured poison into his mouth and the neighbours sent her son to the Hospital and where he met his death.

37. During cross examination this witness admitted that on the alleged date of occurrence deceased Rokshana went her house along with her children. This witness went to the house of member along with Roskhana and her children. He denied the defence suggestion that the victim Rokshana committed suicide by hanging herself. He also denied the suggestion that the victim Mostafa committed suicide by taking poison. She denied the suggestion that she deposed falsely in this case.

38. P.W. No.12 Md. Amjad Hossain deposed that on the date of occurrence at about 8.00 / 8.30 a. m. his sister-in-law, the deceased Rokshana came to his house and told him that the accused persons namely Selina, Rashida and Salam assaulted her, due to a dispute arised in respect of the pathway. The deceased Rokshana also stated that she went to the house of Salam member and he assured her to hold a *salish* at the afternoon. This witness deposed that at about 01.30 p.m. his son informed him about the incident and he along with his son went to the house of Rokshana and saw her dead body lying on the bed and the victim's son (Robiul) and daughter (Muslama) told him that the accused persons assaulted her mother in the morning, later on, they again assaulted her, at that time, they went their aunt's house and on return they saw her mother met her death. This witness also deposed that he made a phone call to the local police station and they asked him to go there. Thereafter, at about 02.30 p. m. he went to the police station and informed them about the incident but the police became angry and took his signature on a paper. This witness heard that Golam Mostafa also died in the Hospital and the police took the dead body of Mostafa. He identified his signature in the U.D. case.

39. During cross examination this witness denied the defence suggestion that he made written complaint to the Police that the death of the victim was caused due to hanging. This witness heard that the deceased Mostafa went to the house of accused persons to protest against assaulting of his wife, at that time, the accuseds poured poison into mouth of deceased Mostafa. He denied the suggestion that the deceased Mostafa committed suicide by taking poison and deceased Rokshana committed suicide by hanging herself and he deposed falsely in this case.

40. P.W.13 Ahad Ali in his deposition deposed that the occurrence took place on 24.04.2002 and on that day, in the morning, he went to the shop of one Shahider, which is situated ½ Kilometter away from his house. This witness also deposed that: “দোকান থেকে ফিরে এসে দেখি যে গ্রামের ফতে চাচী রোকসানা করে ডাকছে এবং মোস্তফা বলে যে সে বাসায় নাই এবং ফতে চাচী দেখি যে সালাম মেম্বারের বাড়ির দিকে যাচ্ছে এবং সালামের বাড়িতে ফতে চাচী আসামী সেলীর সাথে কথা বলছে এবং সালামের বাড়িতে সেলী বলে যে রোকসানার কঠ শোনা যাচ্ছে এবং ফতে চাচী ঘুরিয়া রোকসানার বাড়িতে ফিরে আসে এবং ফতে চাচী রোকসানার সাথে ঝগড়া করে এবং সাথে সেলীও ঝগড়া করে এবং ০৫/০৭ মিনিট পর আমি রিক্সা নিয়ে শহরের দিকে চলে যাই। রিক্সা চালানোর পর ১১.০০/১১.৩০ টার দিকে বাড়িতে ফিরে আসি এবং মোস্তফা ভাই বউ বউ বলে দুই বার চিৎকার দেয় এবং শুনিয়ে মোস্তফার বাড়িতে যাই এবং গিয়া দেখি যে, রোকসানা ফাঁসিতে লটকানো এবং মোস্তফা ভাই রোকসানার পা ভাসিয়া ধরে আছে এবং আমাকে বাধন খুলে দিতে বলে এবং লাশ বিছানায় শুয়াইয়া দেই এবং তখন এজাজুল, মহসিন, ইন্তেজারা আসে এবং এজাজুল বলে যে ডাক্তার ডাকো এবং আমি ডাক্তার ডাকিতে যাই এবং ডাক্তারের দেখা না পেয়ে ঘুরে আসি এবং ওয়াহেদ চিৎকার করে যে মোস্তফা এনড্রিন খেয়েছে আগাও এবং বের হয়ে গোবর খাওয়ানোর চেষ্টা হলো এবং সে বলে যে কিছু হয় নাই এবং পুরনো বাড়ির দিকে দৌড়ায় এবং গোবর খেতে চায় না। এবং আফজালের দোকানের সামনে টাকা বের করে এবং তাহার ভাইকে দেয় এবং তারপর হাসপাতালে নেওয়া হয় এবং হাসপাতালে মোস্তফা মারা যায়।”

41. During cross-examination he deposed that: “মৃত্যু রোকসানা ও মৃত মোস্তফার বাড়ির পাশে আমার বাড়ি। ফতে চাচী হইল ফাতেমা যিনি এই মামলার সাক্ষী এই আসামীরা মৃত্যু রোকসানাকে মারডাং করিয়াছিল তাহা আমি দেখি নাই বা শুনি নাই।”

42. P.W.14 Sakim Uddin, in his deposition deposed that he lived in the Uttar Gariya village. This witness deposed that on 24.04.2002, both the victims Rokshana and Mostafa had died. This witness also deposed that on that day, in the morning, he saw Fatima called the victim, in reply deceased Mostofa said she was not at home, then Fatima went to the house of accused Shaly and as they heard voice of Rokshana, then they went to the victim's house again and an altercation took place. Thereafter, this witness went to town with his rickshaw and he came back home at about 12.00 O'clock. At this stage, he was declared hostile by the prosecution.

43. During cross examination by the prosecution he denied the suggestion that Fatima did not come to the house of Rokshana and no altercation took place between Fatema and Rokshana. He denied the suggestion that he deposed falsely in this case, at the instigation of the accused persons.

44. During cross examination by the accused this witness admitted that the deceased Mustafa is his brother-in-law and he did not see the incident. He saw the dead body of Rokshana lying on the bed. He saw Moshin, Wahed, Rezaul, Abed Ali, Baten, Sayed Ali and some women were present at the place of occurrence. He did not hear anything from the village that the accused persons assaulted the victims namely Mostafa and Rokshana.

45. P.W. No.15 Sub-Inspector Nibaran Chandra Borman is the Recording Officer of the Unnatural Death Case No. 121 dated 24.04.2002. This witness deposed that “এই মামলা সংক্রান্তে মৃত্যু রোকসানা এর ভগ্নিপতি আমজাদ হোসেন লিখিত ভাবে থানায় জানান যে, তাহার শ্যালিকা রোকসানা গলায় ফাঁসা দিয়া আত্মহত্যা করিয়াছে এবং লিখিত অবগতিপত্র পেয়ে থানায় (সদর রংপুর) ডিউটি অফিসার থাকাকালে অপমৃত্যু মামলা নং ১২১ তাং ২৪/৪/২০০২ ইং রঞ্জু করে তদন্তভার এস.আই মোঃ তাহৎইয়াতুল এর উপর অর্পণ করি। He identified his signature on U.D. case, which mark as exhibit-3.

46. During cross-examination he deposed that: “আমজাদ হোসেন লিখিত এজাহার দেন ঠিক। মামলা রঞ্জুর সাথে সাথে I.O. কে Endorse করিয়াছিলাম। দুপুর ১২.৪৫ মিনিট তাং ২৪/৪/২০০২ ঘটনার সময় ঠিক এজাহার মতে। এজাহার মতে লাশ নামানো হয়েছে এবং মাটিতে শোয়ানো অবস্থায় আছে দেখা যায় ঠিক। রোকসানার স্বামী মোঃ মোস্তফা কথিত ঘটনার সময় কোথায় ছিল বা তাঁহার ভূমিকা কি ছিল তাহা এজাহারে উল্লেখ নাই ঠিক।

47. P.W. No.16, Constable No. 609, Sree Moninranath Borman in his deposition deposed that on 24.04.2002, he along with the Investigating Officer went to the place of occurrence and on completion of inquest report by the Investigating Officer, he carried the dead body of Rokshana to the morgue of Rangpur Medical College Hospital through a Chalan, he identified his signature on it which marked as exhibit-4.

48. During cross examination he admitted that after taking the dead body of Rokshana, the doctor did not give him any paper.

49. P.W. No. 17 Dr. Abdul Jalil in his deposition deposed that that he held autopsy on the dead body of the deceased Rokshana on 25.04.2002 brought and identified by Constable No. 609, Sree Moninranath Borman and found the following injuries:-

1. One large hematoma is situated over the right parietal region 1” away in front of lambdoid suture measuring 2” X 1 ½”.

2. One small hematoma is situated over the left parietal region adjacent to the sagittal suture and left lambdoid suture measuring 1" X 1 ½".
3. One transverse ligature mark is situated over the thyroid cartilage in front and on each side of the neck which slipped upward with abrasion followed by oblique ligature mark is found. Knot mark is situated near left mandibular angle.

“On dissection parch men titration not found extravasations of blood found to the mounds. Dark clotted blood found under the scalp and extramural space in the right side. Both by brain it's excavated (right hemephra whole brain) found congested. All the injuries mentioned above are ante mortem in nature. In our opinion the cause of death is due to shock and intracranial hemorrhage with asphyxia as a result of head injury and hanging which were ante mortem and homicidal in nature”.

50. This witness also held autopsy on the dead body of the deceased Golam Mostafa on 25.04.2002 brought and identified by Constable No. 118, Abdul Gafur and he did not found any external and internal injury on the person of the deceased. On receipt of the chemical analysis report, he opined that “from our P.M. examination report and chemical analysis report, we are in opinion that the cause of death due to asphyxia as a result of intake of O.P.C. (organic phosphorous compound) poisoning which was ante mortem in nature.

51. During cross examination this witness admitted that the injury Nos. 1 and 2 of the post mortem report of deceased Rokshana were not mentioned in the inquest report.

52. P.W. No. 18 Inspector Md. Ohiduzzaman, the Officer-in-Charge of Rangpur Kotwali Police Station as Investigating Officer, investigated the case. This witness also deposed that on receipt of the complaint petition from the informant Md. Younus Ali, he registered the Kotwali Police Station Case No. 68 dated 28.04.2002 under sections 302/201/34 of the Penal Code. He filled up the FIR Form, which marked as exhibit-5 and his two signatures on it marked as exhibit- 5 (Ka) and 5 (Kha). He identified his two signatures in the second page of complaint petition; these are marked as exhibit-1/2 and 1/3. During investigation he visited the place of occurrence, prepared the sketch map with an index, these were marked as Exhibits 6 and 7 and his signatures on those as Exhibit-6/ka and 7/ka respectively. He recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure and collected the post mortem reports, perused the reports of the Investigating officers of two U.D. cases. After conclusion of investigation, finding prima facie case against the accused persons namely Abdus Salam, Salina @ shaly and Rashida, he submitted charge sheet being No. 669 dated 03.11.2002 under sections 302/201 of the Penal Code.

53. During cross examination this witness admitted that Sub-inspector Md. Tahitul Islam prepared the inquest report of deceased Rokshana in presence of witnesses, pursuant to the Unnatural Death Case No. 121 dated 24.04.2002 and witness Md. Amjad Hossain, the brother-in-law of deceased Rokshana is the informant of the said U.D. case, he identified the dead body of deceased Rokshana. This witness admitted that it is stated in the Inquest report of deceased Rokshana, that a crescent shape ligature mark of thin rope is found on the neck and there is no other injury mentioned in the said report. This witness admitted that Sub-inspector Sree Anukul Talukdar prepared the inquest report of the deceased Mostafa, pursuant to the Unnatural Death Case No. 123 dated 24.04.2002 and Abaz Ali, Araz Ali, Abdur Razzaque and Raju were present there, during preparation of inquest report of deceased Mostafa, but they were not cited as witnesses in the Charge sheet. He denied the suggestion that he hastily submitted the charge sheet and his investigation was perfunctory.

54. P.W. No.19 Sub-inspector Md. Tahitul Islam as Investigating Officer of the Kotwali Police Station U.D. case No. 121 of 2002 dated 24.04.2002, visited the place of occurrence and prepared the inquest report of deceased Rokshana in presence of witnesses. This witness deposed that he sent the dead body to the morgue of Rangpur Medical College for autopsy and prepared the seizure list and made conversation with the doctor over telephone, who held autopsy on the dead body of deceased Rokshana. This witness also deposed that he submitted all documents and record of U. D. case No. 121 of 2002 to the Investigating Officer Mr. Wahiduzzaman, the Officer-in-Charge of Kotwali Police Station. He identified the Inquest report of deceased Rokshana, which marked as exhibit-2 and his signature on it marked as exhibit-2/1 and the seizure list marked as exhibit -8 and his signature on it marked as exhibit-8/Ka. These alamots are violet coloured print sari, deep brown coloured petticoat, pink coloured blouse and light violet and white coloured sari, these are marked as material exhibit-1 series. This witness also deposed that in the inquest report, there are no sign of head injury of the deceased Rokshana because he did not see the head of the victim by moving her hair. He denied the suggestion that he did not act transparently at the time of preparing the seizure list and Inquest report of deceased Rokshana.

55. During cross examination this witness deposed that সত্য যে, প্রথম যখন আমি মৃতদেহ দেখিয়াছি তখন মৃতদেহের পড়নে একটি বেগুনি রং এর শাড়ি ছিল। সত্য যে, মৃতদেহের লাশ যখন আমি মর্গে চালান দেই তখন ও বেগুনি রং এর ঐ শাড়িটি মৃতার পড়নে ছিল। আমি সে শাড়িটি সিজ করিয়াছি। উহা পরিধেয় শাড়িটি নহে অপর একটি শাড়ি যাহা বেগুনি সাদা রং এর আমি সর্বমোট একটি সিজার লিস্ট তৈরী করিয়াছি যাহা প্রদর্শনী- ৮। এই সিজার লিস্টে ব্লাউজ পেডিকোর্ট ইত্যাদির কোন উল্লেখ নাই। যে শাড়িটি আমি প্রদর্শনী ৮ মূলে সিজ করিয়াছি ঐ শাড়িটি আমার সামনে উপস্থাপন করেন মৃতার বোন সাফী উলফা বেগম। সিজার লিস্টে সাফী আছে সবুর আলী ও ওয়াস আলী এই ২ জনই মৃত্তা রোকসানার স্বামী মৃত মোস্তফার ভাই কিনা আমার জানা নাই। প্রদর্শনী ৮ চিত্রিত, জন্ম তালিকার ৪ নং কলামে ২য় লাইন শাড়ি যাহার দ্বারা মৃত্তা রোকসানা বসতঘরের তীরের সহিত ফাঁস দিয়া আত্মহত্যা করিয়াছিল। পর্যন্ত এক কলামের এক ঘরে লেখা সত্য। উক্তি করিয়াছিল এর পরবর্তী বলিয়া জানা যায়। লেখাগুলি ভিন্ন কলাম দিয়া লেখা। উক্তি করিয়াছিল শব্দের ল অক্ষরের পরে ঐ নাই। প্রদর্শনী ৪ চিত্রিত চালানটি আমার তৈরী। প্রদর্শনী ৪ এর ৯ নং কলামের ভিতরে লেখা আছে ফাঁস দিয়া আত্মহত্যা। এই কলামটি সরকারের নির্ধারিত ফরম। আমি সততা এবং নিষ্ঠার সঙ্গে সুরতহাল রিপোর্ট তৈরী করিয়াছি। আমার আচারণে কোন স্বচ্ছতার অভাব ছিল না। মৃত্তা রোকসানার সুরতহাল প্রতিবেদনে শরীর বলিতে আমি আপাদমস্তক বুঝাইয়াছি। সংবাদদাতা মোঃ আমজাদ হোসেনের লিখিত এজাহারের ভিত্তিতে অস্বাভাবিক মৃত্তা মামলা রঞ্জু হয়। এজাহারের শিরোনাম বিষয় ফাঁসি লটকাইয়া মৃত প্রসঙ্গে। সত্য যে, সংবাদদাতা আমজাদ হোসেন মৃত্তা রোকসানার দুলাভাই। সত্য যে, এজাহারে আমজাদ হোসেন মৃত্তা রোকসানা ফাঁসি লটকাইয়া মৃত্যুবরণ করিয়াছে উল্লেখ করিয়াছেন। সত্য যে, সুরতহাল রিপোর্টে উল্লেখ আছে মৃত্তার গলায় চিকন রশির অর্ধ চন্দ্রাকৃতির দাগ দেখা গেল। আমি রশি শব্দটি এই জন্য ব্যবহার করিয়াছি যে, দাগটি খুব চিকন ছিল। সত্য যে, আমি সুরতহাল লিখিত চিকন রশি আদৌ অনুসন্ধান করি নাই। মৃত্তা রোকসানার দেহ মৃত্তা রোকসানার বোন সাফী উলফা বেগমের মাধ্যমে ভালভাবে ওলট পালট করিয়া দেখিয়াছি, মৃত্তা রোকসানার সমস্ত শরীর ওলট পালট করিয়া দেখিয়াছি। মৃত্তার গলায় চিকন রশির অর্ধচন্দ্রাকৃতির দাগ ছাড়া শরীরের আর কোথাও কোন প্রকার জখম পাই নাই। মৃত্তা রোকসানার সুরতহাল যে ৬ জন সাফীর সাক্ষর রহিয়াছে তাহাদের নাম যথাক্রমে ১। আঃ সালাম, পিতা -মৃত নাছিম উদ্দিন ২। মোঃ আঃ রউফ, পিতা- সবুর আলী ৩। নাম অস্পষ্ট ৪। নাম অস্পষ্ট ৫। মোঃ আনোয়ারুল হক ৬। আঃ বাতেন, পিতা- ছোলেমান আলী। আমি সুরতহালের কার্বন কপি দেখিয়া সাক্ষ্য দিতেছি। মূল সুরতহাল রিপোর্ট কোথায় বলিতে পারিব না। সত্য যে, আমি ডাক্তার যিনি ময়না তদন্ত করিয়াছেন তার সাথে টেলিফোনে যোগাযোগ করিয়াছি। ঐ ডাক্তার তার নাম ডাঃ আব্দুল জলিল। তাহার টেলিফোন নম্বর এই মুহূর্তে মনে নাই। গত ২৫-৪-২০০২ ইং তারিখ বিকাল ৩.০০ ঘটিকায় ময়না তদন্তকারী ডাঃ আব্দুল জলিল আমাকে টেলিফোনে জানাইলেন পোস্ট মর্টেম রিপোর্ট প্রস্তুত করা হইয়াছে। আমি ২৯-৪-২০০২ ইং তারিখে ঐ পোস্ট মর্টেম রিপোর্ট পাইয়াছি। আমি ডাঃ আব্দুল জলিলের সাথে শারীরিক ভাবে দেখা করি নাই।

56. These are the depositions of the prosecution witnesses.

57. We have gone through the first information report, inquest report, charge sheet, deposition of the witnesses, impugned judgment and order and other materials on record. We have given our anxious consideration to the submissions advanced by the learned Advocates

for both the sides. Learned Advocate appearing for the appellants argued that the appellants were convicted and sentenced on the basis of the evidence adduced by the prosecution witness Nos. 1, 2, 3, 6, 7, 9, 10, 11, 12, 17 and 18. Except the Police personnel and Medical Officer, all other prosecution witnesses mentioned above are near relatives of the informant and both the deceased and their belated disclosure that on the alleged date and time of occurrence, the appellants seriously assaulted the victim Rokshana and as a result, she became senseless. The appellants thought that the victim Rokshana met her death and as such, they carried the body of Rokshana inside her house and hanged her body with a bar by her sari to show that the victim committed suicide; thereafter they left the place of occurrence. On getting information, victim Mostafa came to the place of occurrence; he became angry and shouted at them. At that stage, the appellants assaulted him and forcibly poured poison into his mouth and due to the reaction of poison; he met his death at the Hospital, which could be regarded as subsequent embellishments. The learned Judge relying on the evidence of near relatives and interested witnesses convicted these appellants.

58. **First** question raised by learned Advocate for the Appellants that whether or not all the prosecution witnesses are near relatives of the informant or victim and judgment and order of conviction and sentence passed by the trial Court against these appellants on the basis of the evidence of interested, inter-related and partisan witnesses is sustainable in law. The evidence of interested, inter-related and partisan witnesses must be closely scrutinized before it is accepted. We find support of this contention in the case of *Nawabul Alam and ors. Vs. The State, 15 BLD (AD) 61* wherein it is held:

*“The principle that is to be followed is that the evidence of persons falling in the category of interested, interrelated and partisan witnesses, must be closely and critically scrutinized. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses for that will result in a failure of justice, but their evidence is liable to be scrutinized with more care and caution than is necessary in the case of disinterested and unrelated witnesses. An interested witness is one who has a motive for falsely implicating an accused person and that is the reason why his evidence is initially suspect. His evidence has to cross the hurdle of critical appreciation. As his evidence cannot be thrown out mechanically because of his interestedness, so his evidence cannot be accepted mechanically without a critical examination. As Hamoodur Rahman, J. (as his Lordship then was) observed in the case of *Ali Ahmed vs. State (14 DLR (SC) 81*):*

“Prudence, of course, requires that the evidence of an interested witness should be scrutinized with care and conviction should not be based upon such evidence alone unless the Court can place implicit reliance thereon” (Para - 10).

*.....The rule that, the evidence of interested witnesses requires corroboration is not an inflexible one it is a rule of caution rather than an ordinary rule of appreciation of evidence. The Supreme Court of Pakistan spelt out the rule in the case of *Nazir Vs. The State, 14 DLR (SC) 159*, as follows:*

“.....we had no intention of laying down an inflexible rule that the statement of an interested witness (by which expression is meant a witness who has a motive for falsely implicating an accused person) can never be accepted without corroboration. There may be an interested witness whom the Court regards as incapable of falsely, implicating an innocent person. But he will be an exceptional witness and, so far as an ordinary interested witness is

concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated alongwith the guilty the Court will in the case of an ordinary interested witness look for some circumstances that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. That is what is meant by saying that the statement of an interested witness ordinarily needs corroboration.

.....The High court Division was obviously in the wrong in holding that no corroboration was necessary in this case. It failed to scrutinize the evidence of interested eye- witnesses and totally ignored the fact that the evidence of P.Ws. 3-5 having so many infirmities is by itself insufficient and unsafe to sustain any conviction on a capital charge and requires corroboration by either circumstantial or ocular corroborative evidence.”

59. In the instant case, we find that the P.W.-1 Md. Younus Ali is the informant and brother of the deceased Mostafa, P.W. No. 2 Ulfa Khatun is the wife of informant and sister of victim Rokshana, P.W. No. 3 Ajajul Haque is a cousin of deceased Mostafa, P.W. No. 6 Muslama Khatun and P.W. No. 7, Rabiul Islam are daughter and son of the deceased Mostafa and Rokshana, P. W. No. 8 Sabur Ali, step brother of the deceased Golam Mostafa. P.W. No.9 Md. Abdur Rouf, brother of the deceased Rokshana and P.W. No.12 Md. Amjad Hossain, brother-in-law of the deceased Rokshana, these prosecution witnesses are near relation of both the deceased. The prosecution witness Nos. 6 and 7 are son and daughter of both the victims, they lost their parents on the alleged date of occurrence. They are probable and natural witnesses of the alleged incident of murder and they narrated vivid picture of the alleged occurrence, how their parents met their death. The prosecution witness Nos. 2, 3, 10, 11 and 12 witnessed part of the incident and supported the prosecution case. There is no major contradiction or discrepancy in their statements on any material point. Prosecution Witnesses Nos.1 2, 3, 6, 7, 10, 11 and 12 are material witnesses, though they are close relatives of both the victim, but they cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 2, 3, 6, 7, 10, 11 and 12 can be discarded or liable to be flung to the wind simply because they happened to be close relative of the deceased Golam Mostafa and Rokshana. They are most natural, probable and competent witnesses in the present case. The prosecution witness Nos. 6 and 7 are inmates of the house and saw the major part incident. They have given details of the entire occurrence and even in their cross-examination the defence could not show any material contradiction or discrepancy, for which their ocular testimonies should be disbelieved. We find support of this contention in the case of ***State vs. Moslem reported in 55 DLR (2003) 116*** wherein this Division held that:

“A close relative who is a material witness cannot be regarded as an interested witness. The terms ‘interestedness’ postulates that the witness must have some direct interest in having the accused somehow or the other connected for some animus or some other reasons. ‘Interestedness’ has been defined by Supreme Court of Pakistan in the case of Nazir and others vs. State, PLD 1962 (SC)269 in the following words. “Interested witness is one who has a motive for falsely implicating an accused person.”

There is no law that the statement of a particular witness is liable be flung to the wind simply because he happens to be a close relative of the victim. However, the court while putting reliance on the statement of a close relation and so-called interested witness would be on its tiptoe and guard and would scrutinize the statement more carefully. Evidence of close relative has only to

be scrutinized with greater care in order to find out whether the same suffer from internal marks of falsehood due to interestedness.”

60. **Second** question raised by learned Advocate for the Appellants that whether or not delay in lodging the Ejahar and belated statements of prosecution witnesses makes the prosecution case shaky and doubtful.

61. Learned Advocates appearing for the Appellants argued that the alleged incident took place on 24.04.2002 and the informant lodged this instant Ejahar to the Officer-in-Charge of Kotwali Police Station on 27.04.2002. There is no explanation in the Ejahar as to the delay of 3 (three) days, which cast serious doubt on the prosecution story, because it's allowed the prosecution witnesses with ample opportunity for concoction and embellishment of the prosecution story.

62. In the Instant case, we find that the incident took place in the morning of 24.04.2002 and the P.W. No. 1 lodged this instant Ejahar to the Officer-in-Charge of Kotwali Police Station at about 11.45 on 27.04.2002, the cause of delay as explained by the informant in lodgment of the Ejahar is that due to terrible shock, he lodged the same after a short delay. P.W. No. 1 Md. Younus Ali is the informant and brother of the deceased Mostafa, he did not witness the incident of murder and he heard about the incident from two children of the deceased Golam Mostafa and Rokshana and lodged this instant Ejahar. The informant's house is situated 1 ½ Kilometer away from the place of occurrence. P.W. 4 deposed that the accused Salam is very strong in men and materials. From the beginning to end, the accused persons and others tried to suppress the incident of murder and published widespread rumour in the neighbourhood that both the victims committed suicide. The informant at first heard the death of his sister-in-law and thereafter, he heard about the death of his elder brother, two bad news one after another shocked the children as well as the family members, as such, we are of the view that the cause of delay as explained in the Ejahar is found to satisfactory.

63. **Third** question raised by learned Advocate for the Appellants that there are serious contradictions between the inquest report and post mortem report relating to the injuries on the person of the deceased Rokshana but the learned Judge failed to consider the inquest report and the Unnatural Death cases though these are primary documents of the prosecution case. The learned Advocate for the appellants argued that the inquest report disclosed that the deceased Rokshana sustained one injury on the neck due to hanging. Whereas the medical officer P.W. No. 17 Dr. Abdul Jalil found three injuries on the person of the deceased and as such according to him two injuries remained unexplained and it is a material contradiction, so no reliance can be placed in the testimony of the prosecution witnesses.

64. It appears from the record, the prosecution witnesses Nos. 6 and 7 in one voice have testified that while the victim Rokshana was returning home from the house of Abdus Salam at about 10.00 to 11.00 a.m. and as she reached near the courtyard of her house, at that time, accused persons indiscriminately assaulted her and they carried her body to her room and hanged the body with a bar by a sari. P.W. No.19 Sub-inspector Md. Tahitul Islam, who went to the place of occurrence and prepared the inquest report found the aforesaid one injury on the neck. P.W. No. 17 Dr. Abdul Jalil, held autopsy on the dead body of the deceased Rokshana on 25.04.2002 and found 3 (three) injuries 2 (two) injuries on the head and one on the neck. P.W. No.19 Sub-Inspector Md. Tahitul Islam deposed that in the inquest report, there are no sign of head injury of the deceased Rokshana because he did not see the head of victim by moving her hair. He denied the suggestion that he did not act transparently at the

time of preparing the seizure list and inquest report of deceased Rokshana. Thus, the ocular evidence of prosecution witnesses supported by post mortem report with regard to the injury no. 1 and 2 cannot be disbelieved. Further, the medical evidence is only corroborative in nature, in that view, the ocular evidence of the eye-witnesses, which substantially corroborates the injuries on the person of the deceased Rokshana, must be accepted.

65. **Fourth**, question raised by learned Advocate for the Appellants that whether or not the defence case is more probable than the prosecution case. The defence case as it appears from the trend of cross examination is that the appellants are innocent and they did not commit any offence as alleged against them. Their further case is that on the alleged date and place of occurrence there is an altercation took place between the victim Rokshana and Golam Mostafa relating to the loan and due to the said altercation the victim Rokshana became angry and committed suicide by hanging herself with the bar by a sari and on getting that information her husband victim Golam Mostafa also committed suicide by drinking poison. The learned Advocate for the appellants argued that the prosecution witnesses being Nos. 4, 5, 8, 12 and 14 did not support the prosecution case, rather they supported the defence case.

66. We have perused the evidence on record, wherefrom it transpires that these witnesses did not witness the incident, they heard about this incident from the neighbour, their evidence are hearsay, however, P. W. No.5 Abdul Baten during cross examination he deposed that আসামীদের বিরুদ্ধে কোন দোষ নাই তাহারা কেন আসামী হয়েছে বলতে পারব না। রোখসানা ও স্বামী স্ত্রীর মধ্যে দীর্ঘ দিনের ঝগড়া।----- ঘটনার পূর্বের দিন মোস্তফা তাহার স্ত্রীকে কুড়াল মারিয়াছিল। This witness did not witness the incident and his evidence does not corroborate with the post mortem report or any other evidence adduced by the prosecution.

67. **Final** question is whether and the prosecution proved their case beyond reasonable doubt.

68. This is a double murder case. We have perused the evidence on record, wherefrom it transpires that P.W. No. 1 Md. Younus Ali, the informant and brother of the deceased Mostafa, he did not witness the incident of murder, he heard about incident from two children (P.W. Nos. 6 and 7) of the deceased Golam Mostafa and Rokshana and lodged this instant Ejarah to the Officer-in-Charge of Kotwali Police Station on 27.04.2002 and alleged that due to bad economic condition of the victim Mostafa and Rokshana borrowed some money from the accused No. 1 Salam and accused No. 2 Salina and they promised to pay certain amount of interest for that amount, with this regard a dispute arise with the accused persons and they blocked the pathway of the deceased. On 24.04.2002 at about 7.00-7.30 a.m. there is an altercation took place between the accused persons and the victim Rokshana and they assaulted the victim Rokshana. At that stage, accused Abdus Salam threatened her that unless they paid the rest amount within 12 hours, then they have to transfer their household in their name. As such, victim Rokshana went to the house of Abdus Salam, ex-member of Union Parishad and made a complaint to him. He assured her (Rokshana) to hold a *salish* with this regard at the afternoon. While she was returning home from the house of Abdus Salam at about 10.00 to 11.00 a.m. and as she reached near the courtyard of her house, at that time, accused Salam, Salina, Rashida seriously assaulted her and they carried her body into her room and hanged the body with a bar by a sari to show that she committed suicide. The deceased Rokshana's son, P.W. No. 7, Rabiul Islam informed his father about this incident; he came back home and protested about the incident. At this stage, the accused persons namely Salam, Salina and Rashida assaulted the deceased Golam Mostafa and forcibly

poured poison into his mouth and the victim to save himself run away towards the road and became senseless. Later, the neighbours sent him to Rangpur Medical College Hospital and where he met his death. The Prosecution Witnesses Nos. 6 and 7 in one voice have testified that while the victim Rokshana was returning home from the house of Abdus Salam at about 10.00 to 11.00 a.m. and as she reached near the courtyard of her house, at that time, accused persons indiscriminately assaulted her and they carried her body to her room. There after they saw the dead body of their mother. Before the lodgment of the instant Ejahar, there are 2 (two) G. D. entries were filed one by P.W. No. 12 Amjad Hossain and the other by P.W. No. 15 Sub-Inspector Nivaran Chandra Barman. Accordingly, 2 (two) U. D. cases were started. P.W. No.15 Sub-Inspector Nivaran Chandra Borman is the Recording Officer of the Unnatural Death Case No. 121 dated 24.04.2002. P.W. No.19 Sub-inspector Md. Tahitul Islam as Investigating Officer of the Kotwali Police Station U.D. case No. 121 of 2002 dated 24.04.2002, visited the place of occurrence and prepared the inquest report of deceased Rokshana in presence of witnesses. He sent the dead body of deceased Rokshana to the morgue of Rangpur Medical College for autopsy. P.W. No. 17 Dr. Abdul Jalil held autopsy on the dead body of the deceased Rokshana on 25.04.2002 and found following injuries:-

1. One large hematoma is situated over the right parietal region 1" away in front of lambdoid suture measuring 2" X 1 ½".
2. One small hematoma is situated over the left parietal region adjacent to the saggital suture and left lambdoid suture measuring 1" X 1 ½".
3. One transverse ligature mark is situated over the thyroid cartilage in front and on each side of the neck which slipped upward with abrasion followed by oblique ligature mark is found. Knot mark is situated near left mandibular angle.

69. He opined that the cause of death is due to shock and intracranial hemorrhage with asphyxia as a result of head injury and hanging which were ante mortem and homicidal in nature". P.W. No. 17 Dr. Abdul Jalil also held autopsy on the dead body of the deceased Golam Mostafa on 25.04.2002 and he did not found any external and internal injury on the person of the deceased. On receipt of the chemical analysis report, he opined that "from our P.M. examination report and chemical analysis report, we are in opinion that the cause of death due to asphyxia as a result of intake of O.P.C. (organic phosphorous compound) poisoning, which was ante mortem in nature.

70. In the instant case, we find that the learned Additional Sessions Judge, 2nd Court, Rangpur convicted and sentenced these appellants relying on the evidence of P.W. No. 3 Ajajul Haque, P.W. No. 6 Muslama Khatun, P.W. No. 7, Rabul Islam P.W. No.10 Md. Abdus Salam, P.W. No. 11 Jamila, P.W. No.12 Md. Amjad Hossain, P.W. No. 17 Dr. Abdul Jalil and circumstantial evidence. The prosecution witness Nos. 6 and 7 are daughter and son of the victims and these two witnesses lost their parents in the alleged incident, they are most probable and natural witnesses of this alleged incident of murder and they narrated the vivid picture of what had happened on the alleged date of occurrence and how their parents had died by this unfortunate incident, though they are child witnesses, they witnessed the major part of the incident and having testified about the factum of the occurrence. They have not been shaken in cross examination. Their evidence can be relied upon as they are capable of understanding and replied the questions intelligently, which corroborated with the post mortem report and other evidence on record. We find support of this contention in the cases of *Forkan @ Farhad and another vs. State 47 DLR 148* and *Abdul Quddus vs. The state 43 DLR (AD)234*. The learned Additional Sessions Judge relying on their evidence as well as

circumstantial evidence, passed this judgment and order of conviction and sentence against these appellants. Their evidence also corroborated by other prosecution witnesses.

71. We also find that there is no ocular evidence witnessing the commission of entire offence committed by convict appellants at the place of occurrence. Prosecution also relied upon circumstantial evidence to proof of its case. Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false tutored and biased witnesses but it is very much difficult to procure circumstantial evidence. As there is no break in the chain of causation and chain of circumstances connecting these appellants with the killing of both the victims Mostafa and Rokshana and as circumstantial evidence is more cogent than the evidence of eye witness. The learned Additional Sessions Judge, after considering the evidence on record convicted and sentenced these appellants there is no irregularity or illegality in the aforesaid conviction and sentence and the prosecution proved their case beyond reasonable doubt and the prosecution witnesses corroborated with each other on material point as such, there is no reason to interfere by this Court to the conviction and sentence passed by the trial court. The allegations against these appellants under Sections 302 / 34 and 201 of the Penal Code has been well proved by the prosecution as the chain of oral and circumstantial evidence connects the convict appellants in killing of both the victims Mostafa and Rokshana and thereby appellants have committed offence under Sections 302 / 34 and 201 of the Penal Code, as such, we are of the view that the prosecution proved their case beyond reasonable doubt.

72. **Accordingly, the appeal is dismissed** and the conviction and sentence passed by the learned Additional Sessions Judge, 2nd Court, Rangpur in Sessions Case No. 283 of 2002 is hereby upheld. The appellants are directed to surrender before the trial Court within 30 (thirty) days from the date of receipt of this order failing which the Court below shall secure their arrest as per law.

73. Send down the lower court records along with the judgment and order of this court at once.