

**9 SCOB [2017] HCD 18****HIGH COURT DIVISION**

Death Reference No. 39 of 2010  
With  
Criminal Appeal No.3904 of 2010  
With  
Jail Appeal No. 183 of 2010

**The State and others**

Vs.

**Md. Sukur Ali and others**

Mr. A.K.M. Zahirul Huq, D.A.G with  
Mr. Md. Aminur Rahman Chowdhury and  
Mr. Shah Abdul Hatem, A.A.Gs  
..... For the State

Mrs. Hasna Begum, Advocate  
... For the appellant

Heard On: 05.07.15 and 06.07.15.

And

Judgment on: 06.07.15, 07.07.2015

**Present:**

**Mr. Justice Soumendra Sarker**

**And**

**Mr. Justice A.N.M. Bashir Ullah**

**Code of Criminal Procedure, 1898**

**Section 164:**

**Whenever it is noticed that, all the legal mandatory formalities in recording the confessional statement are duly observed and the Magistrate; who recorded the confessional statement is satisfied that the confession is voluntary and free from all taint-in that case, such confession can be the sole basis of conviction of the confessing accused.** ... (Para 31)

**Penal Code, 1860**

**Section 304:**

**As we have come across from the evidence on records that there was no pre-plan or premeditation from the side of the convict-appellant to kill his wife, we have the reason to hold such a view that there was a provocation from the side of the deceased prior to the occurrence of killing her by her husband Sukur Ali and definitely on the hit of the moment the deceased Mehbuba was killed by throatling. It is evident as we have already spelt out earlier that the relationship between the husband and wife was not good. Hence; the premeditation of killing the victim Mehbuba from the side of the condemned-prisoner prior to the occurrence of killing her is absent. In this circumstance of the case it amounts to culpable homicidal not amounting to murder, under the ambit of section 304 (Part-I) of the Penal Code.** ... (Para 33)

**JUDGEMENT**

**Soumendra Sarker, J:**

1. This reference under section 374 of the Code of Criminal Procedure has been made by the learned Additional Sessions Judge, Bogra for confirmation of the sentence of death passed on the condemned-prisoner Sukur Ali in Sessions Case No.327 of 2006 arising out of

Dup Chachia Police Station Case No. 08 dated 10.06.2006 corresponding to G.R. No.45 of 2006 (Dup) under sections 302/201 of the Penal Code.

2. The condemned-prisoner Md. Sukur Ali also filed a Criminal Appeal and a Jail Appeal being No. 3904 of 2010 and 183 of 010 respectively against the said conviction and sentence in which the convict-prisoner was convicted and sentenced to death under section 302 of the Penal Code.

3. The reference and appeals have been heard together and are being disposed of by this single judgment.

4. The prosecution case; in a nutshell can be stated thus, one Md. Ohidul Islam, Officer-in-Charge of Dhupchachia Police Station under Bogra District lodged the First Information Report with the same police station contending *inter alia*, that on 10.06.2006 at about 9.35 p.m. one Aynal Bepari, a Member of Dharsun Union Parishad brought a message to the police station on which a G.D. entry being No.367 dated 10.06.2006 was made in the concerned Dupchachia police station to the effect that a dead body of an unknown woman is floating in a canal which is locally known as "Iramoti Khal". On that G.D. Entry the informant Md. Ohidul Islam, Officer-in-Charge of Dupchachia police station accompanied by other police constables started for the place of occurrence at about 11.00 a.m. and going to the place of occurrence they found the dead body of an unknown woman floating in the water of the aforesaid canal. Thereafter, the informant managed to get a dead body under his control and possession and then prepared the Inquest Report of the dead body. Subsequently, he sent the dead body for postmortem. At that time the persons present therein could not recognize the dead body. The wearing apparels of the dead body were a red coloured blouse, black "breasheer" and red coloured two petticoats. Finding the symptom of the dead body the informant realized that the woman was killed by throatling. After lodging the ejarah the informant took up the investigation of the case and during his investigation he took some snaps of the dead body. Subsequently; on 26.06.2006 the son of deceased namely Khokon and brother of the deceased Sirajul Islam finding the wearing apparels of the dead body could recognize the dead body as mother of Khokon namely 'Mehbuba'. The I.O. during his investigation as investigating officer recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure and apprehended the accused of the case Sukur Ali on 12.07.2006 at 1.00 a.m. The accused Sukur Ali confessed his guilt by disclosing that the victim Mehbuba happens to be his second wife. On 08.06.2006 in the name of treatment calling the victim Mehbuba he went to the place of occurrence 'Iramoti' canal side and thereafter, killed Mehbuba by throatling. To conceal the dead body he immersed the body into the water of that canal. Thereafter, the investigating officer went to the place of occurrence again with the accused Sukur Ali who identified the place of occurrence and again confessed his guilt stating that he personally killed his wife Mehbuba. Thereafter the accused Sukur Ali was placed before a Magistrate, First Class for recording his statement under section 164 of the Code of Criminal Procedure. The accused person confessed his guilt voluntarily before the Magistrate and the Magistrate recorded his statement accordingly. After closer of investigation the investigating officer submitted charge sheet against the accused of the case Sukur Ali under section 302/201 of the Penal Code being charge-sheet No.54 dated 09.08.2006. While the case was ready for trial it was sent to the learned Sessions Judge, Bogra who transmitted the same to the Court of learned Additional Sessions Judge, Bogra and the learned Additional Sessions Judge framed charge under sections 302/201 of the Penal Code which was read over to the accused in bengali at which he pleaded not guilty and claimed to be tried.

5. After the close of evidence from the side of the prosecution who were 18 in numbers, the accused person was examined under section 342 of the Code of Criminal Procedure. At that time also the condemned-prisoner i.e. the accused of this case Sukur Ali pleaded him innocent and claimed to be tried.

6. From the trend of cross-examination of the witnesses and examination of the condemned-prisoner under Section 342 of the Code of Criminal Procedure the case of the condemned-prisoner Sukur Ali is such that he is innocent and in no way connected with the killing of his wife Mehbuba, who after marriage lead immoral life, as the result of which the relationship between the convict-appellant and the deceased Mehbuba was not good and that the victim Mehbuba might have been killed by any unknown miscreants, not by the convict-appellant Sukur Ali.

7. After trial of the original Sessions Case being No.327 of 2006 the learned Additional Sessions Judge considering the evidence and the materials on record as well as facts and circumstances of the case finding the convict-appellant guilty, convicted him under section 302 of the Penal Code and sentenced him to death.

8. Out of the said judgment and order of conviction and sentence this Death Reference No.39 of 2010 has arisen out and the condemned-prisoner himself has preferred a Criminal Appeal being No. 3904 of 2010 and Jail Appeal No. 183 of 2010 against the said judgment and order of conviction and sentence and all of these are taken up together for hearing and disposal of by this single judgment.

9. Mrs. Hasna Begum, the learned Advocate appearing as State Defence lawyer in support of the convict-appellant submits that the convict-appellant Sukur Ali, son of late Md. Rostom Ali Bepari has been languishing in the condemned-cell since 16.06.2010 and in the jail custody from 12.07.2006 but in fact there is no eye-witness of the occurrence in this case and the confessional statement of the convict-appellant Md. Sukur Ali is not true and voluntary and there exist some discrepancy in the confessional statement of the accused with that of the other materials on record. The learned counsel of the defence further submits that admittedly the dead body of the victim Mehbuba was highly decomposed and for the said reason it was not possible for the doctor to ascertain the actual cause of death. Besides this; there is no ocular evidence that the dead body belonged to the victim of this case Mehbuba who happens to be the wife of the convict-appellant Md. Sukur Ali and the son of the deceased, Md. Khokon despite identified the dead body as of his mother Mehbuba, but he was not present at the time of occurrence and there was no relationship between the son the witness No.3 Md. Khokon with his mother the victim Mehbuba. The learned defence counsel lastly argued that the instant case is not a case of culpable homicide amounting to murder under section 302 of the Penal Code rather it falls within the purview of culpable homicide not amounting to murder under the ambit of section 304 of the Penal Code, as because from the evidence on records it is evident that under certain provocation and hit of the moment the convict-appellant Sukur Ali out of grudge killed his wife Mehbuba by throattling.

10. Mr. A.K.M. Zahirul Huq, the learned Deputy Attorney General with Mr. Md. Aminur Rahman Chowdhury and Mr. Shah Abdul Hatem the learned Assistant Attorney Generals although appeared on behalf of the State but on behalf of all of them Mr. Md. Aminur Rahman Chowdhury, the learned Assistant Attorney General argued, and during that controverting the argument of the learned State Defence lawyer submits that the prosecution of this case beyond all shadow of doubt has been able to prove their case and there exist

sufficient legal evidence to hold such a view that the convict-appellant of this case Sukur Ali is fully responsible for the death of his 2<sup>nd</sup> wife Mehbuba who on the date of occurrence in the manner and in the place as stated in the FIR killed his wife brutally in a pre-planned way by throatling after calling her from the residence of her parents. The learned Assistant Attorney General Mr. Md. Aminur Rahman Chowdhury further submits that this is not a case of culpable homicide not amounting to murder inasmuch as the convict-appellant Sukur Ali with a cool head and conspiracy committed the offence of killing his wife and there is no evidence that the convict-appellant was compelled to resist him and at the time of resistance the occurrence took place inadvertently from his side, rather; it is in the evidence that the victim Mehbuba along with her husband the convict-appellant Sukur Ali used to reside in the residence of Mehbuba's parents and on the date of occurrence i.e. on 08.06.2006 the convict-appellant with an intention to kill his wife called his wife from that residence in the name of court and thereafter coming to the place of occurrence which is a bank of a canal "*Iramoti Khal*" by name by throatling killed his wife and thereafter to conceal the dead body dragged the body into the water of that canal. The learned Assistant Attorney General also submits that immediately after apprehension of the convict-appellant on 12.07.2006 at 1.00 a.m. he was produced before the Magistrate, 1<sup>st</sup> Class on the same date at 10.00 a.m. for recording the confessional statement of the convict-appellant under section 164 of the Code of Criminal Procedure and it is very well on the record that there is no remand order or allegation of torture, threat, coercion or provocation before recording the statement of the convict-appellant Sukur Ali and all the legal formalities were duly complied with by the learned Magistrate and the confession recording Magistrate (P.W.8) being satisfied that the statement of the convict-appellant is true and voluntarily recorded the same under section 164 of the Code of Criminal Procedure and the said confessional statement being true and voluntary is enough for conviction of the condemned-prisoner under section 302 of the Penal Code and the learned Additional Sessions Judge accordingly convicted the present-appellant Sukur Ali thereunder rightly & legally. The learned Assistant Attorney General referring two decisions of our Apex Court reported in 15 BLC (AD) 127 and 1985 BLD(AD)10 lastly submits that the convict-appellant of this case cannot escape from the liability of killing his wife Mehbuba in the manner stated within the contents of the ejahar and from the evidence it is clear that the husband of the victim the present- convict-appellant Sukur Ali alone with a guilty mind committed the offence of killing his wife and after commission of the offence being repented confessed his guilt voluntarily before the Magistrate, 1<sup>st</sup> Class which is reflected during his examination under section 342 of the Code of Criminal Procedure when he did not raise any such plea that, prior to his confession before the Magistrate there was any torture, threat, coercion or provocation upon him by any body or by police and therefore, the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Bogra should be upheld.

11. In view of the aforesaid submissions from both the parties let us now examine the evidence on record as adduced from the sides of the parties. In the instant case prosecution have examined as many as 08 witnesses including the doctor who did postmortem of the dead body and the learned Magistrate who recorded the statement of the convict-appellant under section 164 of the Code of Criminal Procedure and on the contrary the defence examined none but cross-examined the P.Ws.

12. The witness No.1, i.e. P.W.1 of this case is Md. Ohidul Islam the Officer-in-charge of Dupchachia Police Station who in his testimony before the Court testified that on 10.06.2006 he was serving as Officer-in-Charge of Dupchachia Police Station under Bogra District. On the said date at about 9.35 a.m. one Aynul Hoque Member informed him through mobile

phone that ½ (half) km. away from his residence an unknown dead body of a woman is floating in the water of *Iramoti* canal. After getting this information; he recorded a G.D. entry being No.367 and thereafter started for the place of occurrence with his companion Sub-Inspector Abdul Karim and police force. P.W.1 further states that at about 11.00 a.m. he reached to the place of occurrence and found the dead body. Taking the dead body from water he made inquest report of the same which was identified by him and marked as Exhibit-1. Thereafter, he sent the dead body for postmortem to Shahid Ziaur Rahman Medical College Morgue. P.W.1 also testified that finding the dead body it was presumed to him that the woman might have been killed by throatling. This witness took some snaps of the dead body. He identified the pictures which have been marked as Exhibits-3 series. This witness lodged ejahar with his Police Station Dupchachia and that has been identified by him and the ejahar has been marked as Exhibit-2. P.W.1 himself took up the investigation of the case and after taking investigation he visited the place of occurrence, prepared sketch map and index. Thereafter, he recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure. P.W.1 testified that the son of the accused namely Md. Khokon (P.W.3) identified the dead body as his mother after finding the pictures and wearing apparels. On 12.07.2006 the convict-appellant Sukur Ali was arrested at 1.00 a.m. and at the time of interrogation the condemned-prisoner Sukur Ali confessed his guilt stating that he himself killed his wife Mehbuba who was his second wife. In the name of treatment calling the victim Mehbuba from the residence they went to the place of occurrence which is situated beside a canal namely "*Iramoti Khal*" and he killed his wife therein by throatling. Hearing the confession of the condemned-prisoner Sukur Ali this witness went to the place of occurrence with Sukur Ali who identified the place in where he committed the offence of killing his wife. P.W.1 further stated that he sent Sukur Ali before a Magistrate, 1<sup>st</sup> Class, for recording his statement under section 164 of the Code of Criminal Procedure. P.W.1 identified the sketch map and index of the place of occurrence which has been marked as Exhibits-8 & 8/1. This witness in the last portion of the examination-in-chief testified that after investigation as the case was proved against the condemned-prisoner Sukur Ali he submitted charge sheet No.54 on 09.08.2006 under sections 302 and 364/201 of the Penal Code. This witness identified the condemned-prisoner in the accused dock.

13. In reply to cross-examination the complainant as well as investigating officer of the case testified at a stage that he is the complainant as well as the investigating officer before whom for the 1<sup>st</sup> time one Aynal Hoque Member of the P.O. village gave an information about a floating dead body. Subsequent to that, the son of the deceased Mehbuba, Khokon and the brother of the deceased Sirajul identified the dead body. This witness during his deposition states at a stage in reply to a question of the defence that during his investigation he came to learn that Sukur Ali and Mehbuba are husband and wife and they used to reside in the residence of Mehbuba's parents. In a reply to another question on the place of occurrence the investigating officer (P.W.1) categorically testified that the place of occurrence is situated beside *Iramoti* canal of Dupchachia Police Station and the condemned-prisoner Sukur Ali himself identified the same in his presence.

14. The witness No.2 of the prosecution (P.W.2) is Aynal Hoque Bepari. This witness testified that on 10.06.2006 finding the dead body in a canal he informed the matter to one Bablu Member and thereafter the inquest report of the dead body was prepared in his presence and he put a signature therein. P.W.2 identified his signature in the inquest report which has been marked as Exhibit-1/2. During cross-examination P.W.2 stated at a stage that finding the dead body of the deceased it was presumed that the dead body is decomposed.

15. P.W.3 Md. Khokon testified that the deceased Mehbuba was his mother and he along with his mother used to reside in the residence of his maternal grand father and after the death of his (P.W.3) father, the accused Sukur Ali married his mother Mehbuba when she was widow. This witness further testifies that Sukur Ali was a carpenter in the village and prior to the date of occurrence Sukur Ali beat his mother Mehbuba and on 08.06.2006 in the name of “Kabiraj” Sukur Ali called his mother from the residence and after that his mother did not return. On the following day while his grand mother asked Sukur Ali about the whereabouts of Mehbuba, Sukur Ali being very much afraid of was trembling. Thereafter, this witness along with others of the locality started searching of Mehbuba and on 10.06.2006 from a newspaper he came to know about a dead body & then going before the dead body he identified the body as of his mother ‘Mehbuba’.

16. In a reply to cross-examination P.W.3 testified at a stage that his mother prior to the occurrence used to live with his step-father Sukur Ali in the same residence and finding the wearing apparels of the dead body along with pictures of that; he could recognize the body as of his mother Mehbuba.

17. P.W.4 Md. Shamsuddin was tendered from the side of the prosecution and defence cross-examined him. During cross-examination P.W.4 testified that he had two daughters namely Mehbuba and Mahima & P.W.3 Khokon is the son of Mehbuba’s first husband. This witness further testified that for the second time Mehbuba got herself married with Sukur Ali who was a carpenter. They used to reside in the residence of this witness and on the date of occurrence in the name of doctor Sukur Ali taking his wife from his (P.W.4) residence killed her daughter Mehbuba.

18. P.W.5 Nurunnahar during her deposition testified before the learned trial court that she knows both the parties & on 08.06.2006 the occurrence took place and prior to that Mehbuba and Sukur Ali were husband and wife and they lived together. This witness further states that she is a lady Member of the locality. She testified that prior to the occurrence there was a hassle between Mehbuba and Sukur Ali.

19. P.W.6 Nowroz Islam is a hear-say witness of this case.

20. P.W.7 is Doctor Md. Rezaul Karim, Lecturer, Forensic Medicine, Shahid Ziaur Rahman Medical College Hospital, Bogra. This witness in his testimony testified that on 11.06.2006 he did the postmortem and after that he gave his report, which reads as follows:

“Body was decomposed, Bruise black in colour over the skin just below right mandible on dissection bruise & haematoma just below the skin, fracture of the thyroid cartilage-congestion of larynx trachea. All injuries are ante mortem. In my opinion, death was due to asphyxia resulting from throatling which was ante mortem & homicidal in nature.”

21. This witness identified the postmortem report which has been marked as Exhibit-4.

22. The last witness of this case P.W.8 is Md. Mostafizur Rahman Mridha. This witness during his deposition before the Court testified that on 12.07.2006 he was Magistrate, 1<sup>st</sup> Class in Bogra. In connection of G.R. Case No.45 of 2006 (Dhupchacia) he recorded the confessional statement of this condemned-prisoner Sukur Ali under section 164 of the Code of Criminal Procedure. This witness identified the statement of condemned-prisoner and his signature therein which has been marked as Exhibit-5, 5/1 and 5/2 respectively.

23. During cross-examination Magistrate Mostafizur Rahman testified at a stage that he was satisfied at the time of recording the confessional statement of the condemned-prisoner that the confession is true and voluntary and prior to recording of the confessional statement he has complied with all the legal formalities. He also rendered more than three hours time for reflection of the condemned-prisoner prior to statement and thereafter recorded the statement in the language of the condemned-prisoner.

24. Apart from the oral evidence of this case, the confessional statement which has been marked as Exhibit-5 go to show that the condemned-prisoner Md. Sukur Ali in his confession which was recorded under section 164 of the Code of Criminal Procedure states as follows:

“আমি অনুমান এক বৎসর আগে জয়পুরহাট কালাই থানাধীন ঘটনাস্থল প্রথমে সামসুদ্দিনের মেয়ে মেহবুবাকে নিকাহ করি। সংসার জীবনে তার সাথে আমার কলহ বিবাদ হয়। আমার স্ত্রী মেহবুবা অবাধ্য হয়ে ইচ্ছামত ঘোরাফিরা করে। পতিতা/দেহ ব্যবসায় জড়িয়ে পড়ে। আমি নিষেধ করিলে মেহবুবা আমাকেও বিভিন্ন হুমকি ভয় দেখাতে থাকে। আমি ২য় বিয়ে করলে ১ম স্ত্রী আদালতে আমার বিরুদ্ধে ফৌজদারী মামলা করে। গত ৮/৬/০৬ তারিখে ধার্য তারিখ থাকায় আমি আদালতে হাজিরা দিতে আসলে মেহবুবাও কোর্টে আসে আমি দেখি। কোর্ট না বসায় আমি মেহবুবা ট্রেনে করে শ্বশুর বাড়ীর দিকে চলে যাই। বেলা ৪/৫ টার দিকে আমরা আলতাফ নগর রেলস্টেশনে দুজনে নেমে কিছুক্ষণ উভয়ের মধ্যে ঝগড়া ঝাটি হওয়ায় কিছুক্ষণ অপেক্ষা করিলাম, তারপর দুজনে ভটভটি চড়ে চৌমুহনীর দিকে যাই। চৌমুহনীতে মেহবুবাবার এক মামার বাড়ীতে আসে বলে রওয়ানা হই। আমাকে এক গ্রামে ফেলে আমাকে বসিয়ে রেখে মেহবুবাকে গ্রামের মধ্যে চলে যায়। অনুমান ২ $\frac{1}{2}$  ঘন্টা পরে মেহবুবা আসে। আমার সাথে পুনরায় ঝগড়ায় লিপ্ত হয়। এক পর্যায়ে গ্রামের মাঠের রাস্তায় মেহবুবা হঠাৎ আমার গলার কলারে ধরলে আমিও তার গলায় চিপে ধরি। মেহবুবা পরে যায়। আমি তার মাথায় ও মুখে পানি দিতে থাকি। তার কথা বলে না। দেখি সে মারা গিয়াছে। আমি মেহবুবাবার মৃত দেহ ফেলে রেখে তৎক্ষণাতঃ আমার শ্বশুরবাড়ীর পাশে মেম্বারের বাসাতে যাই। শ্বশুরবাড়ী জিজ্ঞাসা করে মেহবুবা কোথায় আমি উত্তর না দিয়ে চলে যাই। মেহবুবা সব সময় লাল ছায়া ডবল পড়ত এবং লাল রংয়ের ব্লাউজ কালো রংয়ের ব্রেসিয়ার পড়ে ছিল। আমি ভুল করেছি, মাফ চাই।”

25. Having gone through the above mentioned statement along with other material evidence on records; we find that in the instant case despite there is no eye-witness of the occurrence, even then; there is a confessional statement from the side of the condemned-prisoner Sukur Ali which was recorded by a Magistrate, 1<sup>st</sup> Class, the witness No.8 of this case and against this substantive evidence of the prosecution, the defence has declined to produce any paper or adduce any witness to disprove or deny the prosecution's contention/case. Besides this; during examination of the condemned-prisoner under section 342 of the Code of Criminal Procedure all the incriminating evidence specially the confessional statement of him was pointed out and due attention of the accused was taken prior to recording of this reply, but the confessing accused Sukur Ali in his reply raised no objection or such claim that his confession was obtained by any threat, torture, coercion or provocation. The important matter which is transpired from his examination under section 342 of the Code of Criminal Procedure is such that he raised no complain or allegation with regard to his confessional statement in which he directly involved himself in the occurrence of killing his wife Mehbuba. The fact remains that, if it is found that the confessional statement of the accused is true and voluntary it is enough for conviction of the confessing accused. The incriminating evidence in the instant case as we have come across is such that, prior to the date of occurrence the condemned-prisoner Sukur Ali and his wife the deceased Mehbuba used to reside in the residence of Mehbuba's parents. It is also within evidence and proved conclusively by sufficient cogent, credible evidence that on the date of occurrence i.e. on 08.06.2006 the condemned-prisoner Sukur Ali prior to the death of his wife Mehbuba was

with him and the husband and wife were coming from Bogra town together and reached to the place of occurrence which is a bank of a canal "*Iramoti Khal*" by name.

26. On careful scrutiny over the evidence on record it is noticed that all the P.Ws were thoroughly cross-examined from the side of the defence but none of them appears to have been discredited and except some minor discrepancies which were natural, the evidence of the witnesses appears to be sound and cogent. The learned trial court during disposal of the case discussed the evidence on record vividly and evaluated the same in its true perspective and arrived at a concrete decision that on the date, in the manner and in the place as stated from the side of the prosecution the condemned-prisoner Sukur Ali killed his wife Mehbuba by throatling. It is also noticed from the papers on record that the police after apprehension of the condemned-prisoner Sukur Ali within 30 hours produced him before P.W.8 Magistrate, 1<sup>st</sup> Class Md. Mostafizur Rahman Mridha for recording his confessional statement and on perusal of the confessional statement of the condemned-prisoner which has been marked as exhibit-5 we have the reason to inclined such a view that the Magistrate who recorded the statement of the condemned-prisoner, before his recording; complied with the mandatory provisions of sections 164 and 364 of the Code of Criminal Procedure and we find nothing to disbelieve the learned Magistrate who was examined as P.W.8. Besides this; from the papers on records it is apparent that after arrest police did no act of fear in the mind of the condemned-prisoner Sukur Ali prior to his confessional statement under section 164 of the Code of Criminal Procedure. The condemned-prisoner also did not raise any allegation on torture, threat, provocation or coercion from the side of the police or any body before recording of his confessional statement.

27. Consulting the evidence it further transpires that, the Autopsy Report is consistent with the prosecution case as well as investigating officer of this case and the cause of death which was given by the postmortem done doctor, Dr. Md. Rezaul Karim is identical with the symptom of the dead body and it is well established that the deceased of this case died due to throatling and after that; the dead body was dragged into the water of a canal to conceal the same.

28. Scanning the evidence on record it also appears that, there was a bitter relationship between the husband and wife prior to the date of occurrence and on the date of occurrence also i.e. on 08.06.2006 there was an altercation between Sukur Ali and the deceased Mehbuba. It is also within record that at the time of occurrence initially the wife Mehbuba tied of the collar of her husband Sukur Ali at the stage of altercation between them and thereafter the condemned-prisoner Sukur Ali by throatling killed his wife. Therefore, obviously it can be easily held that the condemned-prisoner prior to commission of the offence was not in cool brain, rather; there was a provocation from the side of the victim Mehbuba which led him to kill the victim. Apart from this; we have come across from the evidence on record that the condemned-prisoner married twice and his first wife filed a criminal case against him.

29. It is a fact that in the instant case there is no eye witness which is very natural inasmuch as the occurrence is nothing but a wife killing case. The fact remains that prior to the date of occurrence both the victim as well as her husband the condemned-prisoner lived together as husband and wife in a same residence and it has come into evidence from the testimony of the father of the deceased who is P.W.4 Md. Samsuddin that from his residence prior to occurrence the condemned-prisoner Sukur Ali took away his second wife the victim Mehbuba. It is true that; there is no eye-witness of the occurrence but undisputedly the



deceased was the wife of the condemned-prisoner and she was living in the house of her parents with her husband the condemned-prisoner Sukur Ali as husband and wife. It is also in the evidence as testified by the prosecution witnesses No. 3 and 4 that the condemned-prisoner Sukur Ali took away the deceased on 08.06.2006 from the house of her parents on the plea of treatment from a doctor and subsequent to that the dead body of the deceased was found in the water of a canal. In the case of *Hamidur Rahman (Ms.) -vs.-Sate*, 15 BLC(AD)127, their lordships held such a view that in the facts and circumstances of like nature the accused of a case cannot escape from his liability.

30. Let us now look into the next incriminating substantive evidence of this case *viz.* the confessional statement of the condemned-prisoner Sukur Ali (Exhibit-5).

31. Whenever it is noticed that, all the legal mandatory formalities in recording the confessional statement are duly observed and the Magistrate; who recorded the confessional statement is satisfied that the confession is voluntary and free from all taint-in that case, such confession can be the sole basis of conviction of the confessing accused. In the case of *ABM Nazmus Sakib Ashik -vs.- State*, 12 BLC(AD)203 their lordships has given much importance on the satisfaction of the Magistrate who recorded the confession of the accused as to the voluntariness and spontaneous nature of the confession of the accused. Hence, it appears that the acceptability of a confession depends on the satisfaction of the confession recording Magistrate.

32. In the instant case; the confessional statement of the accused Sukur Ali inasmuch as is free from any legal lacking, this is no doubt a direct piece of evidence to hold such a view that the condemned-prisoner committed the offence of killing his wife Mehbuba and such confessional statement of the accused can easily be relied on for the purpose of conviction and no further corroboration is necessary as it relates to the confessing accused himself since it is voluntary and also true. The trial court here has believed that the confession is voluntary and free from taint. So, there is no legal bar on the court for ordering conviction. Accordingly, here in this case; the learned trial court i.e. Additional Sessions Judge, Bogra finding the convict-appellant guilty under section 302 of the Penal Code sentenced him thereunder to death.

33. It is a fact; that as we have come across from the evidence on records that there was no pre-plan or premeditation from the side of the convict-appellant to kill his wife, we have the reason to hold such a view that there was a provocation from the side of the deceased prior to the occurrence of killing her by her husband Sukur Ali and definitely on the hit of the moment the deceased Mehbuba was killed by throatling. It is evident as we have already spelt out earlier that the relationship between the husband and wife was not good. Hence; the premeditation of killing the victim Mehbuba from the side of the condemned-prisoner prior to the occurrence of killing her is absent. In this circumstance of the case it amounts to culpable homicidal not amounting to murder, under the ambit of section 304 (Part-I) of the Penal Code. Under this section punishment to be awarded when the injury is made with the intention of causing death. From the materials on record and nature of injury caused in this case, it is not difficult to hold that the condemned-prisoner assaulted his wife Mehbuba with intention of causing death inasmuch as it is obvious from the face of the papers that due to asphyxia resulting from throatling the deceased Mehbuba died instantly on the place of occurrence. Hence; this occurrence clearly lies under part-I of section 304 of the Penal Code. [Ref. *State -vs.- Abdul Barek* 54 DLR(AD)28, *Nasir Howlader -vs.- State* 56 DLR 151].

34. In the instant case; meanwhile we have noticed that the condemned-prisoner Sukur Ali is in jail custody since 12.07.2006 and it appears that the condemned-prisoner have a poor economic social background, as reflected from the factual aspects of the case and it is already referred to above that the offence committed by the condemned-prisoner Sukur Ali was not under premeditation and in this context it appears that the learned Additional Sessions Judge, Bogra during passing the order of conviction and sentence has failed to appreciate the actual facts of the case as well as proposition of law which is incorporated in section 302 and section 304 of the Penal Code.

35. It is an appropriate case where the offence under section 302 of the Penal Code is liable to be turned into an offence under section 304 of the Penal Code and the factual aspects of the case lead us to believe that the sentence of death as awarded by the trial Judge is liable to be commuted to the imprisonment for life under the purview of section 304 (Part-I) of the Penal Code.

36. In the result, this Death Reference No.39 of 2010 is rejected with modification of sentence from death to imprisonment for life and the connected appeal and Jail Appeal are dismissed. The conviction of sentence is altered under section 304 (Part-I) from section 302 of the Penal Code. The punishment of death sentence is hereby commuted and substituted by imprisonment for life. Accordingly, the conviction of the condemned-prisoner Md. Sukur Ali is upheld and the death sentence be reduced to imprisonment of life.

37. The term of imprisonment would be counted under the provision laid down in section 35A of the Code of Criminal Procedure.

38. Communicate the judgment and order immediately and send down the lower Court's records at once and inform all concerned.