

Present:
Mr. Justice Bhabani Prasad Singha
And
Mr. Justice Mustafa Zaman Islam

Death Reference No.03 of 2017

with
Criminal Appeal No.660 of 2017
with
Criminal Appeal No.695 of 2017
with
Criminal Appeal No.703 of 2017
with
Criminal Appeal No.707 of 2017
with
Criminal Appeal No.715 of 2017
with
Criminal Appeal No.726 of 2017
with
Criminal Appeal No.738 of 2017
with
Criminal Appeal No.763 of 2017
with
Criminal Appeal No.770 of 2017
with
Criminal Appeal No.809 of 2017
with
Criminal Appeal No.828 of 2017
with
Criminal Appeal No.1176 of 2017
(arising out of J.A.No.24 of 2017)
with
Criminal Appeal No.1213 of 2017
with
Criminal Appeal No.1694 of 2017
with
Criminal Appeal No.2239 of 2017
with
Criminal Appeal No.2441 of 2017
with
Criminal Appeal No.3281 of 2017
with
Criminal Appeal No.3359 of 2017
with
Criminal Appeal No.2914 of 2017
with
Criminal Appeal No.5221 of 2017
with

Criminal Appeal No.5295 of 2017
with
Criminal Appeal No.5320 of 2017
with
Jail Appeal No.11 of 2017
with
Jail Appeal No.12 of 2017
with
Jail Appeal No.13 of 2017
with
Jail Appeal No.14 of 2017
with
Jail Appeal No.15 of 2017
with
Jail Appeal No.16 of 2017
with
Jail Appeal No.17 of 2017
with
Jail Appeal No.18 of 2017
with
Jail Appeal No.19 of 2017
with
Jail Appeal No.20 of 2017
with
Jail Appeal No.21 of 2017
with
Jail Appeal No.22 of 2017
with
Jail Appeal No.23 of 2017
with
Jail Appeal No.25 of 2017
with
Jail Appeal No.26 of 2017
with
Jail Appeal No.27 of 2017
with
Jail Appeal No.67 of 2017
with
Jail Appeal No.68 of 2017
with
Jail Appeal No.69 of 2017
with
Jail Appeal No.144 of 2017

The State

... Petitioner

-Versus-

Lt. Col.(Rtd.)Tarek Sayed and ors.

... Condemned-Prisoners

Lt. Col.(Rtd.)Tarek Sayed
 ... Appellant
 (In CrI. Appeal No.707 of 2017
 and Jail Appeal No.12 of 2017)

Md. Abul Bashar
 ... Appellant
 (In CrI. Appeal No.660 of 2017
 and Jail Appeal No.27 of 2017)

Noor Hossain Councilor
 ... Appellant
 (In CrI. Appeal No.695 of 2017
 and Jail Appeal No.11 of 2017)

S.I. Purnendu Bala
 ... Appellant
 (In CrI. Appeal No.703 of 2017
 and Jail Appeal No.21 of 2017)

ROG-1 Md. Arif Hossain
 ... Appellant
 (In CrI. Appeal No.715 of 2017
 and Jail Appeal Nos.16 of 2017)

Md.Hiru Miah
 ... Appellant
 (In Jail Appeal No.17 of 2017)

Asaduzzaman Noor
 ... Appellant
 (In Jail Appeal No.22 of 2017)

Lt. Commander Md. Masud Rana
 ... Appellant
 (In CrI. Appeal No.726 of 2017
 and Jail Appeal No.13 of 2017)

Major(Retd.) Md. Arif Hossain
 ... Appellant
 (In CrI. Appeal No.738 of 2017
 and Jail Appeal No.14 of 2017)

Md. Mizanur Rahman Dipu @ Mizan
 ... Appellant
 (In CrI. Appeal No.763 of 2017
 and Jail Appeal No.25 of 2017)

Md. Raham Ali

... Appellant
(In Crl. Appeal No.770 of 2017
and Jail Appeal No.26 of 2017)

Habilder(49997) Md. Emdadul Haque
... Appellant
(In Crl. Appeal No.809 of 2017
and Jail Appeal No.15 of 2017)

Sepai Abu Taiyeb and another
... Appellant
(In Crl. Appeal No.828 of 2017
and Jail Appeal No.19 of 2017)

Constable Md. Shihab Uddin
... Appellant
(In Jail Appeal No.20 of 2017)

Ali Mohammad
... Appellant
(In Crl. Appeal No.1176 of 2017
arising out of Jail Appeal No.24
of 2017)

Mortuza Zaman Charchil
... Appellant
(In Crl. Appeal No.1213 of 2017
and Jail Appeal No.23 of 2017)

Sarjent Md. Enamul Kabir
... Appellant
(In Crl. Appeal No.3281 of 2017
and Jail Appeal No.68 of 2017)

Jamal Uddin
... Appellant
(In Crl. Appeal No.5221 of 2017
and Jail Appeal No.144 of 2017)

Sainik Md. Abdul Alim
... Appellant
(In Crl. Appeal No.5295 of 2017
and Jail Appeal No.67 of 2017)

Selim
... Appellant
(In Crl. Appeal No.2239 of 2017
and Jail Appeal No.69 of 2017)

Lance Nayek Md. Belal Hossain
... Appellant
(In Crl. Appeal No.2441 of 2017
and Jail Appeal No.18 of 2017)

1. A.S.I. Md. Bazlur Rahman
 2. Habilder (BGB)Md. Nasir Uddin
 ... convict-Appellants
 (In Crl. Appeal No.1694 of 2017)

1. Sainik Md. Nuruzzaman
 2. ASI(S)606 Md. Abul Kalam Azad
 3. Constable Md. Babul Hasan
 ...Convict-Appellants
 (In Crl. Appeal No.3359 of 2017)

Lance Corp. Md. Ruhul Amin
 ...Convict-Appellant
 (In Crl. Appeal No.2914 of 2017)

Const. Md. Habibur Rahman @ Habib
 ...Convict-Appellant
 (In Crl. Appeal No.5320 of 2017)

-Versus-

The State
 ... Respondent

Mr. Mahbubey Alam, Attorney General
 with
 Mr. M. A. Mannan Mohon, D.A.G
 with
 Mr. K.M. Zahid Sarwar, D.A.G with
 Mr. Bashir Ahamed, A.A.G with
 Mr. Mian Md. Shamim Ahasan with
 Mr. Kazi Md. Mahmudul Karim with
 Mr. Md. Shafiquzzaan, A.A.G
 ... For the State.

Mr. S.M. Shafiqul Islam, State
 Defence Lawyer
 ... For the Condemned-accused
 Mr. Md. Ahsanullah, Advocate
 ... (For the appellant in
 Crl. Appeal No.703 of 2017)

Mr. Md. Iqbal Kabir, Advocate
 ... (For the appellant in
 Crl. Appeal No.763 of 2017)

Mr. S.R.M. Lutfur Rahman Akond,
 ... (For the appellant in
 Crl. Appeal No.695 of 2017)

Mr. Md. Aminul Islam, Adv. with

Mrs. Sultana Khan Ruby, Adv.
... For the appellant
(In Crl. Appeal No.2239 of 2017)
 Mr. Md. Kamrul Alam (kamal, Adv.
... (For the appellant in
Crl. Appeal No.3281 of 2017)

Mr. S.M. Shahjahan, Adv. with
 Mr. Md. Mohinur Rahman, Adv.
... For the appellant
(In Crl. Appeal No.738 of 2017
and Jail Appeal No.14 of 2017)

Mr.Md.Munsurul Hoque Chowdhury with
 Mr.A.K.M.Fazlur Huq Khan Farid and
 Mr.Md.Saifur Rahman Rahi, Advocates
... For the appellant
(In Crl. Appeal No.707 of 2017)

Mr.Md.Munsurul Hoque Chowdhury,with
 Mr. Md. Iqbal Hossain, Advocates
... For the appellant
(In Crl. Appeal No.726 of 2017)

Mr. A.S.M. Abdul Mobin, with
 Mr. Md. Humayun Bashar, Advocates
... For the appellant
(In Crl. Appeal No.660 of 2017)

Mr. A.S.M. Abdul Mobin, with
 Mr. Md. Abdur Razzak, Advocates
... For the appellant
(In Crl. Appeal No.5221 of 2017)

Mr. A.S.M. Abdul Mobin, with
 Mr. Abdullah Al-Mamun Chowdhury, Adv
... For the appellant
(In Crl. Appeal No.828 of 2017)

Mr. A.S.M. Abdul Mobin, with
 Mr. Abdullah Al-Mamun Chowdhury, Adv
... For the appellant no.2
(In Crl. Appeal No.1694 of 2017)

Mr.A.K.M.Fazlul Huq Khan Farid,with
 Mr. Saifur Rahman Rahi, Advocates
... For the appellant
(In Crl. Appeal No.770 of 2017)

Mr. A.S.M.Abdul Mobin, with
 Mr. Md. Abbas Uddin, Advocates

... For the appellant no.1
(In Crl. Appeal No.715 of 2017)

Mr. Md.Khairul Alam, Advocate
... For the appellant
(In Crl. Appeal No.809 of 2017)

Mr. S.M.Shahjahan, with
Mr. Ahmed Mahabubul H.Khan, Adv.
...For the appellant
(In Crl. Appeal No.1213 of 2017 and
Jail Appeal No.23 of 2017)

Mr. A.S.M.Abdul Mobin, with
Mr. Sharif Arif Newaz, Advocates
... For the appellant
(In Crl. Appeal No.3359 of 2017)

Mr. S.M.Shahjahan, with
Mrs. Elida Yeasmin, Advocates
...For the appellant
(In Crl. Appeal No.2441 of 2017)

Mr. Khan Tipu Sultan, Advocate
...For the appellant no.3
(In Crl. Appeal No.715 of 2017)

Mr. S.M.Shahjahan, Advocate
...For the appellant
(In Crl. Appeal No.2441 of 2017
and J.A.No.18 of 2017)

Mr. Md. Shafiqul Alam, Advocate
... (For the appellant no.1
(In Crl. Appeal No.1694 of 2017)

Mr.Md.Taj Muhammad Shaikh, with
Mr.Md.Jahangir Alam, Advocates
...For the appellant
(In Crl. Appeal No.1176 of 2017)

Mr. M. Shehabul Arifin, Advocate
...For the appellant
(In Crl. Appeal No.5295 of 2017)

Mr. Mohammad Mujibur Rahman, Adv.
...For the appellant
(In Crl. Appeal No.5320 of 2017)

Mr. Md. Kamal Hossain, Advocate
...For the appellant
(In Crl. Appeal No.2914 of 2017)

Heard on:22.05.17,23.05.17, 24.05.17,
02.05.17, 28.05.17, 29.05.17,
30.05.17, 31.05.17, 01.06.17,
04.06.17, 05.06.17, 06.06.17,
07.06.17, 08.06.17, 02.07.17,
03.07.17, 04.07.17, 05.07.17,
06.07.17, 09.07.17, 10.07.17,
11.07.17, 12.07.17, 13.07.17,
16.07.17, 17.07.17, 18.07.17,
19.07.17, 20.07.17, 23.07.17,
24.07.17, 25.07.17 & 26.07.17.
Judgment on:22.08.2017.

Bhabani Prasad Singha,J:

This Death Reference under section 374 of the Code of Criminal Procedure,1898 (hereinafter referred to as the 'Code') has been made by the learned Sessions Judge, Narayanganj vide the judgment and order of conviction and sentence dated 16.01.2016 passed in Sessions Case No.103 of 2016 corresponding to G.R.Case No.328 of 2014 for confirmation of the death sentences imposed upon the condemned-prisoners namely, Lt. Colnel Tarek Syeed Mohammad, Major (retired) Md. Arif Hossain, Lt. Commander (dismissed) Masood Rana (M.M.Rana), Noor Hossain Councillor, Lance Nayek Md. Bellal Hossain,

Habilder Md. Emdadul Haque, ROG-1 Md. Arif Hossain, Lance Nayek Md. Hira Mia, Sepoy Abu Taiyab, Constable Md. Shihabuddin, S.I. Purnendubala, Sainik (dismissed) Md. Abdul Alim (absconding), Sainik (dismissed) Mohiuddin Munshi (absconding), Sainik Md. Al-Amin Sharif, Sainik (dismissed) Md. Tajul Islam (absconding), Enamul Kabir (dismissed) (absconding), Md. Mortuza Zaman Churchil, Ali Mohammad, Md. Mizanur Rahman Dipu alias Mizan, Md. Raham Ali, Md. Abul Bashar, Salim (absconding), Md. Sanaulla alias Sana, Manager Shahjahan (absconding), Zamaluddin, Lance Corporal (force retirement) Md. Ruhul Amin, Corporal (dismissed) Md. Mokhlesur Rahman, ASI Abul Kalam Azad under sections 120B/302/34 of the Penal Code. By the said judgment and order of conviction and sentence, the trial Court convicted and sentenced the accused-persons, namely, Lt. Col. Tarek Syeed Mohammad (retired), Major

(retired) Md. Arif Hossain, Lt. Commander
(dismissed) Masood Rana, Noor Hossain
Councillor, ROG-1 Md. Arif Hossain, Lance
Nayek Md. Hira Mia, Sepoy Abu Taiyab,
Constable Md. Shihabuddin, SI PurnenduBala,
Sainik (dismissed) Md. Abdul Alim, Sainik Al-
Amin, Lance Corporal (force retirement) Md.
Ruhul Amin, Corporal (dismissed) Md.
Mokhlesur Rahman, Md. Abul Kalam Azad, Sainik
Md. Nooruzzaman, Constable Babul Hasan, ASI
Md. Kamal Hossain and Constable Md. Habibur
Rahman (absconding) under sections 120B/364/34
of the Penal Code to suffer rigorous
imprisonment for 10 years and to pay a fine
of Tk. 50,000/00, in default, to suffer
rigorous imprisonment for another 1 (one)
year each. By the said judgment and order of
conviction and sentence, the trial Court also
sentenced the accused-persons Lt. Col. Tarek
Syed Mohammad, Major (retired) Md. Arif
Hossain, Lt. Commander Masood Rana, Noor

Hossain Councillor, Lance Nayek Md. Bellal Hossain, Habilder Md. Emdadul Haque, Sainik Md. Asaduzzaman Noor, ROG Md. Arif Hossain, Sepoy Md. Abu Taiyab, SI Purnendubala, Sainik (dismissed) Md. Abdul Alim, Sainik (dismissed) Mohiuddin Munshi (absconding), Sainik (dismissed) Al-Amin Sharif (dismissed), Sainik Md. Tajul Islam (absconding), Md. Mortuza Zaman Churchil, Ali Mohammad, Md. Mizanur Rahman Dipu alias Mizan, Md. Raham Ali, Md. Abul Bashar, Salim (absconding), Zamaluddin, Habilder Md. Nasiruddin and ASI Bazlur Rahman under sections 120B/201/34 of the Penal Code sentencing them to suffer rigorous imprisonment for 7 (seven) years and to pay a fine of Tk.50,000/00, in default, to suffer rigorous imprisonment for 1(one) year each.

As against the said judgment and order of conviction and sentence, the convicted-accused Md. Abul Bashar preferred Criminal

Appeal No.660 of 2017, the convicted-accused Noor Hossain Councillor preferred Criminal Appeal No.695 of 2017, the convicted-accused S.I. Purnendubala preferred Criminal Appeal No.703 of 2017, the convicted-accused Lt. Col (retired) Tarek Syeed Mohammad preferred Criminal Appeal No.707 of 2017, the convicted-accused ROG-1 Md. Arif Hossain preferred Criminal Appeal No.715 of 2017, the convicted-accused Lieutenant Commander (Dismissed) Md. Masood Rana preferred Criminal Appeal No.726 of 2017, the convicted-accused Major (Retired) Md. Arif Hossain preferred Criminal Appeal No.738 of 2017, the convicted-accused Md. Mizanur Rahman Dipu @ Mizan preferred Criminal Appeal No.763 of 2017, the convicted-accused Md. Raham Ali preferred Criminal Appeal No.770 of 2017, the convicted-accused Habilder (49997) Md. Emdadul Haque preferred Criminal Appeal No.809 of 2017, the

convicted-accused Sepoy Abu Taiyab preferred Criminal Appeal No.828 of 2017, the convict-accused Ali Mohammad preferred Criminal Appeal No.1176 of 2017(arising out of Jail Appeal No.24 of 2017), the convicted-accused Mortuza Zaman Churchil preferred Criminal Appeal No.1213 of 2017, the convicted-accused A.S.I. Md. Bazlur Rahman and Habilder (BGB) Md. Nasir Uddin preferred Criminal Appeal No.1694 of 2017, the convicted-accused Salim preferred Criminal Appeal No.2239 of 2017, the convicted-accused Lance Nayek Md. Bellal Hossain preferred Criminal Appeal No.2441 of 2017, the convicted-accused Lance Corporal Md. Ruhul Amin preferred Criminal Appeal No.2914 of 2017, the convicted-accused Md. Enamul Kabir preferred Criminal Appeal No.3281 of 2017, the convicted-accused Sainik-4036506 Md. Nooruzzaman and others preferred Criminal Appeal No.3359 of 2017, the convicted-accused Jamal Uddin preferred

Criminal Appeal No.5221 of 2017, the convicted-accused Sainik Md. Abdul Alim-1446392 (disCharged) preferred Criminal Appeal No.5295 of 2017, the convicted-accused Constable Md. Habibur Rahman preferred Criminal Appeal No.5320 of 2017.

The aforesaid Death Reference and the Criminal Appeals being emerged out of the self-same judgment and order of conviction and sentence and the question of law and facts involved in the Death Reference and the Criminal Appeals being common, the Death Reference and the Criminal Appeals have been heard together and are being disposed of by this single consolidated judgment. Be it mentioned further that the facts, accused-persons, victims, and the witnesses in both the cases being same and identical, they have been heard simultaneously.

The prosecution case, in short, is that one Selina Islam, wife of the victim deceased

Hazi Nazrul Islam lodged a First Information Report (hereinafter referred to as the FIR) against the convict-accused-persons stating, interalia, that the informant's husband Nazrul Islam was a Councillor and Panel Mayor-2 of Narayanganj City Corporation. One Tanvir contractor got contract for construction of roads and drains at Mijimiji under Narayanganj City Corporation and the Mayor engaged Nazrul Islam to supervise the work. During construction works, the informant's husband requested Mubarak for removal of his shop-Shutter in the interest of development of the local area. Without removing the said shop-shutter, Mobarak secretly informed the matter to the accused Noor Hossain and that being informed, on 01.01.2014, the accused Noor Hossain being accompanied by 70/80 terrorists rushed to the place and practiced hooliganism. Thereafter, under Noor Hossain's instruction Ali Hossain,

son of Mubarak filed a false Criminal Case against Nazrul Islam, Yasin, Hasmat Ali Hasu, Aminul Islam Razoo, Anwar Hossain, Shahjalal @ Shahjahan, Badal, Iqbal and others. Rushing to the Mijimiji village Noor Hossain openly threatened Nazrul Islam and his family members in their absence for killing. After the criminal Case was lodged, the victim Nazrul took shelter at Dhaka due to such threatening and obtained anticipatory bail from the Hon'ble High Court Division and filed Hajira on 08.04.2014 at Narayanganj Court. Later, on 27.04.2014 Nazrul and others went to Narayanganj Court for Hajira and that on their way back to Dhaka from Narayanganj Court, at about 1.45 P.M., by two Micro buses 15/16 RAB-Personnel barricaded the way of Nazrul's private car claiming themselves as RAB Members and abducted them. Since such taking way, all abducted persons remained untraced. The Police was informed of the

matter. RAB and they tried to trace out the abducted persons and it was conceived that as on 27.04.2014 the accused Noor Hossain, Haji Yasin Miah, Hasmat Ali Hashu, Aminul Islam Razoo, Anwar, Iqbal and others who threatened to kill her husband, they alongwith other 5/6 persons abducted her husband Nazrul. In view of the above, she lodged the FIR of the case. Some delay took place in lodging the FIR due to conducting search for tracing out the whereabouts of Nazrul and others. During investigation it came to light that as a sequel to previous enmity with the victim Nazrul islam, the accused Noor Hossain got the 7 (seven) victims of the case kidnapped away from the place of occurrence, got them killed and made disappearance of their dead bodies tying up the dead bodies with plastic sacks containing brick in the estuary of the rivers Meghna and Shitalakhsmya Subsequently, the dead bodies floated up.

On receipt of the FIR of the case, police took up investigation of the case and after investigation, prima-facie case having been made out against the accused-persons, submitted Charge Sheet No.232 dated 08.04.2015 of Fatulla Model P.S., Narayanganj under sections 364/302/201/109/114/120B of the Penal Code against them.

At the commencement of trial of the case, Charge under sections 364/302/201/109/120B/34 of the Penal Code was framed against the accused-persons, namely, Noor Hossain, Lt. Col. (retired) Tarek Syeed Mohammad, Jamal Uddin (absconding), Md. Sanaula Sana (absconding), Salim (absconding), Md. Abul Bashir, Md. Raham Ali, Ali Mohammad, Mortuza Zaman Churchil, Manager Shahjahan, Constable Md. Habibur Rahman @ Habib (absconding), Sainik Md. Nooruzzaman, Constable Md. Babul Hasan, S.I Md. Kamal Hossain, (absconding), ASI Abul kalam Azad,

Lance Corporal Md. Ruhul Amin, Corporal Md. Mokhlesur Rahman (absconding), Sainik Md. Asaduzzaman Noor, Sepoy Abu Taiyab, Sainik Md. Mohiuddin, Sainik Md. Abdul Alim, Sainik Al-Amin Sharif, Lance Nayek Md. Hira Mia, Lance Nayek Md. Bellal Hossain, ROG Md. Arif Hossain, SI Purnendu Bala, Lt. Commander Masood Rana (M.M. Rana). The Charge was read over and explained to the accused-persons Lt. Col. Tarek Syeed Mohammad, Md. Abul Basher, Md. Raham Ali, Ali Mohammad, Mortuza Zaman Churchil, Manager Shahjahan Sainik Md. Nooruzzaman, Constable Md. Babul Hasan, A.S.I Abul Kalam Azad, Lance Corporal Md. Ruhul Amin, Sainik Md. Asaduzzaman Noor, Sepoy Abu Taiyab, Sainik Md. Mohiuddin, Sainik Md. Abdul Alim, Sainik Al-Amin Sharif, Lance Nayek Md. Hira Mia, Lance Nayek Md. Bellal Hossain, ROG Md. Arif Hossain, SI Purnendu Bala, Lt. Commander Masood Rana to which they pleaded not guilty claiming to be tried.

Charge under sections 302/201/109/120B/34 of the Penal Code was framed against the accused-persons Sainik Md. Asaduzzaman, Sainik Md. Tajul Islam, ASI Md. Bazlur Rahman, Habilder Md. Nasiruddin, Habilder Md. Emdadul Haque, Sergeant (retired) Md. Enamul Haque. The charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

The accused-persons, namely, Jamal Uddin (absconding), Md. Sanaula Sana (absconding), Constable Md. Habibur Rahman @ Habib (absconding), SI Md. Kamal Hossain (absconding) and Corporal Md. Mokhlesur Rahman (absconding) being absconding, the Charge could not be read over and explained to them.

To substantiate its case, the prosecution in all examined as many as 106 (one hundred and six) witnesses. On the other

hand, none was examined on behalf of the defence.

On the closure of the evidence of the prosecution, the accused-persons, namely, Lt. Col. (retired) Tarek Syeed Mohammad, Major (retired) Md. Arif Hossain, Lt. Commander (force retirement) M.M. Rana, Lance Nayek Md. Bellal Hosain, Md. Mizanur Rahman Dipu alias Mizan, Md. Raham Ali, Sainik Md. Asaduzzaman Noor, Md. Abul Bashar, Ali Mohammad, Mortuza Zaman Churchil, Constable Md. Babul Hossain, Sainik (retired) Md. Nooruzzaman, ASI Md. Abul Kalam Azad, Lance Corporal (force retirement) Md. Ruhul Amin, Habilder BGB Md. Nasir Uddin, ASI Md. Bazlur Rahman, Habilder Md. Emdadul Haque, Constable Md. Shihabuddin, Sepoy Abu Taiyab, SI Purnendu Bala, Lance Nayek Md. Hira Mia, ROG Md. Arif Hossain and Noor Hossain were examined under section 342 of the Code to which they repeated their innocence informing the Court that they would

not adduce any evidence on their behalf seeking justice. The accused-persons Major (retired) Md. Arif Hossain, Lt. Commander (force retirement) M.M. Rana, Arif Hossain, Sainik Md. Asaduzzaman, Habilder Md. Bazlur Rahman, Habilder Md. Emdadul Haque, Constable Md. Shihabuddin, Sepoy Abu Taiyab filed written statements.

The defence case, as it transpires from the trend of cross examination of the prosecution witnesses is the denial and the plea of innocence in the alleged occurrence.

After trial, on analysis and on perusal of the evidence and materials on record and so also on consideration of the facts and circumstances of the case, the trial judge came to the finding that the prosecution succeeded in bringing home the Charge as brought against the accused-persons and accordingly, convicted and sentenced the accused-persons by the impugned judgment and

order of conviction and sentence as said earlier.

It is against the said judgment and order of conviction and sentence passed in Sessions Case No.103 of 2016, the accused-appellants preferred the aforesaid Criminal Appeals.

At the very outset, the learned Assistant Attorney General (hereinafter referred to as the AAG) Mr. Bashir Ahmed on behalf of the State submits that after the genocide of 1971, in the history of Bangladesh, the instant case is in respect of the much discussed about carnage in which the innocent people were killed by some members of law enforcing agency; that admittedly, RAB personnel apprehended the victim-deceased-persons and that the victim- deceased-persons were in their custody; that the accused Noor Hossain got the occurrence perpetrated by the RAB personnel as a sequel to his enmity with the victim deceased Nazrul Islam; that the

murders in this case are brutal and diabolical without any provocation in which the accused Noor Hossain is the mastermind; that the accused-persons Noor Hossain, Lt. Col. Tarek Syeed Mohammad, Major (reertired) Arif Hossain and Lt. Commander M.M. Rana at different times had meeting conspiring with each other with regard to the occurrence; that the prosecution by adducing evidence established the guilt of the accused-persons beyond all reasonable doubt; that in addition to the evidence of the prosecution witnesses there are the confessional statements of most of the convicted accused-persons admitting their guilt implicating themelves and others in the alleged occurrence; that said confessional statements along with the evidence on record can be the basis for their conviction and sentence of the accused-persons; that the recording Magistrates after complying with all the legal

formalities under sections 164 and 364 of the Code recorded the confessional statements of the confessing-accused-persons; that the trial Court was well founded in law in convicting and sentencing the condemned-convict-accused-prisoners on the basis of the evidence on record and as such, the order of conviction and sentence should be maintained. The learned AAG prays for acceptance of the Death Reference and for dismissal of the criminal appeals filed by the convicted-accused-appellants. To support the prosecution case, the learned A.A.G referred the case laws reported in PLD 1979 SC at Page 53, AIR 1969 SC at page 432, AIR 1983 SC at page 680, 1971 SCR at page 599, 2006(2) Supreme Court Cases at page 450, 2012(9) SCC at page 01, 12 DLR SC at page 203, 16 DLR (SC) at page 166, 29 DLR SC at page 271, 18 BLD (AD) at page 175, PLD 1972 SC at page 363, 13 BLC (AD) at page 84, 12 BLC (AD) at

page 203, 2016(1) SC Cases at page 583, 2014 (1) SC Cases at page 216, 2013 (12) SC Cases at page 796, 1985 1 SCC at page 422, 2015(1) SC Cases at page 67, Nirvoya Gang Rape case in Criminal Appeal No.607-608/17 of the Supreme Court of India, 1985 SCC at page 423, 2012 SCC at page 03, (2000) 1 SCC at page 285, PLD 1979 SC at page 63, (2012) 1 SCC at page 10, 63 DLR (AD) at page 105, 53 DLR (AD) at page 1, 4 SCC at page 716, 67 DLR (AD) at page 99, (2016) 9 SCC at page 541, AIR 2010(SC) at page 61, 2014 SCC at page 716, (1978) 4 SCC at page 161, (2013)12 SCC at page 796, 1901 SCC at page 445, 62 DLR (AD) at page 13, (2005) 11 SCC at page 600, (2012) 7 SCC at page 646, 42 DLR (AD) at page 473, (2000) 1 SCC at page 285, (2013) 12 SCC at page 796.

Mr. Mahbubey Alam, the learned Attorney General for Bangladesh also representing the State submits that in this case the victims

were killed by the members of the law enforcing agencies who were supposed to protect the victim-deceased-persons and the lives of the citizens of the country, not by miscreants; that in this case apart from the confessional statements of the accused-persons there are also other evidence to support the case of the prosecution; that the accused-persons unanimously narrated the occurrence, situation thereof implicating themselves in the occurrence; that the murder in question is a preplanned one out of conspiracy; that before the occurrence, the accused Major (retired) Arif Hossain directed to note the names of the accused Purnendu Bala and others to the P.W.72 Sainik Milon Hossain and to keep separated the said persons from others forbidding to give them any duty and not to take their information suggesting that it was a preplan and conspiracy; that the prosecution adduced

evidence of each segment of the case i.e. abduction, killing, making disappearance of the dead bodies of the victims and recovery of the dead bodies etc.; that the evidence of the P.Ws.64 and 66 is enough to prove the chase and abduction of the victims in this case; that before killing the victims, the materials were collected and sacks with brick were prepared for drowning the dead bodies of the victims into water which also suggest preplan and conspiracy; that in a case like this, it is not supposed that there would be direct evidence; that there is circumstantial evidence with regard to the killing of the victims and also the confessional statements of them convicted-accused-appellants; that the victims were killed while they were in the custody of the accused-RAB-personnel and as such, the responsibility is cast upon the accused-RAB-personnel to explain how the victims had died; that if there was the

intention of arresting the victims, then there could be no earthly reason as to why the victims would be taken to Narsingdi instead of Narayanganj and as such, it was definitely not the case of arresting, rather, abduction for killing; that the prosecution could prove the guilt of the convicted-accused-appellants to the hilt and as such, there is nothing to interfere with the impugned judgment and order of conviction and sentence and as such, the impugned judgment and order of conviction should be upheld and confirmed. The learned Attorney General further submits that to restore the dignity and prestige of RAB and to return confidence and faith in the RAB, the accused-RAB personnel in the case be dealt with seriously.

Mr. Ahsanullah, the learned Advocate representing the condemned-accused-prisoner S.I. Purnendu Bala in Criminal Appeal No.703

of 2017 in Death Reference No.03 of 2017 submits that the charge in the case was not properly framed; that the Investigating Officer did not take out the investigation of the case properly; that it is a case of no evidence although 106 Prosecution witnesses were examined by the State in the case; that the confessional statement of SI Purnendu Bala is not true and voluntary; that the Investigating Officer did not investigate as to who were actually present at the place of occurrence and at the time of occurrence; that the Investigating Officer did not examine the inmates of any house, shop keepers of any shop situated near the place of occurrence; that the money transaction as alleged by the prosecution could not be proved in the case; that the Post Mortem Examination Reports of the deceased-persons are not consistent with the prosecution case. The learned Advocate further submits that the

evidence on record is not sufficient to award death sentence to this convicted-accused; that there is no proof that the deceased Nazrul or the deceased Chandan Kumar Sarker were present at the place of occurrence from where they were kidnapped; that the deceased persons did not die in the manner as stated by the prosecution; that the place of occurrence of the case is disputed; that the Call Lists as stated by the prosecution are not proved; that there is no eye witness in the alleged occurrence; that the prosecution case being not substantiated beyond reasonable doubt by convincing evidence, this condemned-accused-prisoner is entitled to an order of acquittal.

Mr. Md. Iqbal Hossain, the learned Advocate representing the convicted-accused-appellant Mizanur Rahman Dipu @ Mizan in Criminal Appeal Nos.763 of 2017 submits that this convict-accused is not an FIR named

accused; that the 4 confessing accused-persons who mentioned his name in their confessional statements did say nothing about his activities in the alleged occurrence and that they only said that he was with them in the microbus; that in the FIR the informant did say nothing about him; that there was a system of pick and choose in respect of involving this convict in the case; that the framing of Charge in the case is exaggerated. The learned Advocate further submits that in recording the confessional statements of the 4 confessing accused-persons implicating him in the alleged occurrence, the provision of law was not followed. The learned Advocate also referred the cases reported in 4 BLD (AD) at page 193 and 17 DLR (AD) at page 139 to support the case of this convicted-accused-appellant in the case.

Advocate Mr. S.R.M. Lutfor Rahman Akond, representing the convict-accused Noor Hossain in Criminal Appeal No.695 of 2017 submits that on the basis of presumption, the informant lodged the FIR of the case; that the Investigating Officer did not take out the investigation of the case properly; that the framing of Charge in the case is defective; that the confessional statements as made by the accused-persons are not true and voluntary; that the criminal conspiracy as alleged against the accused Noor Hossain was not proved; that the P.Ws. did not mention the name of the accused Noor Hossain in their evidence; that he is entitled to an order of acquittal as the prosecution could not prove the case against him on setting aside the impugned judgment and order of conviction and sentence. The learned Advocate also referred the case laws reported in 68 DLR at page 59, 8 BLC (AD) at page 166,

36 DLR (AD) at page 58, 5 BLC (AD) at page 20, 22 DLR (AD) at page 266, 60 DLR (AD) at page 347, 54 DLR (AD) at page 80, 12 BLC at page 203, 41 DLR (AD) at page 62, 40 DLR (AD) at page 186, 29 DLR (AD) at page 29, 37 DLR (AD) at page 139, 39 DLR (AD) at page 117, 44 DLR (AD) at page 10, 18 BLD (AD) at page 43, 66 DLR (AD) at page 06.

Mr. Md. Kamrul Alam, the learned Advocate representing the accused Sergeant Enamul Kabir in Criminal Appeal No.3280 of 2017 submits that this convict-accused is not FIR named; that the Charge Sheet has been submitted against this accused on the basis of the confessional statements of the co-accused-persons; that the charge against the accused-appellant was not framed properly; that the confessing accused-persons did not implicate him in the alleged murder; that the case being not proved against this convicted-

accused, he is entitled to an order of acquittal.

Mr. S.M. Shajahan, the learned Advocate representing the condemned-accused-prisoner Major (retired) Arif Hossain in Criminal Appeal No.738 of 2017 in Death Reference No.03 of 2017 submits that here two different cases were disposed of simultaneously; that the commencement of the trial of the case is a mischief done by the trial Court and this is not a simultaneous trial; that there is no order of the trial Court or of the High Court Division is there to dispose of the cases simultaneously; that there should have been an order by the trial Court to the effect that that the cases would be disposed of simultaneously and as such, the trial of the case is vitiated; that suspicion cannot be the basis of conviction and that in Sessions Case No.103 of 2016, there is no legal evidence against this accused and as such,

he is entitled to an order of acquittal in the case; that the confessional statements of the confessing accused-persons have not been recorded as per law; that the confessional statement of the accused-persons are not true and voluntary; that the statements of some of the accused-persons under section 161 of the Code being recorded at a belated stage, their evidence cannot be relied upon; that there is no mention of the names of the accused-persons in the Inquest Report; that the charge against this convicted-accused being not proved beyond reasonable doubt, he is entitled to an order of acquittal; that the examination of the convicted-accused Major (retired) Arif Hossain under section 342 of the Code was not done properly; that the prosecution could not prove the case against the convicted-accused Major (retired) Arif Hossain by legal evidence; that exchange of money between the accused Major (retired)

Arif Hossain and the accused Noor Hossain was not proved. The learned Advocate also referred the case laws reported in AIR 37 (1950) Allahabad at page 119, PLD 1976 Lahore at page 1446, PLD 1986 SC at page 146, 56 DLR at page 185, 2008 PCrlg at page 523, 43 DLR (AD) at page 62, AIR 1953 SC at page 468, PLD 2003 Lahore 217, 16 BLD at page 121, 16 BLD at page 552, 36 DLR at page 185, 45 DLR at page 171, 2 DLR at page 39, 27 DLR (AD) at page 29, 19 BLC (AD) at page 95, 1950 SCR India at page 526, 12 DLR SC at page 512, 41 DLR (AD) at page 157, 35 DLR at page 119, 21 DLR SC at page 88, 40 DLR at page 443, 15 BLD (AD) at page 154, 38 DLR (AD) at page 311, 6 BCR (AD) at page 225, 39 DLR (AD) at page 117, 60 DLR (AD) at page 05, 1987 BCR (AD) at page 140, 1986 BCR (AD) at page 225, PLD 1963 West Pakistan (Peshoar) at page 1178, AIR 1934(Kolkatta) at page 678 and 2 BCR at page 292.

Mr. Munsurul Hoque Chowdury, the learned Advocate representing the condemned-accused-prisoner Lt. Commander M.M. Rana and Lt. Col. Tarek Syeed Mohammad submits that there should have been one trial in the two cases, not two; that the Sessions Case No.1748 of 2016 has no legal value; that no element of section 120 B of the Penal Code is there in the Charge Sheet; that as the convicted-accused acted as per the command of his higher authority, he is entitled to the benefit of section 79 of the Penal Code; that framing of Charge in both the cases are defective; that except sending trawler to the Kanchpur Landing Station, there is nothing against the accused Lt. Commander M.M. Rana; that this accused had no knowledge of the occurrence and had no meeting of mind with the other accused-persons; that the accused Lt. Commander M.M. Rana acted as per the order of the accused Major (retired) Arif Hossain;

that the confessional statement of the accused Lt. Commander M.M. Rana is not a confessional statement as per section 164 of the Code; that being directed by his superior Commander the accused Lt. Col. Tarek Syeed Mohammad, he assisted the accused Major (retired) Arif Hossain and took part in the operation; that the total planning of the operation was made by accused Major (retired) Arif Hossain, not by him; that the accused Raham Ali did not utter a single word about conspiracy; that there is no finding with regard to conspiracy in the judgment of the trial Court; that there is no direct allegation of commission of offence under section 302 of the Penal Code against him and that there is no common intention of him with the accused Major (retired) Arif Hossain to kill the victims; that this convicted-accused-appellant was not properly charged under sections 302/120B of the Penal Code.

The learned Advocate lastly submits that the accusation against this convict-accused being not proved, he is entitled to an order of acquittal. The learned Advocate also referred the case laws reported in 42 DLR (AD) at page 50, 4 BLC (AD) at page 223, 53 DLR at page 438, (2010) 2 Supreme Court Cases at page 91, 29 DLR (SC) at page 246, 42 DLR (AD) at page 50, AIR 1940 Calcutta at page 561, 19 DLR at page 573, 67 DLR (AD) at page 6, 49 DLR at page 373, 47 DLR at page 317, 11 BLD at page 158, 7 BLD (AD) at page 1, 13 BLT at page 524, 5 ALR(AD) at page 97, 55 DLR at page 382, 17 BLC at page 10.

Mr. S.M. Mobin, the learned Advocate representing the convicted-accused-persons Jamal Uddin and Abul Bashir in Criminal Appeal No.5221 of 2017 and Criminal Appeal No.660 of 2017 submits that the convicted-accused Jamal had no confessional statement and that there is no evidence against him and

that excepting the confessional statements of the four co-accused-persons, no witnesses mentioned about him in their evidence; that there is no direct evidence with regard to commission of murder against this convicted-accused-persons; that the confessional statements of the accused-persons being recorded after remand, such confessional statements are not true and voluntary; that the presence of the accused-persons at the place of occurrence is doubtful; that the criminal conspiracy as alleged against these convicted-accused-persons could not be proved. The learned Advocate Prays for acquittal of these convicted-accused-persons from the charge brought against them. The learned Advocte also referred the case laws reported in 49 CWN at page 6768 and 20 BLC(AD) at page 125.

The learned Advocate S.M. Mobin representing the convicted-accused-persons

ROG Md. Arif Hossain, Asaduzzaman Noor, Constable Shihab, Habilder Nasir Uddin and Sepoy Abu Taiyab in Criminal Appeal No.715 of 2017 submits that the act of this convicted-accused-persons may be brought under section 34 of the Penal Code, not under section 120B of the Penal Code; that excepting the convicted-accused Taiyab, no allegation of taking part in commission of murder of the victims is there against these convicted-accused-persons. The learned Advocate lastly prays for acquittal of these convicted-accused-persons. The learned Advocate also referred the case laws reported in 3 SCC 1988 at page 609, 22 BLC (AD) at page 155, 67 DLR (AD) at page 7, 18 BLC (AD) at page 81.

Mr. A.K.M. Fazlul Huq Khan Farid, the learned Advocate representing the condemned-accused-prisoners Tarek Syeed Mohammad in Criminal Appeal No.707 of 2017 and the accused Md. Raham Ali in Criminal Appeal

No.770 of 2017 submits that the convicted-accused Lt. Col. Tarek Syeed Mohammad is not an FIR named accused; that the FIR is not a substantive evidence and the case is based on the Charge Sheet; that the judgment of the trial Court is based on the confessional statements of the confessing-accused-persons after taking them on remand time and again and as such, the confessional statements of the confessing accused-persons are not true and voluntary; that there is no element of section 120B of the Penal Code in the case; that except the confessional statements, there is no evidence against this convicted-accused; that the confessional statement of the accused Lt. Col. Tarek Syeed Mohammad warrants no death sentence to him; that the accused Md. Raham Ali being an employee, cannot be a conspirator; that there is no evidence against these accused-persons. The learned Advocate prays for acquittal of these

convicted-accused-persons. The learned Advocate also referred the case laws reported in 53 DLR at page 287 and 40 DLR (AD) at page 106.

In addition to the submission of the learned Advocate Mr. A.K.M. Fazlul Huq Khan Farid, the learned Advocate Mr. Munsurul Hoque Chowdhury submits that no person of the RAB Head Office was examined in the case; that the accused Lt. Col. (retired) Tarek Syeed Mohammad had no complicity in the occurrence of kidnapping, killing and making disappearance of the dead bodies of the victim-decesed-persons; that the investigation of the case is perfunctory; that charge under section 120 B of the Penal Code in the case is not proved against this accused; that this accused was not in furtherance of common intention of all the accused-persons in the case to commit the offence and that at best the act of the

accused Lt. Col. Tarek Syeed Mohammad may come under the purview of section 364 of the Penal Code. The learned Advocate also referred the case laws reported in 17 BLC at page 10 and 51 DLR at page 16.

Mr. Ahmed Mahabubul H. Khan, the learned Advocate representing the convicted-accused-appellant Mortuza Zaman Churchil in Criminal Appeal No.1213 of 2017 submits that this convicted-accused-appellant is not FIR named; that on the basis of the confessional statement of this accused, he was included in the Charge Sheet; that no other witnesses implicated him in the alleged occurrence; that this convicted-accused did not admit his guilt in the offence; that the statement of this convicted-accused is exculpatory in nature and that it is a case of no evidence. The learned Advocate lastly submits that this convicted-accused may kindly be acquitted from the case.

Mr. Md. Khairul Alam, the learned Advocate representing the convicted-accused-appellant Habilder Md. Emdadul Haque in Criminal Appeal No.809 of 2017 submits that this convicted-accused was not present at the time of killing of the victims; that starting of the case against this convict accused is illegal; that as the victim Nazrul had popularity, instead of taking the victims to Naraynaganj, the victims were taken to Narsingdi; that framing of charge against this convicted-accused is defective and that the confessional statement of this accused is neither true nor voluntary. The learned Advocate lastly prays for acquittal of this convicted-accused on the ground that the prosecution failed to prove the charge against him.

Mr. S.M. Shafiqul Islam, the learned State Defence Layer representing the absconding convicted-accused-persons,

namely, Sainik Mohiuddin Munshi, Sainik Al-Amin Sharif, Sainik Md. Tajul Islam, Md. Sanaulla @ Sana and Manager Shahjahan adopting the submission of the learned Advocate Mr. S.M. Shahjahan submits that the names of these convict-accused-appellants are not there in the FIR; that none of the witnesses mentioned the names of these accused-appellants involving them in the alleged occurrence. The learned Advocate also referred the case laws reported in 54 DLR (AD) at page 34, 67 DLR (AD) at page 7 and 18 BLC (AD) at page 81.

Mr. S.M. Shahjahan, the learned Advocate with Mrs. Elida Yeasmin, the learned Advocates representing the convicted-accused Lance Nayek Md. Bellal Hossain in Criminal Appeal No.2441 of 2017 submit that this accused knew nothing about the occurrence from before; that his confessional statement is not a true and a voluntary one; that the

charge against this accused being not proved, he is entitled to an order of acquittal.

Mr. Md. Aminul Islam, the learned Advocate representing the convicted-accused-appellant Salim in Criminal Appeal No.2239 of 2017 submits that this accused is not an FIR named accused; that there is no evidence against him; that no witness implicated him in the alleged occurrence and that he has been convicted on the basis of the confessional statements of the other accused-persons; that the abscondence of this accused by itself is not a conclusive evidence. The learned Advocate further submits that the allegation against this convicted-accused being not proved, he is entitled to an order of acquittal in the case. The learned Advocate also referred the case laws reported in 1984 BLD (AD) at page 103, 13 BLC (AD) at page 17, 14 BLC (AD) at page 67, 11 BLC (AD) at page 49, 9 BLC (AD) at page 59, 44 DLR

(AD) at page 10, 12 DLR (SC) at page 217, 56 DLR (AD) at page 132, 47 DLR at page 467, 1 BLC at page 325, 1 BLC at page 539, AIR 1979 (SC) at page 1382.

Mr. Khan Tipu Sultan, the learned Advocate representing the convicted-accused-appellant Lance Nayek Md. Hira Miah in Criminal Appeal No.715 of 2017 submits that excepting the confessional statement of this accused, there is no ocular evidence against him in this case; that in recording the confessional statement of this accused, legal requirements of sections 164 and 364 of the Code were not followed; that the confessional statement of this convicted-accused was extracted by coercion after long police detention; that the confessional statement is not true and voluntary; that in the matters of conspiracy, abduction and killing he was not a party. The learned Advocate lastly

prays for moderate punishment of this accused other than death.

Mr. Taz Mohammad Sheikh, the learned Advocate representing the convicted-accused-appellant Ali Mohammad in Criminal Appeal No.1176 of 2017 submits that this accused-appellant is not an FIR named accused; that excepting the P.W.1, no other witness mentioned his name; that he had no participation in the alleged murder; that the allegation of commission of murder against the other convicted-accused-persons in the case is correct but in case of this accused-appellant there is suspicion with regard to his participation in the alleged occurrence; that his confession is not true and voluntary. The learned Advocate lastly prays for acquittal of this convicted-accused-appellant. The learned Advocate also referred the case laws reported in 1 MLR at page 205, 13 BLD at page 179, 11 BLD at page 147, 40

DLR at page 154, 44 DLR at page 295 and 59 DLR at page 345.

Mr. Md. Shafiqul Alam, the learned Advocate representing the convicted-accused-appellants ASI Bazlur Rahman and Nasir Uddin in Criminal Appeal No.1694 of 2017 submits that the confessional statement of the accused-persons in the case are not true and voluntary; that this convicted accused-appellants just complied with the order of his superiors; that no other witnesses stated their names; that who recorded the statement of this accused was not examined and as such, the statement is not admissible. The learned Advocate lastly prays for acquittal of these convicted-accused-appellants.

Mr. M. Shehabul Arefin, the learned Advocate representing the convicted-accused-appellant Sainik Md. Abdul Alim in Criminal Appeal No.5295 of 2017 submits that this accused-appellant did not make confessional

statement; that he was not in any conspiracy for killing the victims; that under compelling circumstances he brought the trawler; that there is no overt act of him in the alleged occurrence. The learned Advocate lastly prays for acquittal of this convicted-accused-appellant. The learned Advocate also referred the case laws reported in 22 BLC (AD) at page 155, 67 DLR (AD) at page 06 and AIR 1998 at page 2443.

Mr. Md. Kamrul Alam, the learned Advocate representing the convicted-accused Md. Enamul Kabir in Criminal Appeal No.3281 of 2017 submits that this accused-appellant did not make any confessional statement; that he was not in the raiding party; that none entangled him in the alleged killing; that no independent witness said that this convicted-accused got into the trawler. The learned Advocate lastly prays for acquittal of this convicted-accused.

Mr. Mohammad Mujibur Rahman, the learned Advocate representing the convicted-accused-appellant Md. Habibur Rahman in Criminal Appeal No.5320 of 2017 submits that this accused did not make any confessional statement; that he has been implicated in this case on the basis of the confessional statements made by the accused-persons Lt. Commander M.M. Rana, Abul Kalam Azad, Sainik Md. Nooruzzaman, Babul Hassan and Ruhul Amin; that he did not go to Narsingdi or to the landing station; that the prosecution could not bring home the charge as brought against him. The learned Advocate prays for acquittal of this accused-appellant. The learned Advocate also referred the case reported in 67 DLR (AD) at page 6.

In view of the submissions and the counter submissions of the learned Attorney General Mr. Mahubey Alam, the learned Deputy General (DAG) Mr. K.M. Zahid Sarwar, the

learned Assistant Attorney General (AAG) Mr. Bashir Ahmed and the learned Advocates for the convicted-accused-appellants as stated above, this Court is to review the relevant evidence and materials on record and scan the attending circumstances of the case to arrive at a proper and correct decision.

In this case, admittedly, the five victims, namely, (1) Hazi Nazrul Islam, (2) Maniruzzaman Khan Swapan, (3) Sirajul Islam Liton, (4) Tajul Islam and (5) Md. Jahangir Hossain were kidnapped, killed and their dead bodies were drowned in the river water which subsequently floated up.

The P.W.1 Selina Islam, the informant and the wife of the victim (deceased) Nazrul Islam deposed that on 27.04.2014 A.D at about 01-40/01-45 P.M. the occurrence took place on the road situated in front of 'Fatulla Osman Ali Stadium'. The victim deceased Nazrul was the panel Mayor of Narayanganj City

Corporation and that he was also the Councilor of ward No.2, Narayanganj City Corporation bestowed responsibility upon Nazrul for looking after the construction works of drain and road. One Mobarak, the relation of the accused Noor Hossain refused to shift his shop and informed Noor Hossain of the matter. Being informed, Noor Hossain and others rushed there with pistol, hockey stick, lathi etc. and damaged shops and plundered goods and injured several persons. Ali Hossain, the son of Mobarak with the help of Noor Hosssain filed a criminal case against Nazrul and 16 others and openly threatened in the locality to kill Nazrul and his family members. Being afraid, the victim-deceased Nazrul left the locality and took shelter in Dhaka and obtained bail from the Hon'ble High Court in the case. The victim-deceased Nazrul filed 'hazira' on 27.04.2014 at about 10.00 a.m. before Narayanganj Court

with his case partners. After Hazira, 05 (five) persons including the victim-deceased Nazrul started for Dhaka by a private car and that on their way to Dhaka, at about 01.45 P.M., two Hiace minibuses with 20/25 miscreants identifying themselves as 'RAB' personnel by dragging out from the private car hijacked the victim-deceased-Nazrul and others and got them into microbus forcibly. Before the said occurrence, she talked lastly with the victim-deceased-Nazrul at about 1.30 P.M from her (P.W.1) TNT number. As the mobile of the victim -deceased-Nazrul and others were switched-off, she (P.W.1) and others tried to trace out the victim (deceased) and others and the matter was informed to Police Super and RAB-11, Narayanganj. Thereafter, on 28.04.2014 A.D. she lodged the FIR of the case. This witness proved the FIR as Exhibit-1 and her signature therein as Exhibit-1/1. This witness further

deposed that prior to the alleged occurrence Noor Hossain and others threatened to kill the victim Nazrul and his family members. So, she filed the case against Noor Hossain and others. Under Noor Hossain's conspiracy and leadership of the accused Tarek Syeed Mohammad, the accused-persons Arif Hossain and other RAB pronnal perpetrated the alleged occurrence and that the accused-persons Ali Mohammad, Raham Ali, Mortuza Zaman Churchil, Mizanur Rahman Dipu, Abul Bashar and Noor Hossain assisted 'RAB' personnel in killing the victim-deceased-Nazrul.

In her cross this witness stated that the occurrence took place on 27.04.2014 A.D. She lodged the FIR reciting unknown 'RAB' personnel and unknown miscreants. Later, she (the Pw1) could know from common people and from Shahidul and his (Shahidul's) daughter about the hijacking of her husband. She also heard from the people that in the name of

'RAB', the victims were abducted. As the mobile phone of the victim (deceased) was switched-off, she along with others went to Narayanganj and informed the local MP of the occurrence in details. She went to 'RAB' office and orally informed 'RAB' office of the occurrence. Through 'media', news was made about floating of the dead bodies of the victims. Khan Osman Stadium Road was the alleged place of occurrence. She intimated the local Mayor of the alleged occurrence. The accused Noor Hossain threatened the victim-deceased-Nazrul with death before the occurrence. The victim Nazrul was the councilor of ward no.2 and that the accused Noor Hossain was the councilor of ward no.4. The accused-persons have not been implicated in the instant case falsely. As the accused-persons committed the alleged offences, the Investigating Officer duly sent-up the accused persons in the Charge-Sheet.

The P.W.2 Isob Mia, the brother of the deceased stated in his deposition that on 27.04.2014 his brother was missing. On 30.04.2014 his dead body was found at Dhaleswari village on the bank of the river Shitalakshmya being tied up with brick at the hands and legs. Police made inquest on the dead body and prepared Inquest Report. He attested the Inquest Report as a witness. This witness proved the Inquest Report as Exhibit-2 and his signature therein as Exhibit-2/1.

In his cross this witness stated that he saw the dead body in floating condition in the river and identified it. The Inquest Report was prepared on the bank of the river.

The P.W.3 Md. Hossain stated in his deposition that the dead bodies of the deceased-persons Advocate Chandan Babu and Ibrahim were lifted up from the river on 30.08.2014 at 5.00 p.m. Police held inquest

on the dead body. He attested the Inquest Report. This witness proved his signature in the Inquest Report as Exhibit-2/2. This witness further deposed that the dead bodies were tied up with rope.

This witness stated in his cross that he did not read the Inquest Report as he was an illiterate man. Hearing news, he went to the place where the dead bodies were lifted. The Inquest Report was made on the bank of the river. Seeing the dead body of his brother floating, he identified it.

The P.W.4 K.M. Mohiuddin, Senior Judicial Magistrate, Narayanganj deposed that on 04.06.2014 he recorded the confessional statement of the accused Md. Arif Hossain under section 164 of the Code observing all the legal formalities. This witness proved the confessional statement as Exhibit-3 and his signatures therein as Exhibits-3(1)-3(6).

This witness further deposed that on 05.06.2014 he recorded the statement of the accused Md. Masood Rana under section 164 of the Code observing all the legal formalities. This witness proved the confessional statement of the accused Masood Rana as Exhibit-4 and his signatures therein as Exhibits-4(1)-4(6).

This witness further deposed that on 14.06.2014 he recorded the confessional statement of the accused Mortuza Zaman Churchil. This witness proved the confessional statement as Exhibit-5 and his signatures therein as Exhibits-5(1)-5(6).

This witness further deposed that on 18.06.2014 he recorded the confessional statement of the accused Tarek Syeed Mohammad as per law. This witness proved the confessional statement as Exhibit-6 and his signatures therein as Exhibits-6(1)-6(6).

This witness further deposed that on 30.08.2014 he recorded the confessional statement of the accused Lance Nayek Md. Hira Miah as per law. This witness proved the confessional statement as Exhibit-7 and his signatures therein as Exhibits-7(1)-7(6).

This witness further deposed that on 13.09.2014 he recorded the confessional statement of the accused S.I. Purnendu Bala as per law. This witness proved the confessional statement as Exhibit-8 and his signatures therein as Exhibits-8(1)-8(6).

This witness further deposed that on 28.03.2014 he recorded the confessional statement of Md. Raham Ali as per law. This witness proved the confessional statement as Exhibit-9 and his signatures therein as Exhibits-9(1)-9(5). This witness further deposed that all confessing accused-persons put their signatures in the statements in his presence. He recorded the statements of the

said accused-persons under section 164 of the Code. In addition to the aforesaid accused-persons, he recorded the statements of the witnesses Md. Shahidul Islam @ Khoka and Rabeya Akhter Ankhi on 22.05.2014. This witness proved the statements as Exhibits-10 and 11 and his signatures therein as Exhibits-10/1-11/1.

This witness further deposed that on 18.08.2014, he recorded the statement of the witness S.I. Polash Golder. This witness proved the statement as Exhibit-12 and his signature therein as Exhibit-12/1.

In his cross, this witness stated that he recorded the statements in his office. As per the desire of the accused-persons, he recorded their confessional statements. He wrote in the confessional statements that of their own accord the accused-persons voluntarily made the statements. After remand the accused-persons were produced before him.

He wrote questionnaire and stated to the accused-persons. At the time of recording the statement of the accused-persons, excepting him and the accused-persons, none else was present. The accused Noor Hossain was produced at 9.10 a.m. before him for recording his statement under section 164 of the Code. On 14.06.2014 at 9.15 a.m., the accused Churchill was produced before him for recording his statement. On 28.03.2015, the accused Raham Ali was produced before him for recording confessional statement. He recorded the confessional statement of the accused Constable Shihab on 04.09.2014. He was produced before him on 04.09.2014 at 9.15 a.m. This witness denied the defence-suggestions that he did not record statements of the confessing accused-persons as per provision of section 164 of the Code or that the accused-persons did not make the statement voluntarily or that the statement

of the confessing accused-persons were not correct or that the confessional statements were not read over to the accused-persons.

The P.W.5 Md. Belayet Hossain stated in his deposition that at the time of occurrence he was attached to Bandar P.S. On 30.04.2014 at the instruction of the Officer-in-Charge vide G.D.E. No. 1154 he went to Shantinagar on the bank of river Shitalakshmya and held inquest on the dead bodies of two persons and thereafter, sent the dead bodies through Constable No.909 Ramjan Ali to Victoria Sadar Hospital for autopsy. He prepared Inquest Report. This witness proved the Inquest Report as Exhibit-13 and his signature therein as Exhibit-13/1. He seized the articles which he found with the dead bodies of the deceased-persons. This witness proved the Seizure Lists as Exhibits-14 and 15 and his signatures therein as Exhibits-14/1 and 15/1. This witness further deposed that the

articles which were found with the dead body of Chandan were brick, plastic sack, ring, payjama and jute-rope. He held inquest on the dead body of the deceased Chandan as well. This witness proved the Seizure List as Exhibit-2 and his signature therein as Exhibit2/1. He sent the dead body of Nazrul to Victoria Hospital with Constable Abdul Quddus for autopsy for determination of cause of his death.

In his cross this witness stated that he held Inquest on the dead bodies of Chandan Babu and Nazrul. No doctor was present at the time of holding Inquest. He did not mention the cause of death in the Inquest Report. He himself made the G.D.E. This witness denied the defence-suggestion that he held Inquest on the dead body of an unknown Hindu.

The P.W.6 constable Ramzan Mridha deposed that on 30.04.2014 he accompanied SI Belayet and SI Mizan to the bank of the river

Shitalakshmya to see the dead bodies in floating condition. He took the dead bodies of Chandan Sarker and that of Ibrahim to Hospital for autopsy. This witness proved his signatures in the Chalan. The defence declined to cross examine this witness.

The P.W.7 SI. Md. Mizanur Rahman deposed that on 30.04.2014 at 03.45 p.m. he held Inquest on the dead body of the deceased Ibrahim (48) on the bank of the river Shitalakshmya and prepared the Inquest Report and sent the dead body to morgue for autopsy. He seized alamats viz. Punjabi, 20 brick, plastic-sacks, belt, jute-rope and jangia etc. under a Seizure List. This witness proved the Seizure List as Exhibits-18 and 19 and his signatures therein as Exhibits-18(1) and 19/1. This witness proved the Inquest Report as the Exhibit-2 and his signature therein as Exhibit-2/3.

In his cross this witness stated that there was no mention of cause of death in his report. At present he was attached to Narsinghi Sadar P.S. as an S.I.

The P.W.8. Abul Kalam Azad deposed that on 27.04.2014 A.D he came to Narayanganj Court for his case-hazira. 17 persons including the victim Nazrul, Swapan came to the Court for filing hazira and that after filing hazira they returned back. Chairman Nazrul proceeded towards Dhaka with Swapan by the private car of Swapan. Returning back to his residence, he heard that the victims Nazrul Chairman, Swapan, Ibrahim and others had been kidnapped. Thereafter, he alongwith others tried to trace out the kidnapped persons but failed. 01/02 days later, he heard that some dead bodies were floating in the river.

In his cross this witness stated that he also stated to police what he said today.

The P.W.9 Zahangir Alam Tipu deposed that the occurrence took place on 27.04.2014. The victim-deceased Nazrul went to Court for Hazira. He went to the Court to meet Nazrul and after meeting Nazrul returned back to Adamzee. He, thereafter, came to know thorough media that 05 persons were kidnapped and were kept concealed. Later, he came to learn that 7(seven) dead bodies were recovered.

In his cross this witness stated that he said to police what he said to day in the Court.

The P.W.10 Md. Fakhrul Islam deposed that the occurrence took place on 27.04.2014 at about 1.00/1.30 p.m. The victim-deceased Swapan was his friend. He went to the Court to meet Swapan. Swapan went to Dhaka and he

went to Adamzee. Trough TV he heard in the evening that Nazrul and others had been kidnapped. Later, he heard that RAB-personnel kidnapped Nazrul and others and that in total 07 persons were kidnapped. He subsequently heard that the dead bodies were found at the river side.

This witness denied the defence-suggestion that being influenced he deposed falsely.

The P.W.11 Chandni Rupam, Senior Judicial Magistrate, Narayanganj deposed that on 01.04.20015 observing legal formalities she recorded the confessional statement of the accused Abul Basahr under section 164 of the Code in connection with Fatulla P.S. Case No. 11(5)14 dated 27.04.2014 under sections 364/302/201 of the Penal Code. Accused Abul Bashar made the statement of his own will in sound mind. This witness proved the statement

as Exhibit-20 and her signatures therein as Exhibits-20(1)-20(6).

This witness further deposed that on 24.07.2014 she recorded the confessional statement of the accused Md. Ali Mohammad under section 164 of the Code in connection with Fatulla P.S. Case No. 11(5)14 dated 27.04.2014 under sections 364/302/201 of the Penal Code. The accused Md. Ali Mohammad made the statement voluntarily in sound mind. This witness proved the statement as Exhibit-21 and her signatures therein as Exhibits-21(1)-21(6).

This witness further deposed that on 30.08.2014 she recorded the confessional statement of the accused Habilder Md. Emdadul Haque under section 164 of the Code in connection with Fatulla P.S. Case No. 11(5)14 under sections 364/302/201 of the Penal Code. The accused Habilder Md. Emdadul Haque made the statement voluntarily in sound mind. This

witness proved the statement as Exhibit-22 and her signatures therein as Exhibits-22(1)-22(6).

This witness further deposed that on 08.12.2014 she recorded the confessional statement of the accused Md. Abul Kalam Azad under section 164 of the Code in connection with Fatulla P.S. Case No. 11(5)14 under sections 364/302/201 of the Penal Code. The accused Md. Abul Kalam Azad made the statement voluntarily in sound mind. This witness proved the statement as Exhibit-22 and her signatures therein as Exhibits-23(1)-23(6).

This witness further deposed that she also recorded the statement of the witness Major Md. Suruj Mia under section 164 of the Code. This witness proved the statement as Exhibit-24 and her signatures therein as Exhibit-24(1).

In her cross this witness stated that before recording the confessional statements she put the five substantial questions to the confessing accused-persons. She properly recorded the confessional statements. She recorded the statements in her chamber at Narayanganj. After four days' remand the accused Abul Bashar was brought to her. She gave three hours' time for speculation to the accused Ali Mohammad. She recorded two confessional statements in two cases. The accused Emdadul Haque was brought to her on 30.08.2014 at 09.20 a.m. This witness denied the defence-suggestions that the confessing accused-persons did not make the statements voluntarily or that she did not record the statements as per law or that the confessional statements were extracted by coercion.

The P.W.12 Mizanur Rahman deposed that on 30.04.2014 in his presence two Hiace

Microbuses, one white colour and one blue colour and a trawler were seized. On 30.04.2014 two sacks with a dead body were seized under a Seizure List. This witness proved his signature in the Seizure List as Exhibit-21(1). This witness further deposed that rope, shoe, Gabardin Pant and belt of his brother Maniruzzaman Khan Swapan were also seized. Cords (rope), shoe, belt pants were also seized in his presence. The occurrence took place on 27.04.2014 at 1.30/2.00p.m. On 27.04.2014 he was at work at Adamjee. While he was going along the road, Shahjahan, the case partner of his brother Nooruzzaman told him that his brother and Nazrul were not being found. Forthwith, he made phone call to Ismail who accompanied his brother Maniruzzaman. Ismail told him that his brother was also not being found. Hearing this, he went to the house of councillor Nazrul to see that wife of Nazrul went to

Narayanganj for searching Nazrul. Going to Mowchak, Siddhirganj he saw people to demonstrate for release of Nazrul. At dusk, he went to meet the wife of Nazrul at Narayanganj. On his asking, wife of Nazrul disclosed that giving identity of RAB, some people kidnaped away Nazrul from near Fatulla stadium. Till 12.00 'o' clock at night, they searched for his brother and others. Thereafter, he went to his home. After returning home he came to know through media about the act of kidnapping. On 28.04.2014 he went to Fatulla P.S. with the wife of Nazrul and she filed the case on the allegation of kidnapping. On 29.04.2014 also he searched for his brother. On 30.04.2014 he came to know through media that some dead bodies floated at Bandar Kolagachhia. Hearing that, he along with 4/5 other persons went there to see some dead bodies to float in the water. He searched for the dead body of his brother

and subsequently saw that a dead body was floating in the water. After the dead body was lifted up, he saw it to be of his brother Maniruzzaman Swapan. The body was dragged to the bank. He asked the Officer-in-Charge Bandar P.S, to show what was inside the sack. The belly of his brother was perforated. Police held Inquest on the dead body of his brother and prepared Inquest Report and took his signature therein. This witness proved his signature in the Inquest Report as Exhibit-22(1). This witness further deposed that Police told him that the dead body of his brother would be taken to Victoria Medical College. Accordingly, he went there. Subsequently, he heard that RAB personnel kidnapped away his brother and others and killed them. He saw dead bodies of 4/5 other persons with the dead body of his brother. Thereafter, he heard that the dead bodies of 7 (seven) kidnapped persons were found. While

his brother was alive he came to know that the life of Nazrul was in danger and that he would be killed. He cautioned his brother. His brother used to tell that Noor Hossain might cause harm to him.

In his cross this witness stated that he told the Investigating Officer that Noor Hossain might cause harm to Nazrul. For release of Nazrul he made human chain. He put signatures in two Seizure Lists. He had talks with the Officer who held Inquest on the dead body. He could identify the dead body of his brother. Keeping the sacks in water the ropes were cut. He accompanied the wife of Nazrul to the Police Station. On the date of the recovery of the dead bodies he made statement to the Investigating Officer. This witness denied the defence-suggestions that he falsely implicated RAB-personnel in the case or that he deposed falsely.

The P.W.13 Hazi Md. Shahidul Islam deposed that the occurrence took place on 27.04.2014 at about 1.45 p.m. on the road of Osmani Stadium. On that day Chairman Nazrul along with his case partners, namely, Tajul, Swapan, Liton, Jahangir came to Narayanganj to give hazira. On their way back after giving hazira, Nazrul, Tajul, Swapan, Liton and Jahangir were kidnapped. Towards 2.00 p.m. they came to know that five persons along with Nazrul had been kidnapped away. Knowing about the occurrence, they came near the stadium to see 04/05 persons at work. On asking, said persons disclosed that with two numberplateless minibuses, 15/16 RAB personnel kidnapped away 5/6 persons. Thereafter, he came to know that Advocate Chandan Sarker along with his driver was also kidnapped away by the RAB personnel. After 'Asr' prayer they went to the local member of the parliament (MP). The Local MP made

telephone call at different places in respect of Nazrul and assured him that Nazrul would be recovered alive. Thereafter, hearing missing news of Nazrul, some people created blockade at the Link Road and some people surrounded Kalibazar office of RAB-11. On 27.04.2014 Tarek Syeed of RAB made phone call to the MP whereon the respected MP asked them to go to the RAB office with their relatives saying that Nazrul was there. Thereafter, on 27.04.2014 at about 08.30 p.m. he along with his daughter, the father-in-law of his daughter and others went to RAB office at Adamjee. At the gate, their mobile phones were kept and they were taken to the C.O. Tarek Syeed who made query about their names and addresses and asked as to why they encircled the RAB office. Then they replied that five persons along with Nazrul had been kidnapped away and that was why they encircled the office. Tarek Syeed asked about

the relation of Nazrul with Shamim Osman. In reply, they said the relation was good. Then Tarek Syeed said that the relation of Nazrul with Shamim Osman was not good, rather, relation with Ivy was good. Saying that, Tarek Syeed said that they did not kidnap the victims and that Shamim Osman kidnapped the victims. They said that MP sent them to him. But he was saying the reverse. Then he along with his relatives requested Tarek Syeed to return Nazrul alive to them. They begged life of Nazrul from Tarek Syeed. At one stage, he touched feet of Tarek Syeed and said he would pay more money than Noor Hossain paid them to kill Nazrul. Then Tarek Syeed drove them out of his office. The main planner of kidnapping of five persons including Nazrul, Swapan and others was the accused Noor Hossain and with the money of Noor Hossain the members of RAB-11 kidnapped the victims and killed them as hired persons.

RAB personnel made confessional statements to that effect admitting their guilt in the occurrence in the Court. The RAB by pushing injections and by twisting the mouth of the victims with polythene ensured the death of the victims and perforated the belly of Nazrul and others. To flow the occurrence to a different track, the accused-persons took the dead bodies of seven victims-deceased persons to Kanchpur Landing Station, tied the dead bodies with sacks containing brick, perforated the belly of the deceased-persons and dropped the dead bodies in the estuary of the river Shitalakshmya at Kalagachhia. The terrorist noor Hossain got the landing ghat cleared up by Shahjahan, Churchil, Ali Mohammad, Raham Ali, Bashar, Salim, Jamal and others and switched off the lights. All the accused-persons had arms with them. Till 2.00 a.m. the accused Arif talked with the accused Tarek Syeed over mobile phone and ensured the

death of the victims. On 30.04.2014 in the morning they got information that the dead bodies floated up in the river. Getting the news, he along with his daughter Beauty and relatives went near the river and saw the dead bodies tied up with sacks containing brick and the dead bodies were perforated at the belly. They identified the dead body of Nazrul and subsequently, buried it. The accused-persons whose name he mentioned earlier were present in the Court. He made statement to police.

In his cross this witness stated that he was the Chairman of Siddhirganj Union Parishad. He had good relation with deceased Nazrul. He made statement to the Investigating Officer more than once. He narrated the occurrence to the Investigating Officer. He saw the dead body of Nazrul to be tied up with rope. Four persons said that the RAB personnel dragged the victims into two

microbuses and kidnapped them away. The four labourers told him about two numberless microbuses and about the kidnapping. The RAB personnel were in plain dress and gave their identity as RAB personnel. He cannot say the names of the four labourers. The RAB personnel who were involved in the occurrence made confessional statements admitting their guilt. He made statement to the Investigating Officer. He could not recollect as to how many days after the occurrence he made statement to the Investigating Officer. This witness denied the defence-suggestions that the accused Noor Hossain did not pay money to the accused Tarek Syeed or that his daughter i.e. the informant filed the case falsely against the accused-persons or that the accused-persons ASI Kamal Hossain, Constable Habibur Rahman Habib and SI Bazlur Rahman were not present at the place of occurrence at the time of occurrence.

The P.W.14 Md. Sahahjahan deposed that the date of occurrence was 27.04.2014. He saw in the media that five persons along with Nazrul were kidnapped. Three days after that he saw in the media that the dead bodies of Nazrul and others were found. He along with Nazrul Islam, Swapan, Liton and others came to the Court to give hazira(attendance). After hazira, Nazrul went to Dhaka by the car of Swapan. He along with three others went to their residence at 2.00 p.m. He came to know about the occurrence on TV. Police examined him about the occurrence.

The defence declined to cross examine this witness.

The P.W.15 Md. Abu Hanif deposed that he held Inquest on the dead body of the deceased-victims and prepared Inquest Report and seized the recovered alamats.

In his cross this witness stated that during preparation of the Inquest Reports no witness told him about the cause of death.

The P.W.16 Md. Abdul Quddus stated in his evidence that on 30.04.2014 he was attached to Bandar P.S. As per G.D.E. No.1154 dated 30.04.2014 he went to Chardhaleswari area on the bank of river Shitalakshmya with S.I. Belayet. Going there, he saw dead bodies floating in the river. With the assistance of the local people the dead bodies were lifted up. His authority held Inquest on the dead body of the deceased. He took the dead bodies to the morgue of Narayanganj Hospital for autopsy. Subsequently, he heard about the names of the dead persons. This witness proved his signatures in the Forms in respect of the dead bodies and also proved his signatures in the Inquest Reports as Exhibits-38(1), 40(1), 14(2), 21(2), 15(2), 27(2), and 19(2). This witness further

deposed that there were sacks tied up with rope with the dead bodies which were seized under Seizure Lists.

In his cross this witness stated that he only carried the dead bodies.

The P.W.17 Advocate Priyatam Kumar Deb deposed that the occurrence took place on 27.04.2014 at about 1.30 p.m. at Dhaka-Narayanganj Link Road situated adjacent to Khan Osman Ali Stadium. His uncle, the victim Chandan Kumar Sarker along with his driver was kidnapped away while they were returning home. The kidnappers kidnapped them in the name of RAB. On the date of occurrence Advocate Panna lodged a G.D.E. They went to the Police Station, RAB office and S.P. office in search of the said victims but failed to trace out their whereabouts. Hearing news about recovery of the dead bodies from the river Shitalakshmya, he went there and signed the Inquest report. He

received the dead body of his deceased uncle after Post Mortem examination. Through media, newspapers and from the confessional statements of the accused-persons, he got confirmed that the RAB personnel conjointly with Noor Hossain Kidnapped away the victim Nazrul with the financial assistance of Noor Hossain. As his uncle protested the act of kidnapping, his uncle and all others were killed.

In his cross this witness stated that he based his statement on the basis of the news he got from media.

The P.W.18 Md. Abu Taher deposed that the occurrence took place on 27.04.2014 at 1.00/1.30 p.m. near Fatulla Stadium. On the date and at the time of occurrence seven persons including Nazrul were kidnapped. Knowing about the occurrence he made phone call to Tajul and found his phone switched off. He then made contact with Abul Khair,

the father of Tajul who told him that Shahid Chairman along with others were searching for the kidnapped persons. On 30.04.2014 at 03.00/03.30 p.m. through TV he came to know that in the Shitalakshmya river at Kolagachhia Union under Bandar P.S. some dead bodies floated up. They went to the place to see that one dead body had already been lifted up from the river. He identified the dead body of his nephew Tajul. He saw that entrails had come out of the dead body of his nephew Tajul. Police held Inquest on the dead body of the deceased. Police seized sacks and wearing apparels under a Seizure List. This witness proved his signatures in the Inquest Report and in the Seizure List as Exhibits-26(2) and 28(2). This witness further deposed that with regard to construction of a road, an altercation took place between Mobarak, maternal uncle's son of Noor Hossain and the victim Nazrul prior to the alleged

occurrence. At one stage, Mobarak made phone call to Noor Hossain. Thereafter, 60/70 persons came to assault Nazrul. Having not found Nazrul, those persons dismantled shop of Nazrul. On the following day the accused-persons Noor Hossain, Yasin, and Majibar with their associates came to Siddhirganj in front of the house of Mobarak. Mohammad Ali, son of Mobarak filed a case of mugging against Nazrul and 14 others. The date for hazira in that case was fixed on 27.04.2014. After giving hazira while Nazrul and others were returning, seven persons including Nazrul were kidnapped away from near the stadium. On 30.04.2014 he came to know that the dead bodies of the kidnapped persons floated up in the river Shitalakshmya. Subsequently, he came to know that in exchange of money the accused Noor Hossain got Nazrul and others killed by RAB personnel Tarek Syeed and others.

In his cross this witness stated that he identified the dead body of Tajul seeing pant, belt and face. He was present at the time of occurrence of first February. From different media he came to know that by paying money to the RAB personnel, the accused Noor Hossain got the occurrence perpetrated by RAB personnel. This witness denied the defence-suggestions that the accused Noor Hossain did not cause to happen the occurrence by RAB personnel paying them money.

The P.W.19 Md. Saiful Islam deposed that the victim deceased Nazrul was the husband of his elder sister. The occurrence took place on 27.04.2014 at about 1.30 p.m. On 01.02.2014, an altercation regarding construction of a road took place between Nazrul and Mobarak. Thereafter, Mobarak made phone call to Noor Hossain Chairman. Noor Hossain Chairman came accompanied by many

people with 10/12 vehicles. They dismantled the Honda motorcycle of his younger brother at Siddhirganj. Noor Hossain Chairman dismantled whatever he found. Being the complainant, Mobarak filed a case against Nazrul and others. On 27.04.2014, Nazrul and others came to Narayanganj for giving hazira in the Court. On their way back after giving hazira, Nazrul and others were kidnapped away by the RAB personnel. They searched for Nazrul. He along with his elder sister and others went to the Narayanganj Puran Court Office of RAB wherefrom they came back to Narayanganj Link Road. They protested against the act of kidnapping. On 30.04.2014 at about 2.00/2.30 they got news to the effect that some dead bodies floated up in the river. Having received the news, he along with his sister and relatives went to the Narayanganj Launch Ghat and went to the place where the dead bodies floated up and found

the dead body of the victim Nazrul in tied up condition with the sacks containing brick. The dead body of Nazrul was tied up with two sacks. The dead body was taken to the Victoria Hospital. After post mortem examination, they buried the dead body.

In his cross this witness stated that he could not recollect as to how many days after the occurrence he made statement to police. At the time of occurrence on 01.02.2014 he was near the place of occurrence. This witness denied the defence-suggestion that he deposed falsely.

The P.W.20 S.I. Abu Taleb stated in his deposition that on 30.04.2014 he held Inquest on the dead body of an unknown person (45) and prepared Inquest Report and sent the dead body for autopsy to Narayanganj Victoria Hospital through constable Abdul Quddus. This witness proved the Inquest Report as Exhibit-33 and his signature therein as Exhibit-33(1)

and also proved the Chalan. This witness further deposed that on 01.05.2014 he held Inquest on the dead body of an unknown person (42) and prepared Inquest Report and sent the dead body through constable Abdul Quddus for autopsy to Narayanganj Victoria General Hospital. This witness proved the Inquest Report as Exhibit-34 and his signature therein as Exhibit-34(1) and his signature in the Chalan as Exhibit-32(2). This witness also deposed that he seized alamats viz. plastic sacks, 10 birck which were tied up with the back of the dead body under a Seizure List. This witness proved the Seizure List as Exhibit-37 and his signature therein as Exhibit-37(1). This witness further deposed that he seized alamats viz. a portion of a lungi and a torn out 'Sando' banyan of an unknown deceased person (45) under a Seizure List. This witness proved the Seizure List as Exhibit-38 and his signature therein

as Exhibit-38(1). This witness further deposed that on 01.05.2014 he seized alamats of an unknown person (42) under a Seizure List. This witness proved the Seizure List and his signature therein as Exhibit-39 and 39(1). This witness further deposed that he seized the torn out wearing apparel of another dead body as produced by the constable Abdul Quddus under a Seizure List. This witness proved the Seizure List as Exhibit-40 and his signature therein as Exhibit-40(1). This witness identified the seized alamats as Material Exhibits-IV series.

In his cross this witness stated that he did not mention about the first occurrence in the Inquest Report. In the 2nd Inquest Report there was no description of the occurrence.

The P.W.21 Md. Rafiqul Islam, the elder brother of the victim-deceased Sirajul Islam Liton deposed that he identified the dead

body of the deceased Siraj in Victoria General hospital and received the dead body. He made statement to police.

The defence declined to cross examine this witness.

The P.W.22 Fakirchan deposed that two years back he attested two Seizure Lists in respect of recovery of brick, rope and cloth and attested the Inquest Report. This witness proved his signature in the Seizure List as Exhibit-39(2) and the Inquest Report as Exhibit-34(2).

In his cross this witness stated that he could not say as to what was written in the Seizure List.

The P.W.23 Ibrahim deposed that he was a resident of Shantinagar under Bandar P.S. About two years back he went to the place where the dead bodies were recovered. He saw police to lift up one dead body. He attested the Inquest Report and the Seizure List. This

witness proved his signature in the Inquest Report and the Seizure List as Exhibits-33(2) and 37(2). He further deposed that amongst the seized articles he saw that sacks with brick tied up with rope.

In his cross this witness stated that at the instruction of police, he put his signatures.

The P.W.24 Ibne Hasan deposed that he was an inhabitant of Chuladhara village under Bandar P.S., Narayanganj. The occurrence took place two years back. Hearing news in the television, he went to the bank of the river of the place of occurrence to see gathering of many people. Police brought up the dead bodies from the river. Police held Inquest on the dead body of the dead body. This witness proved his signature in the Seizure List (Exhibit-33) as Exhibit-33(3). This witness further deposed that police recovered dead body tied up with brick and rope. This

witness also proved his signature in the Seizure List as Exhibit-37(3).

In his cross this witness stated that he could not recollect as to whether the two papers in which he put his signatures were read over to him or not.

The P.W.25 Hazi Md. Abdul Salam deposed that he was the full younger brother of the victim Nzrul. On 27.04.2014 his brother came to Narayanganj Court to give hazira. At the time of giving hazira, the RAB personel in civil dress tried to kidnap him. One of them was apprehended by public and handed him over to police and he admitted himself to be a member of RAB. He came to know about it over phone from his brother Nazrul. After hazira, at about 01.30 p.m., his brother and four others started for Dhaka with the white coulour private car of Swapan. He was waiting for his brother in his residence at Jatrabari. At about 1.36 p.m. he made a phone

call to his brother and found the phone to be switched off. Thereafter, he made phone call to Swapan and Liton but this time also he found their mobile phones to be switched off. Thereafter, he rushed to the SP Office from his residence. The wife of his brother also told him over phone that she found the mobile phone of his brother to be switched off. They went to the SP Office at 08.00 p.m. and told everything to the SP. SP took information about his brother and asked them to go to the RAB Office. The wife of his brother and others went to Adamjee RAB office and he along with others went to Kalibazar RAB Office. After going to the RAB Office they asked whether RAB personl brought his brother apprehending to which they answered in the negative.

Thereafter, they came on to the road. The people near the stadium disclosed that at 01.30/01.45 p.m. by there vehicles, the RAB

personnel picked up five persons (Nazrul, Swapan, Liton, Taijul and driver Zahangir) along with his brother. A person saw the act of kidnapping by RAB personnel and saw, the RAB personnel to pick up another person as well. He also came to know that said person was Chandan Advocate. His Bhabi (wife of his brother) went to the MP. Three days after the occurrence the dead bodies were found on the bank of the river Kalagachhia under Bandar P.S. They instantly went to the place of recovery of the dead bodies. On 28.04.2014 his Bhabi lodged FIR with the Fatulla P.S. He identified the dead body of Nazrul. Police held Inquest on the dead body of Nazrul as per his identification. This witness proved the Inquest Report (Exhibit-2) and his signature therein as Exhibit-2(2). This witness further deposed that the dead body was tied up with rope with sack containing 10 brick each and the abdomen was perforated.

This witness proved his signature in the Seizure List as Exhibit-13(2). This witness further deposed that the dead body was taken to Victoria Hospital. He accompanied the dead body. After post mortem examination on the dead body, he received it. He proved the Receipt in respect of receiving the dead body and his signature in the Receipt as Exhibits-42 and 42(1). This witness further deposed that two months before the date of occurrence, in the event of not breaking the shutter of a shop, his brother Nazrul paid him Tk.10, 000/00 to break the shutter. Instead of breaking the shutter, Mobarak informed the matter to Noor Hossain whereon Noor Hossain sent 60/70 persons there who beat up people and dismantled shops. On that night, Noor Hoosain got filed a case against Nazrul. Getting bail in that case Nazrul came to the Court to give hazira. On 02.2014 Noor Hossain came to Mizmizi Chowdhury Para and

compensated the injured people saying that they came to kill Nazrul and having not found him, beat up them and that wherever they would find Nazrul they would kill him. It was propagated that Nazrul was kidnapped away by RAB personnel. With conspiracy with Noor Hossain, the RAB personnel Major Arif, Rana, Syeed and others kidnapped away Nazrul and others. This witness identified the accused-persons Noor Hossain, Rana, Syeed, Arif, Shahjahan, Churchil and Ali Ahmad in the dock who kidnapped away Nazrul and others who were known to him.

In his cross this witness stated that he was present at the time of lodging the FIR. From inside the Court, the RAB personnel made attempt to kidnap his brother. He did not know the accused Purnendu Bala but mentioned in the FIR to be the members of RAB. In the FIR there is no mention of the accused Arif Hossain but there was mention of RAB force.

He made statement to police on 03.05.2014. At first he came to know about the kidnapping from the people on the road. This witness denied the defence-suggestions that under the leadership of the accused Tarek Syeed the occurrence did not take place or that the accused Noor Hossain was not involved in the occurrence or that the accused-persons Mokhlesur Rahman, Abdul Alim, Mohiuddin Munshi, Hira Miah, Md. Ruhul Amin, Jamal Uddin, Shahjahan, Asaduzzaman Khan Noor, Babul Hasan, Churchil, Ali Mohammad, Raham Ali and Commander Masood Rana were not involved in the alleged occurrence.

The P.W.26 Advocate Arunava Sarker deposed that the victim Chandan Kumar Sarker was his full uncle. The occurrence took place on 27.04.2014 at about 2.00 p.m. After finishing his Court-work, while his uncle was returning home by his private car, he was kidnapped from the road in front of Osman

Stadium. At 05.00/05.30 p.m. he came to know from his nephew Dipu that his uncle did not return home. While he gave mobile call to the mobile phone of Chandan Sarker bearing no. 01716436688 it rang but none attended it. Thereafter, he along with his Advocate friend Momen went up to Jalkuri by a CNG and asked people found on the way as to whether any accident took place on the road or any body was kidnapped to which they replied that they did not know anything. Thereafter, he came back to his chamber and made attempt time and again to make mobile contact. At about 7.00/7.30 p.m., a client came to his chamber and informed that Commissioner Nazrul was kidnapped while he was returning from the Court after giving hazira from the road of Osman Stadium. On his query, his client gave description of Nazrul. Then he could recollect that the car of Nazrul and Chandan Sarker were parked side by side in the

eastern side of Bar Library. Both the cars of Nazrul and Chandan Sarker went out at a time. Thereafter, he made mobile phone call to his elder brother Amitava Sarker and informed the matter whereon his brother told him to go to the chamber of Advocate Shakhawat, the president of the Bar. As per the advice of Advocate Shakhawat he went to the RAB office situated at Kalibari. The present RAB personnel told him that as the higher RAB personnel were out side the RAB office they would not be able to take any step. Thereafter, they went to the S.P., Narayanganj and informed him about the matter who advised him to make a G.D.E. As per the advice, he made a G.D.E. bearing no. 1616 dated 27.04.2014 regarding missing. This witness proved the G.D.E. as Exhibit-26 and his signature therein as Exhibit-26 (1). This witness further deposed that on the following day after dusk the missing car of his uncle

was found at Niketon, Gulshan. S.P. Narayanganj assured about the recovery of the private car. In his cross this witness stated that in his G.D.E., he implicated none.

The P.W.27 Md. Alamgir Hossain deposed that the deceased Jahangir was his brother who used to drive the car of the deceased Swapan. He identified the dead body of his brother in Victoria Hospital and received the dead body for burial. This witness proved the Deed of Receipt as the Exhibit-43 and his signature therein as Exhibit-43(1). This witness further deposed that he attested the Seizure List in respect of Jeans Pant, Belt and short (jangia). He made statement to police. On 27.04.2014 at 1.30 p.m. Shahabuddin over phone told him that the mobile phone of Jahangir was found to be switched off. They searched for Jahangir. Thereafter, news was received to the effect that the dead bodies were found in the river

Shitalakshmya. On the following day he came to Victoria Hospital and identified his brother's dead body. Subsequently, he came to know that RAB personnel tied up brick with the back and chest of his brother and that by kidnapping away they killed his brother and dropped his dead body in the river.

This witness denied the defence-suggestion that he did not tell the Investigating Officer that RAB kidnapped his brother.

The P.W.28 A.S.I. Riyazul Haque deposed that on 27.04.2014 while he was on duty at dusk, found a white colour numberless private car in abandoned condition at a place 200 yards away on the road from Gazipur Chowrasta (crossing). With the instruction of higher authority he seized the car under a Seizure List and took it to his custody. This witness proved the Seizure List as Exhibit-44 and his signature therein as Exhibit-44(1). This

witness further deposed that thereafter, finding some papers he included them in the Seizure List. This witness identified the Money Bag, National ID Card, Driving Licence etc. as Material Exhibits-V, V (I)-V(III) series. This witness further deposed that thereafter, he sent the car to the Investigating Officer of Fatulla P.S. Case No.74 (4)14.

The defence declined to cross examine this witness.

The P.W.29 Md. Badrul Alam deposed that on 27.04.2014 at 08.30 p.m. while he along with A.S.I. Riyazul Haque was on duty at Rajendrapur Chowrasta they found a car in abandoned condition. ASI Riyazul Haque seized the car under a Seizure List. He attested the Seizure List. This witness proved his signature in the Seizure List as Exhibit-44(2). This witness further deposed that Money Bag, Papers. Voter ID Card etc. were

seized under the Seizure List. This witness identified the seized articles.

This witness was not cross examined on behalf of the accused-persons.

The P.W.30 Md. Mokter Hossain deposed that He attested the Seizure List dated 27.04.2014. This witness proved his signature in the Seizure List as Exhibit-44(3).

Defence declined to cross examine this witness.

The P.W.31 Anwar Hossain stated in his deposition that he attested the Seizure List dated 27.04.2014. The seized articles were there in the Court. This witness proved his signature in the Seizure List as Exhibit-44(4).

The defence declined to cross examine this witness.

The P.W.32 Constable No. 11696 Md. Salim Mia deposed that on 28.04.2014 at 11.30 p.m. while he was on duty with S.I. Mizanur Rahman

at Niketon area, they found a black colour private car bearing no. Dahaka-Metro Ga-2733-37 (G Corolla) in abandoned condition. Thereafter, S.I. Wahiduzzaman of Fatulla P.S. seized the car under a Seizure List. He proved his signature in the Seizure List as Exhibit-45(1).

The P.W.33 Inspector Wahiduzzaman deposed that on 28.04.20014 he was attached to Fatulla P.S. On receiving information to the effect that a black colour car bearing no. Dahaka Metro-Ga-173377 was found in abandoned condition at plot no. 18 of Nikaton Housing under Gulshan P.S., he went there with his force, seized it under a Seizure List in presence of witnesses under a Seizure List in connection with Fatulla P.S. case No. 74 dated 28.08.2014 under sections 170/341/365/34 of the Penal Code at 11.50 p.m. and took the car to his custody. This

witness proved the Seizure List as Exhibit-45 and his signature therein as Exhibit-45(2).

In his cross this witness stated that at the time of occurrence he was attached to Fatulla P.S.

The P.W.34 Morsheda Akter, the wife of the deceased Maniruzzaman stated in her deposition that the occurrence took place on 27.04.2014. On that date her husband went to Narayanganj with Chairman Nazrul to give hazira. After giving hazira at about 1.00 p.m. she made telephone call to her husband but found his mobile phone to be switched off. She made phone call to Ismail who told her that her husband was not there in the Court and that he went away. Thereafter, she made call to her husband's brother Mizanur Rahman Ripon who told her that he went away. Subsequently, Ripon informed her over phone that from near the stadium, RAB took away her husband and others. Thereafter, on search,

her husband was not found. On 27.04.2014 seeing TV news, the local people disclosed that her husband and others had been kidnapped away by RAB. Thereafter, on 30.07.2014 through TV she came to know that six dead bodies including that of her husband were found in the river Shitalakshmya. Mizanur Rahman Ripon went there and found the dead body of her husband. She became senseless. After 30.04.1974, the dead body of another person was found. With the permission of the Court, she accepted the private car of her husband by a Deed of Undertaking. This witness probed the Deed of Undertaking as Exhibit-46 and her signature therein as Exhibit-46(1). This witness further deposed that through newspaper she came to know that her husband was killed mercilessly. Fifteen days before the occurrence, her husband told her that Noor Hossain filed false case against him. Her husband could not stay at

his residence as the associates of Noor Hossain used to chase him. As per the pre-planning of the accused Noor Hossain the occurrence took place. She saw her husband always thoughtful about Noor Hossain. Excepting Noor Hossain, her husband had no other enemy. She was 100% sure that Noor Hossain got the occurrence perpetrated.

In her cross this witness stated that she made statement to the I.O. This witness denied the defence-suggestions that her husband was not kidnapped away or that she did not tell the Investigating Officer that by chalking out plan Noor Hossain killed her husband or that her husband had no enmity with Noor Hossain or that she did not get news from the TV that RAB kidnapped away her husband or that she deposed falsely.

The P.W.35 Archana Sarker, the wife of the deceased Chandan Sarker deposed that the occurrence took place on 27.04.2014. On that

day at about 1.30/2.00 p.m. finishing his works of the Court her husband was returning home with his private car bearing no. Dhaka Metro-Ga-2733-37. She received the car of her husband from the Court on 30.06.2014. This witness proved the Deed of Custody in respect of the car as Exhibit-27 and her signature therein as Exhibit-27(1).

This witness sought justice for killing of her husband. This witness was not cross examined on behalf of the defence.

The P.W.36 Madhab Kumar Deb stated in his deposition that the deceased Chandan Kumar was his distant maternal uncle. The Occurrence took place on 27.04.2014. On 30.04.2014 he identified the dead body of Chandan Kumar at Chardhaleswari. He attested the Seizure List in respect of brick, rope, sack, belt, pant etc. This witness proved his signature in the Seizure List as Exhibit-14 and his signature therein as Exhibit-14(3).

The defence declined to cross examine this witness.

The P.W.37 Dr. Md. Asaduzzaman deposed that on 30.04.2014 at 5.30 p.m. he held Post Mortem examination on the dead body of Hazi Nazrul Islam (37) through a Medical Board in Narayanganj General Hospital. The board consisted of three members. The other members were Dr. Jalil Ahmed and Dr. Sheikh Farid. During post mortem examination they found the following injuries on the person of the deceased Hazi Nazrul Islam:

1. Continuous horizontal ligature mark around lower part of neck.
2. Extensive echymosis on the occipital and Posterior parietal region of head.
3. Echymosis on the both sides of upper chest.
4. Echymosis on the right and left thigh.

5. Penetrated wound on the abdominal wall, just right to the umbilicus 1½(inch) in diameter.

Besides above, they examined the internal organs and found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-47 and his signature therein as Exhibit47/1. This witness further deposed that the signature of Dr. Jalil and Dr. Sheikh Farid were known to him. This witness proved their signatures as Exhibit-47(2) and Exhibit-47(3). This witness further deposed the Civil Surgeon, Narayanganj countersigned the Post Mortem Examination Report on 07.05.2014. His

signature was known to him. This witness proved the signature of the Civil Surgeon, Narayanganj in the Post Mortem Examination Report (Exhibit-47) as Exhibit-47(4).

This witness further deposed that on 30.04.2014 he along with their board members held Post Mortem examination on the dead body of the deceased Chandan Kumar Sarker (60) in Narayanganj General Hospital. The other members of the board were Dr. Jalil Ahmed and Dr. Sheikh Farid. At 10.00 p.m. they held Post Mortem examination. During Post Mortem examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on left temporal occipital and part of frontal region.
3. Echymosis on left upper chest.

4. Penetrated wound on the abdominal wall, just left lateral to umbilicus $1\frac{1}{2}$ (inch) in diameter.

They found the larynx and esophagus highly congested and found the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-28 and his signatures therein as Exhibit-28(1). This witness proved the signatures of other members of the board therein as Exhibits-28(2), 28(3) and the signatures of Civil Surgeon (Dulal Chandra Chowdhury) as Exhibit-28(4).

This witness further deposed that on 30.04.2014 they held Post Mortem examination on the dead body of the deceased Ibrahim (48)

in Narayanganj Zilla Sadar Hospital at 10.10 p.m. During post mortem examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on left parietal region and whole occipital region.
3. Echymosis on left upper chest wall.
4. Penetrated wound on the abdominal wall just left lateral to umbilicus $1\frac{1}{2}$ (inch) in diameter with protruded intestine.

During examination of the different organs of the dead body they found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation

preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-29 and his signature therein as Exhibit-29(1) and the signatures of Dr. Jalil Ahmed and Dr. Sheikh Farid and Civil Surgeon Dr. Dulal Chandra Chowdhury therein as Exhibits-29(2), 29(3) and 29(4)

This witness further deposed that on 30.04.2014 at 11.00 p.m. they held Post Mortem examination on the dead body of the deceased Moniruzzaman Swapan (40) through a medical board. During post mortem examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on upper chest wall.
3. Echymosis on occipital region.

4. Penetrated wound on the abdominal wall just above the umbilicus 1½(inch) in diameter with protruded intestine.

During examination of the internal organ they found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-48, his signature therein as Exhibit-48(1) and the signatures of Dr. Jalil Ahmed and Dr. Sheikh Farid and the Civil Surgeon Dr. Dulal Chandra Chowdhury therein as Exhibit-48(2), 48(3) and 48(4).

This witness further deposed that on 30.04.2014 at about 10.40 p.m. they held Post

Mortem Examination on the dead body of the deceased victim Tajul Islam (25). During Post Mortem examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on upper chest wall.
3. Echymosis on frontal both partial temporal and occipital region of brain.
4. Penetrated wound on the abdominal wall just left lateral to umbilicus $1\frac{1}{2}$ (inch) in diameter with protruded intestine.

During post mortem examination of the internal organ of the deceased they found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation

preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-49, his signature therein as Exhibit-49 (1) and the signatures of his accompanying doctors and the Civil Surgeon Dr. Dulal Chandra Chowdhury therein as Exhibits-49 (2), 49 (3) and 49(4).

This witness further deposed that on 30.04.2014 at 11.15 p.m. through a Board they held post mortem examination on the dead body of the deceased Md. Jahangir Hossain (28). During examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on upper chest wall.
3. Echymosis on parietal and occipital region.
4. Two penetrated wounds on the abdominal wall just left side of

umbilicus 1½(inch) in diameter
each with protruded intestine.

During examination of the internal organ they found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion death was due to asphyxia as a result of strangulation preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-50, his signature therein as Exhibits-50 (1) and of the two doctors of his Board and the Civil Surgeon Dr. Dulal Chandra Chowdhury therein as Exhibit-50 (2), 50 (3) and 50 (4).

This witness further deposed that on 01.05.2015 at 11.30 a.m. he along with two other doctors through a Medical Board held Post Mortem examination on the dead body of the deceased Sirajul Islam Liton (42). During

post mortem examination they found the following injuries on the person of the deceased:

1. Continuous horizontal ligature mark around lower part of neck.
2. Echymosis on upper chest wall.
3. Echymosis on parietal and occipital region.
4. Two Penetrating wounds on the abdominal wall just left side of umbilicus $1\frac{1}{2}$ (inch) in diameter each with protruded intestine.

During examination of the internal organs they found larynx and esophagus highly congested and that the right and left lung partially decomposed and highly congested.

In their opinion the death was due to asphyxia as a result of strangulation preceded by assault which was ante-mortem and homicidal in nature.

This witness proved the Post Mortem Examination Report as Exhibit-51, his signature therein as Exhibit-51(1) and the signatures of the two other doctors and the Civil Surgeon Dr. Dulal Chandra Chowdhury therein as Exhibits-51 (2), 51 (3) and 51 (4).

In his cross this witness stated that before Post Mortem examination they perused the Inquest Report and the Chalan. In the Inquest Report it was stated that there was hole under the navel of the deceased persons. Under pressure of water, suffocation and asphyxia could take place. They signed 6(six) Post Mortem Examination Reports on 30.04.2014. In the column of comment, the Civil Surgeon did not make any comment.

This witness denied the defence-suggestion that they did not find the 7 injuries as mentioned in the Post Mortem Examination Reports or that they did not hold

Post Mortem Examination properly or that being influenced, they submitted the Post Mortem Examination Reports.

The P.W.38 Dr. Jalil Ahmed deposed that he took part in holding post mortem examination on the dead bodies of six persons on 30.04.2014 and took part in holding post mortem examination on 01.05.2014 as one of the members of the Medical Board. This witness proved his signatures in the Post Mortem Examination Reports as Exhibits-28(2), 29(2), 47(2), 48(2), 49(2), 50(2) and 51(2).

In his cross this witness stated that up to 12 'O' clock at night they held Post Mortem examination on the body of six deceased persons. There was signature of the Civil Surgeon in the Post Mortem Examination Reports. When he agreed with the opinion of the Post Mortem holding doctors he used to put his signature in the report. This witness denied the defence-suggestion that they did

not hold the post mortem examination properly.

The P.W.39 Dr. Sheikh Farhad deposed that he was a member of the Post Mortem Examination Medical Board.

The defence declined to cross examine this witness.

The P.W.40 Dr. Md. Mainuddin deposed that he was a member of the Post Mortem Examination Medical Board.

The defence declined to cross examine this witness.

The P.W.41, Constable Abdul Latif stated in his deposition that on 27.04.2014 he was the body guard of Md. Azimul Ahsan (senior A.S.P). On 27.04.2014 at about 9.00 p.m. he was on duty. At the last stage of their duty at Bandar Siddhirganj area while they were returning from their duty at about 4.00 a.m., they saw a microbus to come at Killarpur area under Narayanganj. As per the instruction of

ASP Md. Azimul Ahsan he gave signal to the microbus to stop and his Officer went near the microbus. He stood beside his Officer. On asking, the person sitting beside the driver of the microbus gave his identity to be Tarek Syeed, the Commanding Officer of RAB-11 stating that after performing duty at launch ghat he was returning to his camp. He stated this fact to the Investigating Officer. This witness identified the accused Tarek Syeed in the dock.

In his cross, this witness stated that he used to accompany his Officer wherever he went. He made statement to the Investigating Officer on 27.03.2015. This witness denied the deffence-suggestions that he did not see any microbus on the night of 27.04.2014 or that he did not stop it or that the person sitting in the microbus did not give his identity to be Tarek Syeed or that he deposed falsely.

The P.W.42 Md. Azim Ul Ahsan, Senior A.S.P. Narayanganj deposed that the occurrence took place on 27.04.2014. At that time he was attached to Narayanganj as the senior A.S.P (A) Circle. On 27.04.2014 at about 2/3 p.m he came to know that 7 persons including councillor Nazrul were kidnapped. On that day following night i.e. on 28.04.2014 at about 3.45 a.m. at night while he was performing the supervisory duty and was entering into Siddhirganj P.S. area from Sadar P.S. area, a white colour Hiace microbus was stopped at Killarpur under Siddhirganj P.S and he wanted to know the identity of the persons inside the microbus. Then the then C.O., RAB Lt. Col. Tarek Syeed gave his identity. The Hiace microbus was going to Siddhirganj P.S area from Sadar P.S. area. Tarek Syeed informed him that after finishing duty at the ghat no. 5 he was coming. In this respect he made statement to

the Investigating Officer. This witness identified the accused Tarek Syeed Mohammad in the dock stating that he was well known to him.

In his cross, this witness stated that he could not recollect the date of his making statement to the Investigating Officer. This witness denied the defence-suggestions that the accused Tarek Syeed did not give his identity on the date and at the time as stated by him or that Tarek Syeed did not tell him that after finishing duty he was returning or that he did not meet Tarek Syeed or that being influenced by the informant he deposed falsely.

The P.W.43 Mokter Hossain deposed that he was a witness in respect of receipt of the dead body of the deceased Nazrul. Hazi Abdus Salam, the brother of the deceased Nazrul received the dead body. This witness proved

his signature in the Deed of Receipt of the dead body as Exhibit-42(2).

The defence declined to cross examine this witness.

The P.W.44 Md. Abul Khair deposed that the deceased Tajul was his eldest son. The occurrence took place on 27.04.2014 at 01.30 p.m. The RAB personnel kidnapped away his son and others. He was a day labourer. He went to Mowchak, the place of his work. On 01.02.2014 at about 11.00/11.30 a.m. an altercation took place between Nazrul and Mobarak, a relative of the accused Noor Hossain concerning the work of Chowdhurypara Government Road. Pursuant to this incident, suddenly, the associates of Noor Hossain attacked them and dismantled shops. On 02.02.2014 he went to his place of work. In the evening he heard that Noor Hossain came to Chowdhurypara with his associates and entrusted responsibility of paying compensation to the persons who

sustained loss to Haji Yasin. On 02.02.2014 he came to learn that Ali Hossain, the son of Mobarak filed a case of mugging against 14/15 persons. In that case his son Tajul Islam alias Russel was also made an accused. But at that time his son was not in the country. He was in India. On 13.02.2014 his son came to the country. Subsequently, on 27.04.2014 he came to the Court to give hazira with panel Mayor Nazrul and other case mates. At 1.30 p.m. after giving hazira he started for home. On their way, at the Dhaka-Narayanganj Link Road, from beside the Khan Saheb Osman Stadium, the RAB personnel kidnapped away his son Tajul Islam, Nazrul, Swapan, Liton and Jahangir Hossain. They saw the news on TV. He made mobile phone call to his son but he found it to be switched off. Thereafter, he made phone call to his another son and also told him to make phone call to Tajul. They also told that the phone was switched off. On

28.04.2014 he along with the wife of Nazrul and his brother went to the office of the S.P. and searched for his son. Thereafter, the S.P. told them to file case in Fatulla P.S. The wife of Nazrul lodged the FIR of the case. On 30.04.2015 at about 03.00/03.30 p.m. he saw on the TV that at Kalagachhia under Bandar P.S. some dead bodies floated up. Then his son and his relatives went there. His son identified the dead body of Tajul Islam. The dead body of his son was taken to hospital and on 01.05.2015 they received the dead body and buried it. Subsequently, he came to know from newspaper and TV that in exchange of money i.e. getting money from Noor Hossain, the RAB personnel committed the murder of the victims. The accused Tarek Syeed, Arif Hossain, M.M. Rana and their team mates perpetrated the act of murder and after their arrest they made

confessional statements in the Court. He made statement to police.

In his cross this witness stated that he made statement to the I.O. on 14.05.2014. Knowing about the occurrence from newspapers he deposed. This witness denied the defence-suggestions that RAB personnel did not perpetrate the occurrence or that he deposed falsely.

The P.W.45 Saiful Islam Mintoo deposed that he was the younger brother of the victim Sirajul Islam. The occurrence took place on 27.04.23014. He heard that at Dhaka-Narayanganj Link Road from near the stadium, his brother along with 05 persons were kidnapped away. He heard that when his brother came to give hazira in the Court, he was kidnapped. He made mobile phone call to his brother but his brother's mobile phone was found switched off. On 01.05.2015 he found the dead body of his brother. He put

his signature i.e. Exhibit-41(2) in the Deed of Receipt of the dead body of his brother.

In his cross this witness stated that it was a fact that his brother got missing on 27.04.2014 and his dead body was found on 01.05.2014.

The P.W.46 Istiak Ahmed Siddiki, Senior Judicial Magistrate deposed that on 03.12.2014 he recorded the confessional statement of the accused Sainik Nooruzzaman under section 164 of the Code in connection with Sessions Case No. 103 of 2016. This witness proved the statement as Exhibit-52 and his signatures therein as Exhibits-52(1)-52(5). This witness further deposed that the accused put eight signatures in the statement. Thereafter, he recorded the confessional statement of the accused Sainik Mohammad Nooruzzaman under section 164 of the Code in connection with Sessions Case No.1748 of 2015. The accused put eight signatures in

the statement. This witness proved the statement as the Exhibit-30 and his signatures therein as Exhibits-Exhibits-30(1)-30(5).

In his cross this witness stated that after recording the statements of the accused he sent him to the jail custody. The accused was in his custody from 9.00 a.m. to 5.00 p.m. This witness denied the defence-suggestions that without observing the legal formalities he recorded the confessional statements or that the accused did not make the statements voluntarily.

The P.W.47 Saifuzzaman Sharif, Judicial Magistrate deposed that on 05.11.2014 he recorded the statements of the witnesses Md. Atiar Rahman, DAD Admn., CPC-1 (RAB-11) and Md. Selim Khan DAD Admn., CPSC RAB-11 in connection with Fatulla P.S. Case Nos.74(4) 14 and 11(5)14 observing the legal formalities properly. This witness proved the

statements as Exhibits-53 and 31 and his signatures therein as Exhibits-53(1)-53(2) and 31(1)-31(2). This witness further deposed that there were two signatures of the witnesses in the every statement. Besides above, on 24.12.2014 he recorded the statement of the witness Sainik Milon Hossain as per law in the said two cases. This witness proved the statements as Exhibits-54 and 32 and his signatures therein as Exhibits-54(1)-54(2) and 32(1) and 32(2). This witness further deposed that besides that on 07.12.2014 at 11.00 a.m., he recorded the confessional statement of the accused Md. Babul Hasan in the two cases one after another giving time for speculation. This witness proved the statement made in the Fatulla P.S. Case No.74(4)14 as Exhibit-55 and his signature therein as Exhibits-55(1)-55(6). This witness further deposed that there were seven signatures of the accused in

the statement. This witness proved the confessional statement of the accused made in Fatulla P.S. Case No. 11(5)14 as Exhibit-33 and his signatures therein as Exhibits-33(1)-33(6). This witness further deposed that there were eight signatures of the accused in the statement.

In his cross this witness stated that the accused Babul was sent with a forwarding. It took about one and half an hour to record the confessional statement. In the certificate the statement was mentioned to be a confessional statement. In connection with the Case No.74(4) 14, the accused Babul Hasan was sent to him at 11.00 a.m. There was no specific mention of starting time of recording the statement and finishing of it. There was tick mark in the statement to the effect that the accused might tell whatever he liked. This witness denied the defence-

suggestion that he did not record the statements of the accused as per law.

The P.W.48 Manwara Begum deposed that she recorded the confessional statement of the accused Sepoy Abu Taiyab in connection with Fatulla P.S. Case No.74(4)14 on 30.08.2014. This witness proved the statement as Exhibit-56 and her signatures therein as Exhibits-56(1)-56(5). This witness further deposed that there were 16 signatures of the accused in the statement. On 07.12.2014 she recorded the confessional statement of the accused Md. Nasir Uddin in connection with Fatulla P.S. Case No.74(4)14. This witness proved the statement as Exhibit-57 and her signatures therein as Exhibits-57(1)-57(5). This witness further deposed that there were 17 signatures of the accused in the statement. This witness further deposed that on 30.08.2014 she recorded the confessional statement of the accused Sepoy Abu Taiyab in connection with

Fatulla P.S. Case No.11(5)14. This witness proved the statement as Exhibit-34 and her signatures therein as Exhibits-34(1)-34(5) stating that there were 15 signatures of the accused in the statement. This witness further deposed that on 07.12.2014 she recorded the confessional statement of the accused Habilder BGB Md. Nashir Uddin in connection with Fatulla P.S. Case No.11(5)14. This witness proved the confessional statement as Exhibit-35 and her signatures therein as Exhibit-35(1)-35(5) stating that there were 7 signatures of the accused in the statement. This witness further deposed that on 25.12.2014 she recorded the confessional statement of the accused Sainik Asaduzzaman Noor in connection with Fatulla P.S. Case No.11(5)14. This witness proved the confessional statement as Exhibit-36 and her signatures therein as Exhibit-36(1)-36(6) stating that there were 12 signatures of the

accused in the statement. This witness further deposed that on 22.07.2014 she recorded the statements of the witness Md. Abdus Samad in connection with Fatulla Case Nos.11 (5)14 and 74(4)14. This witness proved the statements as Exhibits-37 and 58 and her signatures therein as Exhibits-37(1) and 58(1) stating that there were 6 signatures of the witness therein. This witness further deposed that on 22.07.2014 she recorded the statements of the witness Md. Abdus Samad Sikder in connection with Fatulla P.S. Case No.11(5)14 and 74(4)14. This witness proved the statements as Exhibits-59 and 38 and her signatures therein as Exhibits-38(1) and 59(1) stating that there were 6 signatures of the witnesses therein. This witness further deposed that on 04.08.2014 she recorded the statements of witness Abdur Razzak under section 164 of the Code in connection with Case No.11(5)14 and 74(4)14. This witness

proved the statements as Exhibits-39 and 60 and her signatures therein as Exhibits-39(1) and 60(1) stating that there were 14 signatures of the witnesses therein. This witness further deposed that on the same date she recorded the statement of the witness Azam Ali in connection with aforesaid two cases under section 164 of the Code. This witness proved the statements as Exhibits-40 and 61 and her signatures therein as Exhibits-40(1) and 61(1) stating that there were 8 signatures of the witnesses therein. This witness further deposed that thereafter, on 10.08.2014 she recorded the statements of the witness Nazim Uddin in connection with Fatulla Case Nos.11(5)14 and 74(4)14. This witness proved the statements as Exhibits-41 and 62 and her signatures therein as Exhibits-41(1) and 62(1) stating that there were 11 signatures of the witness therein. The Pw48 further stated in her

deposition on 17.12.2014 she recorded the statement of the witness Abdus Satter in connection with Fatulla P.S. Case Nos.74 (4)14 and 11(5)14. This witness proved the statements as Exhibits-63 and 42 and her signatures therein as Exhibits-63(1) and 42(1) stating that there were 8 signatures of the witnesses therein. The Pw48 further stated in her deposition that on 23.12.2014 she recorded the statements of the witness Jahangir Alam in connection with the aforesaid two cases under section 164 of the Code. This witness proved the statements as Exhibits-43 and 64 and her signatures therein as Exhibits-43 (1) and 64 (1) stating that there were 4 signatures of the witness therein.

In her cross this witness stated that she recorded the confessional statement of the accused Sepoy Taiyab in Form No M-84. She stated to the accused that she was not a

police Officer. She started recording the statement at 9.30 a.m. There was no mention as to when she finished recording of the statement. The accused did not tell anything about physical torture to her. She appended certificate in the form after recording the statements. This witness denied the defence-suggestions that the accused Taiyab did not make confessional statements voluntarily or that she did not observe all the formalities of law in recording the statements or that the accused Nasir did not make the statements voluntarily. This witness further stated in her cross that she did not mention as to when she started recording the confessional statement of the accused Nasir Uddin and when she finished it. This witness denied the defence-suggestion that the accused Nasir did not make confessional statement in Case No.11 (5)14. This witness denied the defence-suggestion

that she did not give any memorandum after recording confessional statement of the accused Asaduzzaman Noor. This witness further deposed that after recording the statement of the witnesses Abdus Salam Sikder, Abdus Samad, Md. Abdur Razzak, Azam Ali, Nazim Uddin, Abdus Satter and Jahangir Alam she read over the statements to the witnesses who signed the statements admitting those to be true. This witness denied the defence-suggestion that she did not record the statements of the witnesses properly.

The P.W.49 Md. Ali deposed that on 27.04.2014 at about 12 'O' clock noon he was going to Dhaka by a bus named 'Bandhan'. After crossing Khan Saheb Osman Ali Stadium he saw a team of RAB personnel standing at the left side of the road. It was his presumption that they would install a Check Post consisting of more than 8/10 RAB personnel. Then he saw the RAB mark on the

shoulder of the RAB personnel and arms in their hands. After he reached his place of work at Fakirapool, Dhaka, his brother Mostafa Kamal, the President of Mijimiji Paschim Para High School informed him over phone at 12.30 p.m. that after 12.30 p.m. RAB personnel kidnapped Nazrul. His brother asked as to whether he got that information. Thereafter, he came back from Dhaka office to Mijimiji Mowchak Bus Stand to see hundreds of people assembled there and he saw the father-in-law of Nazrul, wife of Nazrul, Salam, the younger brother of Nazrul. The roads and high ways were blocked. Thereafter, at the assurance of Abdul Matin, the Officer-in-Charge of Siddhirganj P.S. to the effect that he would find out Nazrul, the people went back. On 30.04.2014 at about 3.00 p.m. he saw on TV that dead bodies of six persons along with Nazrul floated up in the river Shitakashmya. Thereafter, through TV and

newspaper he came to know that the RAB personnel kidnapped Nazrul and others and after killing them dropped their dead bodies in the river. He made statement to police on 17.05.2014.

In his cross this witness stated that his bus was in running condition. He clearly saw the RAB personnel wearing their dress. This witness denied the defence-suggestions that he did not see the RAB personnel on the date, at the place and at the time as stated by him or that he deposed falsely.

The P.W.50 Advocate Md. Humayun Kabir deposed that on 30.04.2014 receiving information that the dead body of Senior Advocate Chandan Kumar floated up in the river Shitalakshmya of Chardhaleswari village under Bandar P.S., he along with Advocate Priyatam Kumar Deb and some other lawyers went there and Advocate Priyatam Kumar Sarker identified the dead body of Chandan Kumar.

S.I. Belayert Hossain seized the ring, Sandoguari, pant, belt, shoe, rope, brick, plastic sack etc. under a Seizure List. He attested the Seizure List. Thereafter, at 11.30 p.m., the dead body of Chandan Kumar was received from the Victoria Hospital. He attested the Seizure List and the paper in respect of the receipt of the dead body of the deceased Chandan Kumar. This witness identified the seized materials.

The defence declined to cross examine this witness.

The P.W.51 H.M. Shafiqul Islam deposed that on 31.08.2014 he was attached to Narayanganj Judicial Magistracy. On 31.08.2014, he recorded the confessional statement of the accused Md. Arif Hossain in connection with Fatulla P.S. Case No. 74 (4) observing all formalities of law. This witness proved the confessional statement as Exhibit-65 and his signatures therein as

Exhibits-65(1)-65(6) stating that there were 15 signatures of the accused in the statement. This witness further deposed that on 02.09.2014 he recorded the confessional statement of the accused Md. Bellal Hossain in connection with same case observing all the formalities of law. This witness proved the statement as Exhibit-66 and his signatures therein as Exhibits-66(1)-66(6) stating that there were 09 signatures of the accused in the statement. This witness further deposed that on 30.10.2014 he recorded the confessional statement of the accused Lance Corporal Md. Ruhul Amin (force retirement) in connection with same case observing all formalities of law. This witness proved the statement as Exhibit-67 and his signatures therein as Exhibits-67(1)-67(6) stating that there were 08 signatures of the accused in the statement. This witness further deposed that on 04.12.2014 he recorded the confessional

statement of the accused ASI (without arms 145) Bazlur Rahman in connection with same case observing all formalities of law. This witness proved the statement as Exhibit-68 and his signatures therein as Exhibits-68(1)-68(6) stating that there were 06 signatures of the accused in the statement. The Pw51 further deposed that on 23.06.2014 he recorded the statement of the witness Md. MozaM.M.el Hossain under section 164 of the Code. This witness proved the statement as Exhibit-69 and his signature therein as Exhibit-69(1) stating that there were 03 signatures of the witness in the statement. The Pw51 further deposed that on 10.08.2014 he recorded the statement of the witness Md. Mehedi Shahriar under section 164 of the Code. This witness proved the statement as Exhibit-70 and his signatures therein as Exhibits-70(1)-70(2) stating that there were 06 signatures of the witness in the statement.

This witness further deposed that on 19.08.2014 he recorded the statement of the witness Md. Delwar Hossain under section 164 of the Code. This witness proved the statement as Exhibit-71 and his signature therein as Exhibits-71(1) stating that there were 07 signatures of the witness in the statement. This witness further deposed that on 24.09.2014 he recorded the statement of the witness Md. Shahjahan @ Shajoo under section 164 of the Code. This witness proved the statement as Exhibit-72 and his signature therein as Exhibits-72(1) stating that there was one LTI of the witness in the statement. The Pw51 further deposed that on 24.09.2014 he recorded the statement of the witness Haji Abdul Matin Howlader under section 164 of the Code. This witness proved the statement as Exhibit-73 and his signature therein as Exhibits-73(1) stating that there was one signature of the witness in the statement.

This witness further deposed that on 31.08.2014 he recorded the confessional statement of the accused Md. Arif Hossain in connection with Fatulla Model P.S. Case No. 11(5)14 observing all formalities of law. This witness proved the statement as Exhibit-44 and his signatures therein as Exhibits-44(1)-44(6). This witness further deposed that there were 13 signatures of the accused in the statement. This witness further deposed that on 02.09.2014 he recorded the confessional statement of the accused Md. Bellal Hossain observing all legal formalities. This witness proved the statement as Exhibit-45 and his signatures therein as Exhibits-45(1)-45(6) stating that there were 06 signatures of the accused in the statement. This witness further deposed that on 04.09.2004 he recorded the confessional statement of the accused Md. Shihab Uddin observing all formalities of law. This witness proved the

statement as Exhibit-46 and his signatures therein as Exhibits-46(1)-46(6). This witness further deposed that there were 13 signatures of the accused in the statement. This witness further deposed that on 30.10.2014 he recorded the confessional statement of the accused Lance Corporal (retired) Md. Ruhul Amin in the same case observing all the formalities of law. This witness proved the statement as Exhibit-46 and his signatures therein as Exhibits-47(1)-47(6) stating that there were 08 signatures of the accused in the statement. This witness further deposed that on 04.12.2014 he recorded the confessional statement of the accused ASI Md. Bazlur rahman observing all formalities of law. This witness proved the statement as Exhibit-46 and his signatures therein as Exhibits-48(1)-48(6) stating that there were 06 signatures of the accused in the statement. This witness further stated in his deposition that on

23.06.2014 he recorded the statement of the witness Md. Moazzem Hossain Shahiar in the same case under section 164 of the Code. This witness proved the statement as Exhibit-49 and his signature therein as Exhibits-49(1) stating that there were 03 signitures of the witness in the statement. This witness further deposed that on 10.08.2014 he recorded the statement of the witness Md. Mehedi Shahriar in the same case under section 164 of the Code. This witness proved the statement as Exhibit-50 and his signature therein as Exhibit-50 (1) stating that there were 06 signitures of the witness in the statement. This witness further stated in his deposition that on 19.08.2014 he recorded the statement of the witness Md. Delwar Hossain in the same case under section 164 of the Code. This witness proved the statement as Exhibit-51 and his signature therein as Exhibit-51(1) stating that there were 08

signatures of the witness in the statement. This witness further deposed that on 14.01.2014 he recorded the statement of the witness Haji Abdul Matin Howlader in the same case under section 164 of the Code. This witness proved the statement as Exhibit-52 and his signature therein as Exhibits-52 (1) stating that there was 01 signature of the witness in the statement. This witness further deposed that on 24.09.2014 he recorded the statement of the witness Md. Shahjahan Shajoo in the same case under section 164 of the Code. This witness proved the statement as Exhibit-53 and his signature therein as Exhibits-53 (1) stating that there was 01 (one) LTI of the witness in the statement.

In his cross this witness stated that the accused Arif Hossain was produced in the Court on 31.08.2014 at 10.00 a.m. He was given three hours' time for speculation. It

was mentioned in the statement that the statement of this accused was voluntary. The accused Bazlur Rahman was produced before him at 09.30 a.m. On 31.08.2014 he recorded the statement of the accused Arif Hossain. The accused Ruhul Amin was produced before him at 01.00 p.m. On 04.12.2014 he recorded the confessional statement of the accused Bazlur Rahman. In the column no.8 of the statement he mentioned the statement of the accused Shihab to be voluntary. He himself written the questions put to the accused Ruhul Amin and recorded answer thereof. This witness denied the defence-suggestions that he did not record the confessional statement of the accused Ruhul Amin properly or that the statement of the accused Arif was not voluntary or that the statement of the accused Bellal was not voluntary or that the statement of the accused Shihab was not voluntary or that the statement of the

accused Bazlur Rahman was not voluntary or that he did not record the statements of the accused-persons Ruhul Amin, Bellal and Shihab as per law or that the accused Shihab did not make any confessional statement to him.

The P.W.52 Md. Abdul Awal deposed that on 04.05.2014 at 1.00/1.30 p.m., the Investigating Officer Md. Abdul Awal seized a Premio private car under a Seizure List. He attested the Seizure List as a witness. This witness proved his signature in the Seizure List as Exhibit-74 (1).

The defence declined to cross examine this witness.

The P.W.53 Md. Azad Sheikh deposed that on 04.05.2014 at 1.00/1.30 p.m. from inside J.M. Glass Factory, Shimrail, and police seized a car under a Seizure List. This witness proved his signature in the Seizure List as Exhibit-74(2).

The defence declined to cross examine this witness.

The P.W.54 Md. Hasan deposed that he cannot recollect the date of seizure of some things under a Seizure List. But on that date at 12.00 'O'clock something was recovered. This witness proved his signature in the Seizure List as Exhibit-75(1). This witness was declared hostile by the prosecution.

In his cross by the prosecution this witness stated that from the house of the accused Noor Hossain, the item nos.1-7 of the Seizure List were recovered. Showing a cheque book of the accused Noor Hossain of an account maintained by him in Islami Bank and three papers in respect of purchasing three cars by Noor Hossain, police took his signature in the Seizure List.

In his cross on behalf of the accused Noor Hossain, this witness stated that he did

not see from where the seized materials were recovered.

The P.W.55 Md. Rahim deposed that he attested the Seizure List in respect of sacks, nylon-rope etc. This witness proved his signature in the Seizure List as Exhibit-39(3).

The defence declined to cross examine this witness.

The P.W.56 Md. Jabid Hossain deposed that while he was the Chief Judicial Magistrate, Narayanganj he recorded the confessional statement of the accused Purnendu Bala under section 164 of the Code observing all legal formalities in connection with Fatulla P.S. Case No. 74(4)2014 under sections 170/341/365/302/201/34 of the Penal Code. This witness proved the statement as Exhibit-76 and his signatures therein as Exhibits-76(1)-76(6). This witness further deposed

there were as many 11 signatures of the accused in the statement.

In his cross this witness stated that in the statement he stated that he did not find any mark of torture on the person of the accused. It was stated in the statement that the accused was not bound to make the statement. This witness denied the defence-suggestions that the statement of the accused Purnendu Bala was not recorded following the requirements of law or that he did not read over the statement to the accused or that the statement was not voluntary.

The P.W.57 Md. Moazzem Hosasain Shahin deposed that he made statements under section 164 of the Code to a learned Magistrate on 23.06.2014. This witness proved his signatures in the statements he made in the two cases. This witness further deposed that on 27.04.2014 at 10.00 a.m. he went to Madanpur from Narayanganj. From Madanpur he

came to Chittagong Road. On his way to Narayanganj, he was sitting in the bus at the last boundary of Jalkuri where he saw the RAB personnel signalling a white private car to stop. A navy blue colour microbus barricaded the white private car. 04/05 persons got down from the microbus and dragged out 03/04 persons from the white private car of whom one person was wearing Punjabi and lifted them into the microbus. The person wearing Punjabi was hit with a pistol. Thereafter, a black colour private car colour was signalled to stop to which it did not stop whereon the silver colour microbus chased it and their bus came from there. He came to the Court and withdrew a porcha and went to Jalkuri. Mohan informed him that Nazrul and an Advocate were kidnapped by some persons in civil dress. He himself saw the occurrence. He made this statement to the learned Magistrate.

In his cross this witness stated that he got sure about the occurrence sitting in the godown at Jalkuri. Out of fear he did not inform the police station about the occurrence. This witness denied the defence-suggestions that he did not make statement to police or that he did not know anything about the occurrence.

The P.W.58 Md. Sahahjahan @ Saju deposed that he used to sell plastic sack. He made statement to police. He could not say as to who purchased sacks from him. The person who purchased 15/16 sacks from him showed his shop to police. He sold out each sack at the rate of Tk.20/00.

The defence declined to cross examine this witness.

The P.W.59 Haji A. Matin Howlader deposed that he was the owner of a hardware shop under the name and style 'Anik Enterprise' at Adamjee Sona Mia Market. He made statements

to Magistrate. This witness proved his statements and his signatures therein as Exhibits-52(2) and 73(2). This witness further deposed that a customer purchased 5 kg. jute rope and 2 kg Sutli. Said customer showed his shop to police. Two purchasers purchased the materials.

This witness was not cross examined on behalf of the defence.

The P.W.60 Md. Shafiqul Islam Khoka deposed that on 27.04.2014 at about 8.00 a.m. he came out of his residence and reached Narayanganj Women's College taking his daughter with him because his daughter Rabeya had to appear in the final examination. From 10.00 a.m to 01.00 p.m. he was waiting for his daughter at the college gate. At 1.00 p.m., after examination, he started for his residence at Bandar taking his daughter along the Narayanganj Link Road. There was traffic jam at Chachhara and as such, a delay of 10

minutes took place. Thereafter, near the dustbin a bit in front of the Fatulla Stadium he saw two vehicles of RAB, one white colour private car, one black colour microbus and another private car in total five vehicles. He saw a person with pistol in his hand to get down from the pick up micro and lift up people from the car to the microbus. He stopped his motorcycle and asked a RAB member as to what had happened whereon the member of the RAB shouted at him saying to get lost. Thereafter, he proceeded 20/50 yards ahead and stopped his Honda once again to see that the two microbuses into which the persons were lifted proceeded fast towards Signboard. He followed the microbuses upto Jalkuri. But as the microbuses moved fast, he lost sight of the microbuses. He made statement to Magistrate on 22.05.2014. He made two statements in two cases. In his cross this witness stated that he made

statement to the Investigating Officer. He did not make statement to the authority of Fatulla P.S.

This witness denied the defence suggestion that he deposed falsely.

The P.W.61 Rabeya Akhter Ankhi deposed that on the date of occurrence she came to Narayanganj with her father (the Pw60) to appear in the final examination by a motorcycle. On 27.04.2014 at 8.30 a.m. they started for Narayanganj. Her examination started at 10.00 a.m. and ended at 1.00 p.m. After examination, they started for Signboard via Chachhara and reached near Fatulla Stadium at 1.30 p.m. Coming near the stadium they saw five vehicles of which two were of RAB and two private cars. She saw 5/6 RAB personnel standing here and there. She herself and her father saw persons to be dragged out from the private cars. Her father asked a member of RAB holding pistol in hand

as to what had happened to which the member of RAB shouted at him to get lost. They saw from 20/25 yards that the RAB member having pistol with him dragging out people from the white car. When they proceeded forward they saw the people from the cars were being taken away very fast. After they followed the microbuses for some time, the microbuses went beyond their reach. On 22.05.2014 she made statements to the Magistrate in two cases. This witness proved her signatures in the statements.

This witness denied the defence-suggestion that neither she nor her father went to the place of occurrence on the date and at the time of occurrence or that she deposed falsely.

The P.W.62 Major Mohammad Suruj Mia deposed that he made statement to a learned Magistrate. On 15.04.2014 he got responsibility of RAB-11, Narsingdi. On

27.04.2014 at about 3.00/3.15 p.m. Major Arif made a mobile call in his government mobile being no. 01777711133 from an unknown mobile number asking him to come out of the camp saying that he was near his camp. He came out from the camp to see two microbuses on the road and that Major Arif was standing beside the microbuses. Seeing him, Major Arif came near him and said that they were in an operation and they need money for having their lunch whereon he paid Tk.2, 000/00 to him from his pocket. Thereafter, he went back to his camp. Since then, he did not meet Major Arif. He made these statements to the Magistrate. He made two statements in two cases. This witness proved his signatures in the statements. This witness also identified Major Arif saying that he went to their camp.

This witness stated in his cross that he was the Narsingdi camp Commander. This witness denied the defence-suggestions that

he did not pay Tk.2, 000/00 to the accused Major Arif or that as per instruction of his battalion he deposed falsely.

The P.W.63 Lance Nayek Md. Azam Ali deposed that on 04.08.2014 he made statements in two cases to a Magistrate. This witness proved the statements as Exhibits-40 and 60 and his signatures therein as Exhibits-40(2)-40(4) and 61(2)-61(4). He was in RAB on deputation. On 27.04.2014 his Officer L.S. Samad told him that he had to perform duty with Special Company Major Arif in trawler in the river. On his query, LS Samad told him that he himself and Nayek Razzak would also go. At about 08.00/08.30 p.m. three of them started for Kanchpur Bridge from Narayanganj Bandar Launch Ghat by an engine trawler. At about 10.00/10.30 p.m. they reached Kanchpur Bridge. LS Samad informed Major Arif over mobile phone that they reached near Kanchpur Bridge. Major Arif told LS. Samad to dock the

trawler at Landing Station Ghat and they did it at 10.30/10.45 p.m. and stayed behind the trawler. At that time the teammates of Major Arif in plain dress loaded 12/14 plastic sacks in the trawler. Thereafter, the teammates of Major Arif lifted 07(seven) dead bodies in the trawler. They including LS Samad raised objection saying that they had been sent there to perform duty and that it was not proper to load dead bodies in the trawler to which Major Arif shouted at them saying to keep quiet. He directed them to start the engine and to do what he said. Thereafter, Major Arif and his 10/12 teammates boarded the trawler. It was about 12.00 'O' clock/ 12.15 a.m. at night then. At the direction of Major Arif they kept the trawler driving towards the estuary of Munshiganj. At about 02.00/ 02.15 a.m. at night Major Arif told his teammates to tie up two sacks with each dead body and drop the dead bodies in

the river. After the dead bodies were dropped they came to Narayanganj Bandar Ghat at the direction of Major Arif at about 03.00 a.m. Major Arif and his teammates got down from the trawler and they went to the RAB Ghat. Subsequently, he came to know from the media that the dead bodies which were dropped in the river at the direction of Major Arif were the dead bodies of the seven murder case. He made these statements to the Magistrate and that the statements were read over to him.

In his cross this witness stated that he did not make statement to the Investigating Officer before 04.08.2014. Commander of Kalibazar Camp was M.M. Rana. They had to obey the order of their Officer on 27.04.2014 as a legal order. This witness denied the defence-suggestions that what narrated by him in the deposition were false or that the Investigating Officer of the case allured him that he would not make him an accused in the

case or that at the assurance of the Investigating Officer he deposed falsely in the case or that he did not see Major Arif in the trawler or that Major Arif did not go to the trawler on the date of occurrence.

The P.W.64 Md. Abdus Slalam Shikder stated in his deposition that in respect of the two cases he made statements before a Magistrate. This witness proved his signatures in the statements as Exhibits-38(2) and 59(2)-59(7). This witness further stated in his deposition that on 06.06.2013 he joined RAB-11 battalion, Adamjinagar, Narayanganj as a DAD and thereafter, joined CPC-1 Kalibazar, Narayanganj. On 27.04.2014 from 06.00 a.m. to 2.00 p.m. he along with 12 RAB personnel of different ranks with full uniform were on patrol duty at Narayanganj Sadar, Fatulla Model P.S. and Munshiganj District Sadar P.S. area with two patrol vehicles. While on duty he had talks with Lt.

Commander Masood Rana through his official phone bearing number 01777711111 and his own official mobile phone bearing number 01777711118. Rana Sir (the accused M.M. Rana) instructed him to take position at Shibu Market area under Fatulla Model P.S. until further order. Thereafter, at about 01.30 p.m. Rana Sir directed him to install Check Post a bit ahead of Khan Saheb Osman Ali Stadium until further order. Sometimes after that, Rana Sir asked him to start Check Post. On his query, Rana Sir asked him to install Check Post in the western side of the outgoing road of Dhaka-Narayanganj Link Road informing him that two private cars were going towards him of which one was white and the other black. When the two cars reached the Check Post, he tried to stop the cars. Rana Sir further informed him that he along with Arif Sir (the accused Major (retired) Arif Hossain was chasing the private cars.

Being directed, he stopped the private cars near the City Corporation Gate. Before reaching their Check Post, Major Arif Sir overtook the cars with his blue colour microbus and barricaded the cars. At that time, with the assistance of the RAB personnel in plain dress Major Arif picked up the passengers in the white colour private car into his blue colour microbus. At the same time, with the assistance of the RAB personnel in plain dress with him, Rana Sir picked up the passengers in the black colour car into his silver colour microbus. Thereafter, without making any delay, the blue and the white colour microbuses and the white colour private car smoothly went towards the Signboard area of Narayanganj. In the meantime, his fixed duty being finished, he came back to Narayanganj RAB office. Subsequently, through media and newspapers he came to know that the seven persons as picked

up by the accused-persons Major Arif and Lt. Commander M.M. Rana were the victims of seven murder case of Narayanganj. This witness identified the accused-persons Major Arif and M.M. Rana in the dock.

In his cross this witness stated that on 27.04.2014 he was on duty in three police station areas. Vide CC No. 520 he was on duty from 06.00 a.m. to 14.00 hours. He did not make statement to the Investigating Officer before 22.07.2014. He could not say the numbers of the two cars and two microbuses. In case of necessity RAB personnel might be sent in uniform or in plain dress. They were bound to obey the command of their higher authority. RAB authority might direct to set up Check Post at any time. This witness denied the defence-suggestions that on the date and time of occurrence he did not go to the place of occurrence or that he did not

see the alleged occurrence or that out of allurements he deposed falsely in this case.

The P.W.65 Md. Abdus Samad deposed that on 22.07.2014 he made statements before a learned Magistrate in the two cases which were read over to him. This witness proved his signatures in the statements as Exhibits-37(2)-37(7) and 58(2)-58(7). This witness further deposed that on 27.04.2014 he was on patrol duty in boat at Bandar Ghat from 02.00 p.m. to 07.00 p.m. After duty when he went back to the camp Lt. Commander Rana through Habib called him to his office. When he went to Rana Sir he asked him to remain on duty under Kanchpur Bridge at night saying that mates of Major Arif would go at night on trawler duty. He was asked by Lt. Commander Rana to remain on duty under Kanchpur Bridge at 10.00 p.m. Giving him a phone number being 017802460046. Lt Commander Rana asked him to make contact with Major Arif with that phone

number. He informed DAD Atiar about the order of Lt. Commander Rana. As he could not drive trawler, he sought a driver and assistant whereon as the driver and assistant sepoy Azam and Nayek Razzak were given. At about 08.30 p.m. they started for Kancpur Bridge and reached there at 10.15 p.m. at night. From his mobile phone he made a call to Major Arif saying him that they had come and asked where they would dock the trawler whereon Arif Sir said him that they had people at the Landing Station. He said he did not know the landing section. 05/06 minutes after that they kept roaming under the bridge with the trawler. Once again he said Major Arif to give light signal whereon Major Arif gave light signal and they docked the trawler near the landing ghat and remained in the trawler. Some times after that the mates of Arif Sir loaded 12/13 heavy sack in the trawler and they also loaded seven dead

bodies in the trawler. He asked Major Arif as to what they were loading in the trawler whereon Major Arif shouted at him and directed him to keep quiet and to do what he had asked him to do. Sometimes after that, 10/12 mates of Major Arif got in the trawler. Major Arif directed them to take the trawler to the estuary of Munshiganj river. It was 10.45 p.m. then. At about 02.00/02.15 a.m. at night they reached the Munshiganj estuary. After reaching there, Major Arif directed to drop the dead bodies in the river tying up two sacks with each dead body and accordingly, the mates of Major Arif dropped the dead bodies in the river. Thereafter, at the behest of Major Arif they came back to Narayanganj Bandar Ghat with the trawler at about 03.15 a.m. at night. Major Arif and his mates got down from the trawler and they came back to their camp. Subsequently, through newspapers and media he came to know that the

dead bodies which were dropped by Major Arif in the river were the dead bodies of much discussed 07 murder case. This witness identified the accused-persons Major Arif and accused Rana in the dock.

In his cross this witness stated that his Commander was Lt. Commander Rana. He was in the trawler. He could not identify the victims and the persons in plain dress. Every department had its own law. The subordinates were bound to obey the order of the higher authority. They used to perform their duty as per the written or oral order of their higher authority. This witness denied the defence-suggestions that he did not make statement to the Investigating Officer or that he did not go to the place of occurrence on the day and at the time of occurrence or that he did not see the dead bodies to be loaded in the trawler or that he deposed falsely.

The P.W.66 Md. Abdur Razzak deposed that in the two alleged cases he made statements before a learned Magistrate on 04.08.2014 which were read over to him. This witness proved his signatures in the two statements as Exhibits-39(2)-39(8) and 60(2)-60(8). This witness further deposed that on 27.04.2014 from 06.00 a.m. to 2.00 p.m. he was on duty under the leadership of DAD Abdus Saalam Shikder in the Fatulla P.S. and Munshiganj Sadar P.S. area. At 11.30 a.m., the Commander of CPC-1 Narayanganj Lt. Commander Rana over mobile phone directed Abdus Salam Shikder to stay at Shibu Market under Fatulla P.S. DAD Salam Shikder instantly informed the instruction to the patrol party and they forthwith went to Shibu Market. At about 01.30 p.m. Commander M.M. Rana over his official mobile phone instructed them to go in front of Osmani Stadium and then they went there. Few minutes after their going there,

under the leadership of DAD Salam, M.M Rana again instructed over mobile phone to set up Check Post forthwith. M. M Rana again said them to detain two private cars which would go from Narayanganj and that he along with Major Arif were chasing the cars. Sometimes after that, they saw that a blue colour microbus was overtaking a white private car. Before reaching the Check Post, 100 yards ahead of it the blue colour microbus overtook the white private car and barricaded its way. From the said blue colour microbus Major Arif and his team mates got down and lifted five passengers of the white private car to the blue colour microbus. At the same time, from the silver colour microbus Rana Sir and his team mates got down and lifted two passengers from the black colour private colour. Without making any delay taking the silver colour and blue colour microbuses and the white colour private car Major Arif and M.M. Rana went

away and they went back to the camp as per the order of the company Commander. On the same date at 07.00 p.m. his Officer M.M. Samad told him that they had patrol duty in the riverway at night. His Officer M.M. Samad told him that he himself, he (the pw66) and sepoy Azam would go. His Officer also told him that they had to perform special patrol duty under Major Arif. At 08.00/08.30 p.m. three of them by a trawler started for Kanchpir Bridge and at about 10.30 p.m. reached Kanchpur Bridge area. Then M.M. Samad made contact with Major Arif over mobile phone saying that they had come near Kanchpur Bridge and where they had to stop the trawler. Then Major Arif directed to dock the trawler near the Landing Section. Then, M.M. Samad told that he did not know the Landing Section. Thereafter, Major Arif said that he was giving signal at the Landing Station and they docked the trawler near the Landing

Station. They all were sitting near the engine of the trawler. They saw some people and white colour transports. Sometimes after that, they saw the team mates of Major Arif to load small plastic sacks about 12/14 in numbers in the trawler. Thereafter, the team mates of Major Arif lifted seven dead bodies in the trawler. Seeing that, they got panicked and he along with M.M. Salam asked Major Arif as to why he was lifting so many dead bodies in the trawler. Then Major Arif rebuked them and asked them to keep quiet. Then Azam, the driver of the trawler started the trawler. At 02.15 a.m. at night when the trawler reached the estuary of Munshiganj at the order of Major Arif, the speed of the trawler was slowed down. Then Major Arif asked his team mates to drop the dead bodies in the river tying up two sacks with each dead body. Accordingly, the team mates of Major Arif dropped the dead bodies in the

river tying up sacks with each dead body as directed by Major Arif. Thereafter, at the order of Major Arif, they started for Narayanganj and reached Narayanganj Bandar Ghat at about 03.00 a.m. at night. After reaching the ghat, Major Arif went away with his team mates and they went back to their camp. Subsequently, through media he came to learn that the seven persons who were kidnapped by Major Arif and M.M. Rana and their team mates were the victims of the case. This witness identified the accused-persons M.M. Rana and Major Arif in the dock.

In his cross this witness stated that at the time of occurrence, their camp Commander was M.M. Rana. He could not recognize the victims and the persons in plain dress. Before making statement to the Magistrate he did not make statement to the Investigating Officer. He could not recollect the number of the minibuses. This witness denied the

defence-suggestions that showing allurement or by holding out threat the Investigating Officer made him to depose in the case or that he did not see the occurrence or was not present at the time of occurrence.

The P.W.67. Polash Golder deposed that on 27.04.2014 he was attached to RAB-11, CPC, Narayanganj. He made statements in two cases to a learned Magistrate. This witness proved his signatures in the statements as Exhibits-12 (2)-12(5) and 12(2)-12(5). This witness further deposed that on 27.04.2014 he was on patrol duty from 06.00 a.m. to 02.200 p.m. His patrol Commander was Inspector of Police Abdus Salam Shikder BPM. They were 11 members in the patrol team. They had duty in Narayanganj Sadar, Munshiganj Sadar and Fatulla P.S. area. At about 11.30 a.m. while they were on duty at Dhaka-Narayanganj Link Road, their camp Commander Rana Sir over mobile phone instructed them to stay at Shibu

Market under Fatulla P.S. until further order. At about 01.30 p.m. once again Rana Sir informed that they had to stay in front of Khan Saheb Osman Stadium and on getting subsequent information they had to set up Check Post. At about 01.40 p.m. once again informing that one white colour and other black colour private cars were going towards Sign Board from Narayanganj, Rana Sir over his official mobile phone instructed to stop them at the Check Post. He further informed that he along with Major Arif was coming behind the cars by a microbus. On getting this information, at the order of the Patrol Commander he along with others and the Patrol Commander stood beside the road parking the two patrol transports side by side. Immediately after that he saw a white colour and a black colour private car to come from Narayanganj and go towards Signboard and that behind the private cars two microbuses, one

blue colour and another silver colour to come. Before the private cars came near their Check Post, the blue colour microbus speedily overtook the white colour private car and barricaded it and the silver colour microbus stood behind the black colour private car. Thereafter, Major Arif and some others in plain dress got down from the blue colour microbus and Lt. Commander M.M. Rana along with some others in plain dress got down from the silver colour microbus. Thereafter, they picked up the passengers from the private cars and taking them into the microbuses, the two microbuses and the white private car went speedily towards Signboard. The black colour private car was left behind at the place of occurrence. At the end of their patrol time they went back to their camp at the direction of Abdus Salam. Subsequently, through media and TV he came to learn that the persons who were picked up from the place of occurrence

were the victims of the case. This witness identified the accused-persons Major Arif and M. M. Rana saying that on the date of occurrence they came to the place of occurrence with minibuses.

In his cross this witness stated that he was in the patrol vehicle no.2 and Abdu Salam was in the patrol vehicle no.1. At the direction of Salam Sir they took position at the place of occurrence to set up Check Post. He could not say as to whether the minibuses were requisitioned. Major Arif and Rana were known to him from before and as such, he could identify them on the date of occurrence. In the statement made by him to the Magistrate he did not say that the persons who were picked up on the date of the occurrence were the victims of the case.

The P.W.68 Corporal Md. Jahangir Alam deposed that he made statements in the two cases to a Magistrate. This witness proved

his signatures in the two statements as Exhibits-43(2)-43(3) and 64(2)-64(3). This witness further deposed that on 31.01.2013 he joined the RAB Head Quarter. On 27.04.2014 from 09.00 p.m. to 09.00 a.m. of 28.04.2014 he was on duty of the control room at Adamjinagar, Narayanganj. On 27.04.2014 i.e. on 28.04.2014 the day coming night at 02.00 a.m. Operation Officer ASP Mehedi Shahriar over his government mobile phone no. 01777711103 made a phone call to the mobile phone number of Control Room i.e. 01777711199 and informed him that CPSC Admn. DAD was not being found on phone and asked him to say that it was the command of the C.O. Tarek Sir that one Pajero and one microbus to be sent to the Narayanganj Landing Ghat. He made phone call to CPSC Admn. But he was not found. Thereafter, he made phone call to CSI of CPSC Company Habilder Satter in his official mobile phone no.01777711174. He

informed the order of Mehedi Shahriar to Habilder Satter.

In his cross this witness stated that on 23.12.2014 he made statements to the learned Magistrate. This witness denied the defence-suggestions that Tarek Sir (the accused Lt. Col. Tarek Syeed Mohammad) did not give any order or that he did not send any transport or that referring to Tarek Sir, Shahriar did not give any order or that he deposed falsely.

The P.W.69 Md. Atiar Rahman deposed that on 27.04.2014 he was the DAD Admn. at Kalirbazar old Court. On 05.11.2014 he made statements to the Magistrate. This witness proved his signatures in the statements as Exhibits-31 and 53. This witness further stated that on 27.04.2014 at about 9.00 a.m. Commander Rana Sir through phone wanted to know as to where the patrol party was. He informed him that after duty the patrol party

was in the camp. Then Rana Sir asked patrol Commander Abdus Salam Sikder to take position at Shibu Market. Thereafter, giving reference of Rana Sir, Abdus Salam Sikder went out of the camp with the patrol team. Thereafter, at 10.30 a.m. Rana Sir once again made phone call from his government mobile no.01777711111 directing him to send a civil team consisting of 6(six) members to Narayanganj Court area. As per the said order, he prepared a civil team consisting of Corporal Mokhlesh, Lance corporal Ruhul Amin driver, ASI Abul Kalam Azad, ASI Kamal Hossain, Sainik Nooruzzaman and Constable Babul. Thereafter, talking to Rana Sir over phone he went out of the camp with the team with a silver colour Hiace car. At 8.30 p.m. at night L.S. Samad by his government phone told him that Rana Sir asked him to go to Kanchpur Bridge with a trawler. Thereafter, he told Samad to perform duty as directed by

Rana Sir. This witness identified the accused Mokhlesur Rahman in the dock.

In his cross, this witness stated that as Rana Sir made command, he could identify him properly. This witness denied the defence-suggestions that the accused-persons Moklhesur Rahman, Abdul Alim, Mohiuddin Munshi, Hira Miah and Noorul Amin did not perform duty as stated by him or that he deposed falsely.

The P.W.70 Md. Salim Khan deposed that on 27.04.2014 he was attached to CPSC RAB-11 Adamji, Naranyanganj as DAD (Admn.). He made statements in the two cases on 05.11.2015. This witness proved the statements as Exhibits-54 and 77 and his signatures therein as Exhibits-54(1)-54(2) and 77(1)-77(2). This witness further deposed that on 04.07.2013 he joined CPSC RAB-11, Adamjinagar, Narayanganj and was attached thereto as the DAD (Admn.) since 14.01.2014. On 27.04.2014 at about

09.30 a.m. Major Arif directed him to make a civil team ready in plain dress for going out for operation. As per the order, he asked S I. Purnnendu Bala, Habilder Emdadul Haque, A.B. Arif Hossain, driver Nayek Delwar Hossain, Lance Nayek Hira, Lance Nayek Billal, Constable Shihabuddin, Sepoy Taiyab, Sainik Mahiuddin, Sainik Alim and Sainik Al-Amin to get ready . At about 10.30 a.m., under the leadership of Major Arif Hossaion, S I. Purnnendu Bala, Habilder Emdadul Haque, A. B. Arif Hossain, driver Nayek Delwar Hossain, Lance Nayek Hira, Lance Nayek Billal, Constable Shihabuddin, Sepoy Taiyab, Sainik Mahiuddin, Sainik Alim, Sainik Al-Amin and another driver Nayek Nazim went out of the camp by a blue colour Hiace microbus. He kept doing official works. At 03.30 p.m., Habilder Emdadul Haque and Lance nayek Billal Hossain prepared sacks containing brick. At about 10.03 p.m. at night Habilder Emdadul

Haque, Lance Nayek Billal, S.I. Bazlur Rahman, Sergeant Enamul Kabir, Sainik Tajul Islam and Habilder Nasirudin left the camp with a white Mitshubishi Microbus with the sacks containing brick. Doing his official works viz. Roll Call, Duty Control and Miscellaneous work etc. he went to take rest at 11.30 p.m. Till then, the civil team did not enter into the camp. On the following day i.e. on 28.04.2014 he came to know that at about 02.00 a.m. at night the civil team came back to the camp. On 28.04.2014 Major Arif came to the camp at about 12 'O' clock. This witness identified Major Arif and others whose name he stated in the dock.

In his cross this witness stated that the transports of the camp remained in his custody. It was not his duty to maintain register in respect of the daily use of the transports. The civil team was prepared as per the direction of Major Arif. The

transports did not have number plates. From the date of occurrence up to the making of the statements he did not inform his Head Office about the occurrence. He made statement to the Investigating Officer on 05.11.2014. On the date of occurrence none had power to go out of the camp without his order. As per the direction of higher Authority he arranged duty. On the date of occurrence there were 60/70 members in the company. This witness denied the defence-suggestions that showing allurements to the effect that he would not be made an accused in this case, he was cited as a false witness or that on the date of occurrence he did not pass orders directing the accused-persons to go in the civil team or that on 27.04.2014 he performed duty as assigned by Mehedi Shahriaror or that on 27.04,2014 the members of the civil team reported to him at 06.20 p.m. after duty or that to Check river

erosion RAB did the work of brick and cement or that S.I. Bazlur Rahman did not go out of the camp on the date of occurrence taking sacks containing brick and rope or that these accused-persons did not perform duty in civil dress or that as per direction of the Investigating Officer he made S.I. Purnedu Bala an accused or that he deposed falsely.

The P.W.71 Md. Abdus Satter stated in his evidence that the occurrence took place on 27.04.2014. He made statement to a Magistrate in both the cases. On 27.04.2014 at about 10.30 a.m. taking S.I. Purnendu Bala, Habilder Emdad Hossain, AB Arif, Nayek driver Delwar, Nayek driver Nazim, Lance Nayek Hira, Lance Nayek Bellal, Sainik Mohiuddin, Sainik Abdul Alim, Sainik Al-Amin and Constable Shihab, Major Arif went out of the camp with a navy-blue colour Hiace microbus. On that date at about 3.30 p.m. Habilder Emdad and Lance Nayek Bellal came back to the camp. At

07.00 p.m. Habilder Emdad, Lance Nayek Bellal, Sergeant Enamul Haque, Sainik Tajul Islam and ASI Bazlur prepared sacks with brick. At about 10.00 p.m. the sacks with brick were taken out of the camp by a microbus. In the following morning he saw the transports in the camp.

In his cross this witness stated that on 27.04.2014 D.A.D. (Admn.) was Md. Selim. This witness denied the defence-suggestion that out of allurement he deposed falsely in this case.

The P.W.72 Sainik Milon Hossain stated in his evidence that he made statement to a Magistrate in the two cases. On 27.04.2014 at 10.00 a.m. Major Arif came to office and called D.A.D. Salim Khan, C.S.I. Abdus Satter and himself to his office room and directed them to keep free S.I. Purnendu Bala, Habilder Emdad, AB Arif, Sainik Al Amin, Sainik Alim, Sainik Mohiuddin, Sepoy Taiyab,

Constable Shihab, Lance Nayek Bellal, Lance Nayek Hira and also directed not to give them any duty and to refrain them from any other activities and to act as per his order. He also directed them not to take any information about the persons whose name he stated. On 27.04.2014 at about 10.30 a.m. by a blue colour Hiace microbus Major Arif went out with the aforesaid persons. At about 3.00 p.m., Habilder Emdad and Lance Nayek Bellal came back to the camp and at 5.30 p.m. Habilder Emdad and Lance Nayek Bellal twisted rope behind the barrack and also saw them to prepare sacks containing brick.

This witness denied the defence-suggestions that as per the direction of the Investigating Officer he stated the names of the aforesaid accused-persons or that he did not see the accused-persons Habilder Emdad and Bellal to twist rope.

The P.W.73 Md. Nazim Uddin deposed that the occurrence took place on 27.04.2014. On that date he was attached to RAB-11, Narayanganj. He made statements to a learned Magistrate in the two cases. This witness proved his signatures in the statements as Exhibits-41(2)-41(7) and 62(2)-62(7). This witness further deposed that on 27.04.2014 while going on an operation in plain dress Major Arif sought an additional driver from him to which he replied that he did not have any additional driver. Then Major Arif asked him to get into the blue colour microbus. Major Arif sat in the front seat. Driver sat in the back seat. He saw Sainik Mohiuddin, the teammates of M.M. Rana, Sainik Alim, S.I. Purnendu Bala, Sepoy Taiyab, Habilder Emdad, Constable Shihab, Lance Nayek Billal and Nayek Hira. The driver of the microbus came towards Narayanganj Saignboard area from the Chittagong road. After coming to the Court,

the microbus took a U turn and was kept facing Dhaka. Major Arif got down Billal, Taiyab and Emdad from the transport and asked them to do their job. Sometimes after that, Commander CPC-1 Rana got into the transport. He saw a silver colour microbus to stand 100/200 yards behind their transport. It was his presumption that M.M. Rana came by that white colour microbus. At about 1.30 p.m., Major Arif asked the driver to drive the transport. After crossing some distance a white colour and a black colour private car over took their transport. Then Major Arif told that they would perform operation in the cars ahead and also told them to remain cautions saying that they had arms and they might fire them. Addressing him Major Arif told to take the white private car and to leave it behind somewhere. Before reaching near the Khan Shaheb Osman Ali stadium he along with another driver saw a RAB party in

uniform there. Before reaching the RAB party in uniform, the speed of the private cars became slow. Their microbus went in front of the private cars. Under the leadership of Major Arif and Rana, RAB personnel in plain dress picked up the passenger of the private cars to the microbus and went towards Signboard. Thereafter, he took M.M. Rana in the abandoned white private car as per the direction of Major Arif and dropped him at Chittagong road. By keeping the private car at any place on the Mymensingh Road of Gazipur District he came back to the camp at 10.00 p.m. and reported the matter to the DAD Salim. Thereafter, he came to know that the persons kidnapped from near the stadium under the leadership of Arif and Rana were the victims of 7 murder case. The persons whose name he stated were present in the dock. In his cross this witness stated that he was not a member of the operation team but he was

taken as an additional driver. His name was not included in the operation team. In the operation two transports were used. Subsequently, another silver colour microbus joined it. He left behind the key of the white private car in it. He along with Rana went by a private car.

This witness denied the defence-suggestions that on the allurements to the effect he would not be made an accused in the cases, he deposed falsely or that he did not go to the place of occurrence as stated by him.

The P.W.74 Shahriar Ahmed Shams deposed that from Bangladesh Police Head Quarters, call details of mobile phone no. 01684376576 from 06.04.2014 to 28.04.2014 was sought and accordingly, on 19.03.2015 from Airtel Company CDR List was given to the Police Head Quarters. This witness proved the Forwarding Letters as Exhibit-55, 78 and his signatures

therein as Exhibits-55(1) and 78(1) and identified the Call Lists as Material Exhibits-VII, Vii(1)-VII(12) and IX-IX(1).

In his cross this witness stated that he could not say the names of the users of the mobile phone numbers. He could not say as to between whom conversation took place.

The P.W.75 Hosne Ara Haque deposed that from Bangladesh Police Head Quarters Call List of mobile phone no. 0191440225 was sought and accordingly, they sent the Call List to Police Head Quarters on 22.03.2015. This witness proved the Forwarding Letters as Exhibits-56 and 79 and her signatures therein as Exhibits-56(1) and 79(1) and identified the Lists of CDR as Exhibits-VIII-VIII (1), VIII (12) and X-X (1).

In her cross this witness stated that in their office record the name of the user and the registration number were there. They supplied only the Call Lists.

The P.W.76 Md. Saiful Islam deposed that he put his signature in the Seizure List dated 02.04.2015 as prepared by the Investigating Officer. This witness proved his signatures in the Seizure Lists as Exhibits-57(1) and 80(1). This witness further deposed that Mobile Call List (CDR) were seized.

In his cross this witness stated that there were twenty mobile numbers in the Seizure List. He could not say the names of the users.

The P.W.77 Mehedi Hasan Mintoo deposed that on 02.04.2015 the Investigating Officer of the case seized a Mobile Call List and a List of SMS under Seizure Lists. He attested the Lists. This witness proved his signatures in the Seizure Lists as Exhibits-57(2) and 80(2). This witness further deposed that there were as many as twenty mobile phone numbers in the lists.

In his cross this witness stated that he did not know the names of the users. He read the Seizure Lists. This witness denied the defence-suggestion that as per the instruction of the Officer he put his signature in the Seizure Lists.

The P.W.78 Hawlader Omar deposed that-the occurrence took place on 27.04.2014. At 12.30 p.m. while he was going to the PP Office from the eplash of the learned District and Sessions Judge, he saw 07/08 persons to detain a person. Seeing him in the uniform of police, the detained person was handed over to him and he was asked about the identity of the person. On his query, the person gave his identity to be a member of RAB-11. He sought ID Card from the person but he could not show any ID Card. Then they called Habilder Kamal Uddin through Constable No.983 Md. Rafiqul Islam who identified the detained person to be a member of RAB. Subsequently, they came

to know the name of the person to be Abu Taiyab. He made statement to the Investigating Officer. This witness identified the accused Abu Taiyab in the dock.

In his cross this witness stated that he did not ask the name and address of the detained person. The detained person was released at 01.00 p.m. He did not know the situation of the detained person after he was released. This witness denied the defence-suggestions that the mobile phone of the detained person was in his custody or that he did not detain the accused Abu Tayab on the date and at the time of occurrence.

The P.W.79 Md. Rafiqul Islam deposed that the occurrence took place on 27.04.2014. At about 12.30 p.m. he was working in the Sherista of the learned District and Sessions Judge. At that time, his colleague Constable Howlader Omar brought a person wearing Jeans

pant, Punjabi and turban in the Sherista and asked him to call Habilder Kamal of RAB-11. After Habilder kamal Uddin identified the person wearing Punjabi to be a member of RAB, they released him. Subsequently, he came to know that the person was Sepoy Abu Taiyab. This witness identified the accused Abu Taiyab in the dock.

In his cross this witness stated that he came to know about the name of the accused Abu Taiyab after making statement to the Investigating Officer. This witness denied the defence-suggestion that they did not detain the accused Abu Taiyab on 27.04.2014.

The P.W.80 Habilder Md. Kamal Uddin deposed that the occurrence took place on 27.04.2014. He came to depose in the Court in Case No. 959 in the Court of District and Sessions Judge, Narayanganj. While he was perusing the docket, at about 12.30 p.m., Constable Rafique called him to the next room

and asked him as to whether he knew the detained person wearing turban, Jeans pant and Punjabi who gave his identity to be a member of RAB. He said them to look into the matter in case he gave his identity to be a member of RAB. He saw the person to take food in the RAB mess. He made statement to the Investigating Officer. This witness identified the accused Abu Taiyab in the dock.

This witness was not cross examined on behalf of the defence.

The P.W.81 Istiak Hossain Chowdhury deposed that from the L/C Department of Police, Call Details in respect of ten grameen phone numbers were sought. The Call Details were sent under his signatures to AIG (Confidential), Police Head Quarters. This witness proved the Reports and his signature therein as Exhibits-58-58(1) and 81-81(2) and

the Call Lists and SMS as Exhibits-IX-XI, XII-XVII, XI-XIII, XIV-XIX.

In his cross this witness stated that as per the requisition of the Police Head Quarters he sent the report. There was no mention of the users' name in the report. They did not make report of conversations.

The P.W.82 Md. Fazlul Haque deposed that on 25.05.2014 he took custody of some wild animals from the Investigating Officer Masood Alam Khan viz. three Tilaghughu, four African Parrot, two blue-back birds, two Kakatoa, three African Parrot, one Uretian colour Ghughu, and thirteen pairs of pigeon of different species. This witness proved the Deed of Custody as Exhibit-82 and his signature therein as Exhibit-82(1).

In his cross this witness stated that there was no mention of the person and the place from where he took custody of the animals.

The P.W.83 Masood Alam Khan deposed that on 15.05.2014 while he was posted at Narayanganj, he attached the materials of 77 items of the house of the accused Noor Hossain by dint of proclamation and attachment as issued by the Court and deposited those in the Court. He sent necessary papers to the Investigating Officer through the SDCD. He seized the materials under a Seizure List. This witness proved the Seizure List as Exhibit-83 and his signature therein as Exhibit-83(1). This witness further deposed that the wild animals were given to the custody of the Directorate of wild animals.

In his cross this witness stated that there were three buildings in the house of the accused Noor Hossain. He did not find any person in the three houses. The caretaker of the house identified the house of Noor Hossain. He entered into the house of Noor

Hossain taking some elite persons of the locality. He did not recover illegal materials from the house of the accused Noor Hossain.

The P.W.84 Md. Jamal Uddin Talukder deposed that he took custody of the trawler used in the seven murder case from the Investigating Officer of that case on 01.10.2014. This witness proved the Deed of Custody as Exhibit-84 and his signature therein as Exhibit-84(1).

In his cross this witness stated that from the Investigating Officer Mamunur Rashid Mondol he took custody of the trawler. The trawler was in the custody of DB office. This witness denied the defence-suggestion that he deposed falsely.

The P.W.85 Md. Ramzan Hossain deposed that on 29.09.2014 the Investigating Officer of the case seized a steel body-engine-run trawler from the BIWTA ghat no.5

under a Seizure List. This witness proved his signature in the Seizure List as Exhibit-85(1).

In his cross this witness stated that he could not say the registration number of the trawler or in whose name it was registered.

The P.W.86 Md. Makbul Hossain deposed that he attested the Seizure List in respect of the materials seized from the house of the accused Noor Hossain. This witness proved his signatures in the Seizure Lists as Exhibits-83(2) and 63(3).

In his cross this witness stated that his workshop was situated at a distance of 100/150 yards from the house of the accused Noor Hossain.

The P.W.87 Abdur Rouf Mian deposed that on 15.05.2005 at about 12.00/12.30 p.m. materials were attached from the house of the accused Noor Hossain. He attested the Seizure Lists as a witness. This witness proved his

signatures in the Seizure Lists as Exhibits-83(4)-83(5).

In his cross this witness stated that he used to deal in fish at a distance of 100/150 yards from the house of the accused Noor Hossain. He signed a blank paper.

The P.W.88 Md. Akter Hossain P.P.M. deposed that on 28.042014 he was attached to Fatulla P.S. On that day at about 20.15 hours having received the typewritten First Information Report (FIR) of Selina Islam he started Fatulla P.S. Case No.74 dated 28.04.2014 under sections 170, 341and 365 of the Penal Code. This witness proved the FIR Form as Exhibit-86 and his signatures therein as Exhibits- 86(1) and 86(2). This witness also proved his signature in the FIR as Exhibit-1(2). This witness further deposed that subsequently on getting the written FIR of Dr. Bijoy Kumar Paul he started Fatulla P.S. Case No. 11 dated 07.05.2014 under

sections 364, 302, 201 and 34 of the Penal Code. This witness proved the FIR Form as Exhibit-59 and his signatures therein as Exhibits-59(1)-59(2). This witness also proved his signature in the FIR as lodged by Dr. Bijoy Kumar Paul as Exhibit-1/2.

In his cross this witness stated that both the FIRs were typewritten. In the Case No.11 there was no mention of the name of any accused. The occurrence took place on 27.04.2014. In respect of the occurrence G.D.E. was made in the Police Station. The dead bodies of the victims were recovered on 30.04.2014.

This witness denied the defence-suggestions that he illegally accepted two cases in respect of the same occurrence or that he wrongly explained section 170 of the Penal Code or that he illegally started the Case No.11.

The P.W.89 Mohammad Mobarak Hossain deposed that on 27.04.2014 he was attached to RAB-11 Narayanganj. As per the requisition of O.C., D.B he sent Memo. No.9505 dated 27.06.12014 in respect of the use of mobile Nos.01777711100 and 01713374490 of Lt. Col. Tarek Syeed, Mobile no. 01777711111 of Lt. Commander Masood Rana and mobile no. 01777711155 of Major Arif. This witness proved the letters as sent by him as Exhibits-60 and 87 and his signatures therein as Exhibits-60(1) and 87(1). This witness further deposed that he took custody of a seized Mitsubishi white colour microbus bearing no. Dhaka Metro Cha-5174-54, a blue colour Toyota Hiace microbus bearing no. Dhaka Metro Cha-5362-153 and a silver colour Hiace microbus bearing no. Dahaka Metro Cha-5372-36 on 07.09.2014 from the DB Office, Narayanganj. This witness proved the Deeds of Custody as Exhibits-61 and 88 and his

signatures therein as Exhibits-61(1) and 88(1).

In his cross this witness stated that he supplied the mobile phone of Majot Arif as per requisition and took custody of the microbuses from the DB Office.

The P.W.90 Md. Kamal Hossain deposed that on 03.05.2014 he attested a Seizure List in respect of a black colour and a silver colour mobile phone. The mobile phones were recovered from Shipon. This witness proved his signature in the Seizure Lists as Exhibit 62(1) and 89(1). This witness further deposed that the Seizure List was prepared in the mess of Hazi situated at Katasur, Mohammadpur, Dhaka.

In his cross this witness stated that he did not know as to whether the person from whom the mobile phones were recovered was an accused in the case.

The P.W.91 Hazi Md. A. Hakim deposed that on 30.04.2014 he attested a Seizure List prepared on the bank of river Shitalakshmya at Bandar Kalagahhia. Some sacks and rope were seized. This witness proved his signature in the Seizure List as Exhibit-13(3).

In his cross this witness stated that he could not say the quantity of sacks and rope.

The P.W.92 Yasin @ Shipon deposed that on 03.05.2014 at 12.35 a.m. his uncle Abdur Rahim Ratan gave him a mobile phone. On that date police of Fatulla P.S. brought that mobile phone from him. The mobile phone was an M-70 model mobile phone. Subsequently, he could understand that the mobile phone was the alat of this case.

In his cross this witness stated that he could not say the name of the user of the phone.

The P.W.93 Mahabub Mallik deposed that Inquiry Slip No.154/14 in connection with

Fatulla P.S. Case No. 11(5)14 was sent to Bhola P.S. and he was entrusted with the task of enquiry. On 25.08.2014 he went to the village home of the accused Bashar situated at Balia Rastar Matha under Bhola P.S. and verified the name and address of the accused and found his name and address to be correct. This witness proved the S.C.D. as submitted by him in respect of the accused Basher.

The defence declined to cross examine this witness.

The P.W.94 Maniruzzaman deposed that the occurrence took place on 27.04.2014. On 13.04.2014 he joined RAB-11 at CPSC Adamjee. On 27.04.2014 at about 9.00 a.m, he alongwith Sainik Asad started for Soanargaon and Arahazar P.S to collect information. At about 05.00/05.30 p.m. they went back to their camp via Narayanganj Court area by a motor cycle. At about 08.30.p.m.to 09.00 p.m. Asad told him to give him a lift to Kanchpur

Bridge with his motorcycle. In the event of his refusal Asad held out threat to him to appraise the matter to Major Arif whereon he gave Asad a lift by the motorcycle to Kanchpur Brige with a white marketing bag in his hand. On 26.12.2014 he made statement to the Investigating officer. This witness identified the accused Asad in the dock.

The defence did not cross examine this witness.

The P.W.95 A.B. M. Sirajul Islam deposed that he verified the P.C./P.R. of the accused Mohammad Abul Bashar in Fatulla P.S. Case No.74 dated 28.04.2014 under sections 170/341/365/34 of the Penal Code vide E.S. No. 159 of 2014 and sent the E.S. to Fatulla P.S. The accused being absconding he could not arrest him.

The defence declined to cross examine this witness.

The P.W.96 Md. Syedul Islam deposed that on 18.11.2014 he was attached to Baghatipara Model P.S. as an ASI. He verified the name and address of the accused Md. Abdul Halim in connection with Fatulla P.S. Case No.74(4) 14 as per E.S. No.250 dated 16.10.2014 of O.C., DB, Narayabganj but he could not arrest him. He sent reply accordingly.

This witness was not cross examined on behalf of the defence.

The P.W.97 ASI Md. Enayet Hossain deposed that at the time of occurrence he was attached to Kotwali P.S., Faridpur. On receipt of E.S. on 05.07.2014, he verified the name and address of the accused Mortuza Zaman Churchill and found those to be correct and accordingly, he submitted S.C.D.

This witness was not cross examined on behalf of the defence.

The P.W.98 Kanai Lal Chakraborty deposed that on 05.11.2014 receiving S.C.D. in respect

of the accused Al-Amin Sharif in connection with Fatulla Model P.S. Case No.74(4)14 he verified the name and address of him and found those to be correct and accordingly, submitted S.C.D.

This witness was not cross examined on behalf of the defence.

The P.W.99 SI Abdur Razzak deposed that while he was attached to Rampur Bit under Manohardi P.S., on receipt of E.S. from D.C., D.B., Narayanganj in connection with Fatulla P.S. No.74(4)14 he verified the name and address of the accused Arif Hossain and found those to be correct and submitted E.S. No.74/14 on 05.06.2014.

This witness was not cross examined on behalf of the defence.

The P.W.100 Md. Nurul Amin deposed that he verified the name and address of the accused Ali Mohammad and submitted SCD on 10.08.2014.

The defence declined to cross examine him.

The P.W.101 Md. Abul Khair deposed that on 10.02.2014 he was attached to Borhanuddin P.S., Bhola. On that date receiving the C.S.D. of the accused Md. Arif Hossain in connection with Fatulla P.S. Case No.74(4)2014 he verified the name and address of the said accused and found those to be correct and submitted S.C.D.

This witness denied the defence-suggestion that he did not verify the name and address of the accused Md. Arif properly.

The P.W.102 S.I. Md. Mahibullah deposed that on receiving E.S. on 07.06.2014 to verify name and address of the accused Tarek Syeed Mohammad, he verified the name and address of the said accused and found them to be correct and submitted report on 07.06.2014.

The defence declined to cross examine this witness.

The P.W.103 Md. Haroon Mia deposed that he verified the name and address of the accused Mortuza Zaman Churchill as per the E.S. (Enquiry Slip) sent by O.C, D.B., Narayanganj in connection with Fatulla P. S. Case No.74(4)2014 and he found those to be correct and sent E.S. accordingly.

The defence declined to cross examine this witness.

The P.W.104 ASI Md. Ataur Rahman deposed that he verified the name and address of the accused Md. Bellal Hossain in connection with Fatulla P.S. Case No.74(04) 2014 and found those to be correct and submitted report accordingly.

The defence declined to cross examine this witness.

The P.W.105 Md. Abdul Awal stated in his evidence that he took over Charge of

investigation of the case on 03.05.2014 as per the direction of the Officer-in-Charge and investigated the case from 03.05.2014 to 07.05.2014. He visited the place of occurrence. The sketch map as drawn by his previous Investigating Officer being correct he did not draw it afresh. In his investigation he did not record statement of the witnesses under section 161 of the Code.

In his cross this witness stated that during his four days' investigation, he did not examine any witness. He perused the docket of the previous Investigating Officer. Fazlul Haque recorded the statements of four witnesses who mentioned the names of seven victims.

The P.W.106, the Charge Sheet submitting Investigating Officer Inspector of Police Md. Mamunur Rashid Mondol deposed that on 08.05.2014 he was entrusted with the charge of investigation of Fatulla Model P.S. Case

No.74 dated 28.04.2014 under sections 170/341/365/34302/201 of the Penal Code. He was entrusted with the investigation of the case filed by Advocate Chandan Kumar Sarker on 07.05.2014 in Fatulla Model P.S. Case No.11 dated 07.05.2014 under sections 364/302/201/34 of the Penal Code for kidnapping, killing and concealing of Advocate Chandan Kumar Sarker and his driver Ibrahim. On 08.05.2014 he started investigation in both the cases. He received the case docket of the Case No.74 (4)14 from previous Investigating Officer Md. Abdul Awal, detective branch, Narayanganj. He took note of the investigation works as done by 1st Investigating Officer, S.I. Fazlul Haque Talukder and 2nd Investigating Officer Abdul Awal. On 08.05.2014 he visited the place of occurrence and finding the Sketch Map of the place of occurrence as drawn by the 1st Investigating Officer to be correct, did not

draw Sketch Map and Index thereof afresh. On 09.5.2014 he visited Char of Chardhaleswsari river under Bandar P.S. where the 7 (seven) dead bodies of the deceased-persons were found. He drew Sketch Map and Index thereof showing it to be the 2nd place of occurrence. This witness proved the Sketch Map and the Index thereof and his signatures therein as Exhibits-63- 63(1), 64-64(1), 92-92(1), 93-93(1). This witness further deposed that he sent the arrested accused-persons, namely, Tanveer Ahmed @ Tanveer, Yeasin @ Limon, Alamgir Hossain @ Alamgir, Sona Mia @ Imran, Md. Jewel Ahmed Shahin and Mizan to the Court after remand on 11.05.2014. He sent the arrested accused Mahibullah @ Mahi to the Court praying for ten days' remand in two cases and also sent the arrested accused Arifuzzaman Arif praying for 7 days' remand in two cases. He sent the arrested accused Abdur Rahim @ Ratan after interrogation in

two cases to the Court. On 12.05.2014 as per the memo. no.4141/ crime dated 12.05.2014 he attached the order of direction given in Writ Petition No.4480 of 2014 in the two cases. He sent memo. no. 437 dated 12.05.2014 of D.B. office to the Secretary, Defence Ministry, Sherebangla Nagar, Dhaka for arrest of the then 3 Naval Officers. On 13.05.2014 he sent the accused Rafiqul Islam @ Ratan to the Court with a prayer for 10 days' remand. On the same date the statement of the witnesses Mizanur Rahman Ripon and Morsheda Begum under section 164 were recorded in two cases. On 14.04.2014 the statement under 164 of the Code of Md. Saiful Islam and Abul Khair were recorded. On 16.05.2014 he sent the accused Arifuzzaman Sarker @ Arif to the Court after remand. Vide Police Office memo. no.3982/01(05)/crime dated 06.05.2014, he incorporated the Post Mortem Examination Reports of the deceased-persons Nazrul Islam,

Chandan Kumar Sarker, Ibrahim, Tajul Islam, Moniruzzaman Swapan in the two cases. Receiving the police office memo. no.1241/crime dated 15.15.2014 and memo. no.4242/crime dated 15.05.2014 from the Defence Ministry he found that as per the instruction of the High Court Division, the three Naval Officers can be arrested as per the Criminal Procedure. He incorporated the said memos. in the case diary. On 16.05.2014, in the light of direction given in Writ Petition No.4480 of 2014 of the High Court Division he sent requisition to arrest the then RAB Officers Tarek Syeed Moahammad son of Mozibor Rahman, Md. Arif Hossain son of Anwar Hossain and Masood Rana son of Abdul Hakim under section 54 of the Code to the Officer-in-Charge, Cantonment P.S. On 17.05.2014 as per the direction given in Writ Petition No.4480 of 2014 and as per the diary no.438 dated 17.05.2014 of D.B, Narayanganj

he arrested the accused-persons Lieutenant Col. (retired) Tarek Syeed Mohammad and Md. Arif Hossain. He sent them to the Court and noted it in his diary. On the same date he got recorded the statement of witness Mohammad Ali under section 164 of the Code. On 18.05.2014, he sent the accused Mahibullah to the Court after remand. On the same date, in view of the order passed in Writ Petition No.4480 of 2014, he noted about the arrest of Lieutenant Commander Masood Rana in his diary. On 20.05.2014 he sent the accused Rafiqul Islam @ Ratan to the Court after remand. On 20.05.2014 he sent requisition paper through S.C.D. to the Officer-in-Charge, Siddhirganj, P.S. for attachment of the immovable property of the accused no.1 Noor Hossain Councillor. On 20.05.2014 on receipt of the S.C.D. in respect of attachment he took note in his diary. On 22.05.2014, he sent the eye -witness

Shahidul Islam @ Khoka and Rabeya Akhter for recording their statements under section 164 of the Code. On 17.05.2014, he sent the accused-persons Tarek Syeed Mohammad and Arif Hossain after five days' remand to the Court. Thereafter, on his prayer 10 days' remand in Case No.74 (4)14 was granted. On 23.05.2014, he received the Post Mortem Examination Reports of the victims Jahangir Hosain and victim Sirajul Islam Liton and attached the Post Mortem Examination Reports in the docket. He recorded the statements of Habilder Md. Kamal Uddin, Md. Rafiqul Islam, Md. Omar under section 161 of the Code. On 24.05.2014, he recorded the statements of S.I. Abu Taleb, S.I. Belayet Hossain, S.I. Abu Hanif and S.I. Mizanur Rahman under section 161 of the Code. On 25.05.2014 he sent the arrested accused Masood Rana to the Court after 7 days' remand and showing arrested in Case No.74(4)14 prayed for 10

days' remand and that the Court allowed 8 days' remand. On 30.05.2014 he sent the accused-persons Tarek Syeed Mohammad and Arif Hosain after remand to the Court and prayed for another 7 days' remand in the two cases whereon the Court allowed 5 days' remand. On 02.06.2014 he prayed for 7 days' remand of the accused Masood Rana and that the Court allowed 5 days' remand. He interrogated the accused Masood Rana in both the cases. On 04.06.2014 he sent the accused Tarek Syeed after 5 days' remand and sought for 7 days' remand in Case No.11(5)14 and the Court allowed him 5 days' remand. The accused Md. Arif Hossain expressed his will to make confessional statement in the two cases under section 164 of the Code and as such, he got the statements of the accused Arif recorded under section 164 of the Code by the Senior Judicial Magistrate Mr. Mohiuddin and attached the confessional statements in the

case docket. On 05.06.2014, he got recorded the confessional statement of the accused Masood Rana as per his will by Senior Judicial Magistrate Mr. Mohiuddin and collecting the confessional statements, he attached them to the case record. On 05.06.2014, he came to know that Suxa Mithunia (the injection which makes a man unconscious if pushed) were pushed to the victim Hazi Nazrul Islam, Tajul Islam, Moniruzzaman Swapan, Jahangir Hossain, Sirajul Islam Liton, Chandan Kumar Sarker and Ibrahim. So, he sent letter to the Civil Surgeon, Narayanganj vide memo. no.532 dated 05.06.2014 of D.B. office asking as to whether Suxa Mithunia would be found in the body of the deceased-persons after 40 days disinterring the dead body from the grave. On 05.06.2014, he recorded the statement of Hazi Shahidul Islam under section 161 of the Code in both the cases. On 08.06.2014, he sent

Post Mortem Examination Reports and Inquest Reports of the victim Nazrul Islam, Tajul Islam, Moniruzzaman Swapan, Jahangir Hossain, Sirajul Islam, Advocate Chandan Sarker and Ibrahim to the Court. On 12.06.2014 he showed the accused Mortuja Zaman Charcil arrested in both the cases and sought for 7 days' remand and that the Court allowed 5 days' remand. On 14.06.2014, as per desire of the accused Morturja Zaman Churchil, his confessional statement under section 164 of the Code was recorded. He collected the confessional statements made in both the cases and incorporated in the case dockets. On 15.06.2014, he sent letter to the Police Super, Narayanganj for publication of red notice. Vide memo. no.CSNJ/Admin/2014/5086 dated 15.06.2014 it was revealed that the action of Suxa Mithunia used to start within one minute and gets hydrolyzed and become inactive quickly and as such, the

effectiveness of the medicine remained from 5 to 10 minutes. It gets eliminated from the body very soon. So, there was no possibility of finding its existence in the dead bodies 40 days after. He incorporated the report in the docket. On 18.06.2014, the accused Tarek Syeed Mohammad made confessional statement under section 164 of the Code in both the cases and he incorporated the statements in the case dockets. On 21.06.2014 he sent letter to the Commander RAB-11, Siddhirganj, Naraynaganj for seizure of microbus, trawler, one silver colour Hiace micro, one blue colour micro, one white colour Mitsubishi microbus as used on 27.04.2014. On the same date, he sent another letter for supply of any government mobile phone number, telephone number used by Lieutenant Col. Tarek Syeed Mohammad, Lieutenant Commander Masood Rana and Company Commander Major Arif Hossain (retired) on 27.04.2014. On the same date

letter was sent to BRTA, Mirpur, Dhaka for verification of ownership of microbus bearing no. Dhaka Metro-ca-15-1063, private car bearing no. Dhaka Metro-ga-31-9136 vide memo. No. 582(3). On 23.06.2014, report of BRTA was found. According to the report the accused Noor Hossain was the owner of the microbus no.1063. On the same date as per the desire of the eye witness Md. Moazzam Hossain Shahin his statement under section 164 of the Code was recorded and he attached the report with the case docket. On 24.06.2014 for collection of database in respect of National Identification number-269362-----4945110 and 2693627542020, a letter vide memo. no.592 dated 24.06.2014 of DB office was sent. On 27.04.2014 at about 13.45 hours from the first place of occurrence under the leadership of company Commander Major Arif Hossain (Retd.), RAB-11, he alongwith his team mates of the same company, namely, Nayek

Emdadul Huq, Sainik Mohiuddin Munshi, Constable Shihab Uddin and others kidnapped away 7 persons including the Councillor Nazrul Islam and Advocate Chandan Kumar Sarker, killed them and dropped their dead bodies in the river. For proper investigation of the case he sent a letter vide memo. no. 626 dated 02.07.2014 to hand over said persons to the Investigating Officer. On 02.07.2014 ASP Md. Mobarak Hossain on behalf of the Commanding Officer informed that the phone nos.0177771110 and 01713374490 and T&T nos. 7694964 (office), 7694434 (office), 7691477 (residence), 8711387 (family residence at Dhaka) were of the accused Lieutenant Col. Tarek Syeed Mohammad and mobile phone no.01777711111, T&T no.7634700 (office) were of the accused Lt. Commander Rana (retired) and mobile phone no.01777711155 and T&T no.7691310 (office) were of the accused Major Arif Hossain (retired). He attached the

letter in the docket of both the cases. On 12.07.2014 he sent letter to the Commanding Officer RAB-11 for attendance of DAD Salam Sikder, L.S. Samad in connection with the occurrence of 27.04.2014 before Investigating Officer for interrogation. He attached the memo. no.170000000631401613/595 dated 14.07.2014 in the case docket. On 20.07.2014 he took the accused Ali Mohammad on remand for six days. On 22.07.2014 he sent letter to the Commanding Officer, RAB-11 for directing the driver Nayek Md. Nazim Uddin, driver Constable Mizan, S.I. Polash, Sepoy Azam and Nayek Razzak to remain present before the Investigating Officer for interrogation in respect of the occurrence of 27.04.2014. On the same date, he sent the witnesses Md. Abdus Salam Sikder, BPM and Police Inspector Abdus Samad for recording their statements under section 164 of the Code. After the statements were recorded he attached the

statements to the docket of both the cases. On 24.07.2014 as per the desire of the accused Ali Mohammad he got recorded his confessional statement under section 164 of the Code by the learned Magistrate Chandni Rupam. He attached the statement made in both the cases with the case docket. On 04.08.2014, the accused-persons Nayek Emdadul Huq (BGB), Sainik Mohiuddin Munshi and Constable Shihab Uddin being not handed over to him, he sent DB office memo. no.744 dated 04.08.2014 to the Commander, RAB-11, Siddhirganj, Narayanganj and on the same date for producing DAD Atiar CPC-1(2), S.I. Polash CPC-1 to produce before him. Vide memo no.745(2) dated 04.08.2014, he sent witnesses Nayek-5321 Abdur Razzak, Sepoy-19064 Md. Azam Ali to the Court of Chief Judicial Magistrate, Narayanganj for recording their statements under section 164 of the Code. He attached both the statements with the case

docket. On 07.08.2014 he sent letter vide D.B office memo. no.767 dated 07.08.2014 and Police office memo. no.6946 dated 07.08.2014 to the Director General, RAB Forces, RAB Headquarters, Dhaka to produce the accused-persons, namely, Sainik 4042381 Md. Mohiuddin Munshi, ROG 20070583 Md. Arif Hossain @ Arif, Habilder 499997 Emdadul Huq @ Emdad, Lance Nayek 19513 Md. Hira Miah, Sepoy 73967 Md. Abu Taiyab Ali @ Taiyab, Lance Nayek 26712 Md. Bellal Hosain, S.I. 8211144773 Purnendu Bala, Sainik GD 4048557 Al Amin Sharif @ Al Amin, Sainik 4047423 Md. Tajul Islam, Constable 12513 Md. Shihab Uddin, Corporal 1437953 Md. Mokhlesur Rahman @ Mokhlesh, Lance Corporal 1613082 Md. Ruhul Amin @ Ruhul, Constable 2438 Md. Habibullah @ Habib before the Investigating Officer. On 09.08.2014 he annexed report in respect of ownership of seized private car bearing no. Dhaka Metro Ga-31-9136 with the docket and on

the same date he sent report to the learned Chief Judicial Magistrate. On 10.08.2014 he arrested the accused Mizanur Rahman Dipu from Madaripur. For arrest of the accused Noor Hossain Councillor he sent memo. no.784 dated 10.08.2014 to the Chief Judicial Magistrate, Narayanganj. He got recorded the statements of the witnesses Mehedi Shahariar and Md. Nazim Uddin under section 164 of the Code and annexed the statements in the case dockets of both the cases. On 10.08.2014 as per his prayer for remand of the accused Mizanur Rahman @ Miazan, 7 days' remand was granted. He sent letter to Major Suruj Ahmed, DAD Salim, driver Mizan, Lance Corporal Md. Jahangir to remain present before him on 18.08.2014. He gave custody of the seized car bearing no. Dhaka Metro Ga-31-9136 to Morsheda, the wife of victim Maniruzzaman Khan. On 14.08.2014 he sent letter to RAB-11 office, Siddhirganj for attendance of Nayek

Md. Delwar Hossain, Nayek Md. Mizanur Rahman on 19.08.2014. On 17.08.2014 the accused Mizanur Rahman Dipu @ Mizan was given on remand for five days as per his prayer. On 18.08.2014 he got recorded statements of Major Md. Suruj Mia and S.I. Polash Golder under section 164 of the Code and annexed the statements in the case docket of both the cases. On 19.08.2014 he got recorded statement of witness Md. Delwar Hossain under section 164 of the Code and annexed the statement in the case docket of both the cases. He prayed for remand of the accused Mizanur Rahman Dipu for 10 days' in Fatulla P.S. Case No.11 (5)/14 whereon 7 days' remand of the accused was allowed. On 27.08.2014 he prayed for remand of the accused-persons Habilder Enamul Haque, ROG-1 Md. Arif Hossain, Lance Nayek Md. Hira Mia and Sepoy Abu Taiyab whereon 8 days' remand was allowed. On 30.08.2014 as per desire of the

accused-persons Habilder Enamul Haque, Lance Nayek Md. Hira Mia and Sepoy Abu Taiyab, he got recorded their confessional statements under section 164 of the Code. He annexed the statements as made by the aforesaid accused-persons with the dockets of both the cases. On 31.08.2014 as per the desire of the accused ROG-1 Arif Hossain he got recorded his confessional statement under section 164 of the Code and annexed the statement in the dockets of both the cases. On 02.09.2014 as per the desire of the accused Lance Nayek Billal Hossain, he got recorded his confessional statement under section 164 of the Code and annexed the copies of the statements with the dockets of both the cases. He sent the accused Mizanur Rahman Dipu to the Court for remand. On 03.09.2014 he seized the three minibuses used in the alleged occurrence on 27.04.2014 i.e. a blue colour Hiace microbus bearing no.Dhaka

Metro ga-43-6215 without any number used on 27.04.2014 by Major Arif and his teammates and a silver colour Toyota Hiace Haies microbus bearing no. Dhaka Metro ca-33-7236 which was without number plate and was used by the accused Lieutenant Commander Masood Rana and his teammates and a white colour Mitsubishi old microbus bearing number Dhaka-Metro Ka-51-7454 which carried the sacks containing brick and rope under a Seizure List (Ext.94). As per desire of the accused Md. Shihab Uddin he got recorded his confessional statements under section 164 of the Code and annexed the two confessional statements in both the case dockets. After the accused Purnendu Bala was handed over to him he sought 10 days' police remand of him whereon the Court allowed 8 days' police remand. On 07.09.2014 he submitted information regarding the ownership of the 3 microbuses used by the accused-RAB personnel

and gave custody of the minibuses to MTO-in-Charge Md. Mobarak Hossain by a deed of custody. As per desire of the accused S.I. Purnendu Bala he got recorded his confessional statement under section 164 of the Code. He annexed the two confessional statements as made by this accused with the dockets of both the cases. On 16.09.2014 he sent papers vide memo no.8260/E dated 16.09.2014 to bring back the accused Noor Hossain from India. On 24.09.2014 he got recorded the statements of the witnesses Haji Md. Moni Howlader and Md. Shahjahan alias Saju under section 164 of the Code and annexed the statements with the dockets of both the cases. On 28.09.2014 vide police office memo. no.8327/Crime dated 27.09.2014 he annexed papers with regard to service of Red Notice upon the accused Noor Hossain as arrested in India. On 29.09.2014 he seized a steel body trawler by which Major (retired)

Arif Hossain and his teammates carried the dead bodies of 7 murder case. He seized that alamats as per the identification of Sepoy Azam and as per production of A.S.P Rabiul Haque, Quarter Master, RAB-11 under a Seizure List. This witness proved the Seizure List as Exhibit-95 and his signature therein as Exhibit-95/1. This witness further deposed that on the same date he sent the Seizure List to the Court of the Chief Judicial Magistrate, Narayanganj vide memo. no. 1093 dated 29.09.2014. He gave custody of the trawler to Md. Jamal Uddin Talukder vide a Deed of Custody. On 07.10.2014 he sent requisition to the Officer-in-Charge, P.S. Bauphal, District-Patuakhali for arresting the accused Lance Corporal (retired.) Md. Ruhul Amin and with the assistance of Bauphal P.S. he arrested the accused and kept interrogating him. On 08.10.2014 he sought 10 days' remand of the accused Ruhul Amin

whereon 7 days' remand was given. On 15.10.2014 he once again sent the accused Ruhul Amin to the Court praying for remand whereon 5 days' remand was allowed. He sought 10 days' remand in Case No.11 (5)/14 whereon Court allowed 8 days' remand. As per desire and will of the accused Ruhul Amin he got recorded his confessional statement under section 164 of the Code. On 30.10.2014 he annexed the confessional statement made by this accused in the case dockets of the two cases. On 01.11.2014 vide memo. no.1300 he sent requisition to the Commander RAB-11, Siddhirganj, Adamjinagar for production of DAD Salim CPSC, DAD Atiar CPC-1 and driver Constable Mizanur Rahman in the D.B. office for interrogation. On 05.11.2014 he sent report in respect of development of the case in view of the memo. no. Ain/Writ/129-2014/Criminal Misc. Suo-Moto Rule No.18403/2014. On the same date he got

recorded the statements under section 164 of the Code of DAD Atiar Rahman, DAD Md. Salim Khan by a Magistrate and annexed the two reports in the dockets. He sent memo. no.1387 dated 16.11.2014 to the Commander RAB-11, Adamjinagar, Siddhirganj, Narayanganj to produce the accused Mizanur Rahman on 20.11.2014 at 09.00 a.m. for interrogation. The accused-persons Sergeant Enamul Haque, A.S.I. Bazlu Rahman, Driver Nasir, ASI Kalam, ASI Kamal, Sainik Nooruzam.M.an, Constable Babul Hasan and that Constable Habibur Rahman Habib being not handed over, he sent memo. no.1407 dated 19.11.2014 to the Director General, RAB Forces, RAB Head Quarter, Dhaka. He sent memo. no. 10223 dated 23.11.2014 to AIG, Bangladesh Police Head Quarters for getting attested copies, registration Form, C.D.R. and S.M.S. In view of the decision of the Home Ministry dated 30.11.2014 for extradition of the accused no.1 Noor Hossain

in the sensitive 7 murder case of Narayanganj, he sent the documents to the office of the Police Super, Narayanganj vide memo. no.1454 dated 25.11.2014 whereon vide memo. no.10362/E dated 25.11.2014 it was sent to AIG (NCB) Bangladesh Police Head Quarters. On 27.11.2014 he sent memo. no.1473 to the Commander, RAB-11, Adamjinagar, Siddhirganj, Narayanganj to send the accused driver Constable Mizanur Rahman @ Mizan to the Investigating Officer. On 01.12.2014 the accused persons ASI 145 Md. Bazlur Rahman, Habilder Md. Nasir Uddin, A.S.I. Abul Kalam Azad were handed over to him from the RAB-11 Adamjinagar, Siddhirganj and having arrested, he interrogated them. On 02.12.2014 7days' remand was allowed in respect of ASI Md. Bazlur Rahman, Habilder Md. Nasir Uddin, A.S.I. Abul Kalam Azad and he took them into his custody for interrogation. On 02.12.2014 he sent requisition to the Officer-in-Charge,

Magura P.S. for assistance in respect of the arrest of the accused Sainik Nooruzzaman and after arrest, he kept interrogating the accused Nooruzzaman. As per desire and will of the accused Nooruzzaman he got recorded his confessional statement under section 164 of the Code and annexed the copies of the statements with the dockets of both the cases. On 04.12.2014 as per the will and desire of the accused A.S.I. Md. Bazlur Rahman, he got recorded his confessional statements under section 164 of the Code in both the cases and he annexed the confessional statements as made by this accused with the dockets of both the cases. As per will and desire of the accused Habilder Nasir Uddin he got his confessional statements recorded on 07.12.2014. On the same date as per the will and desire of the accused Constable Md. Babul Hasan he got recorded his confessional statements by a

Magistrate and annexed the confessional statements with the dockets of both the cases. As per the desire of the accused ASI Abul Kalam Azad he got recorded his confessional statements on 08.12.2014 and annexed the confessional statements with the dockets of both the cases. He sent a letter vide memo. no.1560 dated 14.12.2014 to the Commander, RAB-11, Adamjinagar, Siddhirganj to produce DAD Jalil Mollah, CSI Satter, Daily Munshi Sepoy Milon for interrogation on 17.12.2014 at 9.00 a.m. On the same date he sent letter to the Director General, RAB, Dhaka for interrogation of Sepoy Md. Asaduzzaman Noor. On 17.12.2014 he got recorded the statements of the witness Habilder Abdus Satter under section 164 of the Code and annexed the statements with the dockets of the two cases. On 21.12.2014, on his prayer Sepoy, Asaduzzaman Noor was given 7 days' remand. On the same date he sent

letter to the Commander, RAB-11, Siddhirganj for production of the witnesses Lance Corporal Jahangir, Constable Miniruzzaman, DAD Jalil Mollah, Daily Munshi Sepoy Milon on 24.12.2014 at 9.00 a.m. On 23.12.2014 he got recorded the statements of the witness Jahangir Alam (Corporal) under section 164 of the Code and annexed the statements with dockets of both the cases. On 24.12.2014 he got recorded the statements of the witness Sepoy Milon Hossain under section 164 of the Code and annexed the statements with the dockets of both the cases. As per will and desire of the accused Sepoy Asaduzzaman Noor he got recorded his confessional statements under section 164 of the Code and annexed the confessional statement with the dockets of both the cases. On 26.12.2014 he recorded the statement of Constable Moniruzzaman under section 161 of the Code. On 16.03.2015 he sent Police Office Memo. No.2699/E dated

13.03.2015 to send mobile call List and 8 mobile SMS to the AIG (confidential), Police Head Quarters, Dhaka. On 24.03.2015 with the assistance Burichang P.S. Police, Comilla, he arrested the accused Raham Ali and prayed for 10 days' remand whereon the Court allowed 7 days' remand. On 27.03.2015 he recorded the statement of the witness Azimul Ahsan, ASP, Circle-A, Narayanganj under section 161 of the Code. On 28.03.2015 he arrested the accused Md. Abul Bashar from Rupganj area and prayed for 10 days' remand whereon the Court allowed 7 days' remand. On the same date as per the will and desire of the accused Raham Ali, he got recorded his confessional statements under section 164 of the Code and annexed the confessional statements with the dockets of both the cases. On 01.04.2015 as per the will and desire of the accused Abul Bashar he got recorded his confessional statements under section 164 of the Code and

annexed the confessional statements with dockets of both the cases. On 02.04.2015 vide Police Head Quarter Memo No.NIC/02-2012(part-1)/80 dated 02.04.2015 he got Call List of mobile phone no.01782-460064 from 06.04.2014 to 01.05.2014 (grameen phone page-84), Call List of mobile phone no.01777711100-06 from 06.04.2014 to 07.05.2014 (grameen phone page no.342), Call List of mobile phone no.01777711155 from 06.04.2014 to 07.05.2014 (grameen phone page no.221), Call List of mobile phone no.01777720001 from 01.04.2014 to 02.06.2014 (grameen phone page no.1159), Call List of mobile phone no.01777711111 from 15.04.2014 to 03.06.2014 (grameen phone page no.202), Call List of mobile phone no.01716013862 from 01.04.2014 to 30.04.2014 (grameen phone page no.29), Call List of mobile phone no.01777711133 from 01.04.2014 to 30.04.2014 (grameen phone page no.109), Call List of mobile phone no.01777711103 from

01.04.2014 to 30.04.2014 (grameen phone page no.243), Call List of mobile phone no.01777720000 from 26.04.2014 to 28.04.2014 (grameen phone page no.07), Call List of mobile phone no.01777720050 from 26.04.2014 to 28.04.2014 (grameen phone page no.172), Call List of mobile phone no.01914402225 from 20.04.2014 to 10.06.2014 (Bangla Link phone page no.13), Call List of mobile phone no.01684376576 from 06.04.2014 to 28.04.2014 (Airtel phone page no.52), SMS sent from mobile phone no.01782460064 from 26.04.2014 to 28.05.2014 (grameen phone page no.25), SMS sent from mobile phone no.01777711100 from 20.04.2014 to 29.04.2014 (grameen phone page no.416), SMS sent from mobile phone no.01777711155 from 20.04.2014 to 29.04.2014 (grameen phone page no.71), SMS sent from mobile phone no.01777720001 from 27.04.2014 to 28.04.2014 (grameen phone page no.397), SMS sent from mobile phone no.01777711111

from 20.04.2014 to 10.05.2014 (grameen phone page no.86), SMS sent from mobile phone no.01777711133 from 27.04.2014 to 10.05.2014 (grameen phone page no.72), SMS sent from mobile phone no.01914-202225 from 06.04.2014 to 07.05.2014 (Bangla Link phone page no.01), SMS sent from mobile phone no.01684376576 from 26.04.2014 to 06.05.2014 (Airtel phone page no.01) were sent through Constable Saiful Islam. Having received the said mobile Call List in D.B. Office, Narayanganj, he seized those as documentary alamats under a Seizure List. This witness proved the Seizure List as Exhibits-57 and 80 and his signatures therein as Exhibits-57(3) and 80(3). This witness further deposed that on perusal of the CDR of the mobile calls and SMS it came to light that from the mobile number of the accused Noor Hossain i.e. 01684-376576 and from the mobile number of the accused Major Arif bearing no.01782-460064 from 06.04.2014

to 27.04.2014 in 22.55 minutes the accused Arif Hossain made 27 mobile calls to the accused Noor Hossain and the accused Noor Hossain made 12 mobile calls to the accused Arif Hossain and out of that on 27.04.2014 from 10.33 a.m. to 22.55 hours the accused Noor Hossain made 5 mobile calls to Major Arif Hossain and Major Arif Hossain made 5 mobile calls to the accused Noor Hossain. Besides that, from the mobile phone of Major Arif bearing no.01782-460064 he made 4 mobile calls on 27.04.2014 from 13.56 hours to 02.11 a.m. at night and that the accused Tarek Sayed from his phone nos.7694433 and 7691477 made 7 calls to the accused Major Arif Hossain. Besides that, from his personnel mobile phone no.01914-402225 the accused Tarek Sayed sent 2 SMS to Major Arif Hosain. From his mobile number being 01777-711111, the accused Lieutenant Commander Masood Rana made mobile call to the official mobile phone

being no.01777-711100 to Lt. Col. Tarek Syeed from 12.12 p.m. to 02.00 a.m. and sent 2 SMS and talked 6 times from 12.22 a.m. to 2.00 a.m. Besides that, from officially mobile phone no.01777-711100 SMS was sent to the operational mobile no.01782-460064 of Major Arif Hossain and SMS was sent to the mobile number of the accused Lt. Commander Masood Rana being no. 01777-711111 to the effect that "do not carry your official mobile and remove plate before drop". Moreover, from his operational mobile no.01782-560064 the accused Major Arif talked to Sepoy Asaduzzaman Noor in his personal number 01737-389875 six times from 01.35 p.m. to 10.55 p.m. on 27.04.2014. Besides that, on 27.04.2014 at 10.50 p.m. the accused Tarek Syeed Mohammad from his official mobile number being 01777-711100 sent report to the mobile phone of ADG OPS Col. Ziaul Ahsan, RAB Head Quarter, Dhaka showing no arrest,

detention or accident. During investigation it also came to light that the mobile number of the accused Noor Hossain being no.01684-376576 was registered in the fake name of one Nazma Begum and that the mobile number being 01782-460064 as used by Major Arif was registered in the fake name of one Al Shafiul. He prepared CDR from the inception of the occurrence to the end in respect of the operational mobile no.01782-460046 of Major Arif. This witness proved the Sketch Map and Index and his signatures thereon as Exhibits 96-96(1), 97-97(1), 65-65(1), 66-66(1). This witness further deposed that during investigation he made attempt to arrest the confessing accused-persons and verified their names and addresses of the arrested accused-persons and annexed the SCD with the dockets. He recorded the statements of the witnesses under section 161 of the Code and got recorded their statements under

section 164 of the Code and annexed statements with the case dockets. He seized microbuses and trawler as used by the accused-persons in the alleged occurrence. He collected the Mobile Call Lists and SMS of the accused-persons. After investigation and on perusal of the statements under section 164 of the Code of the confessing accused-persons, seized alamats, the Mobile Call Lists and SMS, prima-facie case having been made out against the accused-persons (1) Noor Hossain Councillor, (2) Lieutenant Col.(retired) Tarek Syeed Mohammad, (3) Major (retired) Arif Hossain, (4) Lieutenant Commander (disCharged) Masood Rana, (5) Habilder (49997) Md. Emdadul Haque, (6) ROG-1 Md. Arif Hossain, (7) Lance Nayek 19513 Md. Hira Miah, (8) Lance Nayek 26712 Md. Bellal Hossain, (9) Sepoy 73967 Abu Taiyab, (10) Constable (12513) Md. Shihab Uddin, (11) S.I. Purnendu Bala, (12)1613082 Lance Corporal

(forced retirement.) Md. Ruhul Amin, (13)
A.S.I (without arms) (145) Md. Bazlur Rahman,
(14) Habilder BGB 53799 Md. Nasir Uddin, (15)
ASI (Armed) 606 Md. Abul Kalam Azad, (16)
Sepoy 4036506 (disCharged) Md. Nooruzzaman,
(17) Constable 4665 Md. Babul Hasan, (18)
Sepoy 1616697 Md. Asaduzzaman Noor, (19)
Mortuza Zaman Churchil, (20) Ali Mohammad,
(21) Md. Raham Ali, (22) Md. Raham Ali, (23)
Md. Abul Bashar, (24) 1437953
Corporal (discharged) Md. Mokhlesur Rahman,
(25) 1446392 Sepoy (discharged) Md. Abdul
Alim, (26), 4042381 Sepoy (discharged) Md.
Mohiuddin Munshi, (27) 4048557 Sepoy
(discharged) Al Amin Sharif, (28) 4047423
Sepoy (discharged) Md. Tajul Islam, (29)
Sergeant 4014248 (disCharged) Md. Enamul
Kabir, (30) ASI 2640 Md. Kamal Hossain, (31)
Costable 2921 Md. Habibur Rahman @ Habib,
(32) Salim, (33) Md. Sanaulla @ Sana, (34)
Shahjahan and (35) Jamal Uddin under sections

364/302/201/109/114/34 of the Penal Code and the accusation against the confessing accused-persons Haji Yeasin Mia, Hashmat Ali Hasu, Aminul Islam Razu, Anwar, Iqbal Hossain and the arrested accused-persons, namely, Tanveer Ahmed Tanveer, Yeasin @ sipon, Alamgir Hossain @ Alamgir, Sona Miah @ Imran, Jewel Ahmed Shahin, Miazan, Abdur Rahim @ Ratan, Arifuzzaman Sarker @ Arif, Mohibullah @ Mohi, Rafiqul Islam @ Ratan and Riaz being not proved he submitted the memorandum of evidence and with the approval of his higher authority through memo. no.4059/4/crime dated 07.04.2015 and memo. no.4060/4/crime 07.04.2015 submitted Charge Sheet no.232 dated 04.08.2015 under sections 364/302/201/109/114/34 in the Case No.74(4)2014 and the Charge Sheet No.233 dated 08.04.2015 under sections 364/302/201/109/114/34 of the Penal Code in

Case No.11(05)2015. This witness identified the Charge Sheet and his signatures therein.

In his cross this witness stated that he did not make the tenants/owners/inmates of the 'chha', 'jha', 'nio', 'ta', 'tha', 'da', 'to', 'na', 'pa', 'pha', 'ba', 'sha', etc. i.e. the houses, shops as witnesses in the case. He did not make Jesmin Begum as witness as she could not give any information in respect of the occurrence. The inmates of the houses viz. 'na', 'tha', 'ta' could not give any information of the case and as such, he did not make them witnesses. Excepting the persons who carried the dead bodies by trawler he did not find any witness on dropping of the dead bodies. He visited the landing station. At the time of the occurrence there was no security in the landing station as they were removed from the landing station and as such, they were not made witnesses in the case but the accused-

persons themselves made confessional statements. At the time of occurrence none of the landing station being present he did not cite them as witnesses. At the time of the occurrence the Landing Station was under the control of the mates of the accused Noor Hossain. He did not seize any C/C of Lieutenant Commander Rana as he did not give any command certificate. It was not a fact that without C/C any Officer could not go out of the office. Major Arif went out of the office with 11 teammates. He did not seize any C/C of Major Arif. He did not seize any log register of the transport which was used on 27.04.2014. On that date Major Arif did not use any log book. He verified the log book of RAB-11 of 27.04.2014 but he did not find any log book used by Major Arif. Major Arif committed illegal acts and as such, he did not maintain any log book of transport. The two transports of the office of Major

Arif which were used on 27.04.2014 were numberless and as such, Major Arif did not maintain any log book. Daily Munshi Milon stated clearly that on the date of occurrence Major Arif used transports of the RAB office without any log book. As per the order dated 07.05.2014 he investigated into the case. In the Case No.11 (5)14, the informant did not mention the name of any accused. In the FIR of Case No.74 (4)14 there was no mention of the name of the accused Major Arif. In it, there was mention of some fake RAB personnel. Abdus Salam, the brother of the victim Nazrul identified his dead body. In the Inquest Report there was no mention as to who killed Nazrul. Mizanur Rahman Ripon, the brother of deceased Swapan identified his dead body. In the said two Inquest Reports the cause of death was not mentioned. Abu Taher identified the dead body of Tajul Islam. Yousuf identified the dead body of Ibrahim.

Advocate Priyatam identified the dead body of Chandan Kumar Sarker. Alamgir identified the dead body of the deceased driver Jahangir. The Inquest on the dead body of Rafiqul was held on 01.05.2014. In the Inquest Reports of the aforesaid victim deceased-persons, the cause of death was not mentioned. Case No.74 (4)14 was started on 28.04.2014 at 08.15 p.m. He seized 3 transports in connection with the case. On the date of occurrence he did not find any register in respect of the transports used. No register being maintained in respect of the said transports he did not seize any register. The seized transports were (1) Dhaka Metro-Ga-43-6215, (2) Dhaka Metro-Ca-33-7236 and (3) Dhaka Metro-Ca-51-7454. The transports were used without any number. Out of the seized transports, two were under the supervision of Major Arif. The body of the seized trawler was of steel which was under the supervision of the accused M.M.

Rana. The driver Azam himself told that as per order of M.M.Rana the trawler was brought out. As per his knowledge no log book was maintained in respect of the trawler. Investigation Officer Fazlul Haque investigated the case for 4 days and recorded statements of 4 witnesses. He recorded the statements of the rest witnesses under section 161 of the Code on different dates. On the date of occurrence, the RAB personnel under the order of DAD Salam went to the place of occurrence in uniform. Two pick up of RAB set up Check Post at 11.30 a.m. as per the order of the accused M.M. Rana. The P.W.60 stated about 5 transports. On 04.06.2014 confession of Major Arif under section 164 of the Code was recorded and he was taken on remand on 22.05.2014. He did not find any documentary evidence in respect of the alleged occurrence in the bank account of the accused Arif. He did not find any

documentary evidence to the effect that flat was purchased for him by anybody. He sent requisition for sending Call List of the accused Major Arif to the mobile company through authority and accordingly, the Call List was sent. Shahariar Ahmed Shams, Hosne Ara Haque and Ishtiak Hossain Chowdhury brought the Call Lists of Airtel, Bangla Link and Grameen phone. He sought CDR and SMS of 10 mobile numbers. He did not seek report in respect of call duration and voice test of CDR. He got recorded the statements of 19 witnesses under section 164 of the Code. The witnesses Jahangir Alam, Jahangir Alam Tipu, Fakhrul Islam, Shahjalal, Saiful Islam Mintu, Abul Khair, Mizanur Rahman, Morsheda, Mohammad Ali, Shahidul Islam Khoka, Rabeya, Md. Rafiqul Islam, Kamal Uddin, S.I. Mizanur Rahman, S.I. Abu Taleb, S.I. Belayet Hossain, S.I. Abu Hanif, Anwar Hossain, Hazi Shahidul Islam, Shahidul Islam, Md. Rafiqul Islam,

Alamgir Hossain, Md. Moniruzzaman, Azimul Ahsan, Abdul Latif, Abu Taher, Haji Abdus Salam did not state the name of these accused-persons in their statements under section 161 of the Code. As per the FIR of Salina Islam there was mention of 2 microbuses. He himself examined the informant Salina Islam. The FIR of Salina Islam was recorded under sections 170/341/365/34 of the Penal Code. The FIR of Bijoy Paul was recorded on 07.05.2014 at 08.15 p.m. In the said FIR the name of the accused Major Arif was not mentioned. Victim Ibrahim was the driver of the victim Chandan. In respect of the not sent up accused-persons, the informant Selina Islam filed naraji petition in Case No.74(4)14. He did not make any witness from media because he did not feel it necessary. As per instruction of the Head Quarter, RAB can make operation in whole Bangladesh. The office of the C.O. of RAB-11

was situated at Adamji Nagar, Naryanganj. During investigation he visited the office of the accused Major Arif. On 27.04.2014 a case of explosive was filed. Out of the two families of the informants, the family of victim Nazrul met the Police Super. In his statement under section 161 of the Code Haji Shahidul Islam did not state that by microbuses the RAB personnel picked up the victims. The cause of death of any deceased killed by administering poison, pesticide etc. could be detected by examining Viscera. He did not feel it necessary to get examined the viscera of the deceased-persons. He did not make the Civil Surgeon of Narayanganj a witness in this case. As per the decision of the Bar Association, the Case No.11 (5)14 was filed. The place of occurrence and time of both the cases are same. He submitted two Charge Sheets in two cases. He sent notice for verification of E.S. of the accused-

persons in both the cases and annexed the E.S reports with the dockets of the cases. He along with his previous Investigating Officers arrested some persons out of suspicion in the two cases. He sent 14 RAB personnel for recording their statements. The accused Tarek Syeed made statement under section 164 of the Code on 18.06.2014 after remand. On 22.05.2014 Tarek Syeed was taken on remand. After recording statements under section 164 of the Code, the accused Tarek Syeed was sent to jail hayat. The statement of the ASP Mobarak Hossain was not recorded under section 161 and 164 of the Code. The accused Tarek Syeed himself sent SMS to ADG Ziaul Ahsan in respect of the occurrence dated 27.04.2014. This witness denied the defence-suggestion that Tarek Syeed in his message to ADG did not give nil report. This witness further stated that he did not find any money transaction in respect of this

case. The Sketch Map as prepared by the previous Investigating Officer being correct, he did not draw it once again. The accused M.M.Rana was arrested on 18.05.2014 under section 54 of the Code. He took this accused on remand for 20 days. During remand from 02.06.2014 to 05.06.2014, the confessional statement under section 164 of the Code of the accused was recorded. In the Charge Sheet of Case No.11 (5)14 it is stated that this witness admitted his guilt in the 7 murder case. Mizan was a member of RAB-11. He did not seize any paper of Kalirbazar Camp. Departmental proceeding was filed against the accused M. M. Rana. The place of occurrence of the two cases, Investigating Officer, the witnesses, the accused-persons and the victims are same. As per the narration of the informant, Noor Hossain had enmity with Nazrul. Fazlul Haque rightly drew sketch map and index of the place of occurrence of the

Case No.74 (4)14. He did not examine any one of the house, shops, factory, Madrasha as shown in the dockets of the sketch map of Case No.74 (4)14. Kanchpur Landing Station was situated on the bank of the river Shitalakshmya. He did not examine anyone of the tea-stall, grocery shops and transports agencies near the landing station. There was an office on the landing station. He did not cite as witness any of the persons beside the landing station. He visited the 2nd place of occurrence once. The P.W.34 did not mention any plan of Noor Hossain to kill her husband but there was mention of threat. The P.W.25 did not state that the accused Noor Hossain was involved in the occurrence. In the FIR of the Case No.74 (4)14 there was no mention of killing the victims as per the conspiracy of Noor Hossain. In their statements under section 161 of the Code the P.W.42, the P.W.7, the P.W.2 and the P.W.49 did not

mention the name of the accused Noor Hossain. He got recorded statements of 19 witnesses under section 164 of the Code in the case. In the two cases 21 witnesses made statements under section 164 of the Code. He did not find any neutral witness to the effect that the accused Mizanur Rahman Mizan @ Dipu was the driver of Noor Hossain. He filed Charge Sheet in both the cases on 08.04.2015. From his mobile number being no. 01648-376576 the accused Noor Hossain talked 27 times with the accused Major Arif from 06.04.2014 to 27.04.2014 and that Major Arif talked 12 times with accused Noor Hossain. The accused Noor Hossain used the fake mobile number being no. 01684-376576 of one Nazma Begum. On enquiry he did not find existence of Nazma Begum. He found during investigation that the number as used by the accused Noor Hossain to be a fake one. He himself on investigation did not find Nazma Begum and as such, he said

the number to be fake. The writ of attachment was issued on 15.05.2014. In their statements under section 161 of the Code, the witnesses did not say specifically about kidnap, murder etc. against the accused Noor Hossain. As per law he took the accused PurnenduBala on remand and interrogated him. A trawler was seized. The 2nd case was filed on 07.05.2014. The judgment in Writ Petition was passed on 11.05.2014. During his investigation he did not examine any sergeant, traffic police or armed police in respect of movement of any numberless transports on 27.04.2014. He cited Delwar as a witness. He arrested the accused Hira Miah on 27.08.2014. On 30.08.2014 Hira Miah made confessional statement under section 164 of the Code. The accused Ruhul Amin was arrested on 07.10.2014 and his confessional statement was recorded on 30.10.2014. The accused-persons ASI Kamal Hossain and Constable Habibur Rahman Habib

worked in the team of the accused M.M. Rana. He examined the shopkeeper from whose shop sack and rope were purchased. On 27.08.2014 he arrested the accused Bellal. On 02.09.2014, the confessional statement of the accused Bellal was recorded. After investigation he dropped the names of 5 accused-persons named in the FIR. He issued letter to the C.O. RAB for production of the RAB personnel involved in the occurrence. The accused Abu Taiyab and Constable Shihab were taken on remand on 27.08.2014 and 30.08.2014. In the deposition of Sainik Milon there was mention of roll call at dusk. He did not seize the R.P. registrar. He mentioned in the page no.15 of the Charge Sheet about preparation of sacks with brick by S.I. Bazlur Rahman. In the Check Post as stated in the case, 12 RAB personnel were on duty. The accused Abul Hossain was arrested on 27.03.2015 in connection with Fatulla Model

P.S. Case No.74(4)14 and he made confessional statement voluntarily on 01.04.2015. He drew sketch map of the place of occurrence Fatulla Case No.11 (5)14. He did not take any report in respect of user of mobile no.01684-376576. The accused Babul Hasan was arrested on 07.12.2014 and he made confessional statement voluntarily. There was no mention of the names of the accused-persons Shajahan, Jamal Uddin, Mortuja Zaman Churchill and Raham Ali in the FIR of the case. He could not recollect as to when he visited the landing station. In both the cases statement under section 164 of the Code of 19 witnesses were recorded. In the confessional statements there was mention of driver Mizan and during investigation he found him to be Mizanur Rahman Dipu @ Mizan. The accused Mizanur Rahman Dipu @ Mizan was the driver of Noor Hossain. Four accused-persons in their confessional statements mentioned the name of

the accused Mizanur Rahman Diput @ Mizan. This witness denied the defence-suggestions that the accused-persons Azam Ali, Razzak and Samad did not carry the dead bodies to the trawler or that they did not drop the dead bodies in the river or that they were not involved in the alleged occurrence or that he submitted a perfunctory Charge Sheet or that the alammats of the victims, namely, Chandan and Ibrahim in Case No.11(5)14 were not recovered or that the Case No.11(5)14 was filed at his advice or that the accused Noor Hossain did not come to the office of C.O. Narayanganj(RAB) before the occurrence or that the SMS were false or that he extracted the statement under section 164 of the Code of the accused Tarek Syeed or that the confessional statement as made by the accused Tarek Syeed was not true or that out of conspiracy accused Tarek Syeed had been implicated in this case or that he falsely

implicated the accused Rana in the case or that during investigation the allegation as made against the accused M.M. Rana was not proved or that his statement was not true or voluntary or that due to torture the accused Arif stated the name of the accused Noor Hossain in his statement or that due to physical and mental torture the accused Churchill stated the name of Noor Hossain or that due to physical and mental torture, the accused Raham Ali stated the name of the accused Noor Hossain or that he compelled the accused Ali Mohammad to make confessional statement showing threat of cross fire or that the accused Noor Hossain with the stated phone number did not talk to Major Arif or that without proper investigation he filed the Charge Sheets of Fatulla P.S. Case No.74(4)14 and 11(5)14 or that his investigation was not proper or that in the statement of accused M.M. Rana there was no

mention of plan about the killing of the victims or that the statement of the accused M.M. Rana was not a confessional statement or that said statement was not voluntary and true or that as per supervision of his authority, he submitted Charge Sheet in the cases or that due to direction of the Hon'ble High Court he could not investigate the case properly or that the accused-persons did not kill the victims or that some other persons dropped the dead bodies at the 2nd place of occurrence by killing them elsewhere or that to conceal the truth or to save the actual culprits he illegally submitted two Charge Sheets or that the accused-persons were not present on the date of occurrence at the place of occurrence or that he deposed falsely or that by torture he extracted confessional statement of the accused Bellal or that the witnesses and the accused-persons did not mention the name of the accused ROG

Md. Arif Hossain or that his confessional statement was not true or voluntarily or that by inhuman torture the confessional statement of the accused-persons Sepoy Abu Taiyab and Constable Shihab Uddin were extracted or that before recording of the statements under section 164 of the Code he sent the statement of the accused-persons Sepoy Abu Taiyab and Constable Shihab Uddin under section 161 of the Code or that the confessional statement of the Abul Kalam was not true or voluntary or that he falsely implicated the accused Noor Hossain in both the cases or that there was no specific proof against the accused Babul Hasan in the case or that the accused-persons Shahjahan, Jamal Uddin, Mortuja Zaman Churchil and Raham Ali were not involved in the alleged occurrence or that the accused Mizan was not a driver or that the statements of the accused-persons Emdadul Haque and Nasir Uddin were extracted by inhuman torture

and showing fear of cross fire or that the accused Nasir Uddin was not involved in the alleged occurrence or that he did not take out the investigation of the case properly or that he deposed falsely.

These, therefore, is the evidence adduced by the prosecution to substantiate its case. It is based on such evidence on record that this Court has now to come to a decision as to whether the prosecution was able beyond all shadow of doubt to bring home the charge as brought against the condemned-accused-persons.

From the evidence of the prosecution witnesses, it transpires that, the P.W.1 Salina Islam, the informant of the case supported the prosecution case by stating that the occurrence took place on 27.04.2014 near the Khan Osman Stadium; that her husband Nazrul Islam was brutally killed by Ali Mohammad, Raham Ali, Mortuja Zaman Chirchil,

RAB personnel, Mizanur Rahman Dipu, Abul Bashar and others with the assistance of the accused Noor Hossain. The P.W.2 Esob stated in his evidence that on 27.04.2014 his brother, the deceased Ibrahim got missing and his dead body was found on 30.04.2014 at 5.00 p.m. in tied up condition with brick; that he attested the Inquest Report in respect of the deceased Ibrahim. The P.W.3 Mohammad Hossain stated in his evidence that on 30.04.2014 the dead bodies of Advocate Chandan Babu and Ibrahim were lifted up from the river and police held Inquest on their bodies. He attested the Inquest report. The P.W.4 K.M. Mohiuddin, Senior Judicial Magistrate stated in his evidence that he recorded the confessional statements of the accused-persons Md. Arif Hossain, Md. Masood Rana, Mortuja Zaman Churchil, Tarek Syeed, Lance Nayek Md. Hira Miah, S.I. Purnendu Bala and Md. Raham Ali under section 164 of the

Code observing all the legal formalities and the said accused-persons signed the statements when those were read over to them admitting the contents to be true. This witness further stated that he recorded the statement of the witnesses Md. Shahidul Islam @ khoka, Rabeya Akhter and Polash Golder. At the time of recording confessional statement no marks of injuries were found on the persons of the accused-persons. The accused-persons made their statements voluntarily. He appended certificate in the column No.9 of the statements. The P.W.5 Md. Belayet Hossain held Inquest on the dead body of the deceased Chandan Kumar Sarker and sent the dead body to Victoria Sadar Hospital for autopsy. The P.W.6 Constable Ramjan Mridha reached the dead bodies of Chandan Sarker and Ibrahim to hospital for autopsy. The P.W.7 Md. Mizanur Rahman held Inquest on the dead body of the deceased Ibrahim and seized alams and after

Inquest sent the dead body for autopsy to Narayanganj Sadar Hospital. The P.W.8 Abul Kalam Azad stated in his evidence that on 27.04.2014 Nazrul Chairman, Tajul, Swapan, Ibrahim and others had been kidnapped; that 1/2 days after their dead bodies floated up in the Shitalakshmya river. The P.W.9 Jahangir Alam Tipu stated in his evidence that on 27.04.214 Nazrul Islam and 5 others were kidnapped and that dead bodies of 7 persons including Nazrul Islam, Swapan, Tajul, Jahangir, Chandan Sarkar and driver Liton were found. The P.W.10 Md. Fakhrul Islam deposed that the occurrence took place on 27.04.2014 at about 1/1.30 p.m. and that 7 persons including Nazrul were kidnapped. The P.W.11 Chadni Rupam, Senior Judicial Magistrate, Narayanganj stated in her evidence that she recorded the confessional statements of the accused-persons Md. Abul Bashar, Ali Mohammad, Habilder Md. Emdadul

Haque, Md. Abul Kalam Azad under section 164 of the Code complying with the legal formalities and that the accused-persons made the statements voluntarily. She also recorded the statements of the witnesses Major Md. Suruj Miah. The Pw12 Mizanur Rahman Khan Ripon the witness of seizure of two minibuses stated in his evidence that the occurrence took place on 27.04.2014 at about 01.00/2.00 p.m.; that on 30.04.2014 with the dead body of his brother, the deceased Maniruzzaman, he saw dead bodies of 04/05 persons; that the dead bodies of seven kidnapped victims were found; that when his brother was alive he used to tell him that Noor Hossain might cause harm to Nazrul; that he could identify the dead body of his brother. The Pw13 Hazi Shahidul Islam stated in his evidence that the occurrence took place on 27.04.2014 at 01.45 p.m. on the road of Osmani Stadium; that by numberless two

microbuses, 15/16 RAB personnel forcibly kidnapped away seven persons including Nazrul, Advocate Chandan and his driver; that getting money from Noor Hossain the RAB personnel kidnapped and killed Nazrul; that Arif , Rana, Tarek and other RAB personnel admitted their guilt; that on 30.04.2017 the dead body of Nazrul floated up in the river; that the members of RAB-11 who were involved with the occurrence made confessional statements. The Pw14 Md. Shahjalal stated in his evidence that he along with Nazrul Islam, Swapan, Liton, Tajul and others came to the Court on 27.04.2014 for giving hazira and after giving hazira came back to his home and learnt about the occurrence through TV. The Pw15 Md. Abu Hanif stated in his evidence that on 30.04.2014 at 16.10 hours with the assistance of the local people he lifted up the dead body of Maniruzzaman from near the bank of river Shitalaksmya; that he held

Inquest on the dead body and sent to the General Hospital for autopsy and that he seized the alamats; that he also lifted up the dead body of the deceased Tajul Islam from near the bank of river Shitalaksmya with the assistance of people and held Inquest on the dead body and seized alamats and sent the dead body to the General Hospital for autopsy. The Pw16 Constable Md. Quddus brought the 06 dead bodies with the seized materials by trawler after Inquest to Narayanganj Hospital for autopsy. The P.W.17 Advocate Priyatam Kumar Dev stated in his evidence that on 27.04.2014 at 1.30 p.m. the occurrence took place on the Dhaka-Narayanganj Link road adjacent to Khan Shaheb Osman Ali Stadium; that his maternal uncle Advocate Chandan Sarker and his driver were kidnapped away by some persons giving their identity to be RAB personnel; that on 30.04.2014 the dead body of his maternal

uncle was floated up; that with the financial assistance of the accused Noor Hossain, the RAB official and members of RAB kidnapped Nazrul Islam and that when his maternal uncle saw the kidnapping and raised objection his maternal uncle along with others were kidnapped and killed. The P.W.18 Md. Abu Taher stated in his evidence that on 27.04.2014 from near Fatulla Stadium Nazrul along with 7 persons were kidnapped and killed by RAB personnel; that in exchange of money, Noor Hosain got Nazrul and others killed by the RAB personnel Tarek Syeed and others. The P.W.19 Md. Saidul Islam sated in his evidence that the occurrence took place on the Dhaka-Narayanganj link road near Khan Shaheb Osman Ali Stadium; that on 27.04.2014 at 1.30 p.m. while Nazrul and others were returning from the Court after giving hajira RAB personnel kidnapped 7 of them; that on 30.04.2014 some dead bodies floated up in the

river and he identified the dead body of Nazrul which was tied up with two sacks of brick. The P.W.20 Abu Taleb held Inquest on the dead bodies of Md. Alamgir Hosssain and Md. Sirajul Islam Liton and seized alamats of the dead bodies. The P.W.21 Md. Rafiqul Islam identified the dead body of his elder brother, the deceased Md. Sirajul Islam Liton in the Narayanganj Victoria General Hospital. The P.W.22 Fakir Chan is the Seizure List witness (Exhibit- 39(2) in respect of seized alamats i.e. brick, rope, sacks and cloths etc. The P.W. 23 Ibrahim attested the Inquest Report and the Seizure List. The P.W.24 Ibne Hassan attested the Inquest Report and the Seizure List. The P.W.25 Haji Md. Abdus Salam, the younger brother of the deceased Nazrul stated in his evidence that on 27.04.2014 at about 1.30/1.45 p.m. RAB personnel kidnapped away 7 persons i.e. Nazrul, Swapan, Liton, Tajul, driver

Jahangir, Advocate Chandan and his driver by minibuses; that 3 days after the occurrence the dead bodies of the victims were found at Kalagachhia under Bandar P.S; that the dead body of Nazrul was tied up with brick and that his abdomen was perforated; that by conspiracy with the accused Noor Hossain, the RAB personnel Major Arif, Tajul, Tarek Syeed and others kidnapped away and killed his brother and others. The P.W.26 Advocate Arunava Sarker stated in his evidence that the occurrence took place on 27.04.2014 at about 2.00 p.m.; that while his uncle Advocate Chandan Kumar Sarker was going to his residence from the Court he was kidnapped from the road near Osmani Stadium by some unknown persons; that the Commissioner Nazrul was kidnapped from the road near Osmani Stadium while he was going back after giving hajira in the Court. The P.W.27 Md. Alamgir Hossain, the elder brother of the deceased

Jahangir identified the dead body of his brother in Victoria Hospital and attested the Seizure List in respect of the wearing apparel of his brother; that the RAB personnel kidnapped away the 7 victims and after killing them dropped their dead bodies in the river. The P.W.28 Rizaul Haque stated in his evidence that on 27.04.2014 at dusk finding a numberplateless private car 200 yards away from Gazipur crossing, he seized it under a Seizure List and subsequently, handed it over to the Investigating Officer of Fatulla P.S. Case No.74(4)14. The P.W.29 Md. Badrul Alam stated in his evidence that on 27.04.2014 they found a car in abandoned condition on the road 200 yards away from Rajendrapur crossing which was seized under a Seizure List. The P.W.30 Md. Moktar Hossain attested the Seizure List Exhibit-44. The P.W.31 Anwar Hossain attested the Seizure List Exhibit-44. The P.W.32 Constable Md.

Salim Miah stated in his evidence that on 28.04.2014 at 11.30 p.m. they found a black colour private car bearing no. Dhaka Metro Ga-2733-37(G Corolla) in abandoned condition which was seized under a Seizure List. The P.W.33 Md. Wahiduzzaman stated in his evidence that on 28.04.2014 with the assistance of Gulshan P.S. police he seized a black colour private car at the vacant place of plot no.18 under a Seizure List as alamat. The P.W.34 Morsheda Akhter stated in her evidence that on 27.04.2014 her husband, the victim Moniruzzaman Swapan, Nazrul Chairman and others were kidnapped away by the RAB personnel and subsequently, their dead bodies were found; that her husband could not stay at home for fear of Noor Hossain; that the occurrence took place as per the plan of Noor Hossain; that she was 100% sure that Noor Hossain caused to happen the occurrence. The P.W.35 Archana Sarker, the wife of the

deceased victim Advocate Chandan Sarker stated in her evidence that the occurrence took place on 27.04.2014. The Pw36 Madhab Kunar Deb stated in his evidence that the occurrence took place on 27.04.2014; that he identified the dead body of his maternal uncle, the deceased Chandan Kumar Sarker and attested the Seizure List (Exhibit-14) in respect of brick, rope, sacks etc. The Pw37 Dr. Md. Asaduzzaman stated in his evidence that he held Post Mortem Examination on the dead body of the deceased-persons Hazi Nazrul Islam, Chandan Kumar Sarker, Ibrahim, Maniruzzaman, Tajul Islam, Md. Zahangir Hossain, Sirajul Islam Liton through a Medical Board and submitted Post Mortem Examination Reports (Exhibits-47, 28, 29, 48, 49, 50 and 51) and that in their opinion the death of the deceased-persons was due to asphyxia as a result of strangulation preceded by assault which was ante mortem and

homicidal in nature; that the Post Mortem Examination Reports were countersigned by the Civil Surgeon. The Pw38 Dr. Jalil Ahmed stated in his evidence that he also took part in holding post mortem examination on the dead body of seven persons on 30.04.2014 and 01.05.2014. The Pw39 Dr. Sheikh Farhad and the Pw40 Dr. Md. Mainuddin stated in their evidence that they were the members of the Medical Board holding post mortem examination. The evidence of the Pw37, 38, 39 and 40 are consistent with the Post Mortem Examination Reports. The Pw41 Constable Abdul Latif stated in his evidence that on 27.04.2014 he was on duty with Senior ASP Md. Tazimul Ahsan. At about 03.45 a.m. while they were going from Siddhirganj P.S., Narayanganj towards Sadar P.S., they saw a microbus to come; that he stopped the microbus; that on query by Senior ASP Md. Tazimul Ahsan the person sitting beside the driver gave his

identity to be Tarek Syeed, the Commander of RAB-11 saying that he was going to the camp after completion of duty at the Launch Ghat. The Pw42 Additional Police Super Md. Tazimul Ahsan stated in his evidence that on 27.04.2014 at 03.45 a.m. (i.e. 28.04.2014) while he was entering into Sadar P.S., Narayanganj area from Siddhirganj P.S. area, at Killarpur they stopped a white microbus and on query, the person sitting inside the Hiace microbus giving his identify to be C. O. Lt. Colonel Tarek Syeed said that after duty he was coming from the Ghat no.5. The Pw43 Md. Akter Hossain is a witness in respect of receiving the dead body of the deceased Nazrul by Hazi Abdus Salam. The Pw44 Md. Abul Khair, the father of the deceased Tajul Islam stated in his evidence that the occurrence took place on 27.04.2014 at about 1.30 p.m on the Dhaka-Narayanganj Link Road near the Khan Saheb Stadium; that on

27.04.2014 Nazrul and his case partners came to give hazira in the Judges' Court and after hazira while they started for their residences at 01.30 p.m., Nazrul, Swapan, Liton, Tajul Islam, Jahangir Hossain had been kidnapped away by the RAB personnel; that on 30.04.2014 some bodies floated up at Kalagachhia under Bandar P, S; that his second son identified the dead body of Tajul Islam; that exchange of money of Noor Hosasain, the accused persons Tarek Syeed , Arif Hossain, M.M. Rana and other members of their team caused to happen the occurrence of killing. The Pw45 Saiful Islam Minto, the younger brother of the victim Sirajul Islam stated in his evidence that on 27.04.2014 his brother along with others came to give hazira in the Court and was kidnapped away from Dhaka-Narayanganj Link Road near the stadium. The P.W.46 Ishtiaque Ahmed Siddique, Senior Judicial Magistrate stated in his evidence

that on 03.12.2014 he recorded the statement of the accused Sainik Mohammad Nooruzzaman under section 164 of the Code who made the statement voluntarily. The P.W.47 Saiduzzaman Sharif, Judicial Magistrate stated in his evidence that he recorded the statement of the witness DAD Admn. Md. Salim Khan on 05.11.2014 in the two cases; that on 24.12.2014 he recorded the statement of Sainik Milon Hossain and that on 07.12.2014 he recorded the confessional statement of the accused Md. Babul Hossain in the two cases. The P.W.48 Manwara Begum, Joint District Judge stated in her evidence that she recorded the confessional statements of Sepoy Abu Taiyab, Md. Nasir Uddin, Habilder BGB Nasir Uddin, Sainik Asaduzzaman Noor in the two cases and also recorded the statements of the witnesses Md. Abdus Samad, Abdur Razzak, Azam Ali, Nazim Uddin, Abdus Salam and Jahangir Alam as per law. The P.W.49 Mohammad

Ali stated in his evidence that on 27.04.2014 at 12.00 O'clock he was in a bus namely 'Bandhan'; that he saw some armed RAB personnel on the road crossing the Khan Shaheb Osmani Stadium who had mark of RAB on their shoulder; that on 30.04.2014 he came to know through news and television that Nazrul and others were kidnapped and killed and after killing their dead bodies were dropped in the river. The P.W.50 Advocate Md. Humayun Kabir stated in his evidence that on 30.04.2014 at 3.30/8.00 p.m. he along with some other lawyers went to Char Dhaleshari village and identified the dead body of deceased Chandan Sarker and attested the Seizure List in respect of the alamats. The P.W.51 H.M. Shafiqul Islam stated in his evidence that he recorded the confessional statements of the accused-persons Md. Arif Hossain, Md. Bellal Hossain, Md. Ruhul Amin, ASI Md. Bazlur Rahman in both the cases as

per law and also recorded the statements of the witnesses Md. MozaM.M.el Hossain Shahin, Md. Delwar Hosain, Md. Shajahan @ Saju, Haji Abdul Motin Howlader, Md. Mehedi Shahrrior in both the cases as per law. The P.W.52 Md. Abdul Awal stated in his evidence that on 04.05.2014 a F Primio private car was seized in his presence by the Investigating Officer and he attested the Seizure List. The P.W.53 Md. Azad Sheikh stated in his evidence that on 01.04.2014 police seized a M Premio private car from J.M. Glass Factory, Shimrail and he attested the Seizure List. The P.W.54 Md. Hasan stated in his evidence tht he attested the Seizure List Exhibit-75. The P.W.55 Rahim attsted the Seizure List Exhibit-39 in respect of sacks, nylon rope found with the dead body on 01.05.2014. The P.W.56 Md. Zabid Hossain stated in his evidence that he recorded the confessional statement of the accused S.I. Purnendu Bala

following the provision of section 364 of the Code in Fatulla P.S. Case No.74 (4)14; that he did not see any mark of torture on the person of Purnendu Bala and he even saw by putting off his shirt as to whether there was any mark of injury on his person. The P.W. 57 Md. Moazzem Hossain Shahin stated in his evidence that he made a statement to the Magistrate on 23.06.2014 in two cases; that on 27.04.2014 while he was sitting in a bus at the last boundary of Jhalkuri, he saw 4/5 RAB personnel coming by a navy-blue colour Hiace microbus, barricade a white private car and drag out 3 /4 persons from the white private car; that thereafter, a black colour private car was signalled to stop; that private car did not stop whereon the silver colour micro chased the car. Mohan informed him that Nazrul and an Advocate were kidnapped away by persons in civil dress whereon he said he himself saw the

occurrence. The P.W.58 Md. Shahjahan @ Saju, a dealer in plastic bag sold out 20 sacks used in the occurrence. The P.W.59 Haji Abdul Matin Howlader stated in his evidence that on 27.04.2014 in the evening 5 kg of rope (jute) and 2 kg sutli were purchased from his shop used in the alleged occurrence. The P.W.60 Md. Shahidul Islam @ Khoka stated in his evidence that on 27.04.2014 at about 1.00 p.m. he alongwith his daughter saw 5 RAB personnel to lift passengers from a private car to their microbus and went very fast towards Signboard. The P.W.61 Rabeya Akhter Ankhi stated in her evidence that on 27.04.2014 at about 1.30 p.m. she alongwith her father saw the RAB personnel to drag out passengers from the private cars and to lift them in their microbuses and were taken away speedily. The P.W.62 Major Mohammad Suruj Miah deposed that on 27.04.2014 at 3.00/3.15 p.m. Major Arif

made a call in his official number from an unknown number stating that they were near his camp asking him to come out of the camp. He came out of the camp to see two microbuses on the road and Major Arif was standing there; that on asking of Major Arif he paid him Tk.2,000/-. The P.W.63 Lanace Nayek Md. Azam Ali stated in his evidence that on 27.04.2014 he along with L.S. Samad and Nayek Razzak went to Kanchpur bridge by a engine trawler; that at about 10.00/10.45 p.m. the teammates of Major Arif with plain dress lifted 12/14 heavy plastic sacks in the trawler and also lifted 7 dead bodies; that about at 12.00/12.15 a.m. Major Arif directed them to drive the trawler towards the estuary of Munshiganj and that at 2.00/02.15 a.m. at the direction of Major Arif his teammates dropped the dead bodies of the victim one by one in the river. The P.W.64 Md. Abdus Salam Sikder stated in his

evidence that on 27.04.2014 camp Commander M.M. Rana over mobile phone being number 01777-711111 directed him to take position ahead of Khan Shaheb Osmani Stadium and sometimes after that M.M. Rana asked him to start Check Post; that at that time with the assistance of his mates in plain dress, Major Arif dragged out the passengers from a white car and got them into his blue colour microbus and at the same time with the assistance of his mates in plain dress M.M. Rana lifted the passengers of a black colour private car in his silver colour microbus i.e. the victims of the car and without any delay the blue and the silver colour microbuses and the white private car went away towards Narayanganj-Dhaka link road speedily. The P.W.65 Md. Abdus Samad stated in his evidence that on 27.04.2014 as per instruction of Lieutenant Commander Rana over phone number being 01782-460046 at about

10.15 p.m. they reached Kanchpur bridge with a trawler; that sometimes after that the teammates of Major Arif lifted 12/13 heavy plastic sacks in the trawler and thereafter the teammates of Major Arif lifted 7 dead bodies in the trawler from the micro; that at about 2.00/2.15 p.m. at the instruction of Major Arif they reached Munshiganj estuary by trawler and that at the instruction of Major Arif, his teammates dropped the dead bodies of the victims in the river tying up two sacks with each dead body. The P.W.66 Abdur Razzak stated in his evidence that as per the order of Lieutenant Commander M.M. Rana on 27.04.2014 they went in front of Khan Shaheb Osman Stadium and set up Check Post; that sometimes after that they saw Major Arif and his teammates to lift 5 passengers from a white private car to their blue colour micro; that at the same time the accused M.M. Rana along with his teammates

dragged out two passengers from a black private car and lifted them up in their silver colour microbus and without making any delay Major Arif and M.M. Rana went away by the microbus; that at 8.00/8.30 p.m. he along with M.M. Samad and Azam Ali went to Kanchpur Landing Station by a trawler; that the teammates of Major Arif lifted 12/14 heavy plastic sacks in the trawler and thereafter, they lifted 7 dead bodies in the trawler; that at 2.15 a.m. as per direction of Major Arif, his mates dropped the dead bodies of the victims in the river tying up two sacks with each of the dead body. The P.W.67 Polash Golder stated in his evidence that as per the command of Commander Rana, on 27.04.2014 they set up Check Post in front of Khan Shaheb Osman Stadium; that at about 1.40 p.m. Major Arif and Lt. Commander M.M. Rana and their teammates lifted up the passengers of two private cars to their two microbuses and

speedily went towards Signboard. The P.W.68 Md. Jahangir Alam stated in his evidence that on 27.04.2014 i.e. 28.04.2014 at 02.00 a.m. at night as per the order of Commanding Officer Tarek, he sent one Pajero and one microbus to Narayanganj ghat. The P.W.69 Md. Atiar Rahman stated in his evidence that on 27.04.2014 at 10.30 a.m. as per the order of lieutenant Commander M.M. Rana he sent a team consisting of Corporal Mokhlesh, Lance Corporal Ruhul Amin, Driver ASI Abul Kalam Azad, ASI Kamal Hossain, Sainik Nooruzzaman and Constable Babul in civil dress to Narayanganj Court and said team went out of the camp. The P.W.70 Md. Salim Khan stated in his evidence that on 27.04.2014 at 9.30 a.m. as per the order of Major Arif Hossain he prepared a civil team consisting of S.I. Purnendu Bala, Habilder Emdadul Haque, A/B Arif Hossain, Driver Naiyek Delwar Hossain, Lance Nayek Hira, Lance Nayek Billal,

Constable Shihab Uddin, Sepoy Taiyab, Sainik Mohiuddin, Sainik Alim and Sainik Al Amin in civil dress; that at 10.30 a.m. under the leadership of Major Arif Hossain that civil team went out of the camp by a blue colour Hiace microbus; that at 3.30 p.m. at the instruction of Major Arif, Habilder Emdadul Haque, Lance Nayek Billal prepared sacks with brick; that at 10.30 p.m. Habilder Emdadul Haque, Lance Nayek Billal, ASI Bazlur Rahman, Sergeant Enamul Kabir, Sainik Tajul Islam and Habilder Nasiruddin left the camp with a white Mitsubishi microbus. The P.W.71 Md. Abdus Satter stated in his evidence that the occurrence took place on 27.04.2014; that on 27.04.2014 at about 10.30 a.m. taking S.I. Purnendu Bala, Habilder Emdad Hossain, AB Arif, Nayek Driver Delwar, Nayek Driver Nazim, Lance Nayek Hira, Lance Nayek Bellal, Sainik Mohiuddin, Sainik Abdul Alim, Sainik Al Amin and constable Shihab, Major Arif went out

of the camp with a navy-blue Hiace micro that on that day at 7.00 p.m. Habilder Emdad, Lance Nayek Billal, Sergeant Enamul Haque, Sainik Tajul Islam and ASI Bazlu prepared sacks with brick; that at about 10.00 p.m. the sacks with brick were taken out of the camp by a microbus. The P.W.72 Sainik Millon Hossain stated in his evidence that on 20.04.2014 at 10.00 a.m. after coming to office Major Arif called DAD Salim Khan, CSI Abdus Satter and himself to his office room and directed them to keep free S.I. Purnendu Bala, Habilder Emdad, AB Arif, Sainik Al Amin, Sainik Alim, Sainik Mohiuddin, Sepoy Taiyab, Constable Shihab, Lance Nayek Billal, Lance Nayek Hira and not to give them any duty and to refrain them from any other activities and to act as per his order and also directed not to take any information about the said persons ; that on 27.04.2014 at about 10.30 a.m. by a blue

Hiace microbus Major Arif went out with the aforesaid persons; that at about 3.00 p.m. Habilder Emdad, Lance Nayek Billal came back to the camp and Habilder Emdad and Lance Nayek Billal twisted rope behind the barak and also saw them to prepare sacks with brick. The P.W.73 Md. Nazim Uddin stated in his evidence that the occurrence took place on 27.04.2014; that on 27.04.2014 as per the direction of Major Arif he got in the blue colour microbus where he saw Major Arif, driver Delwar, teammates of M.M. Rana i.e. Sainik Mohiuddin, Sainik Alim, S.I. Purnendu Bala, Sepoy Taiyab, Habilder Emdad, Constable Shihab, Lance Nayek Billal and Nayek Hira; that he saw a silver colour micro to 100/200 yards behind the blue colour microbus; that at 1.30 p.m. under the leadership of Major Arif and Rana their teammates in plain dress speedily lifted up the passengers of two private cars i.e. the victims of the seven

murder case in the microbus and went towards Signboard. The Pw74 Shahriar Ahmed Shams brought the call details of mobile phone no. 01684376576 from 06.04.2014 to 28.04.2014 as per requisition of the Police Head Quarters. The Pw75 Hosne Ara Haque brought the call details of mobile phone no. 01914402225 from 20.04.2014 to 10.05.2014 as per requisition of the Police Head Quarters. The pw76 Md. Saiful Islam attested the Seizure List in respect of Mobile Call List (CDR). The Pw77 Mehedi Hasan Mintoo attested the Seizure List (Exhibit-57) in respect of Mobile Call List with SMS. The P78 Hawlader Omar stated in his evidence that on 27.04.2014 7/8 persons detained the accused Abu Taiyab of RAB-11 in the District and Sessions Court, Narayanganj. The Pw79 Md. Rafiqul Islam stated in his evidence that on 27.04.2014 at about 12.30 p.m. the accused Sepoy Abu Taiyab was apprehended in the Court of Sessions Judge,

Narayanganj. The Pw80 Habilder Md Kamaluddin stated in his evidence that on 27.04.2014 at about 12.30 p.m. a person i.e. accused Abu Taiyeb wearing jeans pant and turban was apprehended. The Pw81 Istiak Hossain Chowdhury brought Call details of ten Grameen mobile phone numbers as per requisition of Police Head Quarters. The Pw82 Md. Fazlul Haque took custody of some wild animals from the Investigating Officer of the case by a Deed of Custody (Exhibit-82). The P.W. 83 Masood Alam Khan attached 77 items of materials from the house of the accused Noor Hossain. The P.W.84 Md. Zaman Uddin Talukder took custody of a trawler used in 7 murder case. The P.W.85 Md. Ramzan Hossain attested the Seizure List (i.e. Ext.85/1). The P.W.86 Md. Moqbul Hossain attested the Seizure List (Ext.83) in respect of the seized materials from the house of the accused Noor Hossain. The P.W.87 Abdur Rouf Miah @ Kalu is also a

attesting witness of the Seizure List (Exhibit-83) in respect of the materials of the house of the accused Noor Hossain. The P.W.88 Md. Akther Hossain (PPM) started the Fatulla Case No.74 dated 28.04.2014 and started Fatulla P.S. Case No.11 dated 07.05.2014 on 28.04.2014 and 07.05.2014 respectively. The P.W.89 Mohammad Mobarak Hossain sent requisition in respect of use of mobile of Lieutenant Col. Tarekue Syeed bearing nos. (01777-711100 and 01713-374490), mobile number of Lieutenant Commander M.M. Rana bearing no. 01777-711111 and mobile Phone of Major Md. Arif Hossain bearing no. 01777-711155. He took custody of a white colour Mitsubishi microbus, a silver colour Hiace microbus and a blue colour Hiace microbus to his custody. The P.W.90 Md. Kamal Hossain is an attesting witness to Seizure Lists Exhibits-62 and 89 in respect of M-70 black and silver colour mobile phone. The

P.W.91 Haji Md. Abdul Hekim is an attesting witness to the Seizure List (ext.13) in respect of some sacks. The P.W.92 Yeasin @ Shipon stated in his evidence that his uncle Abdur Rahim Ratan gave him a blue colour M-70 mobile phone, an alamat of the case on 03.05.2014 which a police Officer of Fatulla P.S. brought from him. The P.W.93 ASI Mahabub Mallik verified the name and address of the accused Abul Bashar and submitted SCD. The P.W. 94 Md. Maniruzzaman stated in his evidence that on 27.04.2014 he reached Asad a white colour shopping bag and thereafter, came back to the camp. The P.W.95 A.B.M. Sirajul Islam stated in his evidence that he verified the name and address of the accused Md. Abdul Bashar and sent ES. The pw96 Syedul Islam verified the name and address of the accused Abdul Alim and sent reply thereof. The Pw97 A S I Md. Enayet Hossain verified the name and address of the accused Mortuza

Zaman Churchill and submitted S C D. The Pw98 A S I Kanai Lal Chakraborty verified the name and address of the accused Al-Amin Sharif and submitted SCD. The Pw99 S I Md. Abdur Razzak verified the name and address of the accused Md. Arif Hossain and submitted S C D. The Pw100 A S I Md. Nurul Amin verified the name and address of the accused Ali Mohammad and submitted SCD. The Pw101 S I. Md. Abul Khair verified the name and address of the accused Md. Arif Hossain and submitted SCD. The Pw102 S I. Md. Mahibullah verified the name and address of the accused Tarek Syeed and submitted report. The Pw103 A. S. I. Md. Harun Mia verified the name and address of the accused Mortuza Zaman Churchill in Fatulla P.S. Case No. 74(4)2014 and submitted ES. The Pw104 A. S. I. Md. Aatur Rahman verified the name and address of the accused Md. Bellal Hossain in Fatulla P.S. Case No. 74(4)2014 and submitted ES. The P.W.105 Md.

Abdul Awal investigated the case from 03.05.2014 to 07.05.2014; that he visited the place of occurrence and that the sketch map as drawn by his previous Investigating Officer being correct he did not draw it afresh. The P.W.106, the Charge Sheet submitting Investigating Officer Md. Mamunoor Rashid Mondol stated in his evidence that he perused the case docket, visited the place of occurrence, got recorded the confessional statements of the confessing accused-persons by Magistrates as per their will and desire, collected the Post Mortem Examination Reports, sent requisition to the RAB office for production of some witnesses, collected the Call Lists of the mobile phones of the accused persons Lieutenant Col. Tarek Syeed, Lieutenant Commander M.M. Rana, Major Arif Hossain and Noor Hosssain, got recorded the statements of some witnesses under section 164 of the Code, sent requisition for

attested copy of CDR, recorded the statement of the witnesses under section 161 of the Code, seized alamats of the case and that after investigation prima-facie case having been made out against the accused-persons, submitted Charge-Sheet under sections 364/302/201/109/114/34 against them in both the cases. From the evidence of the Pw106, he appears not to have committed any illegality or irregularity in taking out the investigation of the case.

From the evidence of the aforesaid prosecution witnesses, it is revealed that out of conspiracy and with the financial assistance of the accused Noor Hossain under the leadership of the accused Lt. Col. Tarek Sayeed Mohammad, Major (retired) Arif Hossain and the accused Lt. Commander M.M. Rana in a pre-planned way, the accused-persons kidnapped away the victims-deceased-persons, namely, (1) Nazrul Islam, , 2)

Maniruzzaman, 3) Tajul Islam, 4) Jahangir Hossain and 5) Sirajul Islam Liton from the place of occurrence near Khan Shaheb Osman Ali Stadium, Narayanganj by two microbuses, killed them by strangulation twisting their mouths, faces and throats with polythene with rope and tied up the dead bodies with sacks containing brick to facilitate drowning of the dead bodies into water, took the sacks to the estuary of the rivers Meghna and Shitalakshmya near Munshiganj by a trawler, perforated the dead bodies under navels and then dropped the dead bodies in the river which subsequently, floated up.

In this case, apart from the evidence of the prosecution witnesses, there are the confessional statements of 21 accused-persons, namely, 1) Major (retired) Md. Arif Hossain, 2) Lt. Commander Md. Masood Rana, 3) Mortuza Zaman Churchil, 4) Lt. Col. Tarek Syeed Mohammad, 5) Lance Nayek Md. Hira Mia,

6)Md. Raham Ali, 7)Md. Abul Bashar,8) Md. Ali Mohammad, 9)Habilder Md. Emdadul Haque, 10)Md. Abul Kalam Azad, 11) Md. Shihabuddin, 12) Md. Asaduzzaman Noor, 13) Sainik Md. Nooruzzaman,14) Md. Babul Hossain, 15) Sepoy Abu Taiyab,16) Md. Nasiruddin, 17) R O. G. Md. Arif Hossain,18) Md. Bellal Hossain, 19) Lance Corporal Md. Ruhul Amin, 20) ASI Md. Bazlur Rahman and 21) S.I. Purnendu Bala implicating them and the other accused-persons in the alleged occurrence depicting vividly the manner in which the alleged occurrence was perpetrated.

For better appreciation of the prosecution case the confessional statements are reproduced below.

1. The confessional statement of the accused Major (retired) Md. Arif Hossain- In his confessional statement, the accused Major (retired)Arif Hossain stated that in the

month of March, 2014 in the Officers' conference held at Adamjinagar, the accused C.O. Lieutenant Colonel Tarek Syeed Mohammad gave him councillor Nazrul to be his target and directed Lt. Commander Rana to assist him. They tried to apprehend Nazrul, but could not. Then they used accused councillor Noor Hossain as the source. On 27.04.2014 at about 10.00 a.m. Noor Hossain informed him over phone that Nazrul came to Narayanganj Court to give hazira. Lt. Col. Tarek Syeed Mohammad being informed gave him direction to launch operation to catch Nazrul. Forthwith, he started for the Court by a blue colour microbus taking his team mates (11 members including him) namely, Habilder Emdad, S.I. Purnendu Bala, Nayek Delwar (Driver), Nayek Bellal, Nayek Hira, Nayek Nasir, Sepoy Taiyab, Sepoy Alim, Sepoy Al-Amin, Sepoy Mahiuddin, Constable Shihab with him. At 11.00 a.m. he sent Habilder Emdad, Nayek,

Bellal, and Sepoy Taiyab to the Court to notice movement of Nazrul. At 11.15 a.m., 7/8 teammates of Rana Sir (the accused Lt. Commander M.M. Rana) Joined them by a silver colour microbus. At about 11.30 a.m. Rana Sir came with his transport and joined them and sat with him in his microbus. Rana Sir being the senior, he became the Commander of the operation and chalked out plan. He chalked out plan to the effect that with the members of the routine patrol team, he would get the car of Nazrul stopped at the city corporation gate near the Fatulla Stadium area. At about 1.00 p.m. by a white private car Nazrul proceeded towards Signboard area. Then, he along with Rana Sir followed Nazrul by two microbuses giving description of the car of Nazrul to the patrol team Rana Sir, directed the patrol team to stop the car of Nazrul. At about 1.30 p.m. the patrol team by setting up Check Post stopped the car of Nazrul at the

city corporation gate. Then they dragged 5 persons including Nazrul out of their car and lifted them up in their microbus. Then an ash colour private car came behind them and stopped and a gentleman from that car kept raising hue and cry. Then Rana Sir dragged out that gentleman and his driver from the private car and lifted them into his microbus. From the private car used by Nazrul, five persons and from the private car of Advocate Chandan Kumar two persons were kidnapped. He asked Rana Sir to follow his microbus. At about 1.50 a.m. they reached Tarabo area. He reported to his C.O. Lt. Col. Tarek that they detained 7 persons including Nazrul. Then C.O. (the accused Lt. Col. Tarek Sayeed Mohammad) Sir directed him to make disappearance of all those persons stating that no eye-witness should be kept alive. As per the order of the C.O., he directed Nayek Bellal of their camp to make sacks with brick

and went towards Narsingdi. On their way to Tarabo, Rana Sir got down from the microbus at Chittagong road and went to the office of C.O. At about 2.30 p.m. he reached near Narsingdi camp and talked with camp Commander and took Tk. 2,000/00 from him. At about 4.00 p.m. they went towards Shibpur upazila and at a lonely place they kept waiting. At about 8.00 p.m he told C.O. Sir (Tarek Syeed) that he wanted to come towards Narayanganj whereon C.O. Sir told him that police patrol was beefed up on the road and that he was sending a 3 ton truck and he (Tarek Syeed) directed him to bring the apprehended persons by truck. He told the C.O. it would be late if truck came and that he was going to Narayanganj by microbus. At about 9.00 p.m. they reached Belanagar of Narsingdi. After reaching Belanagar he asked Sainik Mohiuddin to purchase 7 Suxa injections and a syringe. At about 10.30 p.m. they reached Kanchpur and

kept waiting in an abandoned petrol pump. At that time he made phone call to the C.O. (Tarek Syeed) telling that police patrol had been beefed up on the road and in such a situation, it was difficult to enter into Narayanganj and Rana Sir might send trawler under Kanchpur Bridge. Sometimes after that from his landphone C.O. Sir (Tarek Syeed) said that trawler would remain under the Kanchapur Bridge. Then he asked Noor Hossain over phone that there should not be any people under the Kanchpur Bridge. At about 11.00 p.m. he reached B.I.W.T.A. under Kanchapur Bridge with 2 microbuses. At about 11.30 p.m. he asked Bellal to bring the packets of brick under the Kanchpur Bridge. At about 12.00 'O' clock at night, by a white microbus Habilder Emdad, Nayek Bellal, Sepoy Arif, Sepoy Tajul came to the B.I.W.T.A. terminal with the brick-packets. At 12.30 a.m. the trawler of Rana Sir came under the

Bridge. Then he gave final report to the C.O. (Tarek Syeed) stating that he was ready to make disappearance of the 7 kidnapped persons to which C.O. told him to go ahead. Getting command of the C.O., he asked Sepoy Taiyab to push the 7 Suxa injections. He asked passengers of microbus of Rana Sir to keep watch of the area. After pushing injections, by twisting the mouths of the 7(seven) kidnapped persons with polythene, the 8 accused-persons, namely, Nayek Bellal, Nayek Hira, Sepoy Taiyab, S.I Purnendu Bala, Sainik Alamin, Sainik Tajul, Constable Shihab and Sainik Alim killed and ensured their death. Thereafter, he asked all to lift the dead bodies on the trawler. Thereafter, he along with his teammates and that of Rana Sir boarded the trawler and sent back all the transports. At about 1.00 a.m. they started for the river Meghna estuary. At about 2.30 a.m. they reached the Meghna river estuary.

After reaching Meghna estuary, his team mates tied up I(one) set-brick sack with each dead body and dropped the dead bodies in the river. He reached Narayanganj at 3.00 a.m at night. On asking by ADG Ops Col. Ziaul Ahsan, he narrated the occurrence to him whereon ADG Ops asked him to kill Noor Hossain to which he told that due to Nazrul, the situation of Narayanganj was tense and hot and as such, in such a situation, if Noor Hossain was killed, it would be difficult to control the situation of Narayanganj. Thereafter, C.O. told him that he had to kill Noor Hossain. At about 5.00 p.m. C.O. (accused Tarek Syeed) asked him to go to office. After going to office, he came to learn that they had been closed to the Headquarter. At about 8.00 p.m. they reached the Headquarter and joined their mother force.

From the confessional statement of the accused Major (retired) Arif Hossain, it

transpires that he gave a vivid description of how the occurrence was perpetrated from the kidnapping to killing and making disappearance of the dead bodies of the 7 (seven) victim-deceased-persons involving him and other accused-persons in the alleged occurrence.

2. The Confessional statement of the accused Lt. Commander Md. Masood Rana- In his confessional statement the accused Lt. Commander M.M.Rana stated that in the first week of April, 2014 showing a profile of Nazrul, the Commanding Officer (C.O.) of RAB-11 Lt. Col. Tarek Syeed said that said Nazrul had to be arrested and directed him to assist Major Arif in this regard. In view of the direction, on 14/15 April he along with Major Arif conducted an operation but Nazrul could not be arrested. On 27.04.2014 at 10.30 a.m. he went to the office of the C.O. On that day at 10.35 a.m. Major Arif informed

him over phone that Nazrul came to the Court and he required his assistance. At that time he was sitting in front of the C.O. (Lt. Col. Tarek Syeed). C.O. asked him to assist Major Arif. At about 11.00 a.m. he came out of the office of C.O. and asked DAD to make a team ready consisting of 6(six) members and to send it to Major Arif stating that Major Arif was waiting 100 yards in front of the Court. At about 11.20 a.m. by a silver colour Hiace microbus a team of 6 persons including corporal Mokhlesh, Lance Corporal Ruhul reached Major Arif. He could not recollect the names of the rest four members of the team. At about 11.30 a.m. he started for Chasara. At 12.00 'O' clock he arrested an accused with 4(four) cocktail and took him to Narayanganj camp. At about 12.20 p.m. Major Arif asked him to come to his position. At 12.35 p.m. he reached Major Arif with the the transport of company Commander and the

boarded blue colour Hiace microbus of Major Arif. His body guard Constable Habib boarded the silver colour Hiace microbus. After boarding the blue colour microbus, he saw Major Arif and Noor Hossain to talk with own source and own intelligent agencies about Nazrul. At that time, Major Arif told him that Nazrul was a terrorist and that he kept 4/5 arms and that if they go to arrest him in civil dress he could shoot them thinking that we were the companion of Noor Hossain. Major Arif further told that with his patrol team in uniform, Nazrul should be detained at a vacant place. Major Arif being the team Commander, at his direction, he instructed the patrol team in uniform to detain Nazrul. At about 1.00 p.m. phone call came to Major Arif to the effect that Nazrul was coming out of the Court with two cars which they followed with microbuses and giving description of the cars asked the patrol team

to stop the cars near City Corporation Gate after Fatulla Stadium. The colour of the 2 cars of Nazrul was white and black. At about 1.20 p.m. the patrol team stopped the two cars in front of the City Corporation Gate. Then the civil team of their microbus dragged out the passengers of the two cars into their two microbuses. He got down from the microbus and remained at the place of occurrence with the patrol team. Major Arif went to Chittaganj Road with 2 (two) microbuses taking the apprehended persons. Thereafter, as per the pre-plan of Major Arif additional driver Nazim started driving the abandoned white colour car of Nazrul. He boarded the car and stopped at Siddhirganj. One Nazim went towards Gazipur with the car. From Siddhirganj he went to Adamji-nagar Office and met C. O. (the accused Tarek Syeed Mohammad) in his room and informed him of the operation stating that including Nazrul, 5/6

person had been arrested and also informed that Major Arif went towards Chittagong Road taking the 5/6 persons with two microbuses. He also informed the C.O that out of the two private cars, one is removed elsewhere but another was still there at the place of occurrence. Then the C.O. asked him to make arrangement for removal of the car. As per instruction of the C.O. he went to the place of occurrence taking driver Constable Mizan, took the black colour abandoned car to Gulshan Niketon Residential Area and left it behind at 15.45 hours.

From the confessional statement of the accused Lt. Commander M.M. Rana, it appears that he also gave a vivid description of the kidnapping of the 7(seven) victims involving himself and others in it and taking away of the victims towards Chittagong road followed by killing of the victims and making disappearance of their dead bodies.

3. Confessional statement of the accused Mortuza Zaman Churchil.

In his confessional statement the accused Mortuza Zaman Churchil stated that in 2010 by way of purchasing stone from the accused Noor Hossain, a relationship of him with the accused Noor Hossain was established. Four months before, a quarrel broke out between Mobarak Hossain, maternal brother of Noor Hossain and the associates of councillor Nazrul in respect of construction of a drain. The close associates of Noor Hossain, namely, Shahjahan, Ali Mohammad, Sanaulla, often used to tell Noor Hossain to kill Nazrul to which Noor Hossain used to say not to worry he would take decision in this regard. Major Arif often used to come to the office and the residence of Noor Hossain after 10.00 p.m. 5/7 days before 27.04.2014 Noor Hossain went to the office of RAB situated at EPZ. On asking, the soldier on duty disclosed that

Major Arif sat in the office. One hour after, Noor Hossain came out from the office Major Arif. One day after at 5.30 p.m., Noor Hossain went to the office of C.O. (accused Tarek Syeed Mohammad), RAB-11 receiving phone from C.O. In that office, Noor Hossain stayed for 40/45 minutes. Two days after that Noor Hossain once again went to the office of the C.O. and stayed for ½ hour. On 25.04.2015 Major Arif met Noor Hossain in his office at Siddhirganj. On 27.04.2014 at 9.30 p.m., they came to the house of Noor Hossain at his direction. On 27.04.2014 at 5.15 p.m. Ali Ahmed asked him to come within 5 minutes over telephone. He came to Chittagong Road and made phone call to Shahjahan who asked him to come to the Siddhirganj office. After going to office he came to learn from the people that panel Mayor Nazrul Islam along with his associates had been kidnapped. He saw Shahjahan, Ali Mohammad, Sanaula Sana

sitting in the office with two transport and people. When he asked about Mayor Nazrul, the accused-persons Ali Mohammad and Sanaulh told him to keep quiet. Thereafter, they went to EPZ. At 10.15 p.m. Noor Hossain called Shahjahan, Ali Mohammad and Sanaulah to his office and after having talks with those three, Noor Hossain came out and asked Bashar, Raham Ali, Riyaz, Selim, Jamal, Sanaula Sana, Churchil to go with Shahjahan. Thereafter, at 11.10 p.m. they went to the Landing Office near Kanchpur Bridge the black colour microbus of Mizan. After they came to the Landing Office, 3 microbuses speedily entered into the landing. One micro was kept on the road of the platform and the two others were kept at a distance of 5/7 yards. From the micro three persons got down and came to them among them Major Arif was known to him. Shahjahan shouted at him and told him to go to the other side. Major Arif had talks

with Shahjahan and thereafter, went to the microbus. Thereafter, he saw 3/4 persons to upload the dead bodies on the trawler one after another. There were 15/16 people nearby the microbus. After uploading the dead bodies on the trawler, sacks containing brick and rope were also loaded on the trawler. At about 12.15.12.30 a.m. he heard the starting sound of the trawler. Thereafter, Shahjahan signalled them and they got into the microbus and went to the office of Noor Hossain. At 1.00 a.m. a phone call came to Noor Hossain. On 28.04.2014 at 09.00 a.m. they went to the residence of Noor Hossain. On that day at 10.00 p.m. Noor Hossain asked them to come to his residence on the following day at 9.00 a.m. When they came to the residence of Noor Hossain, Ali Mohammad told him that the Chairman (Noor Hossain) went to Dhaka at night. Thereafter, he escaped to Jhitka,

Manikganj to save him. Thereafter, he went to Faridpur.

From the confessional statement of the accused Mortuza Zaman Churchil, it appears that he involved himself, the accused Noor Hossain and other associates of Noor Hossain in the alleged occurrence stating the holding of meeting of the accused Major (retired) Arif Hossain with the accused Noor Hossain prior to the occurrence. From his confessional statement, it also transpires that they were patrolling the Kanchpur landing station while the victims were killed and they were present there till the dead bodies were being taken by a trwler.

4. The Confessional statement of the accused Lt.Col.Tarek Syeed Mohammad.

In his confessional statement the accused Lt. Col. Tarek Syeed Mohammad stated that that he (Tarek Syeed Mohammad) directed the accused Major Arif (retired) and M.M. Rana

(Lieutenant Commander) as per instruction of Head quarter for apprehending 'RAB' Listed terrorist namely, Nazrul. Major Arif (retired) informed him that he attempted earlier and failed to apprehend Nazrul. On 27.04.2014 at about 11.00 a.m. the accused Major (retired) Arif over phone sought permission for confining the victim Nazrul who appeared before Narayanganj Court for Hazira in a case and he (accused Tarek Sayed Mohammad) gave consent to do it. Lieutenant Commander M.M. Rana also sought permission and that he was positive with such. Thereafter, at about 2.00 P.M. accused Arif made contact and informed him stating that the target including 4(four) others were picked up and that they started for 'RAB' camp office, Narsingdi. At about 02.30 p.m. the accused M.M. Rana came to him and claimed for an efficient driver for replacing a car from which the victim Nazrul was abducted. At

about 08.00 p.m the accused Arif made contact with him (Tarek Syeed Mohammad) and asked for sending a car. After 08.00 p.m., the victim Nazrul's wife and 10/12 persons met him (the accused Tarek Syeed Mohammad) as scheduled. The meeting continued for 1(one) hour. Nazrul's family claimed for confinement of the accused Noor Hossain. At about 09.00 p.m., the accused Arif made a phone call to him to send a boat for for returning to the camp. M.M. Rana being the naval officer, he (the accused Tarek Syeed Mohammad) directed the accused Rana over phone to supply a boat to the accused Major (retired) Arif. At about 11.15 p.m. over phone Arif informed him that he reached Kanchpur. Then he said that it was O.K. At 01.30 a.m. over phone the accused Arif told him (the accused Tarek Syeed Mohammad) that the ADG (OPS) made him a phone call. While he was talking to Arif, the ADC (OPS) over phone wanted to know the

whereabouts of Arif. Then he replied that Arif was coming to the camp by a boat. ADG (OPS) told him that Arif was conducting the operation in exchange of 5/6 crores. He (the accused Tarek Syeed Mohammad) asked Arif as to whether he had talks with ADG (OPS) to which Arif replied in the affirmative saying that he knew nothing about money. Thereafter at about 02.30 a.m. he (the accused Tarek Syeed Mohammad) went to the 'Launch-Ghat'. 20/25 minutes after that the accused Arif reached the 'Launch Ghat'. The accused Arif told him (the accused Tarek Syeed Mohammad) about the killing of 07 (Seven) persons. The accused Arif also stated that as Nazrul identified him (the accused Arif), he killed the victim Nazrul and others. He (the accused Tarek Syeed Mohammad) assured the teammates of the accused Arif that they had nothing to worry and that their officer would take responsibility. While he (the accused Tarek

Syed) was returning police checked his microbus and that getting his identity, police let him go. On his query, the accused Major (retired) Arif disclosed that he had a flat at Dhaka and that through Noor Hossain he used to deposit money and that there being enmity between Nazrul and Noor Hossain, he used Noor Hossain as a source. He (the accused Tarek Syeed) further asked the accused Major (retired) Arif Hossain as to why he kept communication with Noor Hossain from before the occurrence to the end to which he kept mum. As per the order of the higher authority he along with Arif and Rana joined their parent force.

From the confessional statement of the accused Lt. Col. Tarek Syeed Mohammad, it appears that he directed the accused Major (retired) Arif to apprehend the victim Nazrul; that as per his permission the accused Major (retired) Arif and the accused

Lt. Commander M. M. Rana apprehended and kidnapped the victims Nazrul and others; that at about 11.15 p.m. on the date of occurrence over phone Arif informed him that he reached Kanchpur to which he said it was O.K.; that the accused Arif told him (the accused Tarek Syeed Mohammad) about the killing of 07 (Seven) persons; that he (the accused Tarek Syeed Mohammad) assured the teammates of the accused Major (retired) Arif that they had nothing to worry and that their officer would take responsibility; that while he (the accused Lt. Col. Tarek Syeed Mohammad) was returning, police checked his microbus and that getting his identity, police let him go; that On his query, the accused Major (retired) Arif disclosed that he had a flat at Dhaka and that through Noor Hossain he used to deposit money; that ADG (OPS) told him that Arif was conducting the operation in exchange of 5/6 crores. The confessional

statement of this accused shows his direct involvement in the kidnapping, killing and making disappearance of the dead bodies of the victims. It also shows monetary transaction in perpetrating the alleged occurrence.

5. Confessional statement of the accused Lance Nayek Md. Hira Miah.

In his confessional statement the accused Lance Nayek Md. Hira Miah stated that on 27.04.2014 A.D. at about 10.00 a.m. DAD Salim directed him (the accused Md. Hira Mia) to get ready for operation. Accordingly, he (Md. Hira Miah), Habilder Emdad, S.I Sainik Al-Amin, Sainik Alim, Sepoy Taiyab, Sepoy Shihab and Lance Nayek Bellal got ready with arms. Major Arif briefed them as operation for recovery of arms. At about 10.30 a.m. under the leadership of the accused Major Arif they started from Adamzee Campus by a blue microbus and reached in front of Narayanganj

Court. The accused Rana Sir (Lt. Commander M.M. Rana) joined with the accused Arif (accused Major (retired) Arif) at Narayanganj near the Court premises and Rana Sir got into the blue microbus. Their blue microbus followed two private cars and that two private cars were halted by 'RAB' Check-Post. They got down from the 'microbus' and lifted five persons into the blue microbus and lifted the rest two persons into the silver Microbus. The Microbuses proceeded towards Narsingdi. They completed their lunch at 04.00 p.m. After completion of lunch they proceeded towards Shibpr, Narsingdi and stayed there upto 08.00 p.m. Thereafter, on their way back to Narayanganj at Bhoolta crossing Sainik Asad and Constable Monir came there by Motor Cycle and handed over something to the accused Major Arif. Arif Sir (retired Major) directed him to (Md. Hira Miah) push injection to the victims and was

compelled to push injection to one victim. Arif Sir and Purnendu Bala pushed injections to the rest. At about 10.30 p.m. they reached the landing Ghat at Kanchpur Bridge. They found 10/12 persons there. Arif Sir called one of them as 'Shahjahan Mia'. By a white microbus Sergeant Enamul, Habilder Emdad, Sainik Tajul, Bazlu brought brick-Sacks, chords etc. The victims' faces were tightened by polythene by the accused Arif Sir and others. At about 01.00 a.m. by a trawler Arif Sir, he himself (Md. Hira Miah), Mohiuddin, Sainik Al-Amin, Sainik Alim, Sepoy Taiyab , Constable Shihab, Bellal and Tajul got into a trawler and proceeded towards the mouth of the river Meghna. Ultimately 07 dead bodies were dropped in the river. Arif Sir himself perforated the bowels of all the confined persons. Thereafter, they all returned to Narayanganj 'Launch Ghat'. C.O. Tarek Sir who was present at the 'Lunch Ghat'

told all of them not to worry and that whatever had happened was under his (CO Tarek Sir) order and that both himself (C.O.) and Major Arif (retired) were responsible.

From the confessional statement of the accused accused Lance Nayek Md. Hira Miah, it appears that he was directly involved in the operation of kidnapping the victims of the case; that he pushed pushed Suxa injection to one of the victims; that he was involved in the act of killing of the victims by tightening the faces of the victims with polythene; that he took part in dropping the dead bodies of the victims in the river; that after returning to Narayanganj 'Launch Ghat' they found C.O., the accused Lt. Col. Tarek Syeed Mohammad who told all of them not to worry and that whatever had happened was under his (the accused Lt. Col. Tarek Syeed Mohammad) order and that both himself and

Major Arif (Major retired) were responsible for that.

6. Confessional statement of the accused Md. Raham Ali.

The accused Md. Raham Ali stated in his confessional statement that accused Noor Hossain had enmity with the victim-deceased Nazrul. RAB Major (retired) Arif used to pay visit the office of the accused Noor Hossain. Two days before the alleged occurrence Major Arif paid a visit to the office of the accused Noor Hossain. On 27.04.2014 at about 08.30 p.m. Shahjahan, Churchil and Ali Mohammad came to his 'Jatra Pandel' and told that Noor Hossain called him (Raham Ali). Accordingly, he went there and found Noor Hosain sitting there with Sanaula, Bashar, Jamal, Salim, Riaz and driver Mizan. In front of all of them (Raham Ali and others) Noor Hossain told that 'RAB' Major Arif kidnapped the victim Nazrul and his followers. Today

(27.04.2014) the kindanpped persons would be killed and that Major Arif would be returning from Narsingdi with the kidnapped persons. Noor Hossain directed them to vacate the landing station for avoiding the entrance of general people. Being directed, at about 10.00 p.m. he (Raham Ali) along with Ali Mohammad, Bashar, Churchil, Riaz, Jamal, Sanaulla, Salim, Shahjahan and driver Mizan went to the Landing Station of BIWTA. Shahjahan directed them for guarding. At about 10.30 p.m., 03 (three) 'RAB' vehicles reached the landing station. One trawler was parked at the Landing Station. The RAB personnel loaded the dead bodies into the trawler from microbuses. The trawler proceeded and that they all returned to Noor Hossain's office; that Noor Hossain told them that 'RAB' personnel killed the victim Nazrul Islam and his followers.

From the confessional statement of the accused accused Md. Raham Ali, it transpires that the accused Noor Hossain had enmity with the victim-diseased Nazrul; that RAB Major (retired) Arif used to pay visit to the office of the accused Noor Hossain prior to the occurrence; that Noor Hossain told that 'RAB' Major Arif kidnapped the victim Nazrul and his followers and that on 27.04.2014 the kindanpped persons would be killed; that as per direction of the accused Noor Hossain they vacated the landing station for avoiding the entrance of general people; that he along with the other associates of the accused Noor Hossain were gurading the Kanchpur Landing Station while the RAB personnel were killing the victim-decesed-persons and that they were present at the landing station till the dead bodies of the victims were taken for dropping in the river by a trawler.

7. Confessional statement of the accused Md. Abul Bashar.

In his confessional statement the accused Md. Abul Bashar stated that the victim-deceased Nazrul and the accused Noor Hossain had enmity. Two months before the alleged occurrence, the accused Noor Hossain's followers made attempt to take revenge on Nazrul but the attempt failed. RAB Major Arif used to pay visit 4/5 times a month to the office of Noor Hossain. On 27.04.2014 he (Abul Bashar) went to the office of Noor Hossain at 7.00 p.m. At about 10.00 p.m. Shahjahan directed him to get in a car and accordingly, got into a 'Hiace' microbus. He was accompanied by Sanaulla, Ali Mohammad, Raham Ali, Kamal, Salim, Riaz, Shahjahan and driver Mizan. They reached at Kanchpur BIWTA Landing Station and Shahjahan giving reference of Noor Hossain deployed all of them in different places for restricting the

entrance of general people inside the Landing Station. Shahjahan cleared boats and trawlers at the landing station. Three microbuses appeared. Inside the microbuses something happened. Major Arif and his associates loaded something into a trawler and that the trawler proceeded. They returned. He (Abul Bashar) went to his residence. Shahjahan and others went to the office of Noor Hossain.

From the confessional statement of the accused Md. Abul Bashar it appears that the victim-deceased Nazrul had enmity with the accused Noor Hossain; that the accused Major (retired) Arif used to pay visit 4/5 times a month to the office of the accused Noor Hossain; that he along with the other associates of the accused Noor Hossain were patrolling the Kanchpur landing station restricting the entrance of general people inside the Landing Station when the victims were killed inside the microbuses; that he

was present while the accused Major (retired) Arif and his teammates loaded the dead bodies of the victims into a trawler for dropping in the river.

8. Confessional statement of the accused Ali Mohammad.

In his confessional statement the accused Ali Mohammad stated that he had close relation with the accused Noor Hossain and his (Noor Hossain's) family since long. He used to stay all the time with the accused Noor Hossain. The accused Noor Hossain had animosity with the victim-deceased Nazrul. He himself (Ali Mohammad) and others sought permission from the accused Noor Hossain for killing the victim -deceased Nazrul. In reply, Noor Hosain said he (Noor Hossain) alone would solve the matter. On 27.04.2014 at about 10.00/10.30 a.m. he (Ali Mohammand) went to Noor Hossain's residence. Sanaula Sana, a close associate of the accused Noor

Hossain called him (Ali Mohammad) and told that RAB-11 would confine the victim Nazrul on that very day (27.04.2014). Noor Hossain called Sanaulla and he (Ali Mohammad) returned to his residence. At about 1.45 p.m. Shahjahan from his mobile contacted him (Ali Mohammad) and directed him to reach sharply as he was called by the accused Noor Hosain. Sometimes after that the accused Noor Hossain came to the ground floor and called Shahjahan. They (Ali Mohammad, Shahjahan, Sanaulla Sana, Bashar, Churchil, Riaz, Salim, Jamal, Bidu, Hasan, Mohit Farooque and 20/25 persons) all stood in rows and were told for arranging more persons. At about 10.00/10.30 p.m., the accused Noor Hossain called him (Ali Mohammad) Shahjahan, Sanaulla, Bashar, Churchil, Riaz, Jamal, Salim and Raham Ali in his (Noor Hossain) office room and told that 'RAB' personnel would come on the bank of Shitalakhsmya river for their function and

asked them to guard the Landing Station and not to allow any entrance of public therein. Thereafter, at about 11.00 p.m. driver Mizan, he (Ali Mohammad), Shahjahan, Sanaula, Bashar, Churchil, Riaz, Salim, Jamal and Raham Ali went to the Landing Station of Shitalakhsmya river. Three microbuses entered into the Landing Station. He (Ali Mohammad) indentified Major (retired) Arif. Arif called Shahjahan. Shahjahan posted them for guarding the landing station. He (Ali Mohammad) found some dead bodies and that 'RAB' personnel loaded the dead bodies into a trawler from the microbuses. Thereafter, he returned to Noor Hossain's office. Noor Hossain told that he (the accused Noor Hossain) had dismissed the victim deceased Nazrul from this world as because the victim-deceased Nazrul harassed him (the accused Noor Hossain) too much.

From the confessional statement of the accused Md. Abul Basher, it transpires that

the accused Noor Hossain had enmity with the victim-deceased Nazrul; that he himself (Ali Mohammad) and others sought permission from the accused Noor Hossain to kill the victim-deceased Nazrul to which Noor Hosain replied that he (Noor Hossain) alone would solve the matter; that on 27.04.2014 he alongwith the other associates of the accused Noor Hossain guarded the Kanchpur Landing Station as per the instruction of the accused Noor Hossain to restrict entrance of public therein while the victims were killed and their dead bodies were loaded into a trawler by the RAB personnel for making disappearance.

9. Confessional statement of the accused Habilder Md.Emdadul Haque.

In his confessional statement the accused Md. Emdadul Haque stated that on 27.04.2014 at about 09.30 a.m. Sainik Milon came to him (the accused Md. Emdadul Haque) and informed about duty without uniform and that

accordingly, he (the accused Emdad) alongwith twelve defence personnel namely, S.I. Purnedu Bala , driver Nayek Delwar, driver Nayek Nazimuddin, Sainik Mohiuddin, Lance Nayek Hira, Lance Nayek Bellal, Sepoy Abu Taiyab , AB Arif, Sainik Alim, Sainik Al-Amin and constable Shihab and Md. Emdadul Haque got ready with 'RAB' jacket and necessary arms and ammunitions. DAD (Admn) Salim Sir directed all of these 12 to go to Major Arif's (the accused Major (retired) Arif Hossain) office room. Major Arif Sir briefed all of them. Accordingly, including Major Arif Sir, 13 personell started at about 11.00 a.m by a 'Hiace' Microbus for operation from camp towards Narayanganj Court. Completing Hazira at about 01.00 p.m. Nazrul got down from the 1st floor of the Court building. He (Md. Emdadul Haque) informed about victim Nazrul's getting into car. Major Arif made contact with him (the accused

Emdadul Haque) and directed him (Emdadul Haque) and Bellal to return back to the camp. At about 03.00 p.m. they returned to the camp. At about 04.00 p.m. DAD Salim Sir directed him (Emdad) and Bellal to attend his (DAD Salim) office. Accordingly, they went to the office and DAD Salim Sir directed them to purchase some sacks, cotton and rope which they purchased. Giving reference to the direction of Major Arif DAD Salim Sir told them to prepare 14 sacks containing 10 brick in each sack. As such, he (the accused Emdadul Haque) and Sergant Enamul prepared 14 sacks. DAD Sir directed them to transmit the said prepared sacks to the Landing 'Ghat' beneath the Kanchpur Bridge through patrol car. Being directed, he (Emdadul Haque), Sergant Enamul, A.S.I. Bazlu, Lance Nayek Bellal, Sainik Tajul and, driver Nasir started for the 'Landing Ghat' with 14 sacks by 2(two) petrol party escort. That at about

11.30 p.m. they reached there and unloaded the said 'Sacks' from the microbus as per desire of Major Arif. They found one big trawler at the 'Landing Ghat' and also found that from 2(two) RAB minibuses 'RAB' personnel transmitted dead bodies into the said big trawler. As per direction of Major Arif, he (the accused Emdadul Haque), A.S.I Bazlu and driver Habilder Nasir returned back to their camp.

The confessional statement of the accused Habilder Md. Emdadul Haque shows that he was one of the participants in the alleged occurrence and that he was present till killing of the victim-deceased-persons and making disappearance of the dead bodies tying up the sacks prepared by them with the dead bodies.

10. Confessional statement of the accused Md. Abul Kalam Azad.

.....

In his confessional statement the accused Md. Abul Kalam Azad stated that on 27.04.2014 at about 09.00 a.m., DAD (Admn) Atiar Sir told him to get ready for emergency duties. Accordingly, he (Md. Abul Kalam Azad), Kamal Hossain, Corporal Ruhul Amin (driver), Sainik Nooruzzaman, Constable Babul Hossain got ready for emergency duties under the leadership of Mokhlesur Rahman and boarded a silver colour number plate less microbus. They came out for operation. At about 11.00 a.m. Rana Sir (the accused Lt. Commander M.M. Rana) directed Mokhles Sir for another operation with Major Arif (the accused Major (retired) Arif Hossain). At about 11.30 a.m. they reached at the left side of the Court. Mokhles Sir made contact with Major Arif. Major Arif and his team mates were inside the blue colour microbus. As per direction they followed the blue microbus of Major Arif. At about 01.00 p.m. 2(two) private cars were

halted while those were crossing Fatulla stadium. Major Arif, Rana Sir, Constable Shihab and Corporal Mokhles got down. Major Arif and his teammates lifted 05(five) persons into the blue microbus and that Rana Sir and his teammates lifted 2(two) persons into their microbus. Major Arif and Rana Sir got into the blue colour microbus and that blue microbus proceeded with. They (the accused Md. Abul Kalam Azad and others) followed the said blue colour microbus. Thereafter, at about 02.30 p.m. they reached near to Narsingdi RAB camp and stayed within Narsingdi territory. At about 08.00 p.m. they started for Narayanganj. On the way, the blue colour microbus halted and that from it 2(two) persons got into their microbus and pushed 2(two) injections into the body of 2(two) confined persons. At about 11.00 p.m. they (accused Abul Kalam Azad and others) reached 'BIWTA' Kanchpur Bridge. Reaching

there, under the direction of Arif Sir, the team members of Arif Sir loaded dead bodies into a trawler. Thereafter, at about 12.00 a.m. they returned back to the camp as per direction of the accused Major Arif. Thereafter, through 'Media' he came to know that 07(seven) persons were abducted and that the said abducted persons had been killed.

From the confessional statement of the accused Md. Abul Kalam Azad, it transpires that on 27.04.2014 he had emergency duties under the leadership of Mokhlesur Rahman; that he was present at the time of kidnapping the victims of the case at the place of occurrence by the accused-persons Major (retired) Arif Hossain and Lt. Commander M.M. Rana with their teammates; that in his presence the injections were pushed to the bodies of the victims and the victims were killed and that he was present at the time of

making disappearance of the dead bodies of the victims.

11. Confessional statement of the accused Md. Shihab Uddin.

In his confessional statement the accused Md. Shihabuddin stated that he (the accused Md. Shihabuddin) got into a blue colour microbus and that entering into it found S.I. Purnendu Bala , A.B. Arif, Sainik Al-Amin, Sainik Alim, Hira Miah, Nayek Nazim, Sainik Mohiuddin and the driver. Later, Major Arif (the accused Major (retired) Arif Hossain) took seat beside the driver and directed the driver to start the microbus. Thereafter, they reached Narayanganj via Chittagong Road and Signboard. Rana Sir (the accused M.M. Rana) got into their blue colour microbus from his silver colour microbus. At about 01.00 p.m AB Arif reported to Major Arif that Nazrul and his companions started from Narayanganj Court with 2(two) private cars.

Rana Sir directed patrol party to halt 2 (two) private cars. Both Arif and Rana Sir got down from the microbus with pistol in hand and 05 persons were lifted into their blue colour microbus from a private car and 2 (two) persons were lifted into the silver colour microbus from another private car. Abducting the said 7 (seven) persons, the two microbuses proceeded towards Narsingdi. At about 03.00 p.m. they reached near Narsingdi 'RAB' Camp. Upto 08.00 p.m. they stayed within the territory of Narsingdi. Thereafter, they started for Narayanganj. Thereafter, Arif Sir (the accused (retired) Major Arif) himself pushed 3 (three) injections to the three confined persons and Lance Naik Hira Miah pushed injection to one confined person and that S.I. Purneddu Bala pushed one injection to confined person totaling 5 (five) confined persons in their blue microbus. Major Arif got into the 'Silver' colour microbus with

syringe. Major Arif Sir, Hira Miah, S.I. Purnendu Bala and Nayek Bellal killed 05 (five) persons in their blue microbus strangulating by twisting the mouths with polythene. Thereafter, they got into the silver colour microbus and killed rest two persons (including one Advocate). Thereafter, the trawler advanced with Major Arif Sir, him (Md. Shihabuddin), S.I. Purnendu Bala, Sergant Enam, AB Arif, Nayek Hira Miah, Nayek Bellal Hossain, Sainik Alim, Sainik Al-Amin, Sainik Mohiuddin, Sainik Tajul and Sepoy Taiyab. At about 02.30 a.m. they reached before estuary of the river Shitalakhsmya and Meghna. Arif Sir directed to drop the dead bodies in the river. Major Arif himself perforated the abdomen under navel of each dead body with knife. Thereafter, tying up sacks containing brick with the dead bodies, they (Md. Shihabuddin and others) dropped the dead bodies into the

river. Thereafter, they returned to Narayanganj Launch Ghat at about 03.00/03.30 a.m. C.O. Tarek Syeed (the accused Lt. Col. Tarek Syeed Mohammad) waited at the 'Launch Ghat' with a car. Both Tarek Syeed Mohammad and Major Arif talked with each other for sometimes. Tarek Sir told them (Md. Sahabuddin and others) not to worry and that what happened had happened under the direction of him and Major Arif. Tarek Sir also directed them not to disclose the occurrence to anyone.

From the Confessional statement of the accused Md. Shihab uddin, it appears that he was present at the place of occurrence at the time of kidnapping the victims; that he was present at the time of pushing injections into the body of the victims and also was present at the time of killing the victim-decesed-persons; that tying up sacks containing brick with the dead bodies of the

victim-decesed-persons he along with other accused-RAB personnel dropped the dead bodies in the river; that thereafter, they returned to Narayanganj Launch Ghat at about 03.00/03.30 a.m. and found the accused C.O. Lt. Col. Tarek Syeed Mohammad waiting at the 'Launch Ghat' who told them not to worry and that what happened had happened under the direction of him and the accused Major (retired) Arif.

12. Confessional statement of the accused Md. Asaduzzaman Noor.

In his confessional statement the accused Md. Asaduzzaman Noor stated that he as 'Runner' of the accused Major (retired) Arif used to go to the residence and office of Councillor Noor Hossain more or less 3/4 times in a week. On 27.04.2014 at about 8.00 p.m. Arif (retired Major) Sir made contact with him (Asaduzzaman) and directed him (Asaduzzaman) for transmitting polythene and

chords from Barbar Shop to near 'Shuva CNG Filling Station' near Gawsia of Adamjee Camp. Accordingly, he and constable Maniruzzaman by a motor cycle transmitted those things to Major (retired) Arif. Later, he (Asaduzzaman) went to Kanchpur Bridge as per direction of Major (retired) Arif to let him (Major (retired) Arif) know the situation underneath Kanchpur Bridge. Later, one trawler came and that S.I. Purneddra Bala, Hira, AL-Amin, Alim, Mohiuddin and 4/5 others lifted dead bodies into the trawler. Thereafter, the trawler started to move and that he and others returned.

From the confessional statement of the accused Md. Asaduzzaman Noor, it transpires that as a 'Runner' of the accused Major (retired) Arif used to go to the residence and office of councilor Noor Hossain 3/4 times in a week; that he alongwith constable Moniruzzaman transmitted polythene and chords

to the accused Major (retired) Arif; that he let the accused Major (retired) Arif know about the situation underneath Kanchpur Bridge; that in his presence the dead bodies of the victim-decesed-persons were lifted into a trawler for making disappearance of the bodies and when the trawler started to move, he returned.

13. Confessional statement of the accused Sainik Md. Nooruzzaman.

In his confessional statement the accused Sainik Md. Nooruzzaman stated that on 27.04.2014 A.D. at about 09.30 a.m. DAD (Admn) Atiar told him (accused Nooruzzaman) to get ready for emergency operation. Under the leadership of Corporal Mokhles they started for operation by a silver colour microbus. They found driver Ruhul Amin in the driving seat and also found Corporal Mukhles, ASI Kamal and Costable Babul in the microbus. Being informed over mobile phone by Rana Sir

(accused M.M. Rana) they (Sainik Nooruzzaman and others) went to Narayanganj Court and joined the accused Major (retired) Arif for operation. Reching there, found one number plateless blue colour microbus. Sometimes later, the accused Lieutenant Commander Rana reached there by another car with the 'Runner' namely, Constable Habib. Rana Sir got into the said blue colour microbus. Crossing Fatulla Statidum 'RAB' personnel in uniform started car-checking and 7(seven) persons were confined form two private cars and lifted into their two microbuses. Their (of the accused Nooruzzaman and others) microbus followed the blue microbus and blue microbus proceeded with the confined 05(five persons). One confined person identified himself as Advocate Chandan Sarkar. Later, their vehicles reached near Narsingdi 'RAB' camp. At about 08.30 p.m they (accused Nooruzzaman and others) started for

Narayanganj. On the way, Lance Nayek Hira and another unknown person pushed injections to two confined persons in their (accused Nooruzzaman and others) vehicle. Thereafter, at about 11.00 p.m. they (accused Nooruzzaman and others) reached in front of a building of BIWTA. As per direction of the accused Major (retired) Arif he (accused Nooruzzaman), Corporal Mokhles, Lance Corporal Ruhul Amin, ASI Kamal, Constable Habib and Constable Babul started to guard. Major Arif with his associates got into their (accused Nooruzzaman) vehicle and acted something. Thereafter, the vehicles went to the 'River Ghat'. The team members of Major Arif Sir loaded the dead bodies of the two vehicles into a trawler. The accused Major (retired) Arif directed their Narayanganj-party to return back to the camp. At 12.30 a.m they (accused Nooruzzaman and others) started for their camp and reached their (accused

Nooruzzaman) Camp. Thereafter, he came to know that 07(seven) persons abducted on 27.04.2014 A.D. by Major (retired) Arif and Rana were the victims of sensitive 7(seven) murder case of Narayanganj.

From the confessional statement of the accused Sainik Md. Nooruzzaman, it appears that on 27.04.2014 he was in an emergency operation; that at the time of kidnapping 7(seven) victims of the case from the place of occurrence he was present; that taking the kidnapped victims they went to Narsingdi; that on their way from Narsingdi to Narayanganj, injections were pushed into the bodies of the victims; that at the time when Major Arif with his accosciates killed the victims getting into their vehicle he was present; that when the team members of the accused Major (retired) Arif and his assocites loaded the dead bodies into a

trawler for making disappearance of the dead he was also present.

14. Confessional statement of the accused Mohammad Babul Hasan.

In his confessional statement the accused Mohammad Babul Hasan stated that under the leadership of Corporal Mokhlesh he (Babul Hassan), driver Ruhul Amin, Mokhlesur Rahman, A.S.I Abul Kalam Azad, A.S.I Kamal Hossain and Sainik Nooruzzaman totaling 6(six) accused-persons went to Narayanganj Court by a numberplateless silver colour microbus and found a blue colour microbus. The silver colour microbus followed the blue colour microbus. The accused M.M. Rana Sir appeared there. Constable Habib got into the silver colour microbus. The accused Major Arif and his companions kidnapped 5(five) persons and lifted them into the blue colour microbus. The rest 2(two) accused-persons were lifted into the silver colour microbus by the

accused Lt. Commander M.M. Rana and his companions. At about 02.30 p.m. they reached near Narsingdi 'RAB' Camp. Later, they came to Narayanganj BIWTA. The companions of the accused Major (retired) Arif loaded dead bodies into a trawler. Thereafter, at about 01.00 p.m. they returned to their Camp.

From the confessional statement of the accused Mohammad Babul Hasan, it transpires that under the leadership of Corporal Mokhlesh he along with five other accused-persons went to Narayanganj Court by a numberplateless 'Silver' colour microbus; that at the time of kidnapping 7 (seven) victims by the accused Major Arif and his companions and the accused Lt. Commander M.M. Rana and his companions he was present; that taking the kidnapped victims they went to Narsingdi; that from Narsingdi they came to Narayanganj BIWTA; that when the companions of the accused Major (retired) Arif loaded

dead bodies into a trawler for making disappearance he was present.

15. Confessional statement of the accused Sepoy Abu Taiyab.

In his confessional statement the accused Sepoy Abu Taiyab stated that on 27.04.2014 at about 09.30 a.m. Sainik Milon asked him (the accused Abu Taiyab) to get ready for emergency duties with the accused Major Arif. Accordingly, he got prepared and appeared before Major Arif. Accordingly, 12 persons (Sepoy Abu Taiyab, S.I. Purnendu Bala, Habilder Emdad, AB Arif, Lance Nayek Md. Hira Miah, Sainik Al-Amin, Constable Shihab, Lance Nayek Bellal, Driver Nayek Delwar, Nayek Azim, Runner Sainik Mohiuddin) made rows. Under the leadership of the accused Arif they all got into a blue colour microbus and reached at Narayanganj Court-side. The accused Arif showed a photo of Ward commissioner Nazrul to them who appeared

before Narayanganj Court. Two Check-Posts were set at some vacant space in front of Fatulla Stadium. The petrol party stopped two private cars and 7(seven) persons were confined and were lifted into two microbuses. Thereafter, said microbuses proceeded towards Narsingdi. They had their lunch near Narsingdi 'RAB' camp. At about 08.00 p.m. they started for Narayanganj. Injections were pushed to the confined victims. Thereafter, the accused-person Arif Sir and Hira confirmed the death of 7 confined persons twisting their mouth with polythene. At about 01.00 a.m. the trawler taking the dead bodies started. At about 02.30 a.m. dead bodies were dropped in the river. At about 03.30 a.m. the trawler returned back to Narayanganj Ghat. The accused Tarek Syeed was present at the 'Launch Ghat' who talked with Major (retired) Arif. The accused Tarek Syeed admitted in his (accused Taiyab) presence the

liability of the occurrence saying that the occurrence happened under his (the accused Tarek Syeed) command.

From the Confessional statement of the accused Sepoy Abu Taiyab, it appears that on 27.04.2014 he was on duty with the accused Major (retired) Arif; that he was present at the time of the kidnapping of the seven victims; that he took part in the kidnapping; that they took the kidnapped victims to Narsingdi; that he was present at the time of pushing injections into the bodies of the victims and was also present at the time of killing of the victims by twisting their mouth with polythene; that he took part in dropping the dead bodies of the victims in the river; that at about 03.30 a.m. when they returned to Narayanganj Ghat, the accused Lt. Col. Tarek Syeed Mohammad admitted his liability of the occurrence saying that the

occurrence took place under his (the accused Lt. Col. Tarek Syeed Mohammad) command.

16. Confessional statement of the accused Md. Nasiruddin.

In his Confessional statement the accused Md. Nasiruddin stated that on 27.04.2014 in his 'Mitsubishi" car 14 (fourteen) sacks containing brick were loaded. Thereafter, under the leadership of Habilder Emadad, the sacks were transmitted to the landing section of BIWTA, Kanchpur at about 10.30 p.m. Sergant Enamul, Habilder Emdad, A.S.I. Bazlu, Sainik Tajul, Lance Nayek Bellal, Sainik Mohiuddin, S.I. Purnendra Bala unloaded the said sacks from his car. He found 2(two) microbuses, one silver colour and another blue colour there. Thereafter, he returned to the camp.

From the confessional statement of this accused, it appears that he reached 14 sacks containing brick under the leadership of the

accused Habilder Emdadul Haque to Kanchpur Landing Station for making disappearance of the dead bodies of the victims and that he was present at the time of killing of the victim-deceased-persons there.

17. Confessional statement of the accused R.O.G. Md. Arif Hossain.

In his confessional statement the accused Md. Arif Hossain stated that as directed by the accused Major (retired) Arif, he (Md. Arif Hossain) got into a blue colour microbus on 27.04.2014 for operation accompanied by the accused Major (retired) Arif, Nayek Delwar driver, Habilder Emdad, Sainik Al-Amin, Sainik Alim, Sainik Mohiuddin Munshi, S.I. Purnendu Bala, Constable Shihab, Lance Nayek Hira, Lance Nayek Bellal, Sepoy Taiyab, Nayek Nazim and others. As per direction of the accused Major (retired) Arif their blue colour microbus proceeded towards Narayanganj town through Chittagong Road from Adamjee RAB

Camp Gate. They reached Narayanganj Court area at about 11.00 a.m. The accused Major Arif sent the accused Taiyab and Habilder Emdad inside the Court premises showing them a photo of the victim Nazrul. The accused Lieutenant Commander Rana reached by a silver colour microbus and got into their blue colour microbus. The accused Rana directed the petrol party for stoping 2(two) private cars near the vacant place of Fatulla Stadium. From two private cars 7(seven) persons were abducted and lifted into two microbuses at about 01.30 p.m. The two microbuses proceeded towards Narsingdi along the 'Chittagong Road'. The accused Major (retired) Arif made contact with the camp Commander of Narsingdi 'RAB', namely, Major Suruj. They had their lunch by purchasing foods from hotel. After having lunch they proceeded towards 'Shibpur' and stayed there for 03/04 hours. At about 08.00 p.m. they

started for Kanchpur, Narayanganj. Sainik Asad and another by a motorcycle reached a packet to the accused Major (retired) Arif. The accused Major (retired) Arif handed over the injection syringe and medicine to the accused Hira and directed him to push injection to the victims. Firstly, the accused Major (retired) Arif pushed injection to the victim Nazrul and that Hira and Purnendu Bala caught hold of the victim Nazrul. Thereafter, injections were pushed to the rests. Over phone, the accused Major (retired) Arif conveyed message for keeping the landing station clear. Reaching the landing station they found 07/08 persons. The accused Major (retired) Arif addressed one of them as 'Shahjahan Bhai'. By a white microbus the accused Sergeant Enamul, Habilder Emdad, Sainik Tajul, A.S.I. Bazlur and Lance Nayek Bellal rushed there with plastic sacks containing, brick and chords. The accused

Major (retired) Arif, Hira, Purneddu Bala, Sainik Hakim, Mohiuddin and Al-Amin killed the said 07(seven) victims. Thereafter, the dead bodies were lifted into a trawler by him (Md. Arif Hossain), Hira, Bellal, Taiyab, Purnendu Bala, Shihab, Bazlu, Al-Amin, Tajul, Sainik Alim, Mohiuddin Munshi, Habilder Emdad and Sergeant Enamul. At about 02.30 a.m. they reached at the mouth of the rivers Shitalakhsmya and Meghna with the trawler. Completing the formalities, they dropped the dead bodies in the river. At about 03.30 a.m. they reached at Narayanganj Ghat. At 'Narayanganj Ghat' the C.O. (the accused Lt.Col. Tarek Syeed Mohammad) was waiting. Both Tarek Syeed and Major Arif (retired) talked with each other for sometimes. They stood in two rows. Addressing them the accused Tarek Syeed told them not to worry and took all responsibilities of the occurrence. He told that whatever happened

had happened under his command (the accused Lt. Col. Tarek Syeed Mohammad) and that of the accused Major (retired) Arif and that they would face the situation.

From the confessional statement of the accused R.O.G. Md. Arif Hossain, it appears that he along with others were in the operation team of the accused Major (retired) Arif; that at the instruction of the accused Lt. Commander M.M. Rana two private cars carrying the seven victims were stopped; that he was present at the time of kidnapping, pushing injections into the body of the seven victim persons and killing them; they dropped the dead bodies in the river; that at about 03.30 a.m. when they reached at Narayanganj Launch Ghat, the accused Lt. Col. Tarek Syeed Mohammad told them not to worry and took all responsibilities of the occurrence saying that whatever happened had happened under instruction of him (the accused Lt.

Col. Tarek Syeed Mohammad) and that of the accused Major(retired) Arif and that they would face the situation.

18. Confessional statement of the accused Md. Bellal Hossain.

In his confessional statement the accused Md. Bellal Hossain stated that on 27.04.2014 at about 10.30 a.m. by a blue microbus he (Md. Bellal Hossain), driver Delwar, S.I. Hira, Sainik Al-Amin, Sainik Alim, Constable Shihab, Sepoy Taiyed, Sainik Mohiuddin and Major (retired) Arif went near Narayanganj Court. The accused Major (retired) Arif sent the accused Taiyab and Emdad for following the victim-deceased Nazrul. The accused Taiyab was confined in the Court premises out of suspicion. Later, he was released. He (Md. Bellal) alongwith the accused Emdad moved inside the Court and that the victim-deceased Nazrul started with 2(two) private cars. He (Md. Bellal) informed the matter to the

accused Major (retired) Arif. He (Md. Bellal) and the accused Emdad retruned to Adamjee Camp by CNG. As per the order of the accused Major (retired) Arif they went to a market and purchased 16 plastic sacks, 05 kg of chords and 2kg of Sutli and returned to the camp by 05-00/05-30 p.m. from the market. They prepared 14 (fourteen) sacks with brick. After preparing the sacks they transmitted said sacks to 'Kanchpur Landing Station'. He (Md. Bellal Hossain), Habilder Emdad, Sergeant Enamul, Sainik Tajul, A.S.I. Bazlu and driver Nasir went to the landing station. They found a blue colour and a silver colour microbus there. Sepoy Azam brought a trawler. As per the order of the accused Major (retired) Arif they all lifted the dead bodies into the trawler. They all carried the dead bodies of the victims and dropped the dead bodies in the river. Thereafter, they returned to 'Narayanganj Launch Ghat'. The

accused Tarek Sir (Lt. Col. Tarek Syeed Mohammad) was present at the 'Narayanganj Launch Ghat'. The accused Tarek took up the responsibility of the alleged killings.

The confessional statement of the accused Lance Nayek Bella Hossain shows that he was aware of the occurrence from before and he took part in perpetration of it including preparation of sacks containing brick upto killing and making disappearance of the dead bodies of the victims by tying up sacks containing brick with the dead bodies.

19. Confessional statement of the accused Lance Corporal Md. Ruhul Amin.

In his confessional statement the accused Md. Ruhul Amin stated that on 27.042014 at about 09.00/09.30 a.m. DAD(Admn.) Sir directed him to make a car ready for emergency operation. Due to scarcity of driver he got a silver colour microbus ready without number plate. Accordingly, Corporal

Mokhles, S.I. Kamal, Constable Bazlu and Sainik Nooruzzaman got into the said microbus. As per direction of Rana Sir (the accused M.M. Rana), they moved towards Chasara Rail Station. After operation they came back to their camp. At about 11.00 a.m DAD Atiar Sir directed him to go to Narayanganj new Court area for aiding Major (retired) Arif to conduct an operation. Major Arif Sir (the accused Major (retired) Arif waited there inside a blue colour microbus. Corporal Moklesh got down from their microbus and met Major Arif. Major Arif directed to follow his microbus. Sometimes after that Rana Sir (the accused Lt. Commander M.M. Rana) with Constable Habib reached there. Rana Sir got into the microbus of Major Arif. Vehicle of Rana Sir returned back. At about 01.00 p.m. Major Arif's microbus proceeded towards 'Signboard'. He (the accused Ruhul Amin) followed Arif's microbus. 'RAB' Check-

Post started operation before 'Fatulla stadium' area. Major Arif Sir (the accused Major (retired) Arif Hossain) and his associates confined some civil persons and got them into the blue microbus. Rana Sir (the accused Major (retired) Arif Hossain and Habib confining 2(two) persons lifted them into his (the accused Ruhul Amin) microbus. His microbus followed the microbus of Major Arif and that the two microbuses proceeded towards Narsingdi and reached near to Narsingdi 'RAB' camp. The accused Major (retired) Arif talked with someone. They stayed at Narsingdi territory upto 08.30 p.m. Thereafter, they proceeded towards Narayanganj. On the way, one person came by a motor cycle and got into Arif Sir's microbus. Two persons got into his (the accused Ruhul Amin) microbus and did something. As car light was off, he failed to understand what they did inside the car. Thereafter, both

microbuses again proceeded towards Kanchpur Bridge. Reaching at a vacant place of Bhulta, all of them got down from the microbus as per direction of Major Arif. Sometimes after that one white microbus rushed there. Major Arif and persons in the blue microbus got into his (Ruhul Amin) microbus. They killed 02(two) confined persons inside the microbus. They (Ruhul Amin and others) heard the whining voice of said two confined persons. Major Arif called us as 'Narayanganj-Party'. They went in front of the accused Arif. The accused Arif directed them to get into the microbus. Following the microbus of the accused Arif they reached the river 'Ghat' and found persons of blue Microbus to load dead bodies into a trawler. They also loaded 2(two) dead bodies of his (the accused Ruhul Amin) microbus into the said trawler. Thereafter, as per direction of the accused Major (retired) Arif the returned back to

Narayanganj Camp. Thereafter, he came to know through the media that the victims of 07 (seven) murder case were killed under the direction of the accused-persons Major (retired) Arif and M.M. Rana.

From the confessional statement of the accused Lance Corporal Md. Ruhul Amin, it appears that on 27.04.2014 at about 11.00 a.m DAD Atiar directed him to go to Narayanganj new Court area for aiding Major Arif to conduct an operation; that at about 01.00 p.m. the accused Major (retired) Arif and his associates confined some civil persons and got them into the blue microbus; that the accused Lt. Commander M.M. Rana and Habib confining 2 (two) persons lifted them into his (the accused Ruhul Amin) microbus; that he was present at the time kidnapping of the seven victims; that he was present at the time of killing the victims and was also present at the time of loading the dead

bodies of the victims into a trawler taking part in it.

20. Confessional statement of the accused A.S.I. Md. Bazlur Rahman.

In his confessional statement the accused Md. Bazlur Rahman stated that on 27.04.2014 at 10.00/10.30 p.m. he (the accused A.S.I. Bazlur Rahman), Sergeant Enamul, Emdad, Tajul and Bellal went to 'Kanchpur' by a white colour microbus with 14 (fourteen) sacks containing brick as per direction of the accused (retired) Major Arif. The driver was the accused Nasir and that they all unloaded sacks containing brick from their 'microbus' and kept on the bank of the river and saw 2 (two) cars stationed there in the south. 5/10 minutes after that 1 (one) trawler rushed there. He (A.S.I. Bazlur Rahman) along with others loaded the sacks containing brick into the said trawler. The dead bodies were loaded into the trawler from

two minibuses. The accused-persons Major (retired) Arif Sir, S.I. Purnendu Bala, Sergeant Enamul, Habilder Emdad, Hira, Bellal, AB Arif, Al-Amin, Alim Shihab, Tajul, Mohiuddin Munshi and Sepoy Taiyab loaded the dead bodies into the trawler.

From the confessional statement of the accused A.S.I. Md. Bazlur Rahman, it transpires that on 27.04.2014 at 10.00/10.30 p.m. he (A.S.I. Bazlur Rahman) along with Sergeant Enamul, Emdad, Tajul and Bellal went to Kanchpur Landing station by a white colour microbus with 14 (fourteen) sacks containing brick; that at the time of killing the victims he was present; that he was present at the time of loading the dead bodies of the victims on to a trawler for making disappearance.

21. Confessional statement of the accused
S. l. Purnendu Bala

.....

In his confessional statement the accused S.I. Purnendu Bala stated that on 27.04.2014 at about 10.00 a.m. he along with Major Arif, Habilder Emdad, Nayek Delwar, Nayek Nazim, AB Arif, Sainik Al-Amin, Sainik Mohiuddin, Sepoy Taiyab, Sepoy Shihab, Lance Nayek Hira and Lance Nayek Bellal got ready for operation and by a blue colour microbus reached 'Signboard' at about 10.30 a.m. Two microbuses (Blue and Silver) conducted the abduction operation. They carried 05 abducted persons in the blue microbus. The microbus proceeded and halted near Narsingdi RAB Camp. Major Suruj of Narsingdi Camp talked with the accused Major (retired) Arif. Sainik Asad handed over something to the accused Major (retired) Arif. Major (retired) Arif contacted somebody and asked him for vacating the landing ghat. The accused Arif Sir called someone as Shahjahan Bhai. Sergeant Enamul, Emdad, Tajul and Lance Nayek Bellal And

A.S.I. Bazlur brought sacks containing brick and chords. Dead bodies were loaded into a trawler. The trawler started with the accused-persons Major (retired) Arif, Hira Miah, he himself, AB Arif, Sergeant Enamul, Sainik Mohiuddin, Sainik Al Amin, Sainik Alim, Sepoy Abu Taiyab, Constable Shihab, Lance Nayek Bellal and Sainik Tajul. They carried the dead bodies of the victims and dropped the dead bodies in the river. Before dropping in the river, the dead bodies were tied up with sacks containing brick. Thereafter, returning 'Narayanganj Launch Ghat' they found C.O. the accused Tarek Syeed Mohammad. The accused Lt. Col. Tarek Syeed Mohammad took the responsibilities of the occurrence upon his shoulder saying that everything was done under his (the accused Lt. Col. Tarek Syeed Mohammad) order.

From the Confessional statement of the accused S. I. Purnendu Bala, it transpires

that on 27.04.2014 he took part in abduction of the victims by two minibuses; that he was present at the time of killing the victims; that they loaded the dead bodies into a trawler and carried the dead bodies of the victims and dropped the dead bodies in the river; that before dropping, the dead bodies were tied up with sacks containing brick; that on returning to 'Narayanganj Launch Ghat' they found C.O. the accused Lt. Col. Tarek Syeed Mohammad who took the responsibilities of the occurrence upon his shoulder saying that everything was done under his (the accused Lt. Col. Tarek Syeed Mohammad) order.

From the confessional statements, it transpires that as per the command of the accused Lt. Col. Tarek Syeed Mohammad, a team of RAB personnel under the leadership of the accused Major (retired) Arif who were chosen for the operation on 20.04.2014 prior to the occurrence and another team of RAB

personnel under the leadership of Lt. Commander M M Rana went to the Narayanganj Judges' Court to apprehend the victim Nazrul which operation failed due to apprehension of the accused Abu Taiyab in the Judges' Court by the public due to his suspicious movement. Thereafter, when Nazrul and his companions started for Dhaka by a white private car, the said teams of the accused Major Arif and Lt. Commander M.M. Rana chased them by a blue and a white colour microbus and overtook them, barricaded their way and draggd them out from the private cars and lifted them to the blue colour microbus and that when the victim Advocate Chandan Kumar Sarker raised objection against the act of the RAB personnel, the accused Lt. Commander M.M. Rana and his team mates dragged Chandan kumar Sarker and his driver out from the black colour private car and lifted them in the silver colour microbus and went towards

Narsingdi speedily. Thereafter, bringing the victims to the Kanchpur Landing Station, they were killed by twisting their mouth with polythene and by strangulation with rope. Subsequently, the dead bodies were taken to the estuary of the rivers Meghna and Shitalakshmya and two plastic sacks containing brick were tied up with the each dead body and after perforating the dead bodies under their navels under the abdomen were dropped in the river water. At the time of killing the victims and making disappearance of the dead bodies of the victims, the accused-associates of the accused Noor Hossain patrolled the landing station and kept it clear from the entrance of the general people with the full prior knowledge that the victims who were kidnapped by the RAB personnel would be killed. The accused Lt. Col. Tarek Syeed Mohammad monitored the entire occurrence from the

starting to the end over mobile phone and even he was present at the Narayanganj Launch Ghat to see the final consequence of the occurrence assuring the RAB personnel who took part in the occurrence not to worry as the occurrence took place as per command of him and the accused Major (retired) Arif Hossain and that they would face consequence thereof. The accused-persons Major (retired) Arif Hossain, Lt. Commander M.M. Rana and the accused Noor Hossain also kept contact with each other during the occurrence. To screen the evidence of the private cars used by the victims Nazrul and Advocate Chandan Kumar were left behind one at Gazipur and another at Niketon, Gulshan. The aforesaid statements of the confessing accused-persons find support from the evidence of the prosecution witnesses, from the materials on record and so also from the circumstances of the case.

.....

From the materials on record, it also transpires that the Pw1, the Pw12, the Pw 13 and the confessing accused-persons i.e, the associates of Noor Hossain implicated him (the accused Noor Hossain) in the alleged occurrence. The Pws 1, 13, 18, 41, 42 and 68 implicated the accused Lt. Col. Tarek Syeed Mohammad in the alleged occurrence. In addition to the evidence of the said witnesses, there is also the confessional statement of this accused as stated earlier and the confessional statements of the other confessing accused-persons. The Pws 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 70, 71, 72 and 73 implicated the accused Major (retired) Arif Hossain in the alleged occurrence. In addition to the evidence of the said Pws there are the confessional statement of Major (retired) Arif Hossain and those of the other confessing accused-persons as discussed before.

.....

The confessional statements recording Magistrates i.e. the Pw4 K.M. Mahiuddin, Senior Judicial Magistrate, the Pw11 Chandni Rupam, Senior Judicial Magistrate, the pw46 Istiaque Ahmed Sidiki, Senior Judicial magistrate, the Pw 47 Syeduzzaman Sharif, Judicial Magistrate, the Pw48 Manwara Begum, Senior Judicial Magistrate, the Pw 51 H.M. Shafiqul Islam, Senior Judicial Magistrate and the Pw56 Md. Jabid Hossain proved the confessional statements of the confessing accused-persons as recorded by them stating that abiding all legal formalities they recorded the confessional statements. It further appears that the Confessional statements were recorded exhausting the legal procedures as prescribed in section 164 of the Code of Criminal Procedure, 1898. The recording Magistrates appended certificates to the effect that the statements were true and voluntary. There is no complaint

whatsoever from the side of the accused-persons that the statements were extracted by coercion, allurement or physical torture. At the time of recording of the confessional statements, no marks of injuries were found on the persons of the confessing accused-persons. After recording the confessional statements the confessing accused-persons were sent to the jail custody. The aforesaid facts suggest that the confessional statements were voluntary and true.

From the evidence of the prosecution witnesses and from the confessional statements of the confessing accused-persons, it is revealed that out of conspiracy and with the financial assistance of the accused Noor Hossain under the leadership of the accused Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain and Lt. Commander M.M. Rana in a preplanned way kidnapped away the victims-deceased-person-persons, namely, 1)

Nazrul Islam, 2) Maniruzzaman, 3) Tajul Islam, 4) Jahangir Hossain and 5) Sirajul Islam Liton from the place of occurrence near Narayanganj Stadium by two minibuses, killed them by strangulation and by twisting their mouths and faces with plastic and ropes, tied up their hands and legs with ropes, tied up two sacks containing brick with each dead body to facilitate drowning of the dead bodies into water, perforated the dead bodies with knife under the navels for easy drowning in the water, took the dead bodies to the estuary of two rivers near Munshiganj by a trawler, and then dropped the dead bodies in the river water and Subsequently, the dead bodies floated up. From the evidence of the prosecution witnesses, and from the confessional statements of the confessing accused-persons, it is revealed that out of conspiracy with and at the finalcial assistance of the accused Noor Hossain the

RAB-accused-personnel under the leadership of the accused Lt. Col. Tarek Syeed Mohammad and Major (retired) Arif and Lt. Commander M.M. Rana in a preplanned way, kidnapped the victim deceased-persons Nazrul and others, killed them and dropped the dead bodies in the river. The manner of occurrence which is revealed from the evidence and the statements of the confessing-accused-persons sends a chill of panic down the spine. To what extent men can become brutal and cruel the occurrence of this case is the glaring example. The offence alleged to have been perpetrated by the accused-persons is the crimes against humanity which is to be dealt with seriously.

From the materials on record, it is found that the accused Noor Hossain sent the accused-prsons, namely, Shahjahan, Raham Ali, Ali Mohammad, Mortuza Zaman Churchil, Bashar, Jamal, Salim, Riaz and Mizan for guarding the

Kanchpur Landing Station restricting the entrance of people inside it to facilitate killing of the victims and making disappearance of their bodies by the accused RAB- personnel.

It is also found that after the operation was finished, the accused Lt. Col Tarek Syeed Mohammad briefed the accused-RAB personnel at Narayanganj Launch Ghat stating that what had happened was under his command and was operated by the accused Major (retired) Arif and that all responsibilities lie with him and Major Arif.

It is also found that on 28.04.2014 at 3.45 a.m., during his night duty, Senior ASP Circle-A, Narayanganj stopped the vehicle of the accused Lt. Col. Tarek Syeed Mohammad at Killarpur crossing, Narayanganj town and that the accused Lt. Col. Tarek Syeed Mohammad gave his identity to be the Commanding Officer, RAB-11 and informed that he went to

Narayanganj launch ghat and returning to his office after completing duties.

From the facts, circumstances, and evidence on record, it is evident that both the defence-accused personnel and civil accused-personnel conjointly under criminal conspiracy and pre-planning in furtherance of their common intention abducted the victims, killed them and dropped their dead bodies in the river.

Now, the question is whether the alleged killing of the victim-deceased persons is culpable homicide amounting to murder or not amounting to murder.

From the evidence and materials on record, it appears that the victim-deceased persons were at first kidnapped in a pre-planned way out of conspiracy, then were killed by twisting their mouth with polythene and by strangulation with rope, the dead bodies were tied up with plastic sacks

containing brick, the dead bodies were taken to the estuary of the rivers Meghna and Shitalakhsmya, the dead bodies were perforated with knife under navels for easy drowning into the river water and thereafter, dropped in the river water. Said facts clearly suggest that as per pre-plan and conspiracy and in furtherance of common guilty intention to kill the victims, they were killed by twisting their mouths with polythene and by strangulation with rope by the accused-persons and thereafter, to screen the evidence, the dead bodies were dropped in the river water which facts definitely attract the 4 clauses of section 300 of the Penal Code. The very fact that the victim-deceased-persons were killed by twisting their mouth with polythene and by strangulation with rope clearly manifest the intention of the convict-accused-persons to kill the victim- deceased-persons which is

sufficient in ordinary course of nature to cause the death of a person. So killing of the victim-deceased-persons in this case is murder clear and simple coming under the purview of section 300 of the Penal Code punishable under section 302 of the Penal Code.

It is the plea of some of the convict-accused-persons that they acted under the command of their Commanding Officer and as such, they are not guilty of the charges as brought against him or them i.e. they are entitled to get benefit of general exceptions as laid down in section 76 and 79 of the Penal Code. Section 76 of the Penal Code provide that "nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself, to be bound by law to do it". Again, section 79 of the Penal Code provides

that "nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact not by reason of a mistake of law in good faith, believes him to be justified by law, in doing it." The sum and substance of these sections are that the acts done under these sections must be for advancement of law and it should be done by mistake of fact and that mistake of law cannot be any excuse. In this case alleged command was given to the said convict-accused-persons to kidnap the victims, to push Suxa injection to make the victims senseless and to kill the victims by twisting polythene in the mouth and by strangulation twisting the throat with rope and to drop the dead bodies tying up with sacks containing brick in the river to make disappearance of the dead bodies which definitely are not legal acts. A person acting on an illegal command cannot get benefit of these two

sections of the Penal Code. So, the convict-accused-persons Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander M.M. Rana, S.I. Purnendu Bala and other accused RAB-Personnel cannot get benefit of the sections 76 and 79 of the Penal Code.

Another plea of some other RAB-convict-accused-persons is that as the convict-accused Major (retired) Arif Hossain threatened them with pistol to shoot them to death, they took part in the alleged occurrence. As per section 94 of the Penal Code except murder, and offences against the state punishable with death, nothing is an offence which is done by a person who is compelled to do it by threat of instant death. The instant case being of causing death of 7 victim-deceased-persons, the said convicted-accused-persons can not get benefit

of the exception as laid down in section 94 of the Penal Code.

It is the established principle of law that a confession if is found to be true and voluntary, it can in law validly form the sole basis of the conviction of the maker and there is no need at all to look for further corroboration. A retraction of a confession has no bearing whatsoever upon the question whether it is true and voluntary (Reference: the case of Abdul Mannan Bhuiyan versus The State reported in 7 ADC at page 427). In the present case, it has already been found that the confessional statements of the confessing accused-accused-persons are true and voluntary. So there is no legal bar in convicting and sentencing the accused-persons on the basis of the confessional statements.

It is the contention of some of the convicted-accused-persons that the confessional statements as made by the

confessing co-accused-persons are not binding upon them. Section 30 of the Evidence Act, 1872 provides that "when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons effecting himself and some other or of such persons is proved, the Court may take into consideration such confession as against such other of such persons as well as against the persons who makes such confession." It is also the established principle of law that confession when proved against confessing accused can be taken into consideration against co-accused in the same offence (Reference: the case of Nausher Ali Sarder and others versus The State reported in 39 DLR (AD) at page 194). Here in this case, confession against the confessing accused-persons are proved and that facts, circumstance and evidence on record also support the prosecution case against these

accused-persons. In this case the confessional statements of the confessing accused-persons find independent corroboration from the evidence of the prosecution eye witnesses as adduced by the prosecution.

It is the defence contention that the Investigating Officer of the case by applying force, coercion and torturing the confessing accused-RAB-personnel extracted the confessional statements. It is absolutely impossible. By no stretch of imagination it can be conceived that by applying force and by torturing the accused RAB-personnel, the members of an elite force, the Investigating Officer (police) would extract the confessional statements. Further, none of the said accused-RAB Personnel complained of application of force, coercion and duress upon them by police to the confessional statements recording Magistrates while making

the confessional statements which is evident from the confessional statements.

In this case, the confessional statements of the confessing accused-persons being true and voluntary, said confessional statements are sufficient to form the basis for conviction of the makers of the confessional statement. The learned Advocates representing the convict-accused-persons cited case laws to show that in case of joint trial of an offence, confessional statement of a co-accused cannot be considered unless the statements are corroborated by independent witnesses. In the decision as cited by the learned Advocates itself i.e. the case of state and another versus Abdul Kader@ mobile Kader reported in 67 DLR (AD) 6) it is held that if the confessional statement of an accused is proved, the same can be considered in respect of others. Here in the case, the confessional statements of the confessing

accused-persons have been proved by the confessional statements recording Magistrates on oath and that the confessional statements are found to be true and voluntary. So, in this case, the confessional statement of one accused can very well be used against other accused-persons. Further, the contents of the confessional statements are supported by the evidence of the independent eye-witnesses and the documentary evidence like the Call Lists of mobile phones used by the accused-persons during the occurrence, the Seizure Lists and Post Mortem Examination Reports of the victim- deceased persons.

Advocate Mr. Shafiqul Alam representing the convicted-accused A.S.I. Bazlur Rahman submits that the Magistrate who recorded the confessional statement of this accused being not examined, the confessional statement cannot be admitted and considered as evidence. In this regard, the case of Mufti

Abdul Hannan versus State reported in 69 DLR (AD) at page 490 may be referred. In the said case, our Apex Court held that "section 80 of the Evidence Act states about presumption as to documents produced as record of evidence. Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take, such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any confession was duly taken.

Section 80 gives legal sanction to the maxim *Omnia praesumuntur rite et solemniter esse acta donee probetur in contrarium* which

means all things are presumed to have been done regularly and with due formality until contrary is proved (Ballentine's Law dictionary). When a deposition or confession is taken by a public servant, there is a degree of sanctity and solemnity which affords a sufficient guarantee for the presumption that everything was formally, correctly and duly done.

Where a person acts in an official capacity, it shall be presumed that he was duly appointed and it has been applied to a great variety of officers. The presumption embraced not only the genuineness of the confession but also that it was duly taken and given under the circumstances recorded therein. It deals not only with relevancy but also with proof, if it was recorded in accordance with law.

A confession by an accused in accordance with law is admissible without examining the

Magistrate who recorded it in view of the fact that the Magistrate was a public servant who recorded the statement in discharge of his official duty provided that it was recorded in accordance with law." Here in this case, the confessional statement of the convicted-accused A.S.I. Bazlur Rahman being recorded observing all legal formalities it is admissible in evidence even without examining the recording Magistrate.

On perusal of the record, it transpires that long about 2 (two) years after making the confessional statements on 08.02.2016, the learned Advocates for 11 (eleven) convicted-accused-persons, namely, 1) S.I. Purnendu Bala, 2) Lance Nayek Md. Hira Mia, 3) Habilder Md. Emdadul Haque, 4) Sainik Md. Asaduzzaman Noor, 5) A.S.I. Md. Abul Kalam Azad, 6) Sepoy Abu Taiyab, 7) Constable Md. Babul Hasan, 8) Sainik Md. Nuruzzaman, 9) Constable Shihab Uddin, 10) R.O.G.-1 Md. Arif

Hossain, 11) Major (retired) Arif Hossain made applications for retraction of confessional statements on behalf of the said confessing accused-persons. But the accused-persons, as per law, are to send retraction petitions through the Jailors with their signatures which they did not do. Here, the retraction petitions filed by the Advocates on behalf of the said accused-persons are not permissible in law and as such, said retraction petitions are no retraction in the eye of law. Further, the aforesaid convicted-accused-persons, namely, 1) S.I. Purnendu Bala, 2) Lance Nayek Md. Hira Mia, 3) Habilder Md. Emdadul Haque, 4) Sainik Md. Asaduzzaman Noor, 5) A.S.I. Md. Abul Kalam Azad, 6) Sepoy Abu Taiyab, 7) Constable Md. Babul Hasan, 8) Sainik Md. Nuruzzaman, 9) Constable Shihab Uddin, 10) R.O.G.-1 Md. Arif Hossain, 11) Major (retired) Arif Hossain made confessional statements on 13.09.2014,

30.08.2014, 30.08.2014, 25.12.014, 08.12.2014, 30.08.2014, 07.12.2014, 03.12.2014, 04.09.2014, 31.08.2014 and 04.06.2014 and as stated earlier, the retraction-petition filed on 08.02.2016 i.e. about two years after making confessional statements which is nothing but the product of after thought and as such, deserve no consideration. So, the retraction deserves no consideration. However, it is the settled principle of law that a confessional statement whether retracted or not, if is found to be true and voluntary, may form the sole basis of conviction of an accused.

In this case, the accused-persons, namely, Mortuza Zaman Churchil, Ali Mohammad, Abul Bashar, and Raham Ali, the close associates of the accused Noor Hossain entangled the accused Noor Hossain, the main architect of the case in the alleged occurrence in their confessional statements. In this case from the evidence and materials

on record, it is found that the informant (the Pw1) at the first opportunity suspected the accused Noor Hossain as one of the perpetrators of the alleged occurrence. The pW12, the brother of Nazrul Islam stated in his evidence that Nazrul Islam used to say that Noor Hoosain would not let him live. The Pw13, the father-in-law of the deceased Nazrul Islam stated in his evidence that holding the feet of the accused Lt. Col. Tarek Syeed Mohammand he requested him to return the victim Nazrul and that he would pay more money than the accused Noor Hossain had paid to him; that he suspected the accused Noor Hossain to be the one of the perpetrators of the alleged occurrence. The mobile Call List of Noor Hossain in respect of his conversation with the accused Major (retired) Arif Hossain and his escaping immediately after the occurrence to India who had to be expatriated by the Home Ministry of

the Government of Bangladesh from India are all the pointers to show that the accused Noor Hossain is the mastermind of the alleged occurrence. So, the confessional statements of the convicted-accused-persons, namely, Mortuza Zaman Churchil, Ali Mohammad, Abul Bashar, and Raham Ali find independent corroboration from the evidence of the aforesaid witnesses. It further appears from the record that the convicted-accused-Major (retired) Arif Hossain used the accused Noor Hossain as a source to appraise the movement of Nazrul Isalm to him which also is a pointer of conspiracy to perpetrate the offence.

To what extent the accused Noor Hossain is influential and powerful is evident from the fact that the victim Nazrul did not have the courage to file a case against the accused Noor Hossain although the men of the accused Noor Hossain beat up Nazrul and his

men concerning construction of a drain. Rather, the accused Noor Hossain got a false case filed by Mobarak, an associate of him against Nazrul.

From the materials on record, it transpires that to perpetrate the alleged occurrence, the accused-persons Noor Hossain, Lt. Col. Tarek Syeed Mohammad and Major (retired) Arif Hossain had meetings at different times prior to the occurrence and that they conspired in that regard and the convicted-accused-Lt. Commander M.M. Rana became a part to it which is evident from his activities on the date of occurrence.

The Pw37Dr. Md. Asaduzzaman, the Pw38 Dr. Jalil Ahmed, the Pw39 Dr. Sheikh Farhad, and the Pw40 Dr. Md. Mainuddin who held Post Mortem examination on the dead bodies of the deceased-persons stated in their evidence that during Post Mortem examination, they found injuries like, 1) continuous horizontal

ligature mark around lower part of neck, 2) Echymosis on upper chest wall, 3) Echymosis on frontal both parietal, temporal and occipital region of brain, 4) penetrated wounds on the abdominal wall just left lateral to umbilicus 1 ½ inch in diameter with penetrated intestine and that in their opinion the death of the deceased-persons was due to asphyxia as a result of strangulation preceded by assault which was ante Mortem and homicidal in nature.

In this case, the Pw57, Md. Moazzem Hossain Shahin, the Pw60 Md. Shahidul Islam @ Khoka, the Pw61 Rabeya Akhter Ankhi, the Pw66 Md. Abdur Razzak, the pw67 and the Pw73 Md. Nizamuddin are the direct eye-witnesses to the kidnapping away of the victim-deceased-persons on the date and at the time of occurrence from the place of occurrence by the RAB personnel by two minibuses dragging out the victims from two private cars into

the minibuses. The Pw62 Major Suruj Mia, another eye witness stated in his evidence that he was the company Commander of Narsingdi RAB camp. On 27.04.2014 at 3.00/3.15 p.m., the accused Major (retired) Arif contacted him over mobile phone going near their camp; that as per his asking, he came out of the camp to see two minibuses; that saying that they were in an operation, the accused Major (retired) Arif took Taka 2,000/00 from him.

The Pw63 Lance Nayek Md. AZam Ali, the Pw65 Md. Abdus Samad and the Pw66 Md. Abdur Razzak are the direct eye-witnesses to the dropping of the dead bodies of the 7(seven) victims in the river by the accused Major (retired) Arif Hossain and his teammates.

The pw78 Constable Howlader Omar, the Pw79 Md. Rafiqul Islam and the Pw80 Habilder Md. Kamaluddin are the eye-witnesses of detaining the accused Abu Taiyab on

27.04.2014 at 12.30 p.m. in the Court of Sessions Judge, Narayanganj who went there to see whether the victim-deceased Nazrul Islam was present there in the Court.

Apart from the aforesaid evidence of the prosecution witnesses, as stated earlier, there are the confessional statements of the accused-persons, namely, 1) Md. Raham Ali, 2) Ali Mohammad, 3) Habilder Md. Emdadul Haque, 4) Md. Abul Kalam Azad, 5) Constable Md. Shihabuddin, 6) Md. Asaduzzaman Noor, 7) Sepoy Md. Nooruzzaman, 8) Md. Babul Hasan, 9) Sepoy Md. Abu Taiyab, 10) Md. Nasiruddin, 11) Md. Arif Hossain, 12) Md. Bellal Hossain, 13) Lance Corporal Md. Ruhul Amin, 14) A.S.I. Md. Bazlur Rahman, 15) Purnendu Bala 16) Md. Arif Hossain, 17) Lt. Commander M.M. Rana, 18) Mortuza Zaman Churchil, 19) Lt. Col. Tarek Syeed Mohammad, 20) Lance Nayek Md. Hira Mia, 21) Md. Abul Bashar who gave vivid description as to how the alleged occurrence

was perpetrated implicating themselves and others in the alleged occurrence which from the aforesaid facts and circumstances appears to be true and voluntary.

The confessional statements recording Magistrates i.e. the Pw4 K.M. Mahiuddin, Senior Judicial Magistrate, the Pw11 Chandni Rupam, the Pw51 H.M. Shafiqul Islam and the Pw56 Jabid Hossain proved the confessional statements on oath stating that they recorded the confessional statements exhausting all the legal procedures as prescribed in section 164 of the Code; that they appended certificates to the effect that the statements were true and voluntary. The confessional statements of the confessing accused-persons further show that during recording of the statements, no marks of injury was found on their persons and that after recording the confessional statements,

the confessing accused-persons were sent to the jail custody.

It is the established principle of law that confessional statement whether retracted or not, if found to be true and voluntary can form the sole basis of conviction (Reference: the case of Hazrat Ali and another vs. The State reported in 44 DLR (AD) at page 51). Here in this case, the confessional statements of the confessing accused-persons have already been found to be true and voluntary.

From the confessional statements of the confessing accused-persons, it appears that those are inculpatory reflecting their acts in the alleged occurrence describing vividly as to how the alleged occurrence was perpetrated admitting abduction of the victim, criminal conspiracy, murder and making disappearance of the dead bodies of the deceased persons in the river.

.....

It is contended on behalf of the defence that in recording the confessional statements of the accused-persons, the confessional statements recording Magistrates did not follow the provisions of law, did not give three hours' time for speculation to the confessing accused-persons, did not state the time of starting recording of the statements and finishing recording of it, did not inform the confessing accused that whether he confessed his guilt or not he would not be handed over to the police. But it is well settled by now that there is no requirement under the law for the Magistrate to inform the confessing accused that whether he confessed his guilt or not he will not be handed over to the police (Reference: the case of Rafiqul Islam @ Rafiq and others versus State reported in 51 DLR at page 488). It is also the settled that the breach of the provision of law, if any, is a technical one

and by that the evidentiary value of the confessional statement cannot be blown away. The defect is very much curable under section 533 of the Code of Criminal Procedure (Reference: the case of Syeed Ahmed versus Abdul Khaleque reported in 51 at page 43). In section 164 of the Code of Criminal Procedure, it is not stated as to whether providing time for speculation before recording confessional statement is mandatory meaning thereby that there is no hard and fast rule that the confessing accused is to be afforded three hours' time for speculation before recording confessional statement. As stated earlier, no injury being found on the persons of the confessing accused-persons and there being no complaint from the side of the confessing accused-persons about any torture, coercion or application of force for making the confessional statements by police and also in view of the fact that the

confessional statements recording Magistrates appended certificates to the effect that the statements were voluntary and true, said confessional statements are voluntary and true. It is the law that once a confession is found to be true and voluntary, a belated retraction will be of no help to the confessing accused. The necessity of corroboration in such cases is not a requirement of law but it usually desired as a rule of prudence (Reference: the case of State versus Tajul Islam reported in 48 DLR at page 305). It is also settled that there is no hard and fast rule that a retracted confession must be discarded. Retracted confession can form the basis of confession if it is found to be true and voluntary. There is no hard and fast rule as to the time to be given to the accused for reflection before confession (Reference: the case of Ratan Kha versus The State reported in 40 DLR

at page 186). It is also the settled law that confession when proved against confessing accused can be taken into consideration against co-accused in the same offence (Reference: the case of Nausher Ali vs. State reported in 39 DLR (AD) at page 194). In the present case, the confessional statements recording Magistrates made genuine effort to find out the real character of the confessions and found the statements to be confessional statements and are true and voluntary. As such, if there be any omission as per the submission of the learned Advocates for the convicted accused-persons, it cannot cast any doubt upon the true and voluntary character of the confessional statements. In this case, from a plain reading of the confessional statements, it appears that all of them are inculpatory involving the makers themselves and also involving the other accused-persons in the

alleged occurrence. It is the contention of the defence that the recording Magistrates omitted to record questions and answers of the confessing accused-persons before recording of the confessional statements. But here in this case, it is found that the Magistrates have put questions to the confessing accused-persons and recorded their answers. Further, the confessional statements recording Magistrates, as stated earlier, made real endeavour for coming to the conclusion that the statements were voluntary. So, omission, if any, as alleged by the defence cannot be considered as fatal defects. Facts stated in the confessional statements appear to be consistent with the evidence of the Pws. In that view of the matter, the confessional statements of the confessing accused-persons, as stated earlier, are true as well (Reference: the case of State versus Kalu reported in 43 DLR

at page 2490). In the present case the confessional statements recording Magistrates appear to have recorded their satisfaction as to the voluntariness, truthfulness and spontaneous nature of the confessions of the confessing accused-persons. So, it appears that confessions have not been vitiated by any illegalities (Reference: the case of ABM Nazmus Sakib Ashik versus State reported in 12 BLC (AD) at page 203). It is well established that confessional statement if found inculpatory in nature and also true and voluntary it can be used against its maker and conviction can solely be based on it without any further corroborative evidence. In the instant case, the confessional statements of the confessing accused-persons are not only inculpatory in nature but also true and voluntary and as such, the trial Court very rightly based conviction of the accused-persons on the confessional

statements and correctly convicted and sentenced the accused-persons by the impugned judgment and order having duly found them guilty under sections 120B/364/302/201/34/201 of the Penal Code (Reference: the case of Jhumur Ali and others versus State reported in 7 BLC at page 62). It is the settled principle of law that confession of an accused duly recorded, though not substantive evidence against other accused, it can well be used against other co-accused when supported by other evidence, direct or circumstantial (Reference: the case of State versus Ershad Ali Sikder and others reported in 8 MLR at page 136). Further, there is no requirement under the law to inform the accused that he would not be remanded to police custody even if he did not make any confession. Of course, if a Magistrate has any reason to believe that the accused is apprehensive of the police he may assure him

as above. But that is not to say that if it were not said the voluntariness of the confession would be in doubt (Reference: the case of Dipok Kumar Sarkar versus The State reported in 8 BCR (AD) at page 141). Here in this case nothing is found from the confessional statements of the confessing accused-persons that they were apprehensive of police.

The death which the deceased-victims met in this case is simply horrific being in the custody of RAB personnel till their death. From the statements of the confessing accused-persons, it appears that taking Tk.2,000/00 from Major Suruj Ali of the Narsingdi RAB camp, they had their lunch. None of them said that they also fed the kidnapped-victims which manifests how inhumane and heartless the said accused-RAB personnel were. What agonizing moment the victims passed in the custody of the accused-RAB personnel waiting

for their death, if it is thought, a man is bound to be horrified and panic-stricken.

It is contended on behalf of some of the convicted-accused-persons that statements under section 161 of the Code of Criminal Procedure of some of the witnesses being recorded at a belated stage, reliance cannot be placed on their evidence. But it is the law that the statement recorded under section 161 of the Code is not a substantive evidence and that mere delay in recording the statements of the witnesses under section 161 of the Code cannot be considered fatal if the evidence adduced by them in the Court appears to be credible after sifting (Reference: the Case of Shahjahan Khalifa and others versus State reported in 19 BLC (AD) at page 95).

It is the contention of the defence that some of the witnesses in their evidence made statements which are not there in the FIR and as such, the evidence of such witnesses can

not be relied upon. But it is the settled principle of law that the evidence of such witnesses cannot be discarded, or disbelieved or ignored only because the informant had made an omission in mentioning the fact in the FIR (The case of State versus Abdus Sattar reported in 43 DLR (AD) at page 44).

From the materials on record, sequences of the alleged occurrences as found to be are:- at 1.30/1.45 p.m. on the date of occurrence the victims Nazrul and others were kidnapped from the place of occurrence near City Corporation Gate, Narayanganj (Khan Osman Stadium, Fatulla, Narayanganj). At 1.50 p.m., the accused-persons went to Tarabo area, Narsingdi, taking the victims by microbuses. The accused Major (retired) Arif reported abduction of the victims to the C.O. the accused Lt. Col. Tarek Syeed Mohammad to which he directed accused Major (retired) Arif to kill all the abducted 7 victims

stating that no eye witness should be kept alive. Getting the order, the accused Major (retired) Arif directed the accused Bellal to prepare 7 sets of brick-sacks. At about 2.30 p.m. the RAB personnel reached near Narsingdi RAB camp and the accused Major (retired) Arif Hossain made phone call to camp Commander Major Suruj and met him out side the camp and took Tk.2,000/00 from Major Suruj and had their lunch. At about 4.00 p.m., RAB personnel went towards Shibpur Upazilla taking the victims and kept waiting at a lonely place. At about 8.00 p.m., the accused Major (retired) Arif Hossain informed the accused C.O. Lt. Col. Tarek Syeed Mohammad that they wanted to go to Narayanganj. At about 9.00 p.m. they reached Belanagar, Narsingdi. At about 10.30 p.m., the accused-RAB personnel reached Kanchpur with two minibuses taking the victims and kept waiting at an abandoned petrol pump. At that

time the accused Major (retired) Arif Hossain talked to the C.O., the accused Lt. Col. Tarek Syeed Mohammad for sending a trawler to under Kanchpur Bridge through accused Lt. Commander M.M. Rana. Sometimes after that, the accused Lt. Commander M.M. Rana informed the accused Major (retired) Arif Hossain over the land phone of the C.O., the accused Lt. Col. Tarek Syeed Mohammad that trawler would remain under the Kanchpur Bridge. Subsequently, the victims were killed by twisting polythene in their mouth and by strangulation twisting their necks with rope and the dead bodies were taken to the estuary of the rivers Meghna and Shitalakshmya and tying up two plastic sacks containing brick, the dead bodies were dropped in the river perforating their bodies under the navels which subsequently floated up.

It also appears from the evidence and materials on record that as part of the evil

scheme the accused Noor Hossain from his office sent the accused-persons, namely, Ali Mohammad, Md. Abul Bashar, Md. Raham Ali, Mortuza Zaman Churhil, Md. Mizanur Rahman Dipu @ Mizan, Salim,. Md. Saanaullah, Manager Shahjahan and Zamaluddin for guarding the landing ghat of BIWTA, Shitalakshmya, Narayanganj, to restrict entrance of common people excepting the accused RAB-personnel inside the landing station to facilitate the accused-RAB-personnel to kill the victims and to make disappearance of their dead bodies saying that the RAB-personnel had kidnapped the victims and would kill them. Said accused-persons remained on patrol at the Kanchpur Landing Ghat facilitating the killing of the victims-deceased persons by the RAB-accused-personnel and were also very much present there facilitating the RAB-accused-personnel to make disappearance of the dead bodies of the victims in the estuary

of the river Meghna and the Shitalakshmya smoothly. In the instant case, the involvement of the accused Noor Hossain can be inferred from the facts, circumstances of the case, confessional statements of his close associates and from his conduct. In this case, the presence of the accused Noor Hossain at the place of occurrence is not necessary. His conduct and manner is important. The chain of the activities of the accused Noor Hossain in the instant case are that he had enmity with the victim-deceased Nazrul Islam; that prior to the occurrence he said that he would remove Nazrul Islam from the world; that he gave information to the accused Major (retired) Arif Hossain that the victim Nazrul went to the Court and as per his information, with the permission of the accused C.O. (Commanding Officer) Lt. Col. Tarek Syeed Mohammad, the accused RAB-personnel abducted Nazrul and others; that

he (accused Noor Hossain) met the accused C. O. Lt. Col. Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain often paid visit to the office of the accused Noor Hossain prior to the occurrence; that he (the accused Noor Hoossain) sent his associates to the landing ghat of the BIWTA at Kanchpur to keep the area clear protecting entrance of the general people into the ghat to facilitate the killing of the victim-deceased-persons and making disappearance of their dead bodies into the river by the accused-RAB Personnel; that he deposited the flat-instalment- money of the accused Major (retired) Arif Hossain and that he escaped to India immediately after the occurrence. So, the presence of the accused Noor Hossain, being the mastermind of the alleged occurrence is not necessary at the place of occurrence who monitored the entire proceedings of the occurrence from the

inception i.e. from the abduction to the commission of murder and making disappearance of the dead bodies. The aforesaid facts also show that having full knowledge about causing death of the victims the said associates of the accused Noor Hossain in furtherance of their common intention assisted the accused-RAB personnel and took part in the alleged occurrence.

The Pw1 Selina Islam Beauty, as stated earlier, supported the FIR case in her deposition involving the accused Noor Hossain in the commission of the alleged occurrence. There is no harm if she does not say anything specifically against him. The Pw13 Haji Md. Shahidul Islam directly involved the accused Noor Hossain with the alleged abduction and killing. The Pw18 Md. Abu Taher, the Pw19 Md. Syeedul Islam entangled the accused Noor Hossain in the alleged occurrence. The Pw25 Hazi Md. A. Salam directly entangled the

accused Noor Hossain in the alleged occurrence. The Pw44 Abul Khair stated about the previous enmity of the accused Noor Hossain with the victim Nazrul. Further, the accused Raham Ali, the accused Abul Bashar, the accused Ali Mohammad and the accused Mortuza Zaman Churchill, the associates of the accused Noor Hossain in their confessional statements entangled the accused Noor Hossain in the alleged occurrence. From the said acts of the accused Noor Hossain and his associates, it can be presumed easily that the accused Noor Hossain and his associates, namely, Ali Mohammad, Md. Abul Bashar, Md. Raham Ali, Mortuza Zaman Churchill, Md. Mizanur Rahman Dipu alias Mizan, Salim, Md. Sanaulla alias Sana, Manager Shahjahan, and Zamaluddin acted in furtherance of their common intention of all to commit the alleged crime i.e. the alleged killing and making disappearance of the dead bodies of the of

the victim-deceased-persons. So, Noor Hossain and his associates perpetrated the offence under sections 302/201/34 of the Penal Code and that the accused-persons Lt. Col. Tarek Syeed Mohammad, M.M. Rana, Major (retired) Arif Hossain and Noor Hossain acted in furtherance of their common intention committing the offence of killing the victims with evil design from difference places. So, their acts come under the mischief of sections 364/302/120B/201/34 of the Penal Code.

From the materials on record, it further transpires that the accused Lt. Commander M.M. Rana directly took part in kidnapping and making disappearance of the dead bodies of the deceased-persons by barricading the two private cars carrying the victims, dragging them into his microbus and making arrangement for trawler to carry the dead bodies of the victim deceased-persons to the

estuary of the rivers Meghna and Shitalakshmya. From the confessional statements of the accused-persons, namely, Mortuza Zaman Churchil, Ali Mohammad, Md. Raham ali, and Abul Bashar, it is evident that said accused-persons and the driver of the accused Noor Hossain, Namely, Md. Mizanur Rahman Dipu along with the accused-persons Md. Salim, Md. Sanaullah @ Sana, Manager Shahjahan and Zamaluddin went to the landing station of BIWTA, Kanchpur, Shitalakshmya at the behest of the accused Noor Hossain which he made sitting in his office room to perpetrate and facilitate commission of the crime. It further appears that before starting for the landing station, in presence of the accused-persons, namely, the accused-persons Churchil, Ali Mohammad, Md. Raham Ali, Abul Bashar, Salim, Md. Sanaullah @ Sana, Manager Shahjahan, Zamiruddin, and Md. Mizanur Rahman Dipu @ Mizan, the accused Noor

Hossain disclosed that the victim Nazrul and others had been kidnapped that day i.e. on 27.04.2014 and would be killed by RAB; that the accused Noor Hossain asked all of the said accused-persons to help the RAB personnel for causing murder of the victims which means that the said accused-persons had the knowledge of causing murder of the victims prior to starting for the landing station.

From the statement of the accused Ali Mohammad under section 164 of the Code of Criminal Procedure, it is clear that in presence of the accused-persons Ali Mohammad, Shahjahan, Sanaulla @ Sana, Bashar, Mortuza Zaman Churchil, Riaz, Salim, Zamal, Hasan, Raaham Ali, Anwar, Taj Miah and others, the accused Noor Hossain told in slang language that as the victim Nazrul harassed him a lot, he would remove Nazrul from the world which

indicates his intention, pre-plan and conspiracy to kill the victim Nazrul.

The accused-persons Raham Ali, Abul Bashar, Ali Mohammad, and Mortuza Zanman Churchil in their confessional statements admitted their active presence at the time of commission of murder and disappearance of the dead bodies of the victims.

So, from the facts, circumatamces and evidence on record, it is evident that the accused Noor Hossain, Md. Mizanur Rahman Dipu @ Mizan, Ali Mohammad, Mortuza Zaman Churchil, Abul Bashar, Salim, Sanaulla @ Sana and Jamal uddin in furtherance of common intention of all the accused-persons committed the offence they were Charged with.

Aforesaid activities and conduct of the accused Noor Hossain and the evidence of the Pws 1,13,18, 19, 25, 44 and the confessional statements of his close associates suggest that he (the accused Noor Hossain) was in

the conspiracy of the alleged abduction, killing of the victim-deceased-persons and disappearance of the of the dead bodies of the victim-deceased-persons. Further, Noor Hossain monitored the alleged occurrence from the very inception to the end and got abducted, killed and made disappearance of the dead bodies of the victim-deceased-persons. From the evidence of the Pw 106, the Investigating Officer, it appears that the accused Noor Hossain used the fake mobile no. 0168 4376576 registered in the name of one Nazma Begum. Said acts of him (the accused Noor Hossain) come under the mischief of sections 120B/ 364/302/201/34 of the Penal Code.

From the materials on record, it transpires that on 27.04.2014, the accused Noor Hossain informed the accused Major (retired) Arif Hossain about the victim Nazrul's whereabouts at Narayanganj Court

with an evil design of confining the victim Nazrul. The accused Major (retired) Arif Hossain being informed sought permission from the accused Lt. Col. Tarek Syeed Mohammad for detaining the victim Nazrul and his case mates and that as the accused Lt. Col. Tarek Syeed Mohammad permitted the accused Major (retired) Arif Hossain to do so and the accused Lt. Commander M.M. Rana was also directed by the accused Lt. Col. Tarek Syeed Mohammad to co-operate with the accused Major (retired) Arif Hossain for confining the victim Nazrul resulted in the forceful illegal abduction. So, it appears that in furtherance of the common scheme of the accused-persons, namely, Noor Hossain, Lt. Col. Tarek Syeed Mohammad, Lt. Commander M.M. Rana, Major (retired) Arif Hossain the alleged occurrence was committed in accordance with the evil plan in furtherance

of the common intention of the said accused-
persons.

It is the established principle of law that "A criminal intention within the meaning of section 34 of the Penal Code is simultaneous conscientious of the mind of the persons participating in the criminal action to bring such particular result and if one facilitate the execution of the common design such person commits an offence as much as his co-participants actually committing the planned crime. The essence of the section is that the persons must be coupled with actual participation, which may be of passive character such as standing by a door or near about the incident with the intention of assisting in furtherance of common intention of all the accused and with readiness to play his part when the time comes for him to act. The dominant feature of Section 34 of the Penal Code is the element of participation in

actions. This participation need not in all cases be by physical presence. Common intention implies acting in concert. This section requires that there must be a general intention shared by all the persons united with a common purpose to do any criminal offence, all of those who assist in the accomplishment of the object would be equally guilty. It follows, therefore, that common intention is an intention to commit a crime actually committed and every one of them should have participated in that crime (Refernce: the case of Bazlul Huda versus the State reported in 18 BLT (AD) at page 30). It is also by now settled that "In order to attract section 34 of the Penal Code it is not necessary that any overt act must be done by any particular accused. The provision shall be applicable if it is established that the criminal act has been done by any one of the accused persons in furtherance of the

common intention of all. Mere distance from the scene of the crime cannot exclude culpability. Criminal sharing by active presence or by distance direction, making out certain measure of jointness in the commission of the act is the essence of section 34" (Reference: the case of State versus Abul Khair and two others reported in 44 DLR at page 284.) Mere distance from the scene of crime cannot exclude culpability under section 34 of the penal Code which lays down the rule of joint responsibility for a criminal act performed by a plurality of persons. All the accused-persons can be found guilty of an offence constructively under section 34 of the Penal Code. To convict any particular accused constructively under section 34 of the Penal Code of an offence e.g. murder, it is not necessary to find that he actually struck the fatal blow, or any blow but there must be clear evidence of some

action or conduct on his part to show that he shared in the common intention of committing the murder. Common intention referred to in section 34 of the Penal Code presupposes a prior concert, a pre-arranged plan i.e. a prior meeting of minds. Common intention is a state of mind which may develop in the course of the transaction constituting the offence and may be gathered from the number and nature of injuries inflicted on the persons of the victim or victims.

In this regard, the learned AAG referred the reported in *Gurdatta Mal and others versus The State of Uttar Pradesh* reported in AIR 1965 Supreme Court at page 257. In which case it is held that section 34 of the Penal Code lays down the principle of joint criminal liability. The necessary condition for application of section 34 of the Penal Code are:- (1) common intention to commit an offence and (2) participation by all the

accused in doing the act or (3) acts done in furtherance of that common. If these ingredients are established, all the accused would be liable for the said offence, that is to say, if two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of common intention, all of them would be guilty of murder (Reference: AIR 1965 SC 257).

Ordinarily common intention presupposes prior concert yet may develop at the spur of moment either immediately before actual attack or during commission of offence, depending upon circumstances of case (Reference: The case of State vs. Md. Shamim alias Shamim Sikder and others reported in 53 DLR at page 439). Physical presence at the time of occurrence is not necessary provided the jointness of action can be inferred from the facts and circumstances of the case of

furthering or facilitating from a distance in committing the offence. Physical presence may vary in the facts and circumstances and from circumstances to circumstances (Reference: the case of State vs. Lt. Colonel Farook Khan reported in 53 DLR at page 287).

To show that the in furtherance of their common intention the accused-persons perpetrated the alleged occurrence, the learned AAG referred the case of Shyamol Ghosh Vs. State of West Bengal reported in (2012)7 Supreme Court Cases at page 646 and the case of Satyavir Singh Rathi, ACP versus State reported in (2011)6 Supreme Court cases 1. In the case of Shyamol Ghosh vs. State of West Bengal reported in (2012)7 Supreme Court Cases at page 646 it is held that "The dominant feature for attracting Section 34 of the Penal Code (hereinafter referred to as "the Code") is the element of participation in absence resulting in the ultimate

"criminal act". The 'act' referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous."

For true and correct appreciation of legislative intent in the matter of engrafting of Section 34 in the statute book, one needs to have a look into the provision and as such Section 34 is set out as below:

"Acts done by several persons in furtherance of common intention- When a criminal act is done by several persons in

furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

In the case of Satyavir Singh Rathi, ACP versus State reported in (2011)6 Supreme Court Cases 1 as referred to by the learned AAG, it is held that "Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the 'common intention' implies a prearranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and

circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different sense from the 'same intention; or 'similar intention' or 'common object'. The persons having similar intention which is not the result of the prearranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC.

The establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when a criminal act is done by several persons in furtherance of the common intention of all. What has, therefore, to be established by the prosecution is that all the persons concerned had shared a common intention."

The learned AAG also referred the case of Tukaram Ganpat Pandare versus State of Maharashtra reported in (1974) 4 Supreme Court Cases at page 544 in which case held

that "Mere distance from the scence of crime cannot exclude culpability under Section 34 which lays down the rule of joint responsibility for a criminal act performed by a plurality of persons. In Barendra Kumar Ghosh v. The King Emperor the Judicial Committee drew into the criminal not those 'who only stand and wait'. This does not mean that some form of presence, near or remote, is not necessary, or that mery presence, without more at the spot of crime, spells culpability. Criminal sharing, overt or covert, by active presence or by distant direction, making out a certain measure of jointness in the commission of Act is the essence of Section 34. Even assuming that presence at the scene is a prerequisite to attract Section 34 and that such propinquity is absent, Section 107, which is different in one sense, still comes into play to rope in the accused. The act here is not the picking

of the godown lock but house -breaking and criminal house trespass. This crime is participated in by those operating by remote control as by those doing physical removal. Together operating in concert, the criminal project is executed.

So, our answer to the question as to whether the convicted-accused-persons killed the victim-convict-deceased-persons in a pre-planned way in furtherance of their common intention and abetting the offence is in the positive.

So long a crime generates in mind, it is not punishable. Thoughts even criminal in character often involuntary are not crimes. But when the thoughts takes the concrete shape of an agreement to do or caused to be done an illegal act or act which is not illegal by illegal means then even if nothing further is done, the agreement is designed as criminal conspiracy.

.....

From the discussion mad here above, it is clear that the accused-persons namely, Noor Hossain, Lt. Col. Tarek Syeed Mohammad, Lt. Commander M.M. Rana and Major (retired) Arif Hossain under a criminal conspiracy abducted, murdered and made disappearance of evidence of the alleged offence of murder and as such, the Charge under section 120B of the Penal Code was framed rightly against the said accused-persons and were rightly found guilty under that sections by the trial Court.

The ingredients of offence of criminal conspiracy are-(a) that there must be an agreement between the persons who are alleged to conspire, (b) that the agreement should be for doing an illegal act , or for doing by illegal means an act which may not itself be illegal. Conspiracy can seldom be proved by means of direct evidence as it is always hatched in secrecy. It is to be inferred from circumstantial evidence consisting generally

of evidence as to the conduct of the parties on certain occasions and in relation to certain matters. In order to prove a criminal conspiracy punishable under section 120B of the Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence.

The alleged offence of abduction for killing the victims in this case was exclusively operated by highly trained defence-personnel and that behind the scene was the mastermind, the accused Noor Hossain.

It is the submission of the learned Advocate for the accused Noor Hossain that section 120B of the Penal Code was not there in the Charge Sheet which was included therein as per the instruction of the High Court. But there is nothing on the record to show that any step on behalf of the accused Noor Hossain was taken by way of seeking

redress against the instruction given by the High Court. So, at this stage, there is no scope to raise that question by him in this Court. In this case, the alleged criminal conspiracy culminated in the killing of the victim-deceased-persons.

An objection to the effect that the persons nearby the place of occurrence were not examined and cited as witnesses by the Investigating Officer by the Investigating Officer is raised from the side of the defence and as such, the investigation of the Investigating Officer is not proper and is perfunctory. But this has not affected the merit of the prosecution case inasmuch as the Investigating Officer has examined the eye-witnesses to the alleged occurrence and they have been cited as witnesses in the Charge Sheet and he did not cite witnesses those who were not present at the place of occurrence.

.....

It is the contention of the learned Advocate Mr. Md. Iqbal Kabir representing the convict-accused Mizanoor Rahman Dipu that there are three Mizan in this case and as such, it is uncertain as to which Mizan the convict-accused Mizanoor Rahman Dipu is and that this convict accused is not an accused in this case. But after investigation the address of the accused Mizanoor Rahman was determined with his father's name. There is allegation of commission of offences under sections 302/201/34 of Penal Code against this convict-accused. Although, the witnesses under section 161 the Code of criminal procedure did not state his name and the confessing four accused-persons did not state his overt act in the alleged occurrence, the materials on record show that he was present at the time of occurrence which constitute the offence under sections 302/34 of the Penal Code against him. Further, the

confessional statements of four said accused- person finds support from the materials on record in respect abduction, killing and dropping of the dead bodies of the victims. Further, the contention of the learned Advocate that he is not Mizanur Rahman Dipu, not Mizan is not correct inasmuch as the father's name of this accused as stated in the charge sheet is same with his father's name as mentioned in the memorandum of appeal. So, there is no ambiguity in respect of the name and address of the said convicted-accused. It is also contended on behalf of the defence that the accused Mizanur Rahman Dipu is the driver of the accused Noor Hossain is not proved. Even if as per the claim of the defence that the accused Mizanur Rahman Dipu is not the driver of the accused Noor Hossain it will not cause any harm to the prosecution inasmuch as his presence was there at the time of occurrence.

However, considering the nature of offence committed by this accused, his sentence may be commuted from death to imprisonment for life.

An objection was raised on behalf of the convict-accused Salim to the effect that this Salim is not the accused-Salim as mentioned in the case and that he was wrongfully shown to be an absconding accused in the case. From the record, it appears that after passing of the impugned judgment and order of conviction and sentence, this Salim surrendered before the trial Court as a convicted-accused. By the very act of surrendering before the trial Court this accused confirmed himself to be the actual accused Salim. Further, during trial of the case, the State Defence Lawyer representing this accused did not challenge the identity of Salim. So, there is no scope to agitate this point at this stage of the case. According to the prosecution, this

accused fled away to India immediately after the occurrence with the accused Noor Hossain. It also transpires that the accused was in police custody in India and after his release from police custody he did not surrender before the trial Court, rather, he was at large. So, he being absent from the jurisdiction of the trial Court, was rightly shown to be an absconding accused in the case by the trial Court.

It is submitted on behalf of the convict-accused Major (retired) Arif Hossain by the learned Adcocate Mr. S.M Shahjahan to the effect that there is no order for disposal of the Sessions Case Nos. 1748 of 2016 and Sessions Case no. 103 of 2016 simultaneously; that the same dates were fixed in the two cases and that the orders passed in both the cases are almost same and that the charge as framed in the cases are defective and as such, the proceedings were vitiated. In the

judgment passed in Sessions Case No. 103 of 2016, it has been mentioned clearly that the two cases were heard simultaneously and that judgment and order of conviction and sentence passed in Sessions Case No. 103 of 2016 shall govern the Sessions Case No.1748 of 2016 also. This being so, there was nothing wrong in fixing the same dates and in passing almost similar orders in the two cases. Further, both the cases being cropped up of the similar occurrence and the victims, the accused-persons and the witnesses being similar, the trial Court rightly heard the two cases simultaneously one after another and that there was no harm in annexing the evidence recorded in the Sessions Case. No. 1748 of 2016 with the Sessions Case No. 103 of 2016. Further, the defence did not raise any objection in the trial Court with regard to annexation of the photocopies and certified copies of the evidence of the

Sessions Case No. 1748 of 2016 with the Sessions Case No. 103 of 2016. It is also required to be mentioned here that as against the charge framed in the two cases against the accused Major (retired) Arif Hossain, no redress was sought by him in the Higher Court. So, there is no scope to agitate this point at this stage.

It is also objected from the side of the convict-accused Major (retired) Arif Hossain that evidence of the Sessions case No. 103 of 2016 was not recorded in presence of the accused-persons. This submission cannot stand due to similar reasons that the alleged occurrence, the accused-persons, the witnesses are all same in the two cases and that in presence of the accused-persons of the two cases the evidence of the prosecution witnesses were recorded.

Advocate Mr.Munsurul Haque Chowdhury representing the convict-accused Lt.

Commander M.M. Rana submits that this accused was present up to the nabbing of the victims Nazrul Islam and others and was not present at the time of killing of the victims-deceased persons and at the time of making disappearance of their dead bodies and that he acted as per the order of the Major (retired) Arif Hossain and as such, he cannot be held liable for commission of any offence as per the provision of section 79 of the Penal Code. As stated earlier, Section 79 of the Penal Code provides that nothing is an offence which is done by a person justified by law or by mistake of fact believing him justified by law. Under said section there must be a bonafide intention to advance a law and it should be in conformity of law. Here, the Sessions Case No. 103 of 2016 is under sections 364/302/120B/201/34 of the Penal Code. So, the offence alleged to have been committed by this accused and other accused-

persons are illegal acts and not in conformity with law. Here, this accused assisted the accused Major (retired) Arif Hossain in kidnapping the victims Nazrul Islam and others by barricading the way of the cars of the victims and he himself also took part in the act of kidnapping the victims Advocate Chandan Kumar Sarker and his driver who were subsequently killed, installed Check Post to stop the movement of the cars carrying the victims at a place near the City Corporation Gate, Narayanganj and lastly, sent trawler to Kanchpur Landing Ghat by which the dead bodies of the victims-deceased-persons were taken to the estuary of the rivers Meghna and Shitalakshmya and the dead bodies were dropped in the river to make disappearance of evidence and he thereby assisted in making disappearance of the dead bodies of the victims and also kept contact over mobile phone with the accused Lt. Col.

Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain during the occurrence. So, in this case, this accused will not get any benefit of section 79 of the Penal Code as his acts were illegal and not in conformity with law. Further, through the submission of the learned Admitted for this convicted-accused, it is admitted that the victims Nazrul and other victims were kidnapped on the date of occurrence from the place of occurrence and he took part in it. Said submission cuts the case of the convict-accused Lt. Commander M. M. Rana to the root that they did not kidnap the deceased-victims on the date of occurrence.

It is the further submission of the learned Advocate Mr. S.M. Shahjahan that the alleged confessional statement of the accused Lt. Commander M.M. Rana is not a confessional statement, rather, a statement of witness under section 164 of the Code as in the

paragraph no.5 of the statement it is mentioned as a statement. But in the paragraph nos.2, 3 and 4 of the statement, it is clearly stated that it is a confessional statement. All these paragraphs to be read together to determine whether the statement is a confessional statement or a mere statement. The paragraph nos. 2, 3 and 4 of the statement definitely suggest it to be a confessional statement.

In this case, the Call List of the accused Noor Hossain is found (Exhibit -1X) missing from the record although it was exhibited in the trial Court. It is the submission of the learned AAG that it was removed on behalf of the accused Noor Hossain from the record inasmuch as removal of said Call List would benefit the accused Noor Hossain. On the other hand, the learned Advocate for Noor Hossain submitted that the prosecution side removed the Call List. But

the prosecution would not have exhibited the Call List if it would not go in favour of the prosecution. In view of the above, this Court opines that there is substance in the submission of the learned AAG.

In this case in kidnapping the victims, number plateless minibuses were used suggesting thereby that for committing an illegal act it was done. Kidnapping the victims by using number plateless minibuses, preparing sacks with brick, killing the victims, drowning the dead bodies i.e. making disappearance of the dead bodies in the estuary of the river Meghna and Shitalakshmya are the continuous chain of events without any break which appear to be the outcome of a clear pre-plan and conspiracy prior to the occurrence inasmuch as these ideas did not crop up instantly or on the spur of the moment. Excepting the accused S.I. Purnanda Bala, it is not the case of any other accused

in the case that somebody else killed the victims and floated up the dead bodies at similar place. In this case, admittedly, the victims were kidnapped and killed. On behalf of the accused S.I. Purnandu Bala it is not specifically mentioned as to who killed the victims and floated up their dead bodies at the place from where the dead bodies were recovered. In this case, the kidnapping and killing of the victims being admitted, where dead bodies floated up is not a material question. The accused-RAB-personnel left the white private car of the victim Nazrul Islam at Gazipur-Kapasias road in abandoned condition without the number plate and so also left the black colour private car of the victim Advocate Chandan Sarker at Niketon, Gulshan which clearly indicates the mens-rea of the accused -RAB-personnel to perpetrate the alleged occurrence.

.....

Some of the accused-RAB-personnel in their confessional statements stated that after dropping the dead bodies in the estuary of Munshiginj (river Meghna), they returned to Narayanganj Launch Ghat at about 3.00 a.m. i.e at the dead of night and they found the accused Lt. Col. Tarek Syeed Mohammad there who briefed them and assured them not to worry saying that whatever happened was as per his command for which he and Major (retired) Arif Hossain were responsible and they would be responsible for that. The accused Lt. Col. Tarek Syeed Mohammad also admitted in his confessional statement that he went to Narayanganj Launch Ghat and assured the RAB-personnel that the RAB authority would take their responsibilities. Here, what happened was kidnapping, killing and dropping of the dead bodies tying up with sacks containing brick in the estuary of the rivers Meghna and Shitalakshmya for

screening evidence of the occurrence. If per as per the version of the learned Advocate of the accused Lt. Col. Tarek Syeed Mohammad, the victims were arrested, they should have been sent to the RAB Headquarter for interrogation or should have been Produced before the nearest Court of Magistrate at Narayanganj . There was no necessity for this accused to go to the launch Ghat at dead of night and wait there till drowning of the dead bodies in the river. Aforesaid facts and circumstances indicates his (the accused Lt. Col. Tarek Syeed Mohammad) involvement in the alleged occurrence from the very beginning to the end. What prevented the accused-RAB personnel to take the victims either to the RAB-Head Quarters or to the nearest Magistrate Court of Narayanganj if as per the defence case, the victims were arrested? As per the confessional statement of the accused Major (retired) Arif Hossain that they could not

enter into Narayanganj by road due to stern police-activities. If the activities of the accused-RAB Personnel were legal, they were not supposed to fear the police, another lawful enforcing agency which definitely suggests that the accused-RAB personnel were engaged in committing unlawful acts as alleged.

From the materials and evidence on record, it is revealed that out of conspiracy with and at the financial assistance of the accused Noor Hossain, the accused-persons under the leadership of accused Lt. Col. Tarek Syed Mohammad, Major (retired) Arif Hossain, Lt. Commander M. M. Rana and their team mates in a pre-planned way, kidnapped the deceased-persons Nazrul and others from the place of occurrence, killed them by strangulation by twisting the mouth of the victims with plastic bag and rope, tying up the hands and legs of the deceased-persons and tying up

2 sacks each containing 10 bricks with the dead bodies to facilitate drowning of the dead bodies into water, took the dead bodies by a trawler to the estuary of two rivers, perforated each of the the dead body under the navel and dropped the dead bodies in the river.

The post mortem examination holding doctors i.e. the Pws37 to 40 proved the Post Mortem Examination Reports of the deceased-persons opining that the cause of death of the deceased-person was due to asphyxia caused by strangulation which was anter mortem and homicidal in nature. The Post Mortem Examination Reports of the victims-deceased-persons are consistent with the opinion of the doctors.

In this case, the Pw57 Md. Moazzem Hossain is one of the eye witnesses who categorically stated in his evidence that under the leadership of Major (retired) Arif

and Lt. Commander M.M. Rana the seven victims were kidnapped on the date and at the time from the place of occurrence. The Pw60 Md. Shahidul Islam, another eye-witness in respect of the picking up of the victim-deceased-persons by the accused-RAB personnel categorically stated about the kidnapping of the victims by the accused-RAB personnel on the date, time and at the place of occurrence. This witness stated categorically in his evidence that he saw 3/4 persons to be dragged out from a car and taken into the microbus. The dragging out of the other victims from the cars came out from the confessional statements of the the accused-RAB personnel also. The Pw61 Rabeya Akter Ankhi, another eye-witness to the kidnapping of the victims by the accused-RAB personnel supported the Pw60, her father in respect of the kidnapping of the victims. The Pw64 Md. Abdus Salam, another eye-witness to

the alleged kidnapping of the victims by the accused Major (retired) Arif and his team mates narrated the kidnapping of the victim-deceased-persons on the date and at the time from the place of occurrence. The Pw67 Polash Golder, another eye-witness to the alleged kidnapping of the victims-deceased-persons stated categorically in his evidence that on the date and at the time of occurrence the victims were kidnapped under the leadership of the accused-persons Major (retired) Arif Hossain and Lt. Commander M.M. Rana by two microbuses. This witness further stated in his evidence that the accused-persons Major (retired) Arif Hossain and Lt. Commander M.M. Rana were known to him from before and as such, he could indentify them on the date of occurrence. The Pw73 Md. Nazim Uddin, another eye-witness to the alleged occurrence of kidnapping drove the blue colour microbus which took part in the allged occurrence of

kidnapping stated in his evidence that under the leadership of the accused-persons Major (retired) Arif Hossain and Lt. Commander M M. Rana, the 7 victims of the case (5 victims of Sessions Case No.1748 of 2015 and 2 victims of Sessions Case No.103 of 2016) were kidnapped from the place of occurrence on the date and at the time of occurrence.

The Pw74 Shahriar Ahmed Shams brought the Call List from 06.04.2014 to 28.04.2014 of mobile phone no. 01684376576.

The pw75 Hosna Ara Haque sent Call List of mobile phone no. 0191440225 from 20.04.2014 to 10.05.2014.

The Pw78 constable Howladr Omar, the Pw79 Md. Rafiqul Islam and the Pw80 Habilder Md. Kamaluddin are the witnesses of detaining the accused Sepoy Abu Taiyab on 27.04.2014 in the Court of Sessions Judge, Narayanganj when he went to Narayanganj Jugdes' Court to observe the movement of the victim Nazrul Islam.

.....

In this case, as it appears from the materials on record that immediately after the occurrence the accused Noor Hossain and Salim escaped to India wherefrom they were arrested which points at their guilt in the alleged occurrence.

The role played by the associates of the accused Noor Hossain, namely, the accused-persons Shahjahan, Raham Ali, Ali Mohammad, Mortuza Zaman Churchil, Bashar, Jamal, Salim Riaz and Mizan in the alleged occurrence are that the accused Noor Hossain sent them for guarding and protecting the Kanchpur Landig Station from entrance of general people therein to make easy the task of the accused-RAB personnel to kill the 7 victim- deceased-persons and to drop their dead bodies in the river. These accused-persons were present at the time of killing of the victims patrolling the landing station and were also presence while the dead bodies were being taken by a

trawler for dropping in the river and for screening evidence.

From the record, it further transpires that on 28.04.2014 at 3.45 a.m. during his night duty, the Pw42 Md. Azim-Ul-Ahsan, Senior ASP Circle A, Narayanganj stopped the transport of the accused Lt. Col. Tarek Syed Mohammad at Killarpur Crossing, Narayanganj town and that the accused Lt. Col. Tarek Syed Mohammad gave his identity to be the Commanding Officer of RAB-11 and informed that he went to Narayanganj Launch Ghat and was returning to his Office after completing duties. This fact shows that the accused Lt. Col. Tarek Syed Mohammad was present at the every phase of the alleged occurrence and he monitored the entire occurrence and that after the operation was finished he was returning to his office. He had no earthly reason to remain present at the Narayanganj Launch Ghat

at the dead of night if he was not directly involved in the alleged occurrence.

From the facts, circumstances and evidence on record, it is evident that both the accused-RAB personnel and civil the accused-persons conjointly under criminal conspiracy abducted the victim-deceased-persons and thereafter, killing the victims dropped their dead bodies in the river to conceal evidence.

It is the plea of some of the convicted-accused persons that they acted under the command of their Commanding officer so they are not guilty of the charge as brought against them i.e. they are entitled to get the benefit of general exception as laid down in section 76 of the penal Code. Section 76 of the Penal Code provides that "nothing is an offence which is done by a person who is, or by reason of a mistake of fact and not by reason of mistake of law in good faith

believes himself to be, bound by law to do it
". But a person acting on an illegal command
of his Officer can not get benefit of section
76 of the Penal Code. Law does not bind any
body to act illegally. Mistake of fact can be
an excuse but mistake of law not. In this
case, the alleged command was given to the
said convict-accused-persons to kidnap the
victims, to push Suxa injection to make the
victims senseless, to kill the victims by
twisting polythene and strangulation, to drop
the dead bodies tying them up with plastic
sacks containing brick into the river to make
disappearance of the dead bodies which
definitely are not legal acts. So, said
convict-accused-persons cannot get benefit of
General Exception as laid down in section 76
of the Penal Code.

Another plea of some other convicted-
accused-persons is that as the convict-
accused Major Arif threatened them with

pistol to shoot them, they took part in the alleged occurrence. As per section 94 of the Penal Code except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threat of instant death or under compulsion. The instant case being of causing death to 7 victim-deceased-persons, the said convict-accused-persons cannot get benefit of the exception as laid down in section 94 of the Penal Code.

From the materials on record, it appears that the accused Noor Hossain monitored the entire alleged occurrence from the inception to the end and got abducted and killed the victims. The Pw1 categorically implicated the accused Noor Hossain with the alleged occurrence, stating that concerning the construction of a road prior to the occurrence, the accused Noor Hossain got

killed her husband, the victim Nazrul Islam. The Pw13, the father-in-law of the victim Nazrul Islam implicated the accused Noor Hossain in the alleged occurrence stating the arch rivalry between the victim Nazrul Islam and Noor Hossain. The Pw12 Mizanoor Rahman, the brother of the victim Nazrul stated in his evidence that during his life time Nazrul used to tell him that the accused Noor Hossain might kill him and that he cautioned Nazrul to that effect. As per section 3 of the Evidence Act, 1872, the statement of the Pw12 that Nazrul used to tell him that Noor Hossain might kill him is substantive evidence in this case. The cohorts of the accused Noor Hossain in their confessional statements entangled him in the alleged occurrence.

From the materials on record, it is also found that the accused-persons Noor Hossain, Lt. Col.Tarek Syed Mahmood, Lt. Commander

M.M. Rana had meeting with regard to the occurrence prior to the occurrence which suggest hatching out of conspiracy for perpetration of the alleged occurrence. It is also found that at the time of occurrence fictitious mobile phone numbers were used, not the Govt. numbers by the accused-RAB-personnel which suggest their criminal intent and conspiracy.

From the confessional statements of the confessing accused-persons, namely, Abu Taiyab, Md. Arif Hossain, S.I. Purnendu Bala, it appears that they in a row stated that at about 3.30 a.m. at night after dropping the dead bodies of the victim-deceased-persons when they came to Narayanganj Launch Ghat they saw the accused Lt. Col. Tarek Syed Mohammad to stand there who assured them that they had nothing to worry and that whatever had happened was happened as per his command. So, from the confessional statements of the

said accused-persons, it appears that they categorically implicated the accused Lt. Col. Tarek Syed Mohammad to be in the command of the alleged entire occurrence. Further, the confessional statement of the accused Lt. Col. Tarek Syed Mohammad, the confessional statements of some of the other accused-persons, circumstantial evidence and the Call List prove the allegation as brought against the accused Lt. Col Tarek Syed Mohammad.

From the confessional statement of the accused Lt. Commander M. M. Rana, it appears that by pushing Suxa injection and strangulation, the victims were killed under the Kanchpur Bridge. From the confessional statements of the confessing RAB-accused-persons, it appears that all of them implicated the accused Lt. Commander M.M. Rana in the alleged occurrence.

The Pws 57, 58, 59, 60, 61, 64, 65, 66, 67, 69, 70, 71, 72 implicated the accused Lt.

Commander Rana in the alleged occurrence. The evidence of these Pws along the confessional statement of the accused Lt. Commander m.M. Rana and the the call list prove his involvement in the alleged occurrence.

The Pws57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72, 73 in their evidence implicated the accused Major (retired) Arif Hossain in the alleged occurrence. In addition to the evidence of the aforesaid witnesses there is the self-inculpatory confessional statement of the accused Major (retired) Arif Hossain in the case. Moreover, the 17 confessing RAB-accused-persons including the accused Major (retired) Arif Hossain and four prosecution witnesses in their statements to Magistrate also implicated the accused Major (retired) Arif Hossain in the alleged occurrence. The evidence of the aforesaid Pws and the confessional statements of the RAB- accused-

persons proved the allegations as brought against the accused Major (retired) Arif Hossain in the case.

The death which the victims of the case met is simply horrific being in custody of RAB till their death with out being fed. From the confessional statements of the confessing accused-RAB persons, it appears that after taking TK. 2,000/00 from Major Suruj Ali, the accused-RAB personnel had their lunch. But none of them said that they had also fed the victims. How inhuman and heartless men could be, is manifest from the conduct of the accused-RAB-personnel. What an agonizing moment the victims had to pass seeing their ensuing death in the form of RAB personnel if is thought of, a person is bound to shudder in panic.

Now, it is to be seen whether the alleged arrest of the victims Nazrul and others by the accused-RAB-personnel is kidnapping or

lawful arrest. If as per the contention of the accused-persons specially of the accused Lt. Col. Tarek Syeed Mohammad, it was a lawful arrest, the accused-RAB-personnel should have produced the victims within 24 hours of their alleged apprehension in the nearest Magistrate-Court as per section 161 of the Code and as per Article 32(2) of the constitution of Bangladesh which they did not, rather, killed the victims and dropped their dead bodies in the estuary of the rivers Meghna and Shitalakshmeya tying up the dead bodies with plastic sacks containing brick to facilitate easy drowning which definitely are the acts of killing and making disappearance of the dead bodies of the victim-deceased-persons. Said facts manifest that the act of the alleged arrest of the victims by the accused-RAB personnel was not an act of arrest, rather, pure kidnapping followed by killing.

.....

From the confessional statement of the accused S.I. Purnendu Bala, it appears that he involved the accused-persons, namely, M. Salim, Major (retired) Arif, himself (S.I. Purnenda Bala), Sepoy Abu Taiyab, Lance Nayek Bellal, Lance Nayek Hira Miah, A.B. Arif, Lance Nayek Bellal, Sainik Mohiuddin, Constable Shihab, Driver Delwar, Driver Nazim, Habilder Emdad, Lt. Commander M.M. Rana and C. O. Lt. Col. Tarek Syeed Mohammad. Said accused further stated in his confessional statement that "at the direction of the accused Major (retired) Arif Hossain they barricaded two cars and picked up five persons including Nazrul from a car and the team mates of the accused Lt. Commander M.M. Rana picked up two persons from the other car. The accused Major (retired) Arif Hossain directed Hira Miah to push Suxa injections into the body of the confined persons which he refused and being threatened pushed

injection into the body of one of the confined persons; that the accused Major (retired) Arif Hossain himself pushed four injections into the body of the rest; that going to the Kanchpur Landing Station they found 8/10 persons who identified themselves to be the people of Noor Hossain; that Habilder Emdad, Lance Nayek Bellal and 2/3 persons appeared there with a white microbus with sacks containing brick and cords; that twisting the mouth of the victims with polythene the accused Major (retired) Arif , Hira, Bellal, killed the confined persons; that Bellal perforated one of the dead bodies with knife and thereafter, the dead bodies were dropped in the river; that at 3.30 a.m., they reached Narayanganj Launch Ghat and found the accused Lt. Col. Tarek Syeed Mohammad standing there; that the accused Lt. Col. Tarek Syeed Mohammad told them that what happened that day was under his command and

that of the accused Major (retired) Arif Hossain and that they both were responsible for that".

It is contended on behalf of the accused S.I. purnendu Bala that the confessional statement of the accused S.I. purnendu Bala is not true and cannot be believed. But as the accused S.I. purnenda Balal himself made the confessional statement it is a true confessional statement. The statements of S.I. Purnenda Bala to the effect that he himself, Major (retired) Arif Hossain, Habilder Emdad, Sepoy Abu Taiyab, Sainik Mahiuddin, Sainik Tajul, Sainik Al-Amin, Sainik Alim, Sergeant Emdad, Constable Shihab, Lance Nayek Hira, Lance nayek Belal got into the trawler; that A. Masood started the trawler from Kanchpur Landing Ghat and they dropped the dead bodies of the victim-deceased-persons tying the bodies with sacks containing brick in the river. Said

statements of the accused S.I. Purnendu Bala in his confessional statement show that S.I. Purnendu Bala was involved in dropping of the dead bodies of the victims in the river which proves allegation under section 201 of the Penal Code also against him.

It is the contended on behalf of the accused Hira Mia that as the accused Major (retired) Arif held out threat to kill him, he pushed injection into the body of a victim and as such, he could not be held responsible for his act. But here, the accused Hira Mia will not get benefit of section 94 of the Penal Code, as stated earlier, as stated earlier, as the offence committed under section 302 penal Code is not available to a person in case of an offence punishable with death and against an offence against State punishable with death. In this case, the offence as committed is under section 302 of the Penal Code and is punishable with death

and hence, the accused Hira Mia and others can not get the benefit of section 94 of the Penal Code.

It is also submitted on behalf of the defence that the Pw 60 Md. Shahidul Islam @ Khoka did not identify the accused S.I. Purnenda Bala in the dock. But this is not fatal in view of the fact that this case is a very big one. It is a minor omission which will not affect the merit of the prosecution case. Further, the Pw60 Md. Shahidul Islam @ Khoka and the Pw61 Rabeya Akhter Ankhi had no enmity with the accused S.I. Purnenda Bala. So, they had no reason whatsoever to entangle the accused S.I. Purnendu Bala unnecessarily in the case if he was not involved in the alleged occurrence.

It is contended on behalf of the defence that as the Pw106 , the Investigating Officer did not draw sketch map of the place of occurrence, the place of occurrence is

indefinite. But the drawing of the sketch map of the place of occurrence is not necessary in view of the fact that during his investigation the Pw106 found the sketch map as drawn by the first Investigating Officer to be correct.

It is further contended by the defence that the shopkeepers nearby the place of occurrence being not examined, the alleged occurrence is doubtful. But said non-examination of the shop keepers has not affected the merit of the prosecution case in view of the fact that those persons who eyewitnessed the alleged kidnapping of the victims from the place of occurrence were examined by the prosecution. Further, these are the admitted facts that the victims got missing from the place of occurrence when they were coming back from the Narayanganj Judges' Court after giving hazira and were

killed and their dead bodies were dropped in the river which were recovered subsequently.

It is also contended by the defence that the Investigating Officer did not cite the inmates of the houses, shop keepers , employees of the farms near the first place of occurrence as witnesses and did not cite witnesses the people working at the second place of occurrence i.e. the Kanchpur Landing Ghat and that he did not seize the log books of the transports used on the date of occurrence and did not seize the register in respect of the RAB personnel who went out from the camp and hence, the investigation taken out by him was defective and perfunctory. But the Investigating Officer (the Pw106) stated categorically in his cross stated that during investigation he did not find any eye-witness of the occurrence from the houses, shops, farms near the first place of occurrence and likewise, he did not cite

witnesses from the second place of occurrence i.e. the Kanchpur Landing Station as no eye witnesses were there because of removal of them from there before the occurrence. The Investigating Officer further stated in his cross that on the date of occurrence the accused Major Arif did not use Log Book of the transports for doing illegal acts and that transports were numberplateless and that was why he did not seize the Log Book. In view of the aforesaid statements of the Pw 106 i.e. the Investigating Officer, the aforesaid contention of the defence does not stand.

From the evidence of the pw70 Selim khan, it appears that at 10.30 p.m. Habilder Emdadul Haque, Lance Nayek Billal, ASI. Bazlur Rahman, Sergeant Enamul Kabir, Sainik Tajul Islam and Habilder Nasir Uddin (driver) left the camp with a white colour Mitsubishi Microbus with the sacks containing brick.

.....

From the evidence and materials on record, it appears that the civil team which took part in the alleged operation were 1) S.I. Purnenda Bala, 2) Habilder Emdadul Haque, 3) A.B. Arif Hossain, 4) Driver Delwar Hossain, 5) Lance Nayek Hira, 6) Lance Nayek Billal, 7) Constable Shihab Uddin, 8) Sepoy Taiyab, 9) Sainik Mahiuddin, 10) Sainik Alim, 11) Sanik Al-Amin, 12) Driver Nayek Nazim at the behest of the accused Major (retired) Arif Hossain.

From the evidence of the Pw71 Md. Abdus Satter, it appears that on the date of occurrence at 10.30 a.m., the accused-persons 1) Major (retired) Arif Hossain, 2) SI Purnendu Bala, 3) Habilder Emdad Hossain 4) A.B. Arif, 5) Nayek driver Delwar, 6) Nayek Driver Nazim, 7) Lance Nayek Hira, 8) Lance Nayek Bellal, 9) Sainik Mahiuddin, 10) Sainik Alim 11) Sainik Al-Amin, and 12) Constable Shihab went out of the camp with a navy Blue

Hiace microbus; that at 19.00 hours at the time of roll-call he saw 1) Habilder Emdad, 2) Lance Nayek Billal, 3) Sergeant Enamul Haque, 4) Sainik Tajul Islam and 5) A.S.I. Bazlur Rahman to prepare sacks with brick in the tin shed house in the northern side of the camp; that at 9.30 p.m. he saw the sacks with brick were loaded in a numberless white colour vehicle the driver of which vehicle was Habilder Nasir; that two regular patrol party entered into the camp and at 10.30 p.m. and forthwith the microbus having the sacks with the brick went out of the camp; that on 28.04.2014 at 1.00/2.00 a.m a phone call came to his mobile phone asking him to send vehicle of Major (retired) Arif to RAB control which he did.

From the evidence of the the Pw57 Md. Moazzem Hossain, it appears that on 27.04.2014 at 10.00 a.m. he went to Madanpur from Narayanganj; that while he was sitting in a

bus he saw RAB personnel in plain dress; that RAB personnel signalled a white car to stop and barricaded it with a Hiace microbus ; that 4/5 persons got down from the microbus and dragged out 3/4 persons and took them into the microbus; that the person wearing Panjabi was given a blow with pistol; that thereafter, a black colour private car was signalled to stop and that it being not stopped, a black colour microbus chased it; that Mohan told him that Nazrul and Advocate Chandan were kidnapped which he himself saw.

Advocate Mr. Ahsanullah representing the condemned-prisoner S.I. Purnendu Bala submitted that non-examination of any body from the landing station made the prosecution case doubtful. But from the evidence on record, it appears that before killing and taking the dead bodies of the victims to the trawler and their dropping, the landing

station was cleared by the people of the accused Noor Hossain at the direction of RAB-personnel and the accused Noor Hossain. So, non-examination of any body from the landing station did not do any harm to the prosecution case.

It is contended on behalf of the defence that as the viscera of the victim-deceased-persons was not sent for chemical examination there remained a defect in the prosecution case with regard to the actual cause of death of the deceased-persons. But the examination of the viscera by chemical examiner was not necessary in this case in view of the fact that this is not a case of killing the victim-deceased-persons by administration of poison.

It is also contended on behalf of the defence that the forensic examination of the cars and the trawler being not done the prosecution case is doubtful. But there was

no necessity to get the cars and the trawler examined by the forensic experts inasmuch as there are the confessional statements of the accused-persons confessing their guilt in the occurrence.

In this case, remarkably, there is no case of defence that fake RAB personnel kidnapped the victim-deceased-persons.

It is contended from the side of the defence that there is no proof that the deceased-persons, namely, the victim Nazrul or Advocate Chandan Kumur Sarker was present at the place of occurrence. But the proof of presence of the said victims at the place of occurrence is the evidence of the Pws 57, 60, 61 and subsequent killing of the said victims and recovery of their dead bodies. It is also proved that the said victims were kidnapped from the place of occurrence and were subsequently killed.

.....

It is also submitted on behalf of the defence that the informant of the Sessions Case No. 1748 of 2015 (in connection with Death Reference No. 04 of 2017) did not believe the FIR of the Sessions Case No. 103 of 2016 (in connection with the Death Reference No. 03 of 2017). Said submission is not correct in view of the fact that the F.I.R. of Sessions Case No.103 of 2016 was lodged by the wife of the victim Nazrul Islam for kidnapping of her husband and his associates not knowing that Advocate Chandan Kumar Sarker was also kidnapped.

Advocate Mr. Ahsanullah further submits that during the investigation, the witnesses in their statements under section 161 of the Code did not specifically implicate the accused S.I. Purnendu Bala in the alleged kidnapping and killing of the victims. But this is quite natural inasmuch as the name of this accused was not known to them. Moreover,

the confessional statement of the accused S.I. Purnendu Bala is enough to convict and sentence him in this case on the allegation as brought against him.

By an order in a writ petition, the Investigating Officer of the case was directed to arrest the accused-persons. Said direction does not mean that the Investigating Officer of the case could not take out investigation of the case properly. Considering the grave nature of the occurrence, the High Court Division gave the direction. Further, the defence did not seek any redress against the said order of the High Court Division in the Appellate Division of the Supreme Court of Bangladesh and as such, the defence cannot take any plea with regard to the legality or illegality of the order.

In his confessional statement the accused Major (retired) Arif Hossain stated that from

one month before the occurrence, the accused Noor Hossain was giving information with regard to the victim Nazrul Islam which means conspiratorial involvement of them and the accused Noor Hossain.

It is also the contention of some other RAB-accused-personnel that as they acted as per the order of their higher authority, they are entitled to the provision of General Exceptions as laid down in the Chapter-IV of the Penal Code. But as per section 105 of the Evidence Act, 1872, the burden is on the accused to prove that his conduct comes within the provision of General Exceptions. In this regard, the learned AAG Advocate Mr.Md.Bashir Ahmed also referred the case of Subeh Khan reported in PLD 1959 (WP) (Lahore) at page 551 in which case it is held that military man acting on illegal command of his officer is not entitled to any benefit under section 76.

.....

Advocate Mr. Iqbal Kabir representing the accused Mizanoor Rahman Dipu raised the question of framing of charge under sections 364/302/201 of the Penal Code against this accused. But whatever might be the charge, offence under which section is proved, punishment is to be awarded accordingly. There is nothing on the record that this accused sought redress against the framing of charge in the higher Court. Further, the presence of this accused was there at the place of commission of the offence. So, his acts come under the purview of sections 302/201/34 of the Penal Code.

It is the submission of the learned Defence-Lawyers that confession of a co-accused is not a substantive piece of evidence against another co-accused and such evidence alone without substantive corroborative evidence cannot form the basis of conviction of a co-accused. But section 30

of the Evidence Act, 1872 provides that "When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other or such persons is proved, the Court may take into consideration such confession as against such other of such persons as well as against the persons who makes such confession". In the present case more persons than one were tried jointly for the same offence and the confessing accused-persons made confessional statements implicating themselves and the other accused-persons in the alleged occurrence and that the confessional statements of the confessing accused-persons find corroboration from the evidence on record. So, said submission of the learned Advocates for the defence cannot be accepted.

It is the submission of the learned Advocate for the accused Churchil that as the

confessional statement of the said accused was recorded after prolonged police custody after taking him on remand, said statement cannot be considered to be true and voluntary. Said submission is not correct in view of the established principle of law that remand is a part of investigation and as such, the delay in recording the confessional statement of the said accused will not render it to be untrue or involuntary.

It is the submission of the learned Advocate Mr. Lutfor Rahman representing the convicted-accused Noor Hossain that the accused Noor Hossain is not guilty of the offence he is charged with as on the basis of presumption, the informant lodged the FIR of the case and that although the section 120 B of the Penal Code was not there in the charge sheet, it was included illegally in the charge sheet as per direction of the High Court Division. But from the confessional

statements of the confessing accused-persons, evidence of Prosecution witnesses and the facts and circumstances of the case, it appears that the accused-persons admitted abduction of the victims, criminal conspiracy with regard to the commission of the offence, murder and disappearance of the dead bodies of the victim-deceased-persons implicating the accused Noor Hossain in the occurrence and that the confessional statements of the confessing accused-prsons have already been found to be true and voluntary made without application of any force, violence or coercion or by physical torture. Further, as against the inclusion of section 120 B of the Penal Code in the charge sheet as per direction of the High Court Division, this convicted-accused did not seek any redress in the Appellate Division of the Supreme Court of Bangladesh. So, at this stage, no plea with regard to any Illegality

or inclusion of section 120B in the charge sheet can be raised.

The learned Advocate for the accused Noor Hosasin further submits that if the abduction was followed by causing of death, charge should have been framed under section 302 of the penal Code, not under section 364 of the Penal Code. But it has not affected the merit of the prosecution case in view of the fact that charge under section 302 of the Penal Code had already been framed against the convicted -accused-persons.

In this case, as stated earlier, 21 accused-persons made confessional statements including four close associates of the accused Noor Hossain, namely, Mortuza Zaman Churchil, Ali Mohammad, Md. Raham Ali and Abul Bashar. From the confessional statements of the said accused-persns, it is evident that said accused-persons and driver of the accused Noor Hossain, namely, Md. Mizanur

Rahman Dipu along with the accused-persons Md. Salim, Md. Sanaulla @ Sana, manager Shahjan and Zamaluddin went to the landing station of BIWTA, Kanchanpur, Shitalakshmya at the behest of the accused Noor Hossain to perpetrate the crime; that before said accused-persons started for the landing station, in presence of accused-persons, namely, Churchil, Ali Mohammad, Md. Raham Ali, Abul Bashar, Salim, Md. Sanaulla @ Sana, manager Shahjahan, Zamaluddin and Md. Mizanur Rahman Dipu@ Mizan, the accused Noor Hossain disclosed that Nazrul and others had been kidnapped that day i.e. on 27.04.2014 and would be killed by RAB ; that the accused Noor Hossain sent all of the said accused-person with his driver Mizanur Rhman Dipu to help RAB personnel for causing 'murder' of the victims. The aforesaid facts also show that the said accused-persons had full knowledge that the victims would be killed

and that they in furtherance of their common intention assisted and took part in the perpetration of the the alleged occurrence.

From the confessional statement of the accused Ali Mohammad, it is clear that in presence of Ali Mohammad, Shahjahan, Sanaulla, Bashar, Churchil, Riaz, Salim, Zamal, Hasan, RAham Ali, Anwar, Taj Miah and others, the accused Noor Hossain told in slang language that as the victim Nazrul went beyond the limit he removed the victim Nazrul from the world which indicates intention of the accused Noor Hosain to kill the victim Nazrul.

It is the submission of the learned lawyer for the accused Raham Ali that there is no mention in the confessional statement of this accused as to when the recording Magistrate started recording the confessional statement of this accused and that the confessional statement recording Magistrate

did not observe the formalities regarding the recording of confessional statement and as such, the confessional statement of this accused is not true and voluntary. Here in this case, the confessional statement recording Magistrate appears to have observed the formalities in recording the confessional statement and that he recorded his satisfaction as to the voluntariness and spontaneous nature of the confession of the accused and it appears that the confession has not been vitiated by any illegality. In this regard, the case of ABM Nazmus Sakib vs. State reported in 12 BLC (AD) at page 203 may be referred. In the said case, our Apex Court held that "It appears from the confessional statement can never be treated to be false or not voluntary but the same is statement of fact depicting vividly the occurrence and does not suffer any infirmity so as to render the same illegal due to certain allegation

alleged in violation of any provision of law regarding the recording of the same. Moreover, at no point of time during trial the alleged allegation was raised against the confessional statement and the said allegation is an afterthought." In the present case also, there is nothing on record to show that during trial of the case this accused raised this plea at the time of trial of the case. It further appears that the confessional statement recording Magistrate made real endeavour for coming to the conclusion that the statement was voluntary. Further the facts stated in the confessional statement appear to be consistent with the evidence of the prosecution witnesses. In that view of the matter, the confessional statement is true and voluntary (Reference: The case of State vs. Kalu reported in 43 DLR at page 249).

.....

It is the further submission of the learned Advocate that while recording the confessional statement of the accused he was not provided sufficient time for speculation. But in section 164 of the Code, as stated earlier, it is not stated as to whether providing time before recording confessional statement is mandatory. Further, there is no hard and fast rule to give time for speculation before recording confessional statement.

In the present case, the confessional statements of the confessing accused-persons are the reflection of one another. One confessional statement reiterates the other with vivid description as to the perpetration of the alleged offence in a brutal and barbaric manner. It is the settled principle of law that confession when proved against confessing accused can be taken into consideration against the co-accused in the

same offence (Reference: the case of Nausher Ali Sardwr versus State reported in 39 DLR (AD) at page 194). Here in this case, the confession being proved against the confessing accused-persons, it can be taken into consideration in the same offence against the other co-accused-persons also.

It appears from the evidence and materials on record that as part of an evil scheme the accused Noor Hossain sent the accused-persons, namely, Ali Mohammad, Md. Abul Bashar, Md. Raham Ali, Mortuza Zaman Churchil, Md. Mizarur Rahman Dipu @ Mizan, Salim, Md. Sanaula @ Sana, Manager Shahjahan and Zamaluddin from his office for guarding the landing station of BIWTA Shitalakhsmya, Naryanganj to stop entrance of the general people inside the landing station for facilitating the accused-RAB personnel to commit the murder of the victims of the case. So, it can easily be presumed that

sending of the said accused-persons by the accused Noor Hossain for guarding and restricting the entrance of the common people into the landing station was for facilitating murder of the victims by the accused-RAB personnel who came from Narsingdi as part of the evil scheme in furtherance of their common intention and entered inside the landing station to execute their plan i.e. killing of the victims and disappearing evidence in the instant case and accordingly, the accused-persons Noor Hossain, Ali Mohammad, Md. Abul Bashir, Md. Raham Ali, Mortuzazaman Churchill, Md. Mizanur Rahman Dipu @ Mizan, Salim, Md. Sanoulla @ Sana, Manager Shahjahan and Zamal Uddin acted in furtherance of common intention of all to commit the crime i.e. the alleged killing and making disappearance of the dead bodies of the victims by different accused-persons in accordance with the plan from different

places. So, Noor Hossain and his associates, as stated earlier, perpetrated the offence under sections 302/34/201 of the Penal Code.

Again, the other accused-persons, namely, Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander M.M. Rana and S.I. Purnendu Bala in furtherance of their common intention took part in kidnapping, Killing and making disappearance of the dead bodies of the victims with an evil design from different places. So, their acts come under the mischief of sections 364/302/34/201 of the Penal Code. The other accused-persons acted in furtherance of common intention under a plan from different places for causing murder of the victims and making disappearance of their dead bodies and as such their acts also come under the similar mischief.

From the materials on record, it transpires that on 27.04.2014 the accused

Noor Hossain informed the accused Major (retired) Arif Hossain the whereabouts of the victim Nazrul at Narayanganj Court with an evil scheme for confining Nazrul and that as the accused Major (retired) Arif Hossain sought permission from the accused Lt. Col. Tarek Syeed Mohammad for detaining the victim Nazrul and his case mates, the accused Tarek Syeed Mohammad accordingly accorded permission to the accused Major (retired) Arif Hossain and that as the accused Lt. Commander M.M. Rana was directed by the accused Lt. Col. Tarek Syeed Mohammad to cooperate with the accused Major (retired) Arif Hossain for confining the victim Nazrul which resulted in forceful illegal abduction of the victims. The aforesaid facts show that in furtherance of their common intention as per their scheme, the accused-persons, namely, Noor Hossain, Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain and

Lt. Commander M.M. Rana acted in perpetration of the alleged occurrence and as such, they have been rightly brought within the mischief of section 34 of Penal Code although the accused-persons Noor Hossain, Lt. Col. Tarek Syeed Mohammad committed the crime from different places in accordance with the evil plan in furtherance of their common intention for causing abduction of the victims and also with the evil scheme of killing the victims and making disappearance of their dead bodies. From the discussion made hereabove, it is clear that the said accused-persons under a criminal conspiracy abducted and murdered the victims and made disappearance of evidence of the alleged offence of murder and as such, charge under section 120 B Penal Code has been rightly framed against them and that the accused Noor Hossain, the kingpin of the occurrence got the victims killed by RAB personnel.

.....

It is the submission of Advocate Mr. Kamrul Alam that the public witness did not mention the name of the accused Sergeant Enamul Kabir in their evidence and as such, his involvement in the alleged occurrence is doubtful. But how public witness would state his name in their evidence where the RAB personnel perpetrated the offence? Further, the Pw71 stated in his evidence that he saw Habilder Emdad, Lance Nayek Billal, Sergeant Enamul Haque, Sainik Tajul Islam and A.S.I. Bazlur Rahman to prepare sacks with brick in the tinshed situated in the northern side of their camp. The accused Bellal in his confessional statement stated that Habilder Emdad, Sergeant Enam, C.S.I. Satter, Sainik Tajul A.S.I. Bazlur Rahman prepared 14 sacks with 10 brick each. This preparation of sacks with brick definitely had purpose.

Advocate Mr. S.M. Shahjahan representing the accused Major (retired) Arif Hossain

submitted that there is no such order for simultaneous trial of the Sessions Case No. 1748 of 2015 and the Sessions Case No. 103 of 2016 either by the trial Court or by High Court Division; that the charge as framed in the cases are defective; that there is no difference in the evidence of the witnesses in the two cases and that the evidence of Sessions Case No. 1748 of 2015 being used in the Sessions case No. 103 of 2016, the trial was vitiated. But the two cases being cropped up from the similar occurrence and the the witnesses and the accused-persons in both the cases being same, naturally both the cases are to be heard simultaneously. Further, in the impugned judgement, the trial Court stated categorically that the Sessions Case No. 1748 of 2015 and Sessions Case No. 103 of 2016 were tried simultaneously on the basis of two FIR and that as the offences in question took place under the same

transaction by the same accused-persons, sentences awarded in Sessions Case NO. 1748 of 2015 and Sessions Case No. 103 of 2016 would run concurrently. Moreover, none of the accused-persons sought redress in the higher Court objecting the simultaneous trial of the aforesaid two cases. No such order is necessary inasmuch as the two cases cropped up from the similar occurrence. Such case are to be tried simultaneously one after another. The two sessions cases being heard simultaneously, there was no harm in fixing same dates in the two cases. Further, no objection was raised in the higher Court as against the charge framed in the cases and hence, there is no scope to raise any objection against the framing of charge in the cases.

It is the further submission of the Advocate Mr. S.M. Shahjahan that the Sessions Case No. 103 of 2016 is a case of no evidence

inasmuch as the evidence of the Sessions Case no. 1748 of 2015 was used in the Sessions Case No. 103 of 2016 and that the evidence was recorded in absence of the accused-persons of the Sessions case No. 103 of 2016. But the occurrence of the cases, the accused-persons and the prosecution witnesses being almost same in the two cases as stated earlier and that the evidence of the prosecution witnesses were recorded in presence of the accused-persons of both the cases, the submission of the learned Advocate cannot stand. Further, defence did not raise any objection against using the photocopy of the evidence of the prosecution witnesses of the Sessions Case No. 1748 of 2015 in the Sessions Case no. 103 of 2016. Moreover, the record shows that the prosecution also filed the certified copies of the evidence of the prosecution witnesses of the Sessions Case No. 1748 of 2015 in the Sessions Case No. 103

of 2015. On perusal of record of Sessions Trial Case No. 103 of 2016, it transpires that the evidence of the the prosecution witnesses as recorded by the trial Court in Sessions Case No.1748 of 2015 were photostated as it is, the evidence was read over to the witnesses whereon they put their signatures therein admitting their evidence to be true. The evidence recorded in Sessions Case No. 1748 of 2015 has also been certified by the trial Court. The Defence did neither raise any objection either at the time of trial nor at the time of pronouncement of judgment against annexing the photo copies of evidence of the Sessions Case No. 1748 of 2015 with the Sessions Case No. 103 of 2016. So, there is no scope at the present stage to challenge the using of the evidence of the Sessions Case No. 1748 of 2015 in the Sessions Case No.103 of 2016.

.....

The learned Advocate further submits that framing charge against the accused-persons under section 364 with section 302 of the Penal Code is an irregularity. But it has not affected the merit of the prosecution case inasmuch as even if section 364 of the Penal Code is omitted section 302 penal Code is there.

It is the further submission of the learned Advocate Mr. S.M. Shahjahan that no separate discussion of the evidence has been made in the two Sessions Cases. But it is not necessary for the occurrence and evidence in both the cases is same and identical.

Advocate Mr. S.M. Shahjahan further submits that the accused Major (retired) Arif Hossain was not properly examined under section 342 of the Code as he was not drawn attention of evidence of all the Pws. But the record shows that the accused Major (retired) Arif Hossain was drawn attention of the

evidence of the Pw1 Dr. Bijoy Kumar Paul (the informant of the Sessions Case No. 103 of 2016), the Pw17 Advocate Priyatosh Kumar Deb, the Pw26 Advocate Arunav Sarker, the Pw35 Archana Sarker, the Pw36 Madhab Kumar Deb and also was drawn attention of confessional statement under section 164 of the Code as made by him. Further, this accused submitted written statement during examination under section 342 of the Code. So, it cannot be said that he was not provided any chance to explain in his defence. So, there was no illegality or irregularity in the trial process. Be it mentioned here that the trial Court recorded the evidence of the prosecution witnesses in his presence. In his written statement during examination under section 342 of the Code this accused stated that after keeping 18 days on remand, by coercion and by mental and physical torture, the confessional statement under section 164

of the Code was extracted from him. But the confessional statement goes to show that no such complaint was made by this accused to the confessional statement recording Magistrate. So, this objection cannot be sustained.

The learned Advocate Mr. S.M. Shahjahan further submits that the recording Magistrate recorded the confessional statement of the accused Major (retired) Arif Hossain as per police forwarding and as such, it is not voluntary. But if as per police forwarding the accused Major (retired) Arif Hossain made statement under section 164 the Code, he could have raised objection at the time of recording his confessional statement which he did not, rather, he put his signatures therein admitting the contents thereof to be true. So, the said submission of the learned Advocate also cannot be accepted.

.....

It is the further submission of the learned Advocate Mr. S.M. Shahjahan that confessional statement made in one case i.e. in Sessions Case No. 1748 of 2015 cannot be used in another case i.e. in Sessions Case No. 103 of 2016. But here, the two cases cropped up from the same occurrence. The witnesses, the accused-persons in the both the cases being same, the confessional statements by the accused-persons being same and identical, there is no hurdle to use the confessional statement of one case in another case in basically two similar cases.

The learned Advocate further submits that as the confessional statement of this accused was recorded after long detention, it cannot be termed as voluntary. But it is the law that if the confessional statement is true and voluntary, for long detention of the accused the evidentiary value of the statement cannot be discarded. In this case,

the confessional statement recording Magistrate proved the confessional statement of the accused Major (retired) Arif Hossain stating that he recorded the confessional statement of the said accused as per law and that the said accused put his signature in the statement in his presence. Exhibit-3 i.e. the confessional statement of the accused Major (retired) Arif Hossain goes to show that the confessional statement recording Magistrate appended certificate to the effect that "It was his firm belief that the accused made the statement spontaneously without being influenced and out of fear and that he made true statement". The learned Magistrate also stated in the certificate that after the statement was read over to the accused, he put his signature therein admitting the contents thereof to be true. So, this Court finds no reason to discard the evidentiary value of the confessional statement.

.....

It is the further submission of the learned Advocate S.M. Shahjahan that only in the Post Mortem Examination Reports of the deceased-persons there is mention of ligature marks on the throats of the victim-deceased-persons and that there is no mention of it in the confessional statement of any accused. Said submission is not correct in view of the fact that the accused Md. Arif Hossain stated in his confessional statement that " Arif Sir (the accused Major (retired) Arif Hossain boarded their blue colour microbus taking S.I. Purnendu Bala, Sainik Alim, Sainik Mahiuddin and Sainik Al Amin with him. After the accused Major (retired) Arif Hossain got into the microbus, the faces of the unconscious victims were twisted with polythene and their death was ensured by twisting their throats with rope one by one. It took 10/15 minutes to kill each victim. After killing the five victims of their

microbus, killed the remaining two victims.” Said confessional statement of this accused finds support from the Post Mortem Examination Report. From the confessional statement of this accused it is quite natural to find ligature mark on the throats of the victim-deceased-persons.

In his confessional statement under section 164 of the Code, the accused Ali Mohammad stated that on the date of occurrence at 12.30/12.30 a.m. at night standing at the stair of the 1st floor of his house the accused Noor Hossain using filthy and abusive language said that the victim Nazrul went beyond his limit against him and as such, he removed the victim Nazrul from the world. Said statement of the accused Noor Hossain shows his direct involvement in the killing of the victim Nazrul Islam.

From the materials on record, it further transpires that the Sessions Case No 1748 of

2015 and the Session Case No. 103 of 2016, as stated earlier, were tried simultaneously on the basis of two lodged FIRs. There is nothing on the record to show that any objection against this simultaneous hearing was raised during trial from the side of the accused-persons. So, even if there is no mention of simultaneous hearing of the two cases in the order sheets, it has not affected the merit of prosecution case and that it has been covered by the statement of the trial Judge in the impugned judgment to the effect that the judgment and order of conviction and sentence as passed in the Sessions Case No. Sessions Case No 1748 of 2015 will govern the Sessions Case No.103 of 2016.

It is also agitated on behalf of the convict-accused-appellants that motive of killing in this case could not be proved by the prosecution. But in a murder case, there

is no necessity to prove motive of the killing (Reference: the case of State represented by the Solicitor Govt. of the People's Republic of Bangladesh Vs. Gias Uddin and others reported in 39 DLR (AD) at page 117). Further, it appears from the materials on record that as a sequel to previous enmity with the victim Nazrul, the accused Noor Hossain got the victim Nazrul and others killed by the accused-RAB personnel. So, in this case although not necessary, the prosecution could prove the motive of killing the victims also.

Drawing attention of the Court to the alleged retraction of confessional statements of some of the confessing accused-persons it is submitted on behalf of the convicted - accused-appellants that the confessional statements of said accused-persons are not true and voluntary. Retraction of a confession at an earliest opportunity may

lend support to the defence plea that the confession was not voluntary one, but from a belated retraction of a confession no interference adverse to the accused can be made. In this case petitions for retraction on behalf of the said confesing accused-persons, as stated earlier, were made about two years after making confession which were also without the signatures of them. So, said retraction is no retraction at all in the eye of law. So, this submission cannot stand.

It is submitted on behalf of the convicted-accused-appellant Churchil that his confessional statement is an exculpatory one and that at best he could have been made a witness in this case. But materials on record, show that the accused Churchil fled way immediately after the occurrence, that he patrolled the landing station and kept it free from entrance of public therein while the victims were being killed by the accused-

RAB-personnel to facilitate them in the act of killing and in making disappearance of the dead bodies of the victims bringing his act under the mischief of sections 302/201/34 of the Penal Code.

It is submitted on behalf of the convicted-accused Lt. Commander M.M. Rana that charge in the case was not framed properly against him. But as against the framing of charge against him, this accused did not seek redress in the higher Court and as such, there is no scope to agitate this point at this stage of the case.

From the materials on record, it appears that the convicted-accused Lt. Commander M.M. Rana barricaded the two cars of the victims Nazrul and others with his microbus assisting in kidnapping of the victims and that he himself picked up two victims i.e. Advocate Chandan Kumar Sarker and his driver into his microbus and they were in his custody till

they were handed over to the accused Major (retired) Arif Hossain. As per the order of the High Court Section 120 B of the Penal Code was inserted in the charge sheet against the accused-persons including this accused against which none of the accused-persons took any step meaning thereby that they accepted insertion of said section in the charge sheet.

It is submitted on behalf of the accused Lt. Commander M.M. Rana that at the direction of Major (retired) Arif Hossain he took part and assisted in nabbing the victims Nazrul and others who were killed subsequently and that he was present upto the stage of kidnapping. This submission of the learned Advocate is a clear admission with regard the involvement of this accused in the alleged occurrence specially kidnapping i.e. the apprehending of the victim Nazrul and others who were killed subsequently.

.....

It is further submitted on behalf of the accused Lt. Commander M.M. Rana that the charge under section 120 B of the penal Code could not be proved against this accused and that as he acted as per direction of the accused Major (retired) Arif Hossain he is entitled to the benefit of section 79 of the Penal Code. This case is under sections 364/302/120B/201/34 Penal Code. This accused assisted the accused Major (retired) Arif Hossain in apprehending the victims Nazrul and others and he himself picked up two victims. i.e. Advocate Chandan Kumar Sarkar and his driver, he installed Check Post near the city corporation Gate at Narayanganj and lastly, sent trawler to Kanchpur Landing Station where the victims were killed and their dead bodies were carried to the estuary of the river Meghna and Shitalakhmya and were dropped in the river to make disappearance of evidence and that during the occurrence he

kept constant contact with the accused- persons Lt. Col. Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain meaning thereby that this accused took part in kidnapping of the victims who were killed thereafter, sent trawler to Kanchpur Landing Station and also had assisted in making disappearance of the dead bodies of the victims in the river after they were killed. So, the acts of this accused come under the mischiefs of section 364/302/201/120 B/34 of the Penal Code and as such he will not get benefit of section 79 P.C. inasmuch as his act was illegal and not in conformity with law. It is further submitted that the confessional statement of this accused is not a confessional statement. But in the column nos. 2, 3 and 4 of the confessional statement of this accused there is mention to the effect that the statement is a confessional statement. If all the columns of the

confessional statement are read together it will appear that the statement of this accused was nothing but a confessional statement.

It is contended on behalf of the condemned-accused-prisoner Noor Hossain that he was not present at the place of occurrence at the time of occurrence and as such, he can not be held guilty in this case on the charge as brought against him. But in this case, the presence of Noor Hossain at the place of occurrence is not necessary. His conduct and manner is significant. The chain of activities of Noor Hossain in the alleged occurrence are that 1) he had enmity with Nazrul, 2) he said that he would remove Nazrul from the world, 3) that he informed the accused Major (retired) Arif Hossain that the victim Nazrul went to the Court, 4) that in accordance with that information, with the permission of C.O., the accused Lt. Col.

Tarek Syeed Mohammad, the accused-RAB-personnel abducted Nazrul and others from the place of occurrence , 5) that he met C.O. the accused Lt. Col. Tarek Syeed Mohammad and that the accused Major (retired) Arif Hossain often paid visit to his office, 6) that he sent his associates to the Kanchpur Landing Station of BIWTA to keep the area clear for restricting entrance of common people into the Landing Station to facilitate killing of the victim-deceased-persons and making disappearance of their dead bodies into the river, 7) he deposited flat-instalment money of the accused Major (retired) Arif Hossain and that he escaped to India immediately after the occurrence. From the evidence of the the Pw1, the informant Selina Islam Beauty, it appears that she supported the FIR of the case entangling this accused this accused (Noor Hossain) in the alleged occurrence. The Pw13 Haji Md.

Shahidul Islam directly involved this accused in the alleged abduction and killing of the victim Nazrul and others. The Pw18 Md. Abu Taher entangled this accused in his evidence. The Pw19 Md. Syeedul Islam deposed against him. The Pw25 Hazi Md. A. Salam directly involved him in the alleged occurrence. The 44 Abul Khair stated about previous enmity of the accused Noor Hossain with the victim Nazrul. The accused Raham Ali and three other close associates of the accused Noor Hossain made confessional statements involving him (the accused Noor Hossain) in the alleged occurrence.

It is further contended on behalf of the defence that the Pws did not say about monetary transaction of the accused Noor Hossain with the RAB personnel. But it has caused no harm to the prosecution case inasmuch as from the confessional statements of the accused Major (retired) Arif Hossain

and others, the monetary transaction came to light.

It is also argued on behalf of the accused Noor Hossain that the Investigating Officer of the case could not ascertain the actual place of killing of the victims. But it has not affected the merit of the prosecution case in anyway in view of the fact that from the confessional statements of the accused Major (retired) Arif Hossain and others, the place of killing of the victims was the landing station of BIWTA, Kanchpur.

It is further submitted on behalf of this accused (Noor Hossain) that the Pws in their statements under section 161 of the Code of Criminal Procedure did not mention the name of this accused. But most of the prosecution witnesses are not the direct witnesses to the occurrence and as such, naturally they did not implicate Noor Hossain in their

statements under section 161 of the Code. In this case, the involvement of the accused Noor Hossain is to be inferred from the facts, circumstances of the case and the conduct of the accused Noor Hossain. From the materials on record, it is also found that during the occurrence, the accused Noor Hossain used the fake mobile phone number being 01684376576 registered in the name of one Nazma Begum whose existence was not found during investigation of the case. Said facts, circumstances and evidence on record suggest that the accused Noor Hossain was in conspiracy of the alleged abduction of the victim-deceased-persons, their killing, making disappearance of the their dead bodies which bring the act of the accused Noor Hossain under the mischief of sections 120B/364 /302 /201/34/109 of the Penal Code.

It is contended on behalf of the convicted-accused Salim that he is not the

accused salim as mentioned in the FIR. It is also contended that he was not rightly shown absconding in the case where red alert through Interpol was issued. But by surrendering before the trial Court after his conviction, this accused confirmed his identity to be Salim. So, there is no weakness of the prosecution case in respect of this accused. Further, the State Defence Lawyer for this accused did not challenge the identity of Salim during trial of the case. So, there is no scope to challenge identity of this accused at this stage. After he was enlarged on bail he was at large. This accused has to show how long he had been in jail in India and when he came to Bangladesh which he did not. So, he being absent from the jurisdiction of the trial Court, he was rightly shown to be absconding in the case. Further, issuance of Red Alert through Interpol being a separate process, it has

nothing to do with the trial of the case. During trial, the accused Salim could not show any thing to the trial Court that despite this accused was in the jail custody in India, he was shown absconding by the trial Court. In this regard, the learned DAG referred the case of Atiqur Rahman and another versus The State reported in 42 DLR (AD) at page 473 in which case our Apex Court held that the plea which the accused did not take in the trial Court, cannot take in the appellate Court. So, the trial of the case in respect of this accused was not vitiated in anyway. This accused left the country immediately after the occurrence with the accused Noor Hossain. It is not the case of this accused that he was not aware of the occurrence. In this regard, the learned DAG referred the case of Shyamal Ghosh versus State of West Bengal reported in (2012) 7 SCC at page 646 in which

case it is held that " Even if we assume that absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent-persons may run away for fear of being falsely involved in criminal cases, but in the present case, in view of the circumstances which we have discussed in this judgment and which have been established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards them". There are four confessional statements of the co-accused-persons against this accused stating that he guarded the landing station when the victims were killed and when the dead bodies of the victims were taken by a trawler for making disappearance. The aforesaid facts and circumstances definitely point to the alleged guilt of this

accused in the occurrence bringing his acts under the mischief of sections 302/201/34 of the Penal Code.

In his confessional statement, the accused Lt. Col. Tarek Syeed Mohammad stated that at 2.30 p.m. on the date of occurrence, the accused Masood Rana went to his room and reported that a car was lying at the place of occurrence; that at 6.00 p.m. the accused Lt. Commander M.M. Rana made contact with him with regard to the car of Advocate Chandan Sarker; that at about 5.00/5.30 p.m. Lt. Commander M.M. Rana phoned him twice stating that the car which he brought from the place of occurrence ran an accident and that there being no sufficient gas in the car it would not be possible to go to Dhaka with that car and that the car should be left behind somewhere at Dhaka ; that then he told Rana that regarding the car everything was known to the accused Arif and as such, he should do

anything with regard to the car after making consultation with the accused Arif ; that on that day at 6.00 p.m. Rana phoned him telling that he had talks with Arif and that he left the car behind at Niketan, Gulshan; that he then asked Rana to keep the car in that condition and to come to Dhaka leaving behind the car. The aforesaid facts show that the submission of the learned Advocate for the accused Lt.Commander M.M. Rana that, the part of operation of this accused ended with the nabbing of the victims Nazrul and others and that he had no connectivity with the killing and making disappearance of the dead bodies of the victim-deceased-persons is not correct. The accused Lt. Commander M.M. Rana kept contact with the accused Lt. Col. Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain even after the kidnapping of the victims and lastly, he sent trawler to Kanchpur landing Station by which

the dead bodies of the victims were carried with the trawler and dropped in the river. The accused Md. Abul Kalam Azad stated in his confessional statement that Lt. Commander M.M.Rana, Constable Habib and two others dragged out two persons from a private car and lifted them up in their transport; that Lt. Commander M.M. Rana asked constable Habib to handcuff those two persons and blindfold their eyes. The aforesaid activities of the accused Lt. Commander M.M. Rana show that he was involved in the alleged occurrence from the inception to the end. Further, the accused Lt. Commander M.M. Rana was an accomplice in the case who removed a vital item i.e. a car from the place of occurrence and assisted in making disappearance of the of the dead bodies of the victim-deceased-persons and as such, he committed mischief under sections 201/34 of the Penal Code also.

.....

From the confessional statement of the accused Abul Bashar, it appears that the confessional statement was an inculpatory one in which he stated that the accused Shahjajahan giving reference of the accused Noor Hossain told him that the accused Noor Hossain had instruction to guard the landing station and accordingly, he guarded the landing station. In his confessional statement, this accused further said that at 10.30 p.m., 3 microbuses came and did something therein and that at 12.30 a.m., the accused Major (retired) Arif and RAB personnel lifted something in a trawler. Said statements of this accused means that he had knowledge of the occurrence and that he was present at the time of killing the victim-deceased-persons and at the time of making disappearance of the dead bodies of the victim-deceased-persons. So, the acts as committed by

this accused will come under the purview of sections 302/201/34 of the Penal Code.

The accused Lance Nayek Hira Miah stated in his confessional statement that at the instruction of the accused Lt. Commander M.M. Rana he set up a check post and that total planning of the operation was chalked out by the accused Major (retired) Arif; that after conclusion of the operation having come to the Narayanganj Launch Ghat he saw the accused Lt. Col. Tarek Syeed Mohammad there. He participated in the dropping of the dead bodies in the estuary of the rivers Meghna and Shitalakshmya. They barricaded the private cars and took part in dragging the victims to their microbus i.e., took part in kidnapping. From the confessional statement of the accused Md. Hira Mia it appears that he took part in the kidnapping, killing the victims by twisting their mouth with plastic and disappearance of the dead bodies of the

victim-deceased-persons and was also present at the time of preparing sacks with brick and also pushed Suxa injection to the victims.

In his confessional statement the accused Raham Ali stated that on the date of occurrence at 8.30 p.m., the accused Noor Hossain Chairman said in presence of him and Sanaulah @ Sana, Bashar, Jamal, Selim, Riyaz, Driver Mizan, Churchil, Ali Mohammad that Major (retired) Arif picked up Nazrul and his men; that from Narsingdi Major (retired) Arif would bring them and that the landing station should be kept free which means that the accused Raham Ali had previous knowledge about kidnapping and killing of the victim deceased-persons and that the accused Noor Hossain had correspondences over mobile phone with the accused Major (retired) Arif Hossain and that the accused Lt. Commander M.M. Rana was continuously in touch with the

accused Noor Hossain indicating their conspiracy in the alleged occurrence.

It is further submitted on behalf of the accused Lt. Commander M.M. Rana that conspiracy of this accused in the commission of the offence is not proved; that he was not a party to any conspiracy and that whatever conversation he had with the accused Lt. Col. Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain is not an offence. But the aforesaid conversation of the accused Lt. Commander M.M. Rana with the accused Lt. Col. Tarek Syeed Mohammad and the accused Major (retired) Arif Hossain was during continuance of the occurrence. So, this contention of this accused cannot be accepted.

It is further submitted on behalf of the accused Lt. Commander M.M. Rana that the confession of this accused is not true and voluntary. But on perusal of the confessional statement of this accused, it

appears that there was no complaint of this accused before recording his confessional statement that by torture or co-ercion, his confessional statement was recorded. Further, there is certificate appended to the confessional statement by the recording Magistrate to the effect that the statement was true and voluntary.

The learned Advocate for the the accused Lt. Col. Tarek Syeed Mohammad submitted that that confessional statement of the said accused was recorded 30 days after his arrest after taking him on remand and as such, it cannot be accepted. But no material could be elicited by the defence to show that the confession was the outcome of torture, coercion or maltreatment. The defence could not prove that the accused Lt. Col. Tarek Syeed Mohammad was subjected to threat and torture before he was produced for making confession. Further, remand is a part of

investigation. As per sub-sections (2) and (3) of section 167 of the Code, a Magistrate has wide and unrestricted power to remand an accused to the custody of police at any stage before the enquiry or trial or trial. The power of Court is not restricted by any provision of law in making orders of remand. Further, whenever the Magistrate considers that further detention is necessary for investigation, he is required to apply his judicial mind to determine whether the circumstances justify detention of the accused in the police custody. Moreover, this accused being a member of RAB, subjection of him to torture by the Investigating Police Officer is impossible and absurd. So, the claim that the confessional statement was neither true nor voluntary cannot be accepted. The Pw106, the Investigating Officer of the case in his evidence categorically stated that as per will and

desire of this accused Lt. Col. Tarek Syeed Mohammad he got recorded his confessional statement which is not challenged by this accused during cross examination of the Investigating Officer. So, the Court opines that his confessional statement of the accused Lt. Col. Tarek Syeed Mohammad is true and voluntary. It is the settled law that when it is established that the Magistrate recording the confession took due care to ascertain that the confession was made voluntarily, the fact that Magistrate did not fill in column no.8 of the prescribed form or committed any irregularity does not render the confession inadmissible (References: the case of Salauddin versus State reported in 32 DLR at page 227 and the case of State versus Lt. Colonel Farook Rahman reported in 53 DLR at page 287). The similar question was raised on behalf of some other convicted-accused-

appellants and the answer of this Court is same.

Further the Investigating Officer of the case i.e. the Pw106 of the case categorically stated in his evidence that the confessing accused-persons made their confessional statements as per their desire and will which was not challenged on behalf of the accused-persons in the cross of the Investigating Officer which suggests that the confessional statements of the confessing accused-persons are true and voluntary.

It is the contention of the defence that as per direction of the accused Lt. Col. Tarek Syeed Mohammad, the victim-deceased-persons were arrested. But if as per direction of the accused Lt. Col. Tarek Syeed Mohammad, the victim-deceased-persons were arrested, there was no necessity to take the victims to Nasingdi instead of Narayanganj and that there was no necessity for the

accused Lt. Col. Tarek Syeed Mohammad to accord permission to the accused Major (retired) Arif Hossain to take them to Nasingdi. So, it is nothing but kidnapping of the victim-deceased-persons.

It is contended further on behalf of the accused Lt. Col. Tarek Syeed Mohammad that in recording his confessional statement, he was not provided sufficient time for speculation. But there is no hard and fast rule as to the time to be given to the accused for reflection before confession. In the section 164 of the Code it is not mentioned as to what time to be given to the confessing accused for reflection before confession. Be it mentioned here that the Investigating Officer of the case, the Pw106 stated in his evidence categoriacally that as per the will and desire of this accused, he got the confessional statement of this accused recorded by the Magistrate and that this

statement of this witness (Pw106) was not challenged on behalf of this accused in his cross examination. In this case, the confessional statement of the accused Lt. Col. Tarek Syeed Mohammad himself and the confessional statements of the other confessing accused-persons are against him.

As stated earlier, the accused Ali Mohammad made confessional statement in this case. From the confessional statement of him, it appears that he was aware of kidnapping of the victim-deceased-persons, killing and making disappearance of the dead bodies of the victim-deceased-persons and that at the time of killing and disappearance of the dead bodies of the victim-deceased-persons he was present and assisted the accused-RAB-personnel by guarding the landing station. It further appears that that the accused Noor Hossain played a vital role in the occurrence.

.....

The accused Major (retired) Arif Hossain in his confessional statement stated that by twisting polythene in the mouth of the victims they killed them which finds support in the Post Mortem Examination Report of the victim-deceased-persons. In his confessional statement the accused Lt. Col. Tarek Syeed Mohammad said that the ADG (ops) asked the accused Major (retired) Arif Hossain as to why he kept contact with the accused Noor Hossain from the inception of the occurrence to the end which means that the accused Major (retired) Arif Hossain was in contact with the accused Noor Hossain althrough the occurrence suggesting their conspiracy in the alleged occurrence.

It is the submission of the learned Advocate for the accused Lt. Col. Tarek Syeed Mohammad that he had no connivance with regard to the act of kidnapping. This accused stated in his confessional statement that he

directed the accused Major (retired) Arif Hossain to arrest the victim Nazrul which actually was not. It was kidnapping followed by murder and concealment of the dead bodies of the victims-deceased-persons. He is one of the kingpins of the occurrence. The order of arrest as stated by this accused itself was illegal as the the alleged arrest was followed by murder of the victims.

In this case, giving orders to arrest the victim Nazrul and others by the accused Lt. Col. Tarek Syeed Mohammad is admitted. Remaining part of the occurrence is illegal. This accused did not direct to produce the victim Nazrul and others before a Magistrate attached to Narayanganj within 24 hours of arrest which he did not which itself is illegal. So, he will not get any benefit of any General Exceptions of the Penal Code.

As per the confessional statement of the accused Major (retired) Arif Hossain, the

victims were killed at about 12.00 'O' clock/12.30 a.m. at night. At 12.30 a.m. at night when trawler arrived at BITWA ghat he informed the accused Lt. Col. Tarek Syeed Mohammad that he was ready to make disappearance of the seven kidnapped persons to which the Commanding Officer i.e. the accused Lt. Col. Tarek Syeed Mohammad said to 'go ahead'. Without killing of the victims there arises no question of concealment of the dead bodies of the victims. So, the accused Lt. Col. Tarek Syeed Mohammad had full knowledge and common intention in respect of killing and concealment of the dead bodies of the victims.

It was submitted on behalf of the the accused Lt. Col. Tarek Syeed Mohammad that he being non-participant in the killing of the victims, he cannot be awarded capital punishment. This very submission means admission of commission of the offence by

this accused. Here in this case, this accused himself ordered Major (retired) Arif Hossain to go ahead with the act of making disappearance of the dead bodies of the victims. So, his act comes under the preview of sections 201/ 34 Penal Code as well.

It is submitted on behalf of the accused Lt. Col. Tarek Syeed Mohammad that he is entitled to get benefit of sections 76 of 79 of the Penal Code. To get protection of sections 76 of 79 of the Penal Code, the accused Lt. Col. Tarekl Syeed Mohammad is to prove as per the provision of section 105 Evidence Act, 1872 that his acts came under the purview of General Exceptions which he could not inasmuch as the so called arrest as said by this accused followed by murder and making disappearance of the dead bodies of the victims concealment definitely are not legal acts. So, he cannot get befehit of sections 76 of 79 Penal Code. In this

regard, the case of Md. Abdul Majid Sarker versus The State reported in 40 DLR (AD) at page 83 may be referred. In the said case, our Apex Court held that "Section 105 of the Evidence Act casts a burden upon the accused to prove the existence of circumstances bringing the case within any special exception or proviso contained in any part of the Penal Code". It is also the contention of some other RAB-accused-personnel that as they acted as per the order of their higher authority, they are entitled to the provision of General Exceptions as laid down in the Chapter-IV of the Penal Code. As per section 105 of the Evidence Act, 1872, the burden is on the accused to prove that that his conduct comes within the provision of General Exceptions. In this regard, the learned AAG Advocate Mr. Md. Bashir Ahmed also referred the case of Sube Khan Vs The State law in PLD 1959 (WP) (Lahore) at page 551 in which case

it is held that "in the case of soldier the Penal Code does not recognize the mere duty of blind obedience to the commands of a superior as sufficient to protect him from the penal consequence of the act." In this case there is complete failure on the part of this accused-persons to prove those circumstances. Further, the acts of the accused being illegal and not for advancement of law, he can not get any benefit of sections 76, 79 or 94 of the Penal code.

Referring to the paragraph no. 5 of the confessional statement of the accused Mostafa Zaman Churchill it is submitted that it is not a confessional statement, rather, a mere statement. But paragraph nos.1-4 of the said confessional statement regarding answers and questions suggest that it is a confessional statement.

From the confessional statement of the accused Mortuza Zaman Churchill, it appears

that the accused Noor Hossain went to the office of the accused-persons Major (retired) Arif and Lt.Col Tarek Syeed Mohammad 5/7 days before the date of occurrence and met them and had talks with them which suggests pre-concert and conspiracy of the accused Noor Hossain with them. Two days after that, Noor Hossain went to the office of the accused C.O., the accused Lt. Col. Tarek Syeed Mohammad. On 25.04.2014 at about 10.00 p.m. the accused Major (retired) Arif Hossain went to the office of the accused Noor Hossain at Siddhirganj.

It is further submitted on behalf of the accused Mortuza Zaman Churchil that no other witness implicated him in the alleged occurrence. But in this case there are three other confessional statements against the accused Mortuza Zaman Churchil in addition to his own one. He was on patrol duly at the landing station during killing of the victims

and making disappearance of their dead bodies. So, it cannot be said that there is no evidence against him and as such, this accused cannot get rid of his responsibilities in the alleged occurrence.

It is submitted on behalf of the accused Emdadul Haque that he came out of the camp with the accused Major (retired) Arif Hossain as a team mate and supplied sacks with brick and that as the victim Nazrul had popularity, instead of taking the victim to Narayanganj for fear of repercussion, the victims were taken to Narsingdi and that he was not present at the time of killing.

From the aforesaid submission for this accused it is clear that he was in the team of the accused Major (retired) Arif Hossain which team along with the team of the accused Lt. Commander M.M. Rana kidnapped the victims which was followed by killing of the victims and making disappearance of their bodies. As

per the confessional statement of the accused Lt. Col Tarek Syeed Mohammad the victim Nazrul was arrested as per direction of DAG (O.Ps) for interrogation. If it is so, the victims should have been brought straightway to Dhaka, if not to Narayanganj. So, it appears that this accused assisted in perpetration of the alleged occurrence in furtherance of common intention of all of them and that he cannot avoid his responsibility in the allged occurrence.

It is further submitted on behalf of the convicted-accused-appellants that there was no mention of the names of the accused-persons in the G.D.E. which made the prosecution case doubtful. But it is quite natural in view of the fact that the informant had no occasion to see the accused-persons to commit the offence.

It is a constant submission made on behalf of all the convict-accused-appellants

that the charge as framed in the case against them is defective. But there is no material on record to show that they challenged the order of framing of charge in the Higher Court or sought redress against it. Further, there is also no material on the record to show that at any point of time althrough the trial the convicted-accused-appellants challenged the proceedings of the case on the ground of framing of alleged defective charge. So, there is no scope to raise this point at this stage.

It is also submitted on behalf of the the convicted-accused-appellants that the CC (Command Certificates) of the accused-RAB - personnel were not seized by the Investigating Officer rendering his investigation defective. But there was no necessity of seizure of C.Cs in respect of the accused-RAB-personnel by the Investigating Officer inasmuch as the

accused-RAB-personnel who were present at the time of commission of the offence and perpetrated the offence is revealed from the evidence and materials on record.

It appears from the confessional statement of the accused Habilder Md. Emdadul Haque that on 27.04.2014 at 11.00 a.m. he along with twelve defence personnel including the accused Major (retired) Arif started by a 'Hiace' microbus for operation from camp towards Narayanganj Court; that he (the accused Md. Emdadul Haque) informed about victim Nazrul's getting into car to the accused Major (retired) Arif Hossain; that he (the accused Emdadul Haque) along with Sergant Enamul purchased sacks, cotton and rope, prepared 14 sacks and he along with others reached the sacks to Kanchpur Landing Station; that he was present till killing of the victims at the Kanchpur Landing Station and transmission of the dead bodies of the

victims into a big trawler for making disappearance.

It is submitted on behalf of the convict-accused-appellants that it is not clear as to how many transports entered into the landing station. But entering of how many transports in the landing station is im.M.aterial in this case. Here, only thing to be seen is whether the kidnapped victims were killed and taking their dead bodies from the landing station by a trawler made diappearance of them.

It is submitted on behalf of the convicted-accused Major (retired) Arif Hossain that the evidence of the Sesions Case No. 1748 of 2015 cannot be used in the Sesionas Case No. 103 of 2016. The aforesaid two cases of course are two distinct cases. But the occurrence, manner of the occurrence, the witnesses and the accused-persons in the two cases are same. Further, the order for

using the evidence of Sessions Case No. 1748 of 2015 in Sessions Case No. 103 of 2016 as passed by the trial Court was not challenged from the side of the convicted-accused-appellants in the higher forum. Moreover, the cases in our hands are not cross or counter cases. As such, the trial Court did nothing wrong in using the evidence of the Sessions Case No. 1748 of 2015 in Sessions Case No. 103 of 2016.

It is also submitted on behalf of the convicted-accused-appellants that the confessional statements of the confessing accused-persons were extracted by coercion and by application of force. From the materials on record, it appears that the Investigating officer had to take great pain to bring the accused-RAB personnel to his custody. The confessing accused-persons did not make any complaint to the confessional statements recording Magistrates that as a

result of coercion and application of force, they were making the statements. Further, the accused-persons being RAB personnel under no stretch of imagination it can be conceived that Investigating Officer by applying force and coercion extracted their confessional statements. As stated earlier, the Pw106, the Investigating Officer stated in his evidence that as per the will and desire of the confessing accused-persons, their confessional statements were recorded which was not challenged in the cross examination of the Pw106. The aforesaid facts falsifies the submission of the defence-lawyers that the confessional statements were extracted by applying coercion or force.

It is further submitted on behalf of the convicted-accused Major (retired) Arif Hossain that the evidence of the Pw60 and the Pw61 is no evidence in the eye of law. But in this case, apart from the evidence of the

Pw60 and the Pw61, the confessional statement of this accused under section 164 of the Code is there and itself is sufficient to convict him. Further, the statement was drawn attention of him at the time of examining him under section 342 of the Code. Further, this accused by standing in the dock himself heard the deposition and cross examination of the prosecution witnesses. From the evidence of the Pw106, the Investigating Officer, it appears that the confessional statement was recorded as per will and desire of this accused observing all legal formalities. The recording Magistrate appended certificate to the effect that the statement was true and voluntary. So, the confessional statement of this accused is a true and voluntary one. In his confessional statement, the accused Major (retired) Arif Hossain gave a vivid description of the occurrence from the beginning to the end.

.....

It is the defence contention that in the Inquest Reports of the case, there was no mention of the names of the accused-persons with their specific overt act in the alleged occurrence which cast a doubt upon the prosecution case. To counter the said submission made on behalf of the convicted-accused-appellants, the learned AAG referred the case of Babul Sikder and others versus State represented by the D C reported in 56 DLR (AD) at page 174 and the case of case of Radha Mohan Singh alias Lal Sahib and others reported in (2006) 2 SCC at page 450.

In the case reported in 56 DLR (AD) at page 174 our Apex Court held that "A perusal of section 174 of the Code indicates that the object of the proceeding (under section 174 of the Code) is merely to ascertain whether a person died under suspicious circumstances or an unnatural death and, if so, what the apparent cause of death. The question

regarding the details of death is foreign to the ambit and scope of proceeding under section 174."

In the case of Radha Mohan Singh versus State of U.P. reported in (2006) 2 SCC at page 450 as referred to by the learned AAG that it is held that "an investigation under section 174 is limited in scope and is confined to the ascertainment of the apparent cause of death. it is concerned with discovering whether in a given case the death was accidental, suicidal or homicidal or caused by animal and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that person acquainted with the facts of the case are summoned and examined under section 175. The details of the overt acts are not necessary to be recorded in the inquest report. The question regarding the details as to how the deceased

was assaulted or who assaulted him or under what circumstances he was assaulted or who are the witnesses of the assault is foreign to the ambit and scope of proceedings under section 174. Neither in practice nor in law is it necessary for the person holding the inquest to mention all these details." In view of the principle as laid down in the aforesaid cases, this Court holds that the submission made on behalf of the defence in respect of the section 174 of the Code (i.e. Inquest Report) cannot be accepted.

In this case, the Pw57 Md. Moazzem Hossain Shahin, the Pw60 Md. Shahidul Islam @ Khoka and the Pw61 Rabeya Akter Ankhi are the eye witnesses who directly witnessed the act of kidnapping of the victim-deceased-persons by the accused RAB-personnel. It is contended by the learned Advocates representing the convicted-accused-appellants that they are not the natural witnesses in the case,

rather, are the chance witnesses and that they did not properly react seeing the alleged occurrence and as such, their evidence cannot be relied upon. To counter the said contention, the learned AAG Advocate Mr. Bashir Ahmed referred the case of Rana Pratap Vs. State of Haryana reported in AIR 1983 SCC Cri L.J. at page, 1272 in which case, it is held that "Murder are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses. The expression 'chance witnesses' is borrowed from countries where every man's home is

considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence." It is also held that "Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far remote from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural

reaction. To discard the evidence of witnesses on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way." This Court does not find any reason to discard the evidence of the the Pw57 Md. Moazzem Hossain Shahin, the Pw60 Md. Shahidul Islam @ Khoka and the Pw61 Rabeya Akter Ankhi.

From the confessional statement of this accused Ali Mohammad, it appers that he sought permission from the accused Ali Mohammad, Noor Hossain to remove Nazrul from the world and that he was present at the Landing Ghat guarding it at the time of killing the victim-deceased-persons and making disppearnce of the dead bodies of the victim-deceased-persons and that he had knowledge of abduction, killing and making disppearnce of the dead bodies of the victim-deceased-persons which bring his acts under

the mischief of sections 302/201/34 of the Penal Code. The other confessing accused-persons, namely, Mortuza Zaman and Bashar also implicated him in their confessional statements under section 164 of the Code.

From the confessional statement of the accused A.S.I. Bazlur Rahman, it appears that he along with others took the sacks containing brick to kanchpur Landing Station; that they unloaded the sacks near the river and subsequently they loaded the sacks in the trawler; that he guarded the Landing Ghat to ensure that no outsiders could enter into the Landing Ghat; that from a microbus dead bodies were loaded in the trawler; that the accused-persons Major (retired) Arif Hossain, S.I. Purnendu Bala, Sergeant Enamul, Habilder Emdad, Lance Nayek Hira, Lance Nayek Bellal, A.B. Arif, Sainik Alamin, Sainik Alim, Constable Shihab, Sainik Tazul, Sainik Mohiuddin Munshi, Sepoy Taiyab came there and

loaded the dead bodies in the trawler from making disappearance of the dead bodies.

It is submitted on behalf of the accused Habilder Md. Nasir Uddin that the confessional statement recording Magistrate ASM Shafiqul Islam who recorded his statement being not examined, his confessional statement cannot be considered. But the confessional statement of this accused being recorded observing all the legal formalities, it can be considered under section 80 of the Evidence Act, 1872. There is endorsement of the recording Magistrate in the confessional statement of this accused to the effect that after recording the confessional statement of this accused he (recording Magistrate) read over it to the accused to which he put his signature in the confessional statement admitting the contents thereof to be true. In this regard, the learned AAG referred the case of Bhagwan Das versus the State of

Punjab at page 214 in which case it is held that " the certificate of the Committing Magistrate endorsed on the deposition sheet states that the deposition was read out to the witness and that the witness admitted it to be correct. The Court is bound to accept this as correct under section 80 of the Evidence Act, 1872 until it is proved to be untrue."

The accused Sainik Md. Abdul Alim was absent during trial of the case. Ten (10) confessing accused-persons implicated him in the alleged occurrence. He was present at the time of killing of the victims followed by death and also was present at the time of making disappearance of the dead bodies of the victim-deceased-persons. The Pw70 Md. Selim Khan, the Pw71 Abdus Satter, the Pw72 Sainik Milon Hossain and the Pw73 Md. Nazim Uddin implicated him in the alleged occurrence. His acts in the alleged occurrence being not in

accordance with law, he will not get the benefit of sections 76 and 79 of the Penal Code. So, his acts in the alleged occurrence come under the mischief of sections 302/34/201 of the Penal Code.

It is further submitted on behalf of this accused that in the event of upholding the judgment of the trial Court, the sentence of this accused may kindly be mitigated to a sentence of imprisonment for life. This very submission made on behalf of this accused amounts to admission of commission of the offence by him. However, considering the facts that he has no confessional statement, this Court thinks that the death sentence as awarded to him may be commuted to a sentence of imprisonment for life considering mitigating circumstances. It appears from the materials on record that the accused Sergeant Enamul Kabir prepared sacks containing brick, took the sacks to the Kanchpur Landing

Station. Seven co-accused-persons including the accused-persons Hira Mia, Constable Shihab Uddin, Abu Taiyab, ROG Arif Hasan, and SI Purnendu Bala in their confessional statements stated that he got in the trawler carrying the dead bodies of the victims' wherefrom their dead bodies were dropped in the river for disappearance.

It is submitted on behalf of the accused Sergeant Enamul Kabir that being instructed by the his superior authority, he reached the sacks containing brick to the landing station which is an admission on behalf of this accused that he took part in commission of the alleged occurrence. Further, his act being an illegal one he cannot get any benefit of General Exceptions as laid down in the Chapter-IV of the Penal Code.

In this case, it is not denied that the accused-persons did not take away the seven victims and that as it is not denied; the

accused-persons are to explain how the victims had died which the accused-persons did not.

It is contended on behalf of the convicted-accused-appellants that non-seizure of alamsats from the RAB office has made the prosecution case doubtful. But in this case, the RAB personnel i. e. the Pw64 Md. Abdus Salam Sikder BPM, the Pw66 Abdur Razzak, the Pw67 SI Polash Golder and the Pw72 Md. Abdul Satter deposed supporting the prosecution case and that they also made statements under section 164 of the Code supporting the prosecution case. This Court finds no reason to disbelieve the evidence of these witnesses. So, the non-seizure of any alamat from the RAB Office, in any way, affected the merit of the prosecutiin case.

In this case, as per the direction of the High Court Division, the accused-prsons were arrested. Had there been no such direction

from the High Court Division, the case would have died at the very inception.

An objection, in this case, has been raised from the side of the convicted-accused-appellants that the examination under section 342 of the Code was not done properly and that the accused-persons had not been drawn attention of the incriminating evidence at the time of their examination under section 342 of the Code. From the record, it appears that the Pws were examined and cross examined in presence of the accused-persons. At any stage of the examination under section 342 of the Code, the defence did not raise any objection to the effect that the accused-persons were not drawn attention of the incriminating evidence. In this regard, the learned AAG referred the case of Satyajit Singh Rathi ACP versus State reported in (2011) 6 SCC para 71 in which case it is held that "even if there is irregularity in

examination under section 342 of the Code and if the accused is not prejudiced, the omission will not affect the merit of the case". In the case of State versus Jahedul Islam reported in 14 BLC (AD) at page 105 our Apex Court held that "if failure or omission to bring the incriminating evidence in examination under section 342 of the Code does not cause any prejudice to the accused, it cannot be said to have caused any prejudice to the accused. In the case in our hand, the recording Magistrate was examined and cross examined in presence of the accused and he heard it. So, alleged omission to bring the confessional statement of the accused to his notice has not prejudiced him in any way".

It is the further contention of the accused-appellants that delay in recording the statements of some of the witnesses under section 161 of the Code made the prosecution

case doubtful. But by now, it is settled that "Statement recorded under section 161 of the Code is not substantive evidence. Mere delay in recording the statements of the witnesses under section 161 of the Code cannot be considered fatal if the evidence adduced by them in Court appears to be credible after sifting" (Reference: The case of Shahjahan Khalifa and others reported in 19 BLC (AD) at page 95). In this regard, the learned AAG also referred the case of State and another Vs. Abdul Kader @ Mobile Kader and others reported in 67 DLR (AD) at page 6 and the case of Mahmudul Islam @ Ratan Vs. State reported in 53 DLR (AD) at page 1. In the case of State and another Vs. Abdul Kader @ Mobile Kader and others reported in 67 DLR (AD) at page 6 our Apex Court held that "Mere delay in recording the statement of a witness by the Investigation Officer cannot be the sole ground to discard his evidence, if he

withstands the test of cross-examination and thus appears to be truthful witness. As many as 3 (three) different Police Officers investigated the case, and it appears to us that the change on Investigation officer also contributed to the delay in examining them". In the case in our hand also, more than one Investigating Officer investigated the case. In the case of Mahmudul Islam @ Ratan Vs. State reported in 53 DLR (AD) at page 1 our Apex Court held that "Judges are competent to take judicial notice of the fact about the present condition of law and order situation in the country and, as such, it is not unlikely that a witness will hesitate to tell the truth for fear of his life. A belated statement in Court, if can stand the scrutiny of cross examination, can be believed if not otherwise unbelievable." The Pw57 in his cross stated that for fear of the accused-persons he did not make statement to the

Investigating Officer. In this case the Pw106 was not cross examined on behalf of the defence as to why delay took place in recording statement of some witnesses under section 161 of the Code. In this regard, the learned AAG also referred the case of Mahavir Singh versus State of Haryana reported in 4 SCC at page 716 in which case it is held that "In case, the question is not put to the witness in cross-examination who would furnish explanation on a particular issue, the correctness or legality of the said issue/fact cannot be raised". In this case, this Court finds nothing to hold that the evidence of the prosecution witnesses is not credible. So, the submission made on behalf of the convicted-accused-appellants does not stand. Here in this case, materials are also there to show that the RAB witnesses were brought to the custody of the Investigating Officer after sending several requisitions to

the RAB authority. So, naturally, there may occur some delay in recording the statements under section 161 of the Code of such witnesses.

In this case, from the evidence of the Pw72 Sainik Milon Hossain, it appears that as per the instruction of the accused Major (retired) Arif Hossain, 10 (ten) RAB personnel were kept off from duty on 20.04.2014 i.e. seven days from before the date of occurrence with instruction that none should take any information about them. It further appears that the accused Major (retired) Arif Hossain appointed Noor Hossain to give information about the victim Nazrul as a pre-plan to kill Nazrul. Accordingly, Noor Hossain gave information to the accused Major (retired) Arif Hossain about going of the victim Nazrul to Narayanganj Court which resulted in the kidnapping, killing and making disappearance of the dead bodies of

the victim-deceased-persons. Said facts suggest conspiracy in perpetrating the alleged occurrence and commission of the occurrence in furtherance of common intention of the accused-persons. Be it mentioned here that in respect of preparation of list as per direction of the accused Major (retired) Arif Hossain, no cross examination was made to the Pw72 on behalf of the defence.

In this case, admittedly the RAB personnel kidnapped away the victims in the name of arrest and that after kidnapping the victims were killed in the RAB custody and that subsequently, the the dead bodies of the were found. So, the RAB accused-personnel are to explain how the victims had met with their death which they did not.

As per his confessional statement, the accused Lance Corporal Md. Ruhul Amin Driver was present althrough the occurrence from the time of kidnapping the victims, taking them

to Narsingdi and going to the BIWTA Landing Ghat, Kanchpur, at the time of killing of the victim- deceased-persons, lifting the dead bodies to the trawler for making disappearance and at the time of making disappearance of the dead bodies of the victims taking active part in the alleged occurrence. In this case, the common intention of the accused- persons under section 34 of the Penal Code including this accused was there from the inception of the occurrence to the end. Further, the accused- persons Abul Kalam Azad, Nuruzzaman, Babul Hossain and others implicated him in their confessional statements. The Pw69 Md. Atiar Rahman in his evidence also implicated this accused in the alleged occurrence. It also appears that this accused drove the blue colour microbus with which some of the victims were kidnapped followed by their

killing and making disappearance of their dead bodies.

It is argued on behalf of the accused Lance Corporal Md. Ruhul Amin that he acted as per instruction of his higher authority and as such, he will get benefit of sections 76 and 79 of the Penal Code. But as stated earlier, the acts as perpetrated by the accused persons being illegal and not in conformity with law, this accused will not get the benefit of the aforesaid sections.

From the materials on record, it transpires that the victim-deceased persons did not die due to pushing Suxa injection. It was used just to make the victims unconscious. Actually, the death was ensured by twisting the mouths of the victims by tpolythene and by twisting their throats with rope. In his confessional statement, the accused Md. Arif Hossain stated that "taking Lance Nayek Hira Mia, SI Purnendu Bala and

Sainik Alim, Arif Sir (the accused (retired) Major Arif Hossain) got into their blue colour microbus. After he got into the microbus, the mouth of the victims were twisted with polythene and twisting the throats with rope 5 (five) victims were killed one by one". In this case, there is evidence on record to show that rope along with plastic sacks were purchased from a shop prior to the killing of the victim-deceased persons. So, in the Post Mortem Examination Report it is rightly mentioned that by twisting mouths and the throats of the victims with pelythene and rope, they were killed by strangulation.

As stated earlier, it is the defence contention that the confessional statements of the accused-RAB-personnel were extracted by coercion. But in this case, it is a matter to be understood as to how the accused RAB personnel were brought to the custody of the

Investigating Officer and what pain the Investigating Officer took sending requisitions one after another to the RAB Office to bring the RAB-accused personnel to his custody. So, by no stretch of imagination it can be conceived that by putting pressure or coercion, the confessional statements of the Accused RAB personnel were extracted.

It is submitted on behalf of the accused-appellants that the Court cannot consider the statements of the witnesses which they did not state to the Investigating Officer. But it can be considered in view of the fact that the statement made by a witness on oath before the Court is the legal evidence.

It is further submitted on behalf of the accused-appellants that non-examination of the people of the Kanchpur Landing Station and the people nearby the landing station by the Investigating Officer has cast doubt upon the prosecution case. But it is not necessary in

view of the facts that prior to the occurrence, the mates of the accused Noor Hossain removed the people of the landing station to facilitate killing of the victims and making disappearance of their dead bodies and also guarded the landing station to restrict the entrance of general people.

It is further submitted on behalf of the accused-appellants that the Landing station as the place of occurrence is disputed. The submission is not acceptable inasmuch as at the landing station the victims were killed. Further, the confessing accused-persons themselves mentioned in their confessional statements that at the landing station the killing took place.

It is submitted on behalf of the accused-appellants that any C.C. (Command Certificate) in respect of the accused-appellants Major (retired) Arif Hossain and Lt. Commander M.M. Rana were not seized by

the Investigating Officer meaning thereby that he did not take out the investigation of the case properly. But it was not necessary in view of the fact that they came out of the camp and perpetrated the offence without any C.C.

It is further submitted on behalf of the accused-appellants that Log Book of the microbuses allegedly used in the occurrence by the accused Major (retired) Arif Hossain was not seized. From the evidence on record, it appears that the microbuses used by the accused-RAB-personnel in the alleged occurrence were without any number plates to conceal the identity of the transports which suggests that with criminal intention to commit mischief, they did not use number plates in the microbuses. The Pw106, the investigating Officer stated in his cross that the accused Major (retired) Arif Hossain did illegal acts and as such, did not

maintain Log Book. So, it is natural that the accused Major (retired) Arif Hossain would not use log book in respect of the transports. So, non-seizure of the log book by the Investigating Officer has not affected the merit of the prosecution case in any way.

In this case, the Call Lists and SMS show that correspondences were made by the accused-persons Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif, Lt. Commander M.M. Rana and Noor Hossain before, during and after the occurrence which show their conspiracy under section 120B of the Penal Code in committing the offence.

In this case, the objections like the confessing-accused persons were not given 3 hours' time for reflection or how in a short span of time, the confessional statements were recorded were not raised during trial of the case and as such, there is no scope for the accused-appellants to raise such

objection at this stage. In this connection the learned AAG referred the Case of Mahavir Singh versus State of Haryana reported in (2014) 6 SCC at page 716 in which case it is held that "It is the settled principle of law that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue cannot be raised".

In his confessional statement under section 164 of the Code the accused S.I. Purnendu Bala stated that on 26.04.2014 he was informed that he had to perform civil duty with the accused Major (retired) Arif Hossain meaning thereby that he had previous knowledge about the occurrence. In the cross examination of the prosecution witnesses on behalf of the accused S.I. Purnendu Bala nothing adverse to the prosecution case is found. There was duress or coercion before

recording the confessional statement is to be proved by the confessing accused. It is not the duty of the Court to enquire into the matter. In this case, this accused could not prove that his confessional statement was the out come of duress or coercion.

It is the law that confession is substantive evidence against the maker. The confessional statements of the other accused-persons are corroborative evidence. In a conspiracy confessional statement without corroboration is admissible in evidence. If there is endorsement to the effect that after recording the confessional statement it was read over and explained to the accused or witness and that the accused or witness put his signature therein admitting the contents to be true the Court is bound to accept the statement to be correct under section 80 of the evidence Act, 1872 until it is proved to be untrue. In this regard, the learned AAG

referred the the case of Bhagwan Singh versus State reported in AIR 1952 Supreme Court 214 in which case it is held that as per the provision of section 80 of the Evidence Act, 1872 the Court shall presume the document to be genuine taken in accordance with law and purporting to be signed by any Judge or Magistrate.

Further, it is the established principle of law that if there is certificate appended by the recording Magistrate to the effect that the confessional statement is true and voluntary, the delay in recording the confessional statement will not affect the merit of the prosecution case.

In this case, the call list, sending RAB personnel to the Court to observe movement of the victim Nazrul, installing check post to apprehend the victims, subsequent conversations between the accused-persons over mobile phone by the accused-persons Lt.

Col Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander M.M. Rana and Noor Hossain and sending SMS are all proof of conspiracy.

It is the contention of the accused-appellants that there are inconsistencies between the Inquest Reports and the Post Mortem Examination Reports. Inquest Report and the Post Mortem Examination Report being not substantive evidence, if there be any discrepancy between them, the Post Mortem Examination Report will prevail over the Inquest Report inasmuch as the Police Officers who prepare the Inquest Report are not medical experts.

In this case, chasing of the victims, kidnapping of them, collection of materials to prepare sacks with brick, killing of the victims, keeping the Kanchpur Landing Station clear restricting public entrance into it, killing the victims, loading their dead

bodies in a trawler and throwing the dead bodies in the river for disappearance, recovery of the dead bodies is a complete chain. The prosecution adduced evidence of each segment of the alleged occurrence in the case. From the evidence of the Pw70 and the Pw71, it appears that after killing of the victim-deceased-persons what would be done was previously decided. The collection of materials viz. purchasing sacks, rope, preparation of sacks with brick etc. indicate said pre-plan. In this case, the evidence of the Pw57, the Pw60 and the Pw61 is enough to prove chase and abduction of the victim-deceased-persons. The aforesaid facts also show how determined the accused-persons were to kill the victim-deceased-persons.

In this case, the death of the victim-deceased-persons are custodial while they were in the custody of the accused-RAB personnel. So, no direct witness with regard

to the killing of the victim-deceased-persons is supposed to be there in the case. The accused-RAB-personnel in whose custody the victim-deceased-persons were to explain how the victim-deceased-persons met their death. In this case the circumstantial evidence, the confessional statements of the accused-persons, specially, those of the accused-persons Hira Miah, Major (retired) Arif Hossain, S.I. Purnendu Bala, Shihab Uddin prove killing of the victim-deceased-persons by the accused RAB personnel. The accused Hira Miah in his inculpatory confessional statement stated that those who were present in the microbus twisted the throat of the victims. So, everybody of them would be liable for killing of the victim-deceased-persons. Before killing of the victims by twisting their mouth with polythene and by twisting their throat with rope, or Suxa injection were pushed into the body of the

victims making them unconscious which are strong circumstances against the accused-RAB-personnel. In this case whether marks on the throats of the victims were present or not is immaterial as they were killed while they were in the custody of the accused-RAB-personnel.

From the confessional statement of the accused S.I. Purnendu Bala, it is found that while they were in the microbus, the accused Major (retired) Arif Hossain had talks over mobile phone with a person on the other side to the effect that whether money was received which indicates that in exchange of money the victims were kidnapped, killed and their dead bodies were thrown into the river tying up sacks containing brick with the dead bodies.

From the confessional statement of the accused Major (retired) Arif Hossain, it appears that it was pre-planned as to what would be done after killing of the victim

i.e. tying up the dead bodies with sacks containing brick those would be drowned into the river.

From the evidence of the Pw63 and the Pw65 who came to the kanchpur Landing Station with trawler, it appears that the team -mates of the accused Major (retired) Arif Hossain lifted the dead bodies of the victims one by one in the trawler and that the accused Major (retired) Arif Hossain directed them to drive the trawler towards Munshiganj and at 2.00/2.30 a.m. at night the dead bodies were dropped in the river.

From the evidence of the Pw65 A. Samad, it appears that the accused Lt. Commander M.M. Rana gave him a mobile bearing no. 01782-460046 which was a private number, not a Govt. number meaning thereby that at the time of the operation, the accused-persons were not using their official mobile phone numbers.

.....

From the evidence of the Pw57 Moazzem Hossain, it appears that he saw the victims to be kidnapped by the accused-persons.

It is the prosecution case that the accused-persons after kidnapping the victims killed them and threw their dead bodies in the river. On the other hand, it is the contention of the defence that the victims were not kidnapped, rather, arrested. But if there was any intention of arresting the victims-deceased-persons, they were not supposed to be taken to Narsingdi instead of taking them to Narayanganj by the accused-persons and also were not supposed to take them to Kanchpur Landing Station instead of taking them to Narayanganj. So, the apprehension of the victim-deceased-persons was not definitely arrest, rather, kidnapping for killing. In this case the Chain of acts from 20.04.2014 to 27.04.2014 was an unbroken one.

.....

The main involvement of the accused Lt. Col. Tarek Syeed Mohammad in the alleged occurrence was his telephonic conversation with three RAB officers. The Pw13 Hazi Md. Shahidul Islam stated in his evidence that the local M.P. asked them to go to the RAB office saying that the victim Nazrul was there. When they went to the accused Lt. Col. Tarek Syeed Mohammad, he said that the M.P. Shamim Osman kidnapped the victim Nazrul asking them to go to the local M.P. Shamim Osman. If the accused Lt. Col. Tarek Syeed Mohammad had no involvement in the alleged occurrence he could have said that they would try to recover the victims which he did not. No cross examination was made on behalf of the defence in view of the aforesaid statements of the Pw13 Hazi Md. Shahidul Islam. The pw13 Hazi Md. Shahidul Islam also said that touching the feet of the accused Lt. Col. Tarek Syeed Mohammad he made entreaty

to him to return the victim Nazrul to them saying that he would pay him more money than the accused Noor Hossain paid to him. These statements of the Pw13 Hazi Md. Shahidul Islam were also not challenged in his cross examination on behalf of the accused Lt. Col. Tarek Syeed Mohammad. If the aforesaid statements of the Pw13 were false, he should have been arrested forthwith. But it was not done.

The Pw41 constable Abdul Latif stated in his evidence that on 27.04.2014 at 4.00 a.m. at night they saw a microbus to come. They signalled it to stop and found the accused Lt. Col. Tarek Syeed Mohammad in it who gave his identity as the Commanding Officer of RAB-11 saying that after performing his duty at the Launch Ghat he was returning to camp. The Pw42 Md. Azim Ul Ahsan, Senior A.S.P., Narayanganj corroborated the aforesaid statements of the Pw41. What was the duty of

a Commander of a disciplined force at the Launch Ghat at the dead of night and why should he return therefrom at night? These facts point to the involvement of the accused Lt. Col. Tarek Md. Syeed Mohammad in the alleged occurrence. It also indicates that he went to the launch ghat to supervise the operation of the alleged occurrence.

As stated earlier, there are as many as 21 (twenty one) confessional statements of the confessing accused-persons involving each other in the alleged occurrence in the case. Even if for arguments sake there are no confessional statements in this case, the RAB-accused-persons are to explain as to how the victims had died as the victims had died while they were in their custody. In this case, mentionably, the death of the victims is admitted. But curiously enough, no suggestion was put to any of the prosecution

witnesses on behalf of the defence that no occurrence as alleged took place.

It is the submission of the learned Advocate Mr. Ahsan Ullah that there is no direct evidence in the case. Said submission of the learned Advocate is not correct in view of the fact that the prosecution witnesses who eye-witnessed the act of kidnapping of the victims by the accused-RAB-personnel came to the court and narrated the occurrence on oath.

In this case the confessional statement of S.I. Purnendu Bala is inculpatory one stating his overt act in the alleged occurrence. Curiously enough, the learned Advocate for the said accused did not read over the confessional statement of said accused while placing his argument before this Court. Apart from the other evidence, the confessional statement of S.I. Purnedda

Bala is sufficient to convict and sentence him in this case.

To counter the objection as raised by the learned Advocate Mr. Ahsanullah for the condemned-accused-appellant S.I. Purnendu Bala with regard to the genuineness of his confessional statement, the learned AAG Mr. Bashir Ahmed referred the case of Bhagwan Singh versus State reported in AIR 1952 Supreme Court 214 in which case it is held that as per the provision of section 80 of the Evidence Act, 1872 the Court shall presume the document to be genuine taken in accordance with law and purporting to be signed by any Judge or Magistrate. In this case, as it appears that the confessional statement of the condemned-accused S.I. Purnendu Bala was recorded as per law; that after recording the confessional statement, it was read over to the accused whereon he put his signature therein admitting the

contents thereof to be true and that the recording Magistrate also put his signature therein. So, the confessional statement is to be taken to be a genuine one.

It is further submitted on behalf of the accused S.I. Purnendu Bala that the prosecution witnesses who brought the Call Lists to the Court did not know the users' name and as such, those cannot be considered. But the Call Lists as produced before the Court were the exhibited documents on their proof. So, there cannot be any reason why those cannot be taken into consideration. Apart from all other evidence, the 164 statement of this condemned-accused-appellant alone is sufficient to find him guilty in the case. This accused directly took part in the kidnapping of the victims which was followed by killing and drowning of the dead bodies of the victims . He was in the trawler taking the dead bodies of the victims for

concealment by dropping those in the estuary of the river Meghna and Shitalakshmya and was present at the time of killing of the victims. He took part in the dropping of the dead bodies in the river. In this case, the Pw4 recorded the confessional statement of the accused SI Purnendu Bala in one case and the Pw19 in another who proved the said statements in their evidence.

It is further submitted on behalf of the condemned-accused-appellant S.I. Purnendu Bala that family of the local M.P. Shamim Osman caused to happen the alleged occurrence. But this accused did not raise the plea during trial of the case. So, there is no scope to raise the plea at this stage. Furthe, no suggestion even was put to any of the prosecution witnesses on behalf of this condemned-accused-appellant to the effect that M.P. Shamim Osman got killed the victims.

.....

It is found from the materials on record that while the accused Lt. Col. Tarek Syeed Mohammad was going to the camp after completion of the operation, police checked their transport. When he gave his identity as the Commanding Officer of RAB-11, police allowed him to go which means that from the very beginning to the end of the occurrence, the accused Lt. Col. Tarek Syeed Mohammad was present bringing his acts under the mischief of sections 120B/364/302/201/34 of the Penal Code.

In this case, no where in their defence, the accused-persons did say that the victims were not kidnapped, not killed or their dead bodies were not dropped in the estuary of the rivers Meghna and Shitalakshmya for screening the evidence.

In this case, no general objection is there to the effect that the victims were not lifted into the minibuses by the accusd-

persons including the accused S.I. Purnendu Bala. In this case, there is no necessity to tell exactly who were in the minibuses and so also there is no necessity to tell the names of the accused-persons specifically. The defence in criminal cases is to be taken in the cross examination of the prosecution witnesses and in examination under section 342 of the Code which being not taken, there is no scope to raise the pleas at this stage by the defence.

In this case, the victims were killed is true. It is not the debatable question as to where the victims were killed. From the materials on record, it is found that the the victims were lifted to minibuses and their dead bodies were unloaded from the minibuses and the dead bodies of the victims were loaded in a trawler from the minibuses which means that killing of the victims were done in the minibuses. The accused Lt. Col.

Tarek Syeed Mohammad was althrough in vigilance about the movement of the microbuses. This accused allowed the accused Major (retired) Arif Hossain to take the victims by microbuses to Narsingdi which indicates the involvement of this accused in the alleged occurrence and it also indicates that the movement of the accused Major (retired) Arif Hossain was under the control of the accused Lt. Col. Tarek Syeed Mohammad. In his confessional statement, the accused Major (retired) Arif Hossain stated that he said the accused Lt. Col. Tarek Syeed Mohammad that if as per his instruction they came to Narayanganj then they had to face police checking which implies that the RAB accused-personnel were afraid of police and they were not inclined to say that they arrested the victims and as such, to conceal the matter, they were trying to avoid police which is also an indication of criminal

intent and conspiracy of the accused RAB-personnel in the case. From the materials on record, it transpires that the surveillance of the accused Lt. Col. Tarek Syeed Mohammad was there all through the occurrence.

It also appears that when the accused Major (retired) Arif Hossain informed the accused Lt. Col. Tarek Syeed Mohammad that the victim were picked up, the accused Tarek Syeed Mohammad said the accused Major (retired) Arif to 'go ahead'. This is conspiracy. In the confessional statements of several confessing-accused-persons there was mention of the involvement of the accused Lt. Col. Tarek Syeed Mohammad in the allged occurrence. So, the confessional statements of the other confessing-accused-persons, his (accused Lt. Col. Tarek Syeed Mohammad) own confessional statement and other facts and circumstances of the case indicate the involvement of the accusd Lt. Col. Tarek

Syed Mohammad in the alleged occurrence. The accused Lt. Col. Tarek Syeed Mohammad asked the accused Major (retired) Arif as to why ADG Col. Ahsan wanted to know about the money. This anxiety of the accused Lt. Col. Tarek Syeed Mohammad shows him to be one of the conspirators. The permission to take the victims to Narsingdi instead of taking to the Magistrate Court, at Narsingdi, allowing the victims to be taken to the Kanchpur Landing Ghat, permitting to make disappearance of the dead bodies of the victims clearly shows involvement of the accused Lt. Col. Tark Syeed Mohammad in the allged occurrence and in the criminal conspiracy.

It is challenged on behalf of the accused S.I. Purnedda Bala that the experts-Pws said that they did not know the user-names of the mobile phones. But the Pws said specifically in their evidence that mobile phone nos. 01777711100, 01713374490, 01777711111,

01777711155 and 01684376576 were the numbers of the accused-persons Lt. Col. Tarek Syeed Mohammad, Lt. Commander M.M. Rana and Major (retired) Arif Hossain and Noor Hossain. The Pw106, the Investigating Officer of the case said in his evidence that the accused-persons Major (retired) Arif Hossain, Lt. Commander M.M. Rana, Noor Hossain, Lt. Col. Tarek Syeed Mohammad had conversation with those mobile phones numbers and sent SMS to each other. In cross examination of the said prosecution witness it was not challenged even by way of putting suggestions to the effect that those mobile phone numbers were not of the said accused-persons which means that the defence accepted that statements of the Pws to the effect those mobile phone numbers were of said accused-persons. Further, The SMS have similarity with the Call List. It is required to be mentioned here that no suggestion was put to the Pws who brought the Call Lists to

the effect that Call Lists were fake or forged.

The accused-persons Churchil, Raham Ali, Ali Mohammad and Bashar stated in their confessional statements that from before the occurrence, the accused Noor Hossain had connection with the accused-persons Major (retired) Arif Hossain and Lt. Col. Tarek Syeed Mohammad. The Pw13 Hazi Md. Shahidul Islam, the father of the informant Selina as stated earlier, stated in his evidence that he said the accused Lt. Col. Tarek Syeed Mohammad Tarek that he would pay more money than what the accused Noor Hosain had paid to him if Naazrul was released. The Pw12 Mizanoor Rahman Khan stated in his evidence that that before his death the victim-decesed-Nazrul said him that the accused Noor Hossain would not let him live. This statement was made by a person who is no more in the world implicating the accused Noor

Hossain. Immediately after the occurrence, the accused Noor Hossain fled away from this country to India which is an indication of his involvement in the alleged occurrence. The accused Noor Hossain informed the accused Major (retired) Arif Hossain on the date of occurrence at 10.00 a.m that the victim Nazrul was in the Court. The Call Lists exhibited in the Court show correspondences between the accused Noor Hossain, the accused Major (retired) Arif Hossain and the accused Lt. Col. Ttarek Syeed Mohammad. The accused Abul Bashar stated in his confessional statement that from 6/7 months before the occurrence the accused Major (retired) Arif Hossain used to come to the office of the accused Noor Hossain Chairman and after staying sometimes there he used to leave the office; that the accused Shahjahan told them at the Kanchpur Landing Station that there was direction of the accused Noor Hossain

Chairman to guard the landing station. In his confessional statement the accused Ali Mohammad stated that saying that the RAB personnel would come by minibuses, the accused Noor Hossain directed them to patrol the landing station. The very fact of directing his people to patrol the landing station when minibuses of RAB personnel would go to the landing station show the conspiracy of the accused Noor Hossain and the accused- RAB-personnel so that the matter of making disappearance of the dead bodies of the victims could not be witnessed by any body else. Here the agreement between the accused Noor Hossain and the accused-RAB-personnel in perpetrating the occurrence can easily be inferred. It further appears from the materials on record that the accused Noor Hossain had conversation with the accused Major (retired) Arif Hossain during the occurrence. As stated earlier, the accused

Noor Hossain sent his people to the Kanchpur Landing Station to patrol the place where the victims were killed so that no outsider can enter into the Landing Station and that the people sent by the accused Noor Hossain facilitated the disappearance of the dead bodies indicating his conspiracy in the occurrence.

The matter of asking about money by Col. Ahsan, the ADJ, RAB to the accused Lt. Col. Tarek Syeed Mohammad show exchange of money between the accused Noor Hossain and the accused-RAB personnel . From the confessional statement of the accused Raham Ali, it appears that the accused Noor Hossain used to pay money to the accused Major (retired) Arif Hossain which is also indicative of conspiracy initiated by the accused Noor Hossain.

The learned Advocate for the accused Noor Hossain submits that there was no document to

show transaction of money between the accused Noor Hossain and the accused-RAB-personnel. But there remains no document in respect of illegal transaction of money and it is not done keeping any document. So, the Investigating Officer (the Pw106) rightly said in his evidence that he did not find any documentary evidence in this respect.

In this case, the correspondences made by the members of elite force like RAB with the accused Noor Hossain show they were in a conspiracy to perpetrate the alleged occurrence.

In this case, as stated earlier, section 120 B of the Penal code was not there in the Charge Sheet, but during trial charge under said section was framed against the accused-persons. Legality and propriety of framing of charge under said section was not challenged by the accused-persons in the higher forum. So, any plea in respect of framing of charge

under section 120 B of the Penal Code cannot be raised at this stage.

To sum up, in this case, admittedly, 5 (five) persons were kidnapped and killed. The accused Major (retired) Arif Hossain selected the killing-squad, they came out of the camp, chased two private cars, lifted the passengers of the cars i.e. the victims of the case to two minibuses without bringing the victims Nazrul and others to their RAB Head Quarter, they chose an abnormal way. On the same date sacks containing brick were prepared. The victims were made unconscious by pushing Suxa injection into their bodies and the victims were killed at the Kanchpur Landing station. Mentionably, the pushing of Suxa injections into the bodies of the victims was not challenged by the defence. By a trawler the accused-RAB-personnel carried the dead bodies of the victims to the estuary of the rivers Meghna and Shitalakshmya and

dropped the dead bodies in the river for making disappearance of the dead bodies. The accused Lt. Col. Tarek Syeed Mohammad was present at the every phase of the occurrence. As per his command the occurrence took place. He even went to the Narayanganj Launch Ghat and assured the RAB-accused-personnel to the effect that they had nothing to worry and that. whatever had happened was as per his command and that he along with the accused Major (retired) Arif Hossain would be responsible for that and also said that he had connection with the accused Noor Hossain. If the accused Noor Hossain was not involved in the occurrence, he would not have sent his people to the Kanchpur Landing Station to guard the landig station area to restrict general people to enter therein which indicates conspiracy and also indicates apparently that the accused Noor Hossain paid money for the killings of the vicims.

.....

Be it mentioned here that if the High Court did not issue Rule directing to take step for arresting the accused-persons, the trial of the case would not have been possible. This case is a milestone in the history of crime. Trial of this case has shown that none is above law whoever or whichever he may be.

By evidence, oral and documentary, circumstantial evidence along with the confessional statements of the 21 (twenty one) confessing accused-persons which are true and voluntary, the prosecution could bring home the charges as brought against the convicted-accused-persons. Subsequent retraction of confessional statements by some of the confessing accused-persons will be no help to the accused-appellants.

The learned Advocate for the accused Noor Hossain submits that the pw74 who brought the mobile call list could not say the user-names

of the mobile numbers of the call list. But said witness is not supposed to know the user-names of the mobile numbers inasmuch as he just brought the list as per requisition of the Court. The Pw106, the Investigating Officer stated clearly in his evidence that the accused Noor Hossain used a fake number in the name of one Nazma Begum inasmuch as on investigation the existence of said Nazma Begum was not found.

During examination under section 342 of the Code the accused-persons Raham Ali, Md. Churchil, Ali Mohammad, Bashar stated that in the confessional statements their signatures were taken by force and coercion in blank paper. Said statement is not acceptable in view of the fact that at the time of recording their confessional statements they did not make any complaint of coercion or that in plain papers their signatures were taken.

.....

It is submitted on behalf of the accused Raham Ali that his confessional statement was recorded on a holiday. But this question was not raised during trial of the case by this accused. Further, even on Friday an accused may be produced before a Magistrate and that on Holiday as well the confessional statement of an accused can be recorded.

The trial Court found that the prosecution could not prove the Call Lists. But this is not correct in view of the fact that from the call lists, calls made by the accused Major (retired) Arif, Tarek Syeed Mohammad, Lt. Commande Noor Hossain, M.M. Rana, and Noor Hossain it appears that the Call Lists were proved.

It is contended on behalf of the convict-accused-Mortuza Jaman Churchil that his confessional statement was not true and voluntary for it was secured by torture and co-ercion. On perusal of the confessional

statement of this accused, it appears that he did not complaint of any torture or coercion by police to the recording Magistrate. So, this plea cannot be accepted.

Referring to the confessional statement of the accused Major (retired) Arif Hossain, the learned Advocate for the accused Noor Hossain submitted that as ADG Col. Ahsan said the accused Major (retired) Arif Hossain that Noor Hossain had to be killed and as such, he fled away to India. This submission manifestes that the accused Noor Hossain had correspondecne with the accused Major (retired) Arif Hossain over mobile phone. This also indicates the conspiracy of the accused Noor Hossain and the accused Major (retired) Arif Hossain in perpetration of the alleged occurrence.

It further transpires from the materials on record that after kidnapping and killing of the victims when the accused Major

(retired) Arif Hossain over mobile phone informed the accused Lt. Col Tarek Syeed Mohammad that the victims were killed and that they were ready to make disappearance of the dead bodies, the accused Lt. Col. Tarek Syeed Mohammad replied- "go ahead" which means he had direct connectively with the arrest, kidnapping, killing and making disappearance of the dead bodies of the victims.

Advocate Mr. SM Shahjahan representing the accused Major (retired) Arif Hossain submits that the evidence of Advocate Chandan Kumar murder case has illegally been used in the Nazrul and others' murder case. In this regard, there is the order of the trial Court (Reference: page no.73, order no.15 dated 28.03.2016 of the paper book). But the defence did not challenge this order of the trial Court in the higher forum, rather, took part in the trial of the cases. So, there is

no scope to raise such plea at this stage of the case. Further, the cases being not cross cases or counter cases and that the cases being in respect of the self-same occurrence and the accused-persons, victims being same, there is no legal bar in using the evidence of the Advocate Chandan Kumar murder case in the Nazrul and others' murder case.

It is submitted on behalf of the defence that the prosecution case is suspicious as the dead bodies of the seven victims floated at the same place. But there is nothing wrong in the floating of the dead bodies at the same place. Because these are the facts that the victims were killed, their dead bodies were dropped in the river and that the dead bodies had floated up. The floating up of the dead bodies at the same place will not belie the fact that the victims were killed. During trial of the case, no plea on behalf of the defence to the effect that floating up of the

dead bodies is unnatural or cannot float up at the same place or it belied the prosecution case was raised. Even if the dead bodies had not floated up, the murder cases could have been proceeded with.

In this case, one important aspect is that the accused-persons are not denying that they did not perpetrate the alleged occurrence or that they did not kill the victims. Their only plea in the case is that the prosecution could not prove its case merely on technical ground.

It is further submitted on behalf of the defence that the motive of the case could not be proved by the prosecution. But it is the settled law that "Motive is not a necessary ingredient of an offence under section 302 of the Code. The Court will see if sufficient direct evidence is there or not. If not, motive may be a matter for consideration, specially when the case is based on

circumstantial evidence (Reference: the case of State represented by the Solicitor, Government of the People's Republic of Bangladesh Vs. Giasuddin and others reported in 51 DLR (AD) at page 103). The submission of the defence is not correct in view of the fact that in this case there are eye-witnesses to the occurrence, the confessional statements of the confessing accused-persons and other evidence on the record and as such, there is no necessity to prove motive in the case.

In this case, from the confessional statements of the accused-persons, it appears that prior to the occurrence, the conspiracy took place i.e. the meeting of the accused Noor Hossain, Major (retired) Arif Hossain, Lt. Col. Tarek Syeed Mohammad and subsequently, the accused Lt. Commander M.M. Rana became a part to it. In this case conspiracy is proved by circumstantial

evidence, direct evidence and the confessional statements of the confessing accused-persons.

It is submitted on behalf of the accused Mortuza Jaman Churchil that his confessional statement is exculpatory in nature. But from the confessional statement of this accused, it appears that he went to the Kanchpur Landing Station to patrol the place, was patrolling the place when the murder of the victims took place and the dead bodies of the victims were loaded in a trawler for making disappearance of them, So, his act comes under the purview of sections 302/201/34 of the Penal Code.

It is the contention of the defence that the trial Court wrongly recorded the evidence of the informants of both the cases separately and used evidence of one case in another case. Here, the occurrence in both the cases as stated before is similar. The

only difference is that the informants of the cases are different in the two cases. So, the trial Court rightly recorded evidence of the informants of both the cases separately and used the evidence of one case in the another because the victims, the accused-persons, evidence in both the cases are same So, by the order no.10 dated 28.03.2016 (page no.73 in Death Reference No. 03 of 2017) the trial Court used the evidence of the Advocate Chandan Kumar murder case in the Nazrul and others' murder case. Be it mentioned here that as against the order no.10 dated 28.03.2016, the defence did neither seek redress in the higher Court nor raised any objection during trial of the cases. So, there is no scope to raise this point at this stage.

From the materials on record, it is found that the accused Lt. Col. Tarek Syeed Mohammad sent message to ADG Col. Ahsan

showing that 'arrest is Nil.' The concealment of abduction or arrest or kidnapping of Nazrul and others to the ADG shows the criminal intention and conspiracy of the accused-persons. The SMS of the accused Lt. Col. Tarek Syeed Mohammad from his mobile phone bearing no. 01777711100 to the mobile phone of the accused Major (retired) Arif Hossain bearing no. 0178246004 and to mobile phone of the accused Lt. Commander M.M. Rana bearing no. 01777711111 to the effect that (1) Don't carry your official mobile, (2) Remove the number plate of microbuses also shows his conspiracy and participation in the alleged occurrence.

In this case, the alleged concurrence is a chain of events from beginning to the end i.e. direction for nabbing Nazrul, kidnapping the victims, taking the victims to Narsingdi instead of taking to Narayanganj, showing 'nil arrest' in the occurrence in the message

sent to ADG by the accused Lt. Col. Tarek Syeed Mohammad, keeping the victims till 8.00 p.m at Shibpur, Narsingdi, pushing Suxa injections to the victims, preparation of sacks containing brick, killing the victims by twisting polythene in the mouth of the victims and strangulation of the victims by rope, lifting the dead bodies on a trawler and dropping the dead bodies in the estuary of the river Meghna and Shitalakhsmya, keeping contact by the accused Lt. Col. Tarek Syeed Mohammad with the accused-persons Major (retired) Arif Hossain, Lt. Commander M.M. Rana and his (the accused Lt. Col. Tarek Syeed Mohammad) presence at the Narayanganj Launchghat after drowning of the dead bodies of the victims. This chain of events also manifest commission of mischief under sections 120B/364/302/201/34 of the Penal Code by the accused Lt. Col. Tark Syeed Mohammad. The accused Lt. Commander M.M. Rana

in his confessional statement said that father-in-law and the wife of Nazrul went to the accused C.O. Lt. Col. Tarek Tarek Syeed Mohammad.

It is further submitted on behalf of the accused-appellants that the Pw3 could not state the names of the accused-persons which is a defect in the prosecution case. But the accused-persons being RAB personnel and associates of the accused Noor Hossain, the Pw3 is not supposed to know their names.

It is submitted on behalf of the accused Noor Hossain that none stated about Noor Hossain's going to the office of the accused Lt. Col. Tarek Syeed Mohammad. But the accused Churchil and his associates in their confessional statements said about going of the accused Noor Hossain to the office of the accused Lt. Col. Tarek Syeed Mohammad.

In this case, some confessing accused-persons in their confessional statements did

not individually implicate them in killing of the victims although some of them implicated him or them in the killing. However, whether an accused did not implicate him or not in the killing, his presence at the time of occurrence is sufficient to bring his act under the mischief of sections 302/34 of the Penal Code. It is the established principle of law that if confessional statement of an accused corroborates the confessional statement of another accused in material points, that confessional statement can be used as evidence.

In this case, the accused A.S.I. Bazlur Rahman made confessional statement in which he stated that he took the sacks containing brick to Kanchpur Landing Station.

The accused Nasiruddin implicated himself in his confessional statement in the alleged occurrence.

.....

The learned Advocate Mr. Ahsanullah representing the accused S.I. Purnendu Bala submits that the mentioning of the cause of death of the victims in the Post Mortem Examination Report by strangulation is not correct. But in his confessional statement the accused Arif Hossain stated that by twisting rope around the necks of the victims, they killed them one by one and the death was ensured. So, the mentioning of the cause of death of the victims in the post mortem examination report to be by strangulation is correct. The strangulation is defined as the compression of the neck by force other than hanging. Weight of the body had nothing to do with strangulation. The instant case is a case of strangulation. Further, whether the mention of the word 'strangulation' in the post mortem examination is right or wrong, still the fact remains that the victims were killed.

.....

The learned Advocate for the accused Lt. Col. Tarek Syeed Mohammad further submits that no co-accused mentioned his name to be the perpetrator of the alleged occurrence. But the accused Mortuza Jaman Churchill stated in his confessional statement that the Commander of RAB-11 (i.e. Lt. Col. Tarek Syeed Mohammad) called the accused Noor Hossain. So, there is no necessity to mention the name of the accused Lt. Col. Tarek Syeed Mohammad as he was the Commander of the RAB-11 at the relevant time. In the confessional statements of the other accused-persons also the name of said accused appears. From the materials on record, it also appears that the accused Lt. Col. Tarek Syeed Mohammad instructed the accused-persons Major (retired) Arif Hossain and others to perpetrate the occurrence and gave instructions time to time during the occurrence. As stated earlier, he was present

though not physically but mentally at the every phase of the alleged occurrence. The Pw40 and the Pw41 saw the accused Lt. Col. Tarek Syeed Mohammad on the road in a microbus to go from Narayanganj Launch Ghat to Narayanganj at the dead of night which manifests his anxiety to see as to whether the act was accomplished perfectly. The circumstances in the case are such that other than his guilt in the case, no other inference can be drawn.

It is submitted on behalf of the accused Lt. Commander M.M. Rana that he had no participation in the conspiracy. The materials on record show that the accused Lt. Commander M.M. Rana directly took part in the kidnapping of the victims followed by their killing and making disappearance of their dead bodies. Knowing that the accused Major (retired) Arif Hossain was going to Narsingdi taking the victims he sent trawler

for dropping the dead bodies of the victims and also removed a private car to make disappearance or screen the evidenc of the case. These all facts point to his involvement in the occurrence, in pre-plan and in conspiracy to cause to happen the occurrence.

It is submitted on behalf of the convicted-accused-appellants that the motive of the case could not be proved. But it is the settled law that "Motive is not a necessary ingredient under section 302 of the Penal Code. The Court will see if sufficient direct evidence is there or not. If not, motive may be a matter for consideration, specicially when the case is based on circumstantial evidence." (Reference: The case of State represented by the Solicitor, Govt. of the peoples' Republic of Bangladesh versus Gias Uddin and others reported in 51 DLR (AD) at page 103). In the instant case

there are direct evidence, circumstantial evidence and confessional statements of the convicted accused-appellants to implicate them in the alleged occurrence.

In this case, the prosecution's duty was to prove kidnapping and killing of the victim-deceased-persons which the prosecution could. In this case it is the confessing-accused-persons themselves who by making confessional statements narrated how they perpetrated the occurrence and how and in what manner they killed the victims. In this case prosecution was not required to prove as to how the victims were killed. It is a case of custodial death. The accused-persons are not denying that it is not a custodial death or that they did not apprehend the victims. The RAB-personnel themselves are the eye-witnesses to the kidnapping of the victims by the accused-RAB-personnel whose evidence cannot be disbelieved. The Pws 57, 60 and 61

as stated earlier, are the direct eye-witnesses to the act of kidnapping of the victim-deceased-persons by the accused-RAB-personnel.

In this case, the mode of killing the victim-deceased-persons i.e. by twisting mouths with polythene and strangulation by rope, dropping the dead bodies by tying up those with sacks containing brick, perforating abdomen of the victim-deceased-persons under the navel for easy drowning suggest that the accused-RAB personnel were used to this type of killing. This mode of killing definitely did not crop up suddenly in the mind of the RAB-accused-personnel manifesting that it is the part of a pre-plan and conspiracy. Before killing the victims, preparation of sacks with brick for easy drowning of the dead bodies into the river water definitely is suggestive of preplan and conspiracy.

.....

In this case the exhibited Call Lists show conversation between the accused Noor Hossain which is indicative of conspiracy and pre-plan for committing the offence. As per section 63 of the Evidence Act, 1872, the Call Lists as prepared by mechanical process is admissible in evidence as secondary evidence. The call record of Noor Hossain is a substantive piece of evidence against him as per the provision of sections 3 and 6 of the Evidence Act, 1872. Confession of the maker is substantive evidence against the maker and corroborative evidence against co-accused. In this case the confessional statements of the co-accused-persons divulge the involvement of the accused Noor Hossain in the alleged occurrence. The evidence of the Pw1, the Pw13 and the Call Lists are substantive evidence against the accused Noor Hossain. The accused-persons Mortuza Jaman Churchil, Shahjahan, Ali Mohammad, Raham Ali

and Abul Bashar, the close associates of the accused Noor Hossain involved him in their confessional statements in the alleged occurrence. Their confessional statements show the involvement of the accused Major (retired) Arif Hossain and the accused Noor Hossain in the alleged occurrence and it also show that the accused Noor Hossain was aware of the entire proceeding of the alleged occurrence and also show his conspiracy in the alleged occurrence. The confessional statements of the aforesaid accused-persons show existing enmity between the accused Noor Hossain and the victim Nazrul. The confessional statement of the accused Major (retired) Arif Hossain shows that he and the Lt. .Commander M.M. Rana used the accused Noor Hossain as the source in the alleged occurrence.

The trial Court in its judgment held that the Call Lists as produced by the prosecution

could not be proved. As against these findings there is no necessity to file an appeal as per the provision of section 423 of the Code.

The Pw12 Mizanoor Rahman Khan Ripon stated in his evidence that while alive the victim Nazrul told him that Noor Hossain would not let him live which is substantive evidence as per section 3 of the Evidence Act, 1872. The Pw1, the informant Selina Islam at the first opportunity suspected Noor Hossain as a perpetrator of the alleged occurrence. It also appears from the materials on record the accused-persons Noor Hossain, Lt.Col. Tarek Syeed Mohammad and Major (retired) Arif Hossain at different times had meetings prior to the alleged occurrence which manifests conspiracy in committing the offence. As stated above, cohorts of the accused Noor Hossain implicated the accused Noor Hossain in the

alleged occurrence. The trial Court rightly held that Noor Hossain to be the mastermind of the alleged occurrence.

It further appears from the materials on record that the Pw1, the Pw12, the Pw13 went to the office of the accused Lt. Col. Tarek Syeed Mohammad situated at Admajee and the Pw13 requested the accused Lt. Col. Tarek Syeed Mohammad that they would pay him more money than the accused Noor Hossain had paid to him and requested him to find out the husband (Nazrul) of his daughter. This statement remained unchallenged from the side of the defence.

It appears from the materials on record that immediately after the occurrence Noor Hossain escaped to India and was extradited by the Govt. of India at the request of the Govt. of Bangladesh and in this way, the accused Noor Hossain was brought back to Bangladesh. It is a strong circumstantial

evidence against the accused Noor Hossain. In this case, the official mobile phone numbers of the accused RAB personnel were not used, rather, fictitious numbers were used which is evident from the very fact that the accused Lt. Commander M.M. Rana gave the Pw65 Abdus Samad a fictitious mobile phone number being 0178-2460046 to talk with the accused Major (retired) Arif Hossain.

It appears that the victim Nazrul did not dare to file any case against the accused Noor Hossain although he was beaten up, rather, the accused Noor Hossain got a false case filed against Nazrul by Mobarak which shows how influential and powerful Noor Hossain was.

The evidence, facts and circumstances of this case appear to have proved conspiracy in this case.

The confessional statement of the accused Mortuza Zaman Churchill is proved by the

recording Magistrate stating that as per law he recorded the confessional statement of Mortuza Jsaman Churchil on 14.06.2014; that there was no marks of injury on his person and that he did not make any complaint of torture or duress by police to him and that he appended certificate to the effect that the statement was true and voluntary. A petition for retraction of the confessional statement of this accused, as stated before, was filed on 08.2014 i.e. about two years after making confession which is nothing but the product of after thought. Further, he did not even sign the petition of retraction, rather, his learned lawyer signed it which is not permissible in law. So, the confessional statement of this accused according to this Court is true and voluntary. It is the law that in case of confessing accused, no corroboration is necessary. Moreover, the accused-persons Ali

Mohammad, Bashar, Raham Ali in their confessional statements corroborated involvement of this accused i.e. Mortuza Zaman Churchill in the alleged occurrence. So, he has been rightly convicted and sentenced in the case. But considering the nature of offence as committed by this accused lenient view may taken in sentencing him. We think that commutation of death sentence to a sentence of imprisonment for life and with fine against him under sections 302/34 /201 of the Penal Code would meet the ends of justice amply.

The accused-persons Lance Nayek Hira Miah, Major (retired) Arif Hossain, Lt. Commander M.M. Rana, Constable Md. Shihabuddin, Sepoy Abu Taiyab, ROG-1 Md. Arif Hossain implicated the accused Lt. Col. Tarek Syeed Mohammad in their confessional statements in the alleged occurrence. In their confessional statements the accused-

persons Lance Nayek Md. Hira Miah, Sepoy Abu Taiyab, S.I. Purnenda Bala stated that at 3.30 a.m. on coming to the Narayanganj Lauch Ghat after drowning the dead bodies of the victims they saw the accused Lt. Col. Tarek Syeed Mohammad to stand there who assured them by saying that what happened was under his command and that they had nothing to worry which show the accused Lt. Col. Tarek Syeed Mohammad to be in command of the occurrence. From the confessional statement of the accused Major (retired) Arif Hossain, it appears that on his saying that after lifting the victims they had started for Narsingdi, the Commanding Officer i.e. the accused Lt. Col. Tarek Syeed Mohammad over phone said him that "no clue of the occurrence should be kept and no direct eye-witness should by kept alive" and directed him to eliminate the 7(seven) victim persons.

.....

The materials on record, the confessional statements of the co-accused-persons and the evidence of the Pw57 , the Pw58, the Pw59, the Pw60, the Pw61, the Pw67, the Pw59, the Pw70, the Pw71 and the Pw72 show the involvement of the accused Lt. Col. Tarek Syeed Mohammad in the alleged occurrence. In addition to the aforesaid evidence there is the call List showing conversation of this accused with other accused-persons on the date of occurrence i.e. 27.04.2014.

In addition to his confessional statement, the other confessing accused-persons and the Pw70, the Pw71, the Pw72 and the Pw73 implicated the accused Emdadul Haque in the alleged occurrence.

Materials and evidence on record further show that in addition to his confessional statement, the Pw74 implicated the accused

Md. Asaduzzaman Noor in the alleged occurrence.

Materials and evidence on record show that in addition to his confessional statement, the Pw70, the Pw71, the Pw72 and the Pw73 implicated the accused ROG Arif Hossain in the alleged occurrence.

Materials and evidence on record show that in addition to his confessional statement, the Pw25, the Pw73, the Pw78, the Pw79 and the Pw80 entangled the accused Abu Taiyab in the alleged occurrence.

Materials on record show that the accused Shihabuddin made confessional statement under section 164 of the Code. In addition to his confessional statement, the Pw70, the Pw71, the Pw72 and the Pw73 implicated him in the alleged occurrence. Further, the co-accused-confessing accused-persons also implicated him in the alleged occurrence.

.....

In addition to his confessional statement and the confessional statements of the other co-accused-persons, the Pw70, the Pw71, the Pw72 and the Pw73 involved the accused S.I. Purnendu Bala in the alleged occurrence.

In addition to the confessional statement of the accused Abdul Alim, the other co-accused-persons in their confessional statements and the Pw70, the Pw71, the Pw72 and the Pw73 implicated the accused Abul Alim in the alleged occurrence.

In addition to the confessional statements of the co-accused-persons, the Pw70, the Pw71 and the Pw73 implicated the accused Mohidul in the alleged occurrence.

In addition to the confessional statements of the co-accused-persons, the Pw70, the Pw71, the pw72 and the Pw73 implicated the accused Al-Amin in the alleged occurrence.

.....

In addition to the confessional statements of the co-accused -persons, the Pws 70, 71, 72 and 73 implicated the accused Tajul Islam in the alleged occurrence.

In addition to the confessional statements of the co-accused-persons, there is evidence of the Pws70, 71, and 73 against the accused Sergeant Enamul Haque.

The accused Lance Corporal Ruhul Amin made confessional statement implicating him in the alleged occurrenc. The co-accused-persons also in their confessional statements involved him in the alleged occurrence. Further, the pws70, 71, 72 and 73 in their evidence implicated this accused in the alleged occurrence.

In addition to the confessional statements of the co-accused-persons, there is evidence of the Pws70, 71, 72 and 73 with regard to the involvement of the accused Mokhlusur Rahman in the alleged occurrence.

.....

In addition to his confessional statement and those of the co-accused-persons, the Pws 69, 70, 71, 72 and 73 entangled the accused Abul Kalam Azad in the alleged occurrence.

The co-accused-persons entangled the accused-persons Md. Habibur Rahman, Kamal Hossain, Habilder Nasiruddin and Bazlur Rahman in the alleged occurrence.

So, from the evidence and materials on record, it appears that 17 members of RAB under the leadership of the accused-persons Lt. Col. Tarek Mohammad Syeed, Major Arif and Lt. Commander M.M. Rana kidnapped the victims, killed them and dropped the dead bodies in the estuary of the rivers Meghna and Shitalakshmya for making disappearance of the evidence. They in a chorus admitted that they abducted the 7 (seven) victims from the place of occurrence i.e. from the Dhaka - Narayanganj Link Road in front of Khan Sahib Osman Ali Stadium. Thereafter, the dead

bodies were found floating in Shitalakhsmya being tied up with sacks containing brick. Post Mortem Examination Report supported the alleged killing i.e. death caused by asphyxia as a result of sstrangulation which was ante mortem and homicidal in nature. Suxa was not found in the dead bodies of the deceased-persons as its action was of very short duration. It is stated in the Post Mortem Examination Report that continuous horizontal ligature mark was found in the neck of the deceased-persons. No suggestion was put on behalf of the defence to the post mortem holding doctors to the effect that the victim-deceased-persons died of drowning. From the aforesaid facts, circumstances and evidence on record, it can easily be inferred that with the intention of killing, in a pre-planned and in a pre-meditated way in cool brain without any provocation, out of conspiracy, the victims were kidnapped,

killed and their dead bodies were drowned in the estuary of the rivers Meghna and Shitalakshmya for screening the evidence.

It is the contention of the convict-accused-persons that the confessional statement of a co-accused cannot be used against another co-accused.

In the case of State versus Mobile Kader reported in 67 DLR (AD) at page 6 our Apex Court held that "confession of a co-accused cannot be treated as substantive evidence against the other person to find him guilty of the offence charged with and it would require other evidence whether direct or circumstantial linking such a person with the crime, before a confession made by co-accused can be adverted to in judging the guilt of that person under section 30 of the Evidence Act, 1872 when more than one persons are being tried for the same offence." Here, in this case, the confessional statements

recording Magistrates proved the confessional statements and the confessional statements of the confessing accused-persons are found to be true and voluntary and that in the case both direct and circumstantial evidence on record linked the accused-persons with the alleged occurrence. So, the confessional statement of one accused may well be considered in respect of other co-accused-persons in this case. In the case of Alamgir Hossain and another versus The State reported in 6 LNJ (AD) at page 100 our Apex Court held that "a confessional statement of a co-accused is a matter for consideration against another accused if jointly tried with him." In the case of Nausher Ali Sarker versus State reported in 39 DLR (AD) at page 194 as stated earlier also our Apex Court held that confession when proved against confessing accused can be taken into consideration against a co-accused in the same offence. In

the present case all the accused-persons are put on trial for the same offence. In view of the aforesaid decisions of our Apex Court, we are of the view that the confessional statement of a co-accused can well be used in the case of another co-accused in the case.

In the present case, the question in controversy in both the proceedings is same and identical. So evidence of a witness in Sessions Case No. 1748 of 2015 is admissible in Sessions Case No.103 of 2016. Further, as said before, as against the order no.10 (Page no.73 of the paper book) passed by the trial Court on the basis of an application filed by the learned Public prosecutor for recording evidence of the informants of the two cases and using the evidence of Sessions Case No.1748 of 2015 in the Sessions Case No. 103 of 2016 in respect of the victim Nazrul and others, the accused-appellants did not seek any redress in the High Court. So, at this

stage, the plea of the accused-appellants that the evidence of Sessions Case No.1748 of 2015 can not be used in Sessions Case No.103 of 2016 cannot be accepted.

It is the contention of the learned Advocate Mr. S.M. Shahjahan on behalf of the accused Major (retired) Arif Hossain that during examination under section 342 of the Code, the accused Major (retired) Arif Hossain was not drawn attention of the incriminating evidence of the witnesses against him and as such, he could not explain anything in his defence and as such, the trial against him is vitiated. The record shows that during examination of this accused under section 342 of the Code, the evidence of the Pw1, the informant Selina Islam Beauty, the Pw13 Hazi Md. Shahidul Islam, the Pw19 Md. Syeedul Islam, the Pw25 Hazi Md. A. Salam, the Pw34 Morsheda Akter, the Pw44 Md. Abul Khair, the Pw57 Moazzem Hossain Shaheen,

the Pw60 Md. Shahidul Isalm @ Khoka, the Pw61 Rabeya Akter Ankhi, the Pw62 Major Suruj Mia, the Pw63 Lance Nayek Md. Azmat Ali who implicated the accused Major (retired) Arif Hossain along with the other RAB personnel involved in the alleged occurrence were drawn attention of the accused Major (retired) Arif Hossain. In addition to the evidence of those witnesses, the confessional statement of this accused had also been drawn attention of him. So, it is not correct to say that during his examination under section 342 of the Code, the incriminating evidence against this accused was not drawn attention of this accused.

It is the further submission of the learned Advocate Mr. S.M. Shajahan that the statements of the Pws 62, 63 , 64 , 65, 66, 67, 68, 69 , 70, 71, 72, 73 being recorded at belated stage, their evidence is worth no credence. But in the case of Shahjahan

Khalifa versus State reported in 19 BLC (AD) at page 95 and 2 ALR (Apex Law Reports at page 78) our Apex Court held that "Statement recorded under section 161 of the Code is not substantive evidence. Mere delay in recording the statements of the witnesses under section 161 of the Code cannot be considered fatal if the evidence adduced by them in the Court appears to be credible after sifting". From sifting evidence adduced in the Court by the said witnesses it does not appear to this Court to be incredible. In this case from the evidence of the Investigating Officer, it is evident as to what pain did he take in investigating the case and in securing the attendance of the RAB-witness. He had to make so many correspondences and had to send so many requisitions to the RAB-Head quarters for production of the said witnesses to him.

It is the contention of Advocate Mr. S.M. Shahjahan representing the accused Major

(retired) Arif Hossain that the Sessions Case No.103 of 2016 and the Sessions Case No.1748 of 2015 being two separate cases, the evidence of Sessions Case No.1748 of 2015 out of which the Death Reference No.04 of 2017 cropped up cannot be used in Sessions Case No.103 of 2016 out of which the Death Reference No. 03 of 2017 has cropped up. In support of said submission, the learned Advocate referred the case of Abdul Aziz versus The State and others reported in 7 BCR (1987) at page 140 in which it is held that "where there is a case and counter case, both the cases should be tried simultaneously one after another. The trial in such case should be on its guard so that the evidence of one case is not imported in the other and thereby divert the course of justice to a wrong channel." But in the case in our hand, both the Sessions Case Nos.103 of 2016 and the Sessions Case No.1748 of 2015 out of which

the Death Reference Nos.03 of 2017 and 4 of 2017 have arisen, the alleged occurrence, the accused-persons and the witnesses are same and that the said cases are not case and counter case and that there is no clash between the two informants of the cases. So, the matters of the cases in the cited decision being distinguishable from the present cases, it has no manner of application in the facts and circumstances of the present case.

It is submitted on behalf of the accused-appellants that some of the prosecution witnesses made statements which are not there in the FIR of the case. But it is the settled law "that the First Information Report, as is well known, is not an encyclopedia of the entire case. It needs not contain all the details. It is also held in the case of State vs. Abdus Sattar reported in 43 DLR (AD) at page 44 it is held that "FIR is nto

the encyclopedia FIR can be used only to corroborate or contradict the maker."

With regard to criminal conspiracy the learned AAG referred the case of Zulfikar Ali Bhutto versus The State reported in PLD 1979 Supreme Court at page 53 and the case of Mukesh and another versus State for NCT of Delhi and others in Criminal Appeal Nos. 607, 608 of 2017 of the Supreme Court of India arising out of SLP (criminal) Nos. 3119 -3120 of 2014 commonly known as the Nirbhaya gang rape case.

In the case of Zulfikar Ali Bhutto versus The State reported in PLD 1979 Supreme Court at page 53 it is held that "Conspiracy is a matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent purpose in common between them. The essence of this offence is the combination to carry out an unlawful purpose, and the unlawful combination and

conspiracy is to be inferred from the conduct of parties. If several persons take several steps, all tending towards the obvious purpose it is for jury to say whether those persons had not combined together to bring about that end which their conduct so obviously appears adopted to effectuate. As part of law of conspiracy, there is no necessity that there should be express proof of a conspiracy such as that the parties actually met and laid their heads together, and then and there actually agreed to carry out a common purpose. Nor is such proof usually attempted. It may be that the alleged conspirators have never seen each other and have never corresponded, one may never have heard the name of other and yet by the law they may be parties to the same common criminal agreement. Thus in some of the Fenian cases tried in the country, it frequently happened that one of the

conspirators was in America, the other in this country, that they had never seen each other but that there were acts on both sides which led to the jury to the inference, and they drew it, that they were engaged in accomplishing the same common object, and when they had arrived at this conclusion that, the acts of one became evidence against other."

In the case of Mukesh and another versus State for NCT of Delhi and others in Criminal Appeal Nos. 607, 608 of 2017 of the Supreme Court of India arising out of SLP (Criminal Appeal Nos. 3119 -3120 of 2014 commonly known as the Nirbhaya gang rape case, it is held that- "The criminal thoughts in the mind when take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal by illegal means than even if nothing further is done an agreement is designated as a criminal conspiracy. The

proviso to Section 120A engrafts a limitation that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is, until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is therefore the agreement for the execution of the unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to

show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.

Although the common design is the root of the Charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common means, and so to carry it into execution.

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful

act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. when two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful; and punishable for a criminal object, or for the use of criminal means.

Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107,

I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters of from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence".

In the case of E.G.Barsay Versus State of Bombay(105), it was held that "the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law".

.....

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence.

In the case of Major Md. Bazlul Huda and others versus State reported in 62 DLR (AD) at page 1 our Apex Court held that "A conspiracy is a matter of inference deduced from certain criminal acts of the parties accused done in pursuance of apparent criminal purpose common between them. A criminal conspiracy consists not merely intention of two or more, but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means when two agree to carry it into effect the very plot of the act itself, and the act of

each of the parties capable of being enforced, if lawful, possible if for a criminal object or for the use of criminal means.

In order to constitute the offence of conspiracy, there must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy in order to the doing of that thing. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in conspiracy in pursuance of which the offence is committed."

It is contended on behalf of the accused Lt. Col. Tarek Syeed Mohammad that he was not present at the place of occurrence and hence, he cannot be held guilty for the alleged occurrence. In this regard, the learned DAG referred the case of Yakub Abdul Razak Memon

versus State of Maharashtra reported in 2013 (13) SCC 1. In which case, it is held that "Section 120-A IPC defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as 'criminal conspiracy'. No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some acts besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120-B IPC prescribes punishment for criminal conspiracy. It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (1) agreement (2) between two or more persons by whom the agreement is

effected; and (3) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in Jones case that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means.

The Court, thus held that an agreement between two or more persons to do an illegal act or a legal act by illegal means is criminal conspiracy. Conspiracy itself is a substantive offence and is distinct from the offence to be committed, for which the conspiracy was entered into. A conspiracy is a continuing offence and continues to subsist and is committed whenever one of the conspirators does an act or series of acts.

So long as its performance continues, it is a continuing offence till it is executed or rescinded or agreement is made, but is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. "

In this case, the conduct of the accused- persons, namely, Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain , Lt. Commander M. M. Rana and meeting of Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain in their office prior to the occurrence , the visit of the accused Major (retired) Arif Hossain to the office of the accused Noor Hossain frequently before the occurrence, the meeting of the accused Noor Hossain with the accused Lt.Col. Tarek Syeed Mohammad in the RAB camp, using the accused Noor Hossain as the source with regard to the movement of the victim Nazrul Islam on the

date of occurrence, talks over mobile phone time again during the occurrence and after the occurrence among these four convict-accused-persons and exchange of SMS definitely points to the conspiracy to cause to happen the occurrence among the said four accused-persons.

Now, with regard to the Call-Lists.

The call -list-Exhibits-IX series, X and XI series in this case are in respect of the calls made by the accused-persons(1) Lt.Col.Tarek Syeed Mohammad, (2) Major (Retd.) Arif Hossain, (3) Lt.Commander M.M.Rana and (4) Noor Hossain through Grameenphone, Banglalink and Airtel. From the materials on record, it appears that the Grameen mobile phone nos. of the accused Lt.Col.Tarek Syeed Mohammad were 01777711100 (office) and 0171337490 (office). The Grameen mobile phone number of the accused Lt.Commander M.M.Rana was

01777711111. The Grameenphone mobile phone number of the accused Major (retired) Arif Hossain was 01777711155 and his operational Grameenphone number was 01782460064. The mobile phone number of the accused Noor Hossain was 01684376576. During investigation it was found to be of the accused Noor Hossain.

From the Call Lists, it appear that on 27.04.2014 i.e. on the date of occurrence, from about 10.33 a.m. to 22.55 p.m., the accused Noor Hossain made 5(five) mobile phone calls to the accused Major (retired) Arif Hossain with the mobile phone no.01684376576 while the accused Major (retired) Arif Hossain made 5(five) mobile calls to the accused Noor Hossain from his operational mobile phone no.01782460064. The call lists further show that on 27.04.2014 at 10.30 a.m. the accused Noor Hossain made mobile phone call to the accused Major

(retired) Arif Hossain and talked for 21 seconds. On 27.04.2014 at 11.55 a.m. the accused Major (retired) Arif Hossain called the accused Noor Hossain and talked for 27 seconds. On 27.04.2014 at 12.00 'o' clock noon the accused Noor Hossain made mobile phone call to the accused Major (retired) Arif Hossain and talked for 32 seconds. On 27.04.2014 at 12.58 p.m. accused Major (retired) Arif Hossain called at the accused Noor Hossain and talked for 35 seconds. On 27.04.2014 at 13.42 hours the accused Noor Hossain called the Major (retired) Arif Hossain from Siddhirganj, Narayanganj and talked for 9 seconds. On 27.04.2014 at 18.09 hours the accused Major (retired) Arif Hossain called the accused Noor Hossain from Satirpara, Narsingdi and talked for 51 seconds. On 27.04.2014 at 21.28 hours the accused Noor Hossain called the accused Major (retired) Arif Hossain from Zinerdi,

Narsingdi and talked for 08 hours. On 27.04.2014 at 22.44 hours the accused Major (retired) Arif Hossain called the accused Noor Hossain from Kanchpur, Narayanganj and talked for 42 seconds. On 27.04.2014 at 22.55 hours the accused Noor Hossain called the accused Major (retired) Arif Hossain from Kanchpur, Narayanganj and talked for 14 seconds. On 27.04.2014 at 10.51 a.m. the accused Major (retired) Arif Hossain called the accused Lt. Commander M.M.Rana from Godnail, Narayanganj and talked for 71 seconds. On 27.04.2014 at 11.26 a.m., the accused Lt.Commander M.M.Rana called the accused Major (retired) Arif Hossain and talked for 39 seconds.

On scrutiny of the call details record, it is further found that the accused Noor Hossain used the mobile phone no.01684376576 which is registered in the fake name of one Nazma Begum.

.....

From the evidence of the pw65 Abdus Samad, it transpires that on 27.04.2014 at about 22.15 hours, the pw65 made mobile phone call the accused Major (retired) Arif Hossain .On the same date, at 22.21 hours the Pw65 once again made mobile phone call to the the accused Major (retired) Arif Hossain. Said mobile calls are consistent with the Call List as filed by the State. The pw65 Abdus Samad said in his deposition that at 10.15 p.m. he reached near Kanchpur Bridge and made mobile phone call to the accused Major (retired) Arif Hossain.

The pw65 Abdus Samad stated in his deposition that the accused Lt.Commander M.M. Rana gave him the operational mobile phone number being 01782460046 of the accused Major (retired) Arif Hossain.

The pw62 Major Md.Suruj Mia stated in his deposition that on 27.04.2014 at about 3.00 p.m. to 3.15 p.m. Major Arif called him in

his mobile phone no.01777711133 from an unknown number i.e. his operational number. The Pw62 further stated in his deposition that at 14.46 hours and 15.05 hours the accused Major (retired) Arif Hossain called him.

The pw64 Abdus Salam Sikder stated in his deposition that from his mobile phone bearing no.01777711118 conversation between him and the accused Lt.Commander M.M.Rana took place on 27.07.2014 at 11.30 a.m. From his mobile phone bearing no. 01777711111 at about 01.30 p.m., the accused Lt. Commander M.M. Rana made call in his (Pw62) phone number and directed him to take position at a place a bit in front of Khan Saheb Osman Ali Stadium.

The Pw69 Md. Atiar Rahman deposed that on 27.04.2014 at about 10.30 a.m.,the accused Lt. Commander M.M. Rana from his government mobile phone bearing no. 01777711111 made a call to him in his mobile no. 01777711115 to

prepare a civil team consisting of 6 (six) members. In his confessional statement, the accused Asaduzzaman Noor stated that on 27.04.2014 at about 8.00 p.m., the accused Major (retired) Arif Hossain made a mobile phone call to his personal mobile phone bearing no. 01737389875. The call list further shows that on 27.04.2014 at 19.42 hours, the accused Asaduzzaman Noor made mobile phone call to the accused Major (retired) Arif Hossain, at 19.53 hours the accused Major (retired) Arif Hossain made mobile phone call to the accused Asaduzzaman Noor, at 19.56 hours the accused Major (retired) Arif Hossain made mobile phone call to the accused Asaduzzaman Noor, at 20.02 hours, the accused Major (retired) Arif Hossain called the accused Asaduzzaman Noor, at 22.20 hours, the accused Asaduzzaman Noor made mobile phone call to to the accused Major (retired) Arif Hossain, at 22.23 hours

the accused Major (retired) Arif Hossain made mobile phone call to the accused Asaduzzaman and at 22.35 hours the accused Asaduzzaman Noor made mobile phone call to the accused Major (retired) Arif Hossain. Said mobile phone calls sre consistent with the call lists and the SMS exchanged by the accused persons Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain etc. which show the conspiracy and commission of the alleged occurrence as per pre-plan. The aforesaid facts show that the prosecution could sufficiently prove the Call Lists in respect of the mobile phone calls of the accused- persons, Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander M.M. Rana and Noor Hossain and as such, the finding of the trial Court that the call Lists could not be proved by the prosecution is not correct.

.....

In this case, the prosecution claims that on 27.04.2014 at about 01.45 p.m., the victims, namely, Hazi Nazrul Islam, Maniruzzaman Khan Swapan, Sirajul Islam Liton, Zahangir Hossain and Taizul Islam were kidnapped and killed by the accused-RAB - personnel and their dead bodies were made disappearance in the river water by tying up plastic sacks containing brick with the dead bodies and when those dead bodies floated up in the river Shitalakshmya were recovered with sacks containing brick in tied up condition. Inquests on the dead bodies were made as per the identification of the dead bodies of the victims by their relatives. The convicted-accused-persons did not challenge the identity of the dead bodies. Further, the convicted accused-RAB personnel did not challenge by contending that not them but some other RAB personnel caused to happen the alleged occurrence.

.....

In this case, as per the submissions of the learned Advocates Mr. Farid Ahmed and Mr. Munsurul Haque Chowdhury representing the convicted-accused Lt. Col. Tarek Syeed Mohammad, the claim of the said accused was that as per direction of his higher authority, he got the victim Nazrul Islam arrested by the accused RAB-personnel on the date of occurrence from the place of occurrence. It is the further submission of the learned Advocate Mr. Munsurul Haque Chowdhury representing the Lt. Commander M. M. Rana that he took part in nabbing of the victims on the date of occurrence as per direction of the convicted-accused Major (retired) Arif Hossain. So, whether the victims were arrested or nabbed as per the version of the said convicted-accused Lt. Col. Tarek Syeed Mohammad, the victims-decesed-persons were lifted up on 27.04.2014 at about 01.45 p.m. from the place of

occurrence i.e. from the road-near the Khan Saheb Osman Stadium, Fatulla, Narayanganj is an admitted fact. As it is found, after lifting of the victims they were mercilessly killed and by tying up two plastic sacks containing brick with the each dead body and perforating the abdomen of the victim-deceased-persons under their navel for easy drowning, the dead bodies were taken to the estuary of the rivers Meghna and Shitalakshmya near Munshiganj by a trawler and those were dropped in the water which subsequently floated up. Had the occurrence been a case of the arrest of the victims, they would have been produced by the RAB-personnel before the nearest Court of Magistrate at Narayanganj within 24 (twenty) hours from the time of arrest as per Article 33(2) of the Constitution of the People's Republic of Bangladesh and as per the provision of section 61 of the Code. But instead of doing

that, as stated earlier, the victims were taken to Narsingdi, another district and after passing time at different places, the victims were not taken to Narayanganj Sadar or to the Head Quarters of RAB, rather, they were taken to Kanchpur Landing Station. At Kanchpur Landing Station the victims were killed and subsequently, their dead bodies were dropped in the river for disappearance of the dead bodies. So, this is definitely not a case of arrest, rather, a case of pre-plan and conspiratory kidnapping followed by killing. Further, it is not the case of the convicted-RAB personnel, as stated earlier, that it is not them but some other RAB-Personnel Kidnapped the victims and killed them.

The chain of events show that from the kidnapping of the victims to the concealment of the dead bodies of the victims after causing death of the victims, this accused

Lt. Col. Tarek Syeed Mohammad was present through mobile calls giving direction to the accused Major (retired) Arif Hossain and others. If as per direction of the accused Lt. Col. Tarek Syeed Mohammad, the victims were arrested, there was no earthly reason to take the victims to Narsingdi, instead of Narayanganj and also the accused Lt. Col. Tarek Syeed Mohammad had no reason to accord permission to the accused Major (retired) Arif Hossain to take them to Narsingdi. So, it is nothing but kidnapping.

In this case, as the killings of the victims took place in the custody of the accused- RAB-personnel in the microbus at Kanchpur Landing Station which was protected from before killing of the victims by the associates of the convict-accused Noor Hossain facilitating the killing, no private person or outsider was supposed to see the act of killing directly. Here the Convicted-

accused RAB personnel who took part in the act of killing of the victims were the most competent persons to narrate the occurrence which they did by making the confessional statements and that their statements are the best evidence in this case in support of the allegation of the prosecution that the RAB personnel kidnapped, killed and made disappearance of the dead bodies of the victims. The confessional statements of the confessing-accused-persons being proved on oath by the recording Magistrates, those can well be considered in respect of the maker and against the other co-accused-persons. Further, no accused-RAB personnel, as stated earlier, will get benefit of either section 76 or 79 of the Penal code provisions of which sections are meant for advancement of law, not for any illegal act. In this case, the acts like kidnapping, killing and making disappearance of the dead bodies of the

victims definitely were not done for advancement of law, rather, those acts were illegal acts clear and simple. So, as stated above, no convicted accused -RAB personnel will get benefit of sections 76 and 79 of the Penal Code in this case. In this connection the case of Md. Abdul Majid Sarker versus The State reported in 40 DLR (AD) at page 82 may be referred. In the said case our Apex Court held that " Section 105 of the Evidence Act casts a burden upon the accused to prove the existence of circumstances bringing the case within any special exception or proviso contained in any other part of the Penal Code. There has been complete failure on the part of the defence to prove their circumstances." In the case on hand, the convicted-accused RAB personnel totally failed to prove that their alleged acts in the case were legal or that they

committed the acts for advancement of law or for any other legal purpose.

Learned Advocates for some of the accused raised the question of some technicalities in the case. In this regard, the learned AAG also referred the case of *Mrityunjay Biswas Versus Pranab Kanti Biswas* reported in (2013) 12 Supreme Court Cases 796 in which case the Indian Apex Court held that "in case of criminal trial hyper technical approach to be avoided. Minor discrepancies are not to be given much emphasis. Every omission cannot be considered a material omission. Minor contradictions, inconsistencies or insignificant embellishments that do not affect core of prosecution case should not be taken to be a ground to reject the prosecution evidence.

In this case there are eye-witnesses of kidnapping the victims by the accused RAB-personnel who subsequently died in their

custody. The victims being killed in the custody of the accused RAB-personnel inside their microbus, naturally there can be no direct eye-witness of the killing. It is the accused-RAB personnel who are to explain as to how the victims had died which they did not. So, the confessional statements of the confessing accused-RAB personnel are enough to find them guilty for commission of murder of the victims. Because they are the most competent witnesses so far as the killing of the victims are concerned. In this case, admittedly, there is no enmity among the confessing accused-persons and were the members of a team. So, there can be no earthly reason for falsely implicating the other co-accused-persons by another co-accused with the occurrence of the case if they were not at all involved in the occurrence.

.....

From the evidence and materials on record, it is revealed that the convicted-accused Major (retired) Arif Hossain conducted the entire operation of the alleged occurrence i.e. kidnapping of the victims, Killing of the victims by taking active part himself therein, making disappearance of the dead bodies of the victims in the estuary of the rivers Meghna and Shitalakshmya and he also was one of the conspirators of the alleged occurrence.

Referring the case of Abul Kashem and others versus State reported in 56 DLR at page 133 the learned Advocate Mr. Aminul Islam representing the convicted-accused Md. Salim submits that abscondence of this accused itself is not an incriminating matter inasmuch as even an innocent person implicated in serious crime sometimes absconds during investigation to avoid repression by police. To rebut the said

submission, the learned AAG Mr. Bashir Ahmed referred the case of Yasin Rahman Rahman Yasin @ Titu versus State reported in 19 BLC (AD) at page 8 in which case our Apex Court held that "Abscondence by itself is not always an incriminating matter, for, even an innocent person sometimes absconds to avoid harassment by police. But in the case, the abscondence of appellant, son of a very rich industrialist immediately after the murder of Jibrabn Taiyyabi and his remaining absconding for a long period of about 13 years do not support at all that he absconded and remained absconding for such a long period to avoid harassment by police. Though motive is not always necessary to prove murder but if it is proved it indicates the high degree of possibility and provides a link in the chain to connect the accused with the murder. Motive is not always necessary to prove murder, but if is established it would be a

corroborative circumstance leading to the complicity of the accused in the offence". In the present case the accused Md. Salim was a close associate of the mastermind of the occurrence, the convicted-accused Noor Hossain who immediately after the murder of the victims and making disappearance of their dead bodies of them escaped to India which is a very strong circumstance to point towards his guilt in the alleged occurrence.

It is also revealed that as a sequel to previous enmity with the victim Nazrul Islam, the convicted-accused Noor Hossain got the victims kidnapped, got killed and made disappearance of the dead bodies of the dead bodies of the victims in the estuary of two rivers by the accused-RAB personnel in exchange of money . In his cross the Pw106, the Investigating Officer of course said that he did not find documentary evidence of exchange of money between the accused Noor

Hossain and the accused RAB personnel. But it is quite natural in view of the fact that exchange of money for an illegal act is not made through documentary evidence. Making question by ADG Ahsan with regard to receiving of money by the accused Major (retired) Arif Hossain from Noor Hossain and asking about payment of money by the accused Major (retired) Arif Hossain by the accused Noor Hossain in course of the occurrence and so also the evidence of the Pw13 Shahidul Islam saying the convicted-accused Lt. Col. Tarek Syeed Mohammad that he (the Pw13) would pay him more money than the accused Noor Hossain paid to him for release of the victim Nazrul Islam are the pointers with regard to the conspiracy and payment of money by the accused Noor Hossain to the RAB personnel for commission of the offence.

In this case from the materials on record, it is found that the accused-persons

dropped the number plates of the car used by the victim Nazrul Islam and the car of the victim Advocate Chandan Sarker and the cars were left behind one at Gazipur and the other at Niketon, Gulshan, Dhaka. The dropping of the number plates of the car used by the victim Nazrul Islam and the car of the victim Advocate Chandan Sarker and leaving the cars behind at Gazipur and the other at Niketon, Gulshan, Dhaka definitely manifest criminal intention to screen the occurrence by the accused-persons Lt. Col Tarek Syeed Mohammad, Major (retired) Arif Hossain and Lt. Commander M. M. Rana and also suggests their conspiracy and pre-plan for committing the offence.

Learned Advocate Mr. Md. Munsurul Haque Chowdhury while arguing on behalf of the convict-accused Lt. Col. Tarek Syeed Mohammad M.M.Rana to the effect that if one part of the confessional statement is found

exculpatory and the other inculpatory, the whole confessional should be discarded. To counter the said submission of the Advocate Mr. Md. Munsurul Haque Chowdhury, the Learned AAG Mr. Md. Bashir Ahmed referred the case of Nishi Kant Jha versus State of Behar reported in AIR 1969 SC 432 in which case it is held that inculpatory portion of the confessional statement can be accepted if the exculpatory portion is found to be inherently improbable. It is also the law that a confessional statement which partly true and inculpatory and also partly false and exculpatory may be taken into consideration and conviction may also be given on the basis of such a statement (Reference: the case of Hazrat Ali and others versus the State reported in 44 DLR (AD) at page 51 in which case our pex Court held that " It may be pointed out here that in a confessional statement an accused may implicate himself and also make some

untrue statement regarding other part or implicate some other person falsely. So, a confessional statement even if it is partly true or partly false or in other words does not disclose the full picture can be used against the maker and there is no legal bar in upholding the conviction on the basis of the confession. Appellant Hazrat Ali having made some untrue statement in his confessional statement Ext.3, the part which implicates him with the offence and which finds support from the confession of the co-accused can very well be considered and in that basis his conviction can be maintained."

In the Sessions Case No.103 of 2016 corresponding to G R Case No.328 of 2014, the defence did not cross examine the prosecution witnesses in respect of some statements made by them in their deposition. In his regard, the learned AAG referred the case of Mahavir Singh versus State of Haryana reported in

(2014) Supreme Court Cases at page 216 in which case it is held that "in case question is not put to witnesses in cross examination who could have furnished explanation on a particular issue, correctness or legality of said fact /issue cannot later be raised". It is further held in the said case that "in all criminal cases normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the Court. Such evidence cannot be safe to rely upon. However, minor discrepancies, contradictions, inconsistencies, embellishments or improvements on trivial

matters which do not affect the core of the prosecution case should not be made a ground on which the evidence can be rejected in its entirety. It is a settled legal proposition that that in case, the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact /issue could not be raised."

To show that in two cases evidence should be recorded separately except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and then evidence be read in the other, the learned AAG referred the case of Harjinder Singh versus State of Punjab and others reported in (1985) 1 SCC at page 422. In the case in our hand also, the trial Court did not consolidate the two cases. He examined the informants of both the cases separately and used the evidence of the other

witnesses who were similar in both the cases also and did in view of the similarity of the occurrence, the victims, the accused-persons and the witnesses.

In this case, admittedly, the accused Lt. Col Tarek Syeed Mohammad directed the accused Major (retired) Arif and Lt. Commander M. M. Rana to nab the victim Nazrul Islam and accordingly, Nazrul Islam and others were kidnapped, killed, and their dead bodies were dropped in the river water; that all thorough the occurrence he monitored the occurrence, gave permission to the accused Major (retired) Arif to make disappearance of the dead bodies and he was present at the Narayanganj Launch Ghat and assured the accused-personnel taking part in the killing and making disappearance of the dead bodies that they had nothing to worry about and that what had happened had happened at his command and that he himself (the accused Lt. Col

Tarek Syeed Mohammad) and the accused Major (retired) Arif Hossain would take all responsibilities. Said facts show his direct involvement in the kidnapping, killing and making disappearance of the dead bodies of the victims.

It is the contention of the learned Advocate for the condemned-accused-prisoner S.I. Purnendu Bala that the local political leaders adopting the theory of 'who would be who and kill one (the victim Nazrul) and hang one (the accused Noor Hossain)' caused to happen the alleged occurrence. But to substantiate this claim neither any attempt was made nor any evidence was adduced on his behalf. So, this contention does not stand.

It is the contention of the condemned-accused Selim that before submitting charge sheet, there was no scope to show him an absconding accused in this case; that the accused Selim as stated by the confessing

accused-persons and the prosecution is not this accused Selim. It is the prosecution case that immediately after the occurrence, the accused Selim became a fugitive with the accused Noor Hossain. But surrendering before the trial Court after conviction of him, this accused confirmed himself to be the accused Selim and also proved himself to be an absconding accused. At the time of the trial of the case, the State Defence lawyer defending this accused did not challenge his identity. So, there is no scope to raise the point of identity at this stage. Further, this accused was as per his version was in the Indian Police Custody and he was subsequently enlarged on bail. This accused thereafter, was at large. This accused did not say from which period to which period he was in the Indian Police custody and from which period to which period he was at large. So, he being absent from the jurisdiction of

the trial Court, he was rightly shown to be an absconding accused in the cases.

Advocate Mr. Ahsanullah representing the condemned-prisoner S.I. Purnendu Bala submits that the case is a baseless one as none of the Kanchpur Landing Station was examined by the Investigating Officer. But from the materials on record, it appears that before killing the victims and after killing taking their dead bodies in the trawler and dropping the dead bodies in the river, the people of the landing station were removed therefrom and the landing station was cleared by the people of the accused Noor Hossain at the direction of accused RAB personnel and the accused Noor Hossain. So, naturally, there would be no witness of the landing station with regard to the alleged occurrence.

It is also the contention of the learned Advocate Mr. Ahsanullah that non-examination of the viscera of the victim-deceased-persons

and the minibuses by which the victims had been allegedly kidnapped and the trawler by which the dead bodies of the victims were taken for dropping in the river cast a doubt upon the prosecution case. There is no necessity of examination of the viscera of the victim-deceased-persons and the trawler in the case inasmuch as there are the confessional statements of the accused-persons in the case regarding the kidnapping of the victims by minibuses and dropping of the dead bodies by the trawler. Further, the case being not killing the victim-deceased-persons by administering poison, there was absolutely no necessity of examining the viscera of the victim-deceased-persons. Be it mentioned here that there is no defence case that fake RAB personnel kidnapped the victims and killed them.

It is further submitted by the learned Advocate that there is no proof that the

deceased Nazrul or Advocate Chandan Sarker were present at the place of occurrence from which they were alleged to have been kidnapped. But the evidence of the Pws 57, 60, 61 and subsequent killing, dropping of the dead bodies in the river, recovery of the dead bodies amply proves that said victims were present at the time of occurrence and were killed after kidnapping them.

It is further submitted by the learned Advocate Advocate Mr. Ahsanullah that the informant of the Sessions Case No. 1748 of 2015 did not believe the FIR of the Sessions Case No. 103 of 2016. Said submission is not correct in view of the fact that Sessions Case No. 103 of 2016 was filed by the wife of the victim-deceased Nazrul Islam for kidnapping her husband and his associates not knowing that Advocate Chandan Sarker was also there at the place of occurrence. So, there arises no question of disbelieving the FIR of

Sessions Case No. 103 of 2016 by the informant of the Sessions Case No. 1748 of 2016.

It is further submitted by the learned Advocate Mr. Ahsanullah that in their statements under section 161 of the Code, the witnesses did not specifically say anything about kidnapping and killing against the accused S.I. Purnendu Bala Saha. But it is quite natural in view of the fact that all of the said witnesses were not the eye-witnesses to the alleged occurrence.

The learned Advocate further submits that In the Writ Petition, the Investigating Officer was directed to arrest the accused-persons by the High Court Division which the High Court Division cannot pass. But considering the grave nature of the occurrence, High Court gave that direction. Further, the defence did not seek any redress against the order of the High Court Division

in the Appellate Division of the Supreme Court.

The learned Advocate for the accused S.I. Purnendu Bala also submits that the pw60 saw only 3/4 victims to have been dragged out from the car and taken into the microbus but did not say about the kidnapping of the other victims. But the dragging out and taking into the minibuses of the other victims came from the confessional statements of the confessing RAB-accused-personnel themselves. So, the kidnapping of all the victims are covered up.

Learned Advocate Mr. Md. Iqbal Kabir representing the condemned-accused-prisoner Mizanoor Rahman Dipu contends that there are three Mizan in the case and that this Mizan is not the accused Mizan of this case and as such, he has not been rightly convicted in this case. Four confessing accused-persons made corroborative statements involving this accused in the case. The accused Ali Mohammad

stated in his confessional statement that taking Mizan, Shahjahan and others he went to the landing station. The Pw1 stated in her evidence that with the assistance of Ali Mohammad, Mizanoor Rahman Dipu, Abul Bashar, Noor Hossain and others, the RAB personnel mercilessly killed her husband Nazrul Islam. Although the witnesses in their statements under section 161 of the Code did not state his name and although the confessing accused-persons did not state his overt act in the alleged occurrence, it appears from the materials on record that he was present at the time of occurrence which constitute an offence punishable under sections 302/201/34 of the Penal Code against this accused. Further, the confessional statements of the co-accused-persons in respect of this accused find support from the materials on record regarding abduction, killing and dropping of the dead bodies of the victims in the river.

The contention of the learned Advocate for this accused that he is not Mizanoor Rahman Dipu is not correct in view of the fact that the father's name of this accused as stated in the charge sheet is same with his father's name as mentioned in the memorandum of appeal as filed by him. However, considering the nature of offence as committed by this accused his sentence may be commuted from death sentence to a sentence of imprisonment for life and fine.

It is also contended by the learned Advocate representing accused condemned-accused-prisoner Mizanoor Rahman Dipu that he is not the driver of the accused Noor Hossain. Even for the sake of argument this submission of the learned Advocate is taken to be correct, it will not affect the merit of the prosecution case inasmuch as he was present at the time of occurrence.

.....

The 21 confessional statements of the confessing accused-persons along with the evidence, oral and documentary as adduced by the prosecution and circumstantial evidence proved the prosecution case. The confessional statements of 21 accused-persons being true and voluntary, subsequent retraction of some of the confessing accused-persons will be of no help to the defence.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Lance Nayek Md. Bellal Hossain was in the team of the accused Major (retired) Arif and was a member of surveillance team. He informed the accused Major (retired) Arif about going out of councilor Nazrul from Narayanganj Court. He along with another purchased 16 plastic sacks, 5 kg. rope and 2 kg. Shutli. He alongwith others prepared 14 plastic sacks with brick, took the sacks with

a white colour microbus to kanchpur Landing Station. He was present at the time of killing the victims at Kanchpur landing Station, lifted the dead bodies in a trawler, he along with others took the dead bodies towards Munshiganj and tying up the dead bodies with plastic sacks containing brick he along with constable Shihab, S.I. Purnendu Bala, Sainik Alim, Sainik Alamin, Sergeant Enamul, A.B. Arif, Lance Nayek Hira, Sainik Tajul Islam and Sainik Mahiuddin Munshi at the behest of the accused Major (retired) Arif Hossain dropped the dead bodies in the estuary of three rivers. The aforesaid acts of this accused come under the mischief of sections 302 /201/34 P.C of the Penal Code.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sainik Md. Asaduzzaman Noor gave the

bag containing polythence and rope to the accused Major (retired) Arif Hossain at the place opposite to Shuvo CNG filling station. He thereafter went under Kanchpur Bridge. While he was there he saw two microbuses to come. At the time of killing the victims he was patrolling the field of BIWTA so that no body could come there. He was present while tthe accused-persons S.I. Purnenda Bala, Lance Nayek Hira Miah, Sainik Alamin, Sainik Mahiuddin and 4/5 others lifted the dead bodies of the victims on the trawler. So, his acts come under the mischief of sections 302/201/34 of the Penal Code.

From the evidence and materials and on record and so also from the confessional statements of the accused persons, it appears that the accused Lance Nayek Md. Hira Miah was the teammate of the accused Major (retired) Arif Hossain and he took part in kidnapping of the 7 victims by remaining

present at the place of occurrence. He pushed Suxa injection into the body of one victim and twisted polythene in the mouth of a victim. The accused Major (retired) Arif Hossain and others twisted the rest victims' mouth with polythene. He alongwith others lifted the dead bodies and sacks containing brick on the trawler. He along with the accused-persons Major (retired) Arif Hossain, S.I. Purnenda Bala, Sergeant Enamul, A.B. Arif, Sainik Mahiuddin, Sainik Alamin, Sainik Alim, Sepoy Taiyab, Constable Shihab, Lance Nayek Bellal, Sainik Tajul took the dead bodies to the estuary of the rivers Meghna and Shitalakshmya. The accused Major (retired) Arif Hossain perforated the dead bodies under their navel. They dropped the dead bodies one by one in the river Meghna. When they came back to Narayanganj Launch Ghat at 3.00 a.m., they saw the accused Lt. Col. Tarek reak Syeed Mohammad was standing

there who told them 'not to worry' and that whatever had happened was at his command and he would face consequence thereof. So, the acts of Lance Nayek Md. Hira Miah come under the mischief of section 302/34 P.C and sections 201/34 of the Penal Code. Considering the gravity of his offence, the trial Court rightly awarded him sentence of death and sentence of rigorous imprisonment for 7 (seven) years and fine rightly for commission of offences under sections 302/201/34 of the Penal Code.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sepoy Abu Taiyab- was one of the teammates (in the team of 12 persons) of the accused Major (retired) Arif Hossain. He along with the accused Emdad went to the Court of Sessions Judge, Narayanganj to observe movement of the victim Nazrul and

was apprehended by the people for his suspicious movement and subsequently, got released by giving his identity to be a member of RAB. He took part in the kidnapping of the victims by lifting the victims from these private cars. At the time of pushing Suxa injections to the victims he kept hold of the victims. He along with the accused Major (retired) Arif Hossain twisted the mouth of the victims with polythence. They took the dead bodies by a trawler to the estuary of the rivers Meghna and Shitalakshmya. He tied up one of the dead bodies with plastic sack containing brick and they dropped the dead bodies in the river. When they returned to Narayanganj launch ghat at 3.30 a.m they saw the accused Lt. Col. Tarek Syeed Mohammad standing there who told them that whatever had happened was at his command and the accused Major (retired) Arif Hossain and that he along with the accused

Major (retired) Arif Hossain would face consequence thereof. His acts come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the gravity of his offence the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and fine for commission of offences under sections 302/201/34 of the Penal Code .

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Constable Shihabuddin was a team mate of the accused Major (retired) Arif Hossain. They were wearing civil dress to conceal their identity. He took part in kidnapping of five victims. The accused-persons Major (retired) Arif Hossain pushed injection to three of the victims, S.I. purnendu Bala pushed injection to one of the victims and Hira Miah pushed injection to one of the

victims. The accused Major (retired) Arif Hossain, Lance Nayek Hira and S.I. Purnendu Bala by twisting polythene in the mouth of 5 victims ensured their death. He was then present inside the microbus where the victims were killed. They lifted the dead bodies on the trawler. Thereafter, taking the dead bodies to the estuary of the rivers Shitalakshmya and Meghna, tied up the dead bodies with sacks containing brick. Major (retired) Arif Hossain perforated the abdomen of the dead bodies with dagger and they dropped the dead bodies in the river. After coming to Narayaganj Launch Ghat at 3.30 p.m. they saw that the accused C.O. Lt. Col. Tarek Syeed Mohammad was standing there who told them "not to worry. Whatever had happened was as per his direction and that of Major (retired) Arif. They would face the consequence thereof." The acts of this accused come under the mischief of sections

302/34 and 201/34 Penal Code. Considering the gravity of his offence the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and fine to him for commission of offences under sections 302/201/34 of the Penal Code.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused S.I. Purnendu Bala was one of the teammates of the accused Major (retired) Arif Hossain who took part in kidnapping of 5 of the victims from the white private car and lifted them in their microbus. While they were in the microbus, the accused Major (retired) Arif Hossain talked with a person more than once asking whether money was received i.e. about monetary transaction between the accused-persons Major (retired) Arif, Lt. Col. Tarek Syeed Mohammad and Noor Hossain etc. The accused-persons Major

(retired) Arif, Bellal Hossain, he himself and Hira Miah strangulated the targets by twisting polythene in the mouths. He along with the accused Major (retired) Arif Hossain, Sainik Mahiuddin, Sainik Alamin, Sepoy Taiyab, Sergeant Enamul, Sainik Tajul, Constable Shihab, Lance Nayek Bellal, Lance Nayek Hira Miah, Sainik Alim, and A.B. Arif took the dead bodies of the victims to the estuary of the rivers Meghna and Shitalakshmya. Two sacks with brick were tied up with each dead body. Lance Nayek Bellal and Major (retired) Arif Hossain perforated the dead bodies under their navel and they dropped the dead bodis in the river. Thereafter, when they came back to Narayangang Launch Ghat, they saw that the accused C.O. Lt. Col. Tarek Syeed Mohammad was standing there who told them that "whatever happened was as per his command and that of the accused Major (retired) Arif

Hossain. You did not see or heard anything. If there be any problem, I along with Major (retired) Arif Hossain would see." The acts of this accused come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the gravity of his offence the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and a fine to him for commission of offences under the aforesaid sections.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sainik Md. Abdul Alim (absconding) was in the team of the accused Major (retired) Arif Hossain. He took part in the kidnapping of 5 victims including the victim Nazrul. He along with the accused-persons Nayek Bellal, Lance Nayek Hira, Sepoy Taiyab, S.I. Purnendu Bala, Sainik Alamin, Sainik

Tazul, Constable Shihab and Sainik Alim by twisting the mouth of the 7 victims ensured their death. They took the dead bodies to the estuary of the the rivers Meghna and Shitalakshmya and dropped the dead bodies in the river. The acts of this accused come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) and fine years to him for commission of offences under the aforesaid sections.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sainik Mohiuddin Munshi (absconding) was a team mate of the accused Major (retired) Arif Hossain. He took part in the kidnapping of 5 victims including Nazrul. He was present at the time of killing of the

victims in the blue colour microbus of the accused Major (retired) Arif Hossain . He along with others took the dead bodies of the victims to the estuary of the rivers Meghna and Shitalakshmya and tying up sacks containing brick dropped the dead bodies in the river. The acts of this accused come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and a fine rightly to him for commission of offence under the aforesaid sections.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sainik Al-Amin Sharif (absconding) was a teammate of the accused Major (retired) Arif Hossain. He took part in the kidnapping of the 5 victims including victim Nazrul. By

twisting polythene in the mouth of the 7 victims he alongwith others ensured death of the victims. He alongwith others took the dead body of the victims to the estuary of the rivers Meghna and Shitalakshmya and tying up sacks containing brick with the dead bodies dropped those in the river. The acts of this accused come under the mischief of section 302/34 and 201/34 of the Penal Code. Considering the gravity his offence the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and a fine to him for commission of offence under sections 302/201/34 of the Penal Code.

From the materials and evidence on record and so also from the confessional statements of the accused persons, it appears that the accused Sainik Tajul Islam (absconding) along with 7 others by twisting polythene in the mouth of the victims ensured their death. He

alongwith the accused-persons Sergeant Enamul, Habilder Emdad, A.S.I. Bazlur Rahman and Lance Nayek Billal took plastic sacks containing brick at the Kanchpur Landing Station and was present at the time of killing of the victims. He along with Major (retired) Arif Hossain, Hira Miah, S.I. Purnendu Bala, Sergeant Enamul, A.B. Arif, Sainik Mahiuddin. Sainik Alamin, Sainik Alim, Sepoy Taiyab, Constable Shihab, Lance Nayek Bellal took the dead bodies of the victims by a trawler to the estuary of the rivers Meghna and Shitalakshmya and tying up sacks containing brick with the dead bodies dropped those in the river. The acts of this accused come under the mischief of sections 302/34 and 201/34 Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years

and a fine for commission of the offences under the aforesaid sections.

It appears from the materials and evidence on record and so also from the confessional statements of the confessing accused-persons that on 27.04.2014 at 10.45 p.m. by a white microbus the accused Sergeant Enamul Kabir, Habilder Emdad, A.S.I. Bazlur Rahman, Sainik Tajul, Lance Nayek Billal brought sacks with brick to the Kanchpur Landing Station. The accused Sergeant Enamul Kabir was present at the time of killing of the victims at the Landing Station. This accused along with the accused-persons Major (retired) Arif Hossain, S.I. Purnendu Bala, A.B. Arif, Sainik Mahiuddin, Sainik Alamin, Sainik Alim, Sepoy Taiyab, Constable Shihab, Lance Nayek Bellal, Sainik Tajul took the dead bodies of the victims by a trawler to the estuary of the rivers Meghna and Shtalakshmya and tying up sacks containing

brick with the dead bodies dropped those in the river. Mentionably, this accused did not make confessional statement in the case. The acts of this accused come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the nature of the offences as committed by this accused, this Court is inclined to commute the death sentence as awarded to this accused to a sentence of imprisonment for life and also with fine under sections 302/34 of the Penal Code and also to suffer sentence of rigorous imprisonment for 7 (seven) years and a fine under section 201/34 of the Penal Code.

It transpires from the materials and evidence on record and so also from the confessional statements of the accused-persons, it appears that the accused Habilder Md. Emdadul Haque was a member of the surveillance team and a team mate of the accused Major (retired) Arif Hossain. He

followed the victim Nazrul and informed his movement to the accused Major (retired) Arif Hossain. He prepared sacks containing brick, took the sacks to the Kanchpur Landing Station. He had knowledge of kidnapping of the victims and was present at the time killing of the victims and lifting the dead bodies of the victims to the trawler for making disappearance of the dead bodies. The acts of this accused come under the mischief of sections 302/34 and 201/34 of the Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death and sentence of rigorous imprisonment for 7 (seven) years and fine rightly to him for commission of offence under the aforesaid sections.

From the materials and evidence on record and so also from the confessional statements of the co-accused persons, it transpires that the accused ROG Md. Arif Hossain was a team

mate of the accused Major (retired) Arif Hossain. He was present at the time of kidnapping of the victims and took part in it. He was present in the blue colour microbus where the victims were killed by twisting polythene bags in their mouth and by strangulation by twisting rope around their throats. He patrolled the Kanchpur Landing Station. He alongwith others lifted the dead bodies of the victims in the trawler. He filled up two plastic sacks with brick and dropped the dead bodies in the river. The acts of this accused comes under the mischief of sections 302/34 and 201/34 Penal Code. Considering the gravity of his offence the trial Court rightly awarded sentence of death for commission of offence under sections 302/34 of the Penal Code and sentence of rigorous imprisonment for 7 (seven) years and a fine under other sections.

.....

In this case, the accused Major (retired) Arif Hossain conducted the entire operation viz. kidnapping, killing of the victims by taking active part therein, making disappearance of the dead bodies of the victims in the estuary of the rivers Meghna and Shitalakshmya and also was one of the conspirators of the alleged occurrence. So, the acts of this accused come under the mischief of sections 364/302/120A/34 and 201/34 of the Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death for commission of offence under sections 364/302/120A/34 of the Penal Code and sentence of rigorous imprisonment for 7 (seven) years and fine under sections 201/34 of the Penal Code.

In this case, it transpires that as a sequel to enmity with the victim Nazrul, the accused Noor Hossain through consipiracy got

the victims kidnapped, killed and made disappearance of the dead bodies of the victims in the estuary of the rivers Meghna and Shitalakshmya. So, the acts of this accused come under the mischief of sections 364/302/120 A/34 and 201/34 Penal Code. Considering the gravity of his offence, the trial Court rightly awarded sentence of death for commission of offence under sections 364/302/120A/34 of the Penal Code and sentence of rigorous imprisonment for 7 (seven) years and a fine under sections 201/34 of the Penal Code rightly.

The appalling, diabolical alleged occurrence sends a chill of panic down the spine of human being. To what extent men can be cruel, unkind and heartless, the condemned-accused-prisoners demonstrated it and that the alleged occurrence is the glaring example of cruelty to its highest degree. In what agony the victim-deceased

persons passed their time in the custody of the accused-RAB personnel with death staring in their faces is beyond thinking. The victim-deceased-persons as died in the custody of the accused-RAB personnel, it is immaterial as to how and by whom they were killed. It is also required to be mentioned that the accused-RAB personnel were so unkind even to the dead bodies of the victims when they perforated the abdomen of the dead bodies under the navels with dagger for easy drowning of the dead bodies in the river water meaning thereby that the accused-RAB personnel even did not spare the dead body of the victim-deceased-persons. It also shows the extent of brutality and inhumanity in committing the alleged crime.

With regard to awarding death sentence to the condemned-accused-prisoners, the learned AAG referred the case of Tapinder Singh versus State of Punjab reported in 1971 CSR

599 in which case it is held that " The manner in which the five shots were fired at the deceased clearly shows that the offence committed was deliberate and pre-planned. We are unable to find any cogent ground for interference with the sentence". Here in this case, after kidnapping the victims, they were killed by twisting their mouths with polythene and by strangulation with rope. Thereafter, two sacks containing brick were tied up with the dead body of each victim and after perforating the abdomen of the each dead body with dagger, dead bodies were dropped in the river for disappearance which is cruelty to the extremity done deliberately and in a pre-planned way. If any body goes through the confessional statements of the confessing-accused-persons in this case, he is bound to shudder in panic thinking the brutal and diabolic manner in which the occurrence was perpetrated. In this regard,

we may refer to the case Madan Gopal Kakkad vs. Naval dubey reported in 3 S.C.C, (1992) 204 (Supra) in which the Indian Supreme Court held that held that "We feel that Judges who bear the sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end, if the gravity of the offences so demand".In respect of the principle of sentencing the learned AAG also referred the case of Abdul Wahed Versus State of Uttar Pradesh reported in (2016) 1 Supreme Court cases at page 583 in which case it is held that "It is the duty of the Court to award proper sentence having regard to the manner in which offence was committed. Undue sympathy would do more harm to criminal justice system undermining the public confidence in the efficacy of the system. It is, therefore, the duty of every Court to award proper sentence having regard to the matter in which the offence is committed." In

the case of Md. Ershad Ali Sikder versus the State reported in 9 MLR (AD) at page 355 our Apex Court held that " sentence of death is appropriate where death is caused with extreme brutality." In this case, the aggravating circumstances of the acts of the convicted-accused-persons outweigh the mitigating circumstances. We do not find any mitigating or extenuating circumstances on record in this case which may impel us to take a lenient view in awarding punishment to the said convicted-accused-persons. So, in this case the convicted-accused-persons namely, Lt. Col. Tarek Syeed Mohammad, Major (retired) Arif Hossain Lt. Commander (retired) M.M. Rana, Noor Hossain, Habilder Md. Emdadul Haque, ROG Md. Arif Hossain, Lance Nayek Md. Hira Mia, Nayek Md. Billal Hossain, Sepoy Md. Abu Taiyab, Constable Md. Shihab Uddin, S.I. Purnendu Bala, Sainik Md. Abdul Alim (absconding), Sainik Md.

Mahiuddin, Sainik Al-Amin Sharif and Sepoy Tajul Islam deserve capital punishment i.e. the death sentence which had been awarded to them by the trial Court for killing the seven victim-deceased-persons (including the two victims of Sessions Case No.1748 of 2015) intentionally in a pre-planned way and in extremely brutal, gruesome, grotesque, diabolical, revolting and dastardly manner without being provoked by the victim-deceased-persons. It is the prayer of the learned Advocates for the condemned-accused-prisoners to commute the death sentence as awarded to them to a sentence of imprisonment for life by way of mitigation. But, we do not find any mitigating or extenuating circumstances on record in this case that may impel us to take a lenient view in awarding punishment to the condemned-accused-prisoners. The convicted-accused-persons had not been given any right or authority or license to take the lives of

the seven victims of the case. In this case the aggravating circumstances in respect of those convicted-accused-persons outweigh the mitigating circumstances. So, we do not find any mitigating or extenuating circumstances on record in this case which may impel us to take a lenient view in awarding punishment to the said convicted-accused-persons.

In the light of discussion made hereabove, and on consideration of the facts, circumstances and evidence on record and so also on observation of the case laws as referred to by the learned Advocates of both the sides, this Court finds the accused-persons, namely, Lt. Col. (retired) Tarek Syeed Mohammad , Major (retired) Arif Hossain, Lt. Commander (retired) Masood Rana, Noor Hossain, guilty under sections under sections 120B/302/201/34 of the penal code and the accused-persons Habilder Md. Emdadul Haque , ROG Md. Arif Hossain, Lance

Nayek Md. Hira Mia, Nayek Md Bellal Hossain, Sepoy Md. Abu Taiyab, Lance Nayek Md. Hira Mia, Constable Md. Shihab Uddin, S I Purnendu Bala, Sainik Md. Abdul Alim (absconding), Sainik Mahiuddin Munshi, Sainik Alamin Sharif and Sepoy Tajul Islam , Sainik Md. Asaduzzaman Noor, Sergeant Enamul Kabir, Md. Mortuza Zaman Churchil, Ali Mohammad, Md. Mizanur Rahman Dipu alias Mizan, Md. Raham Ali, Md. Abul Bashar, Salim (absconding), Md. Sanaulla, Manager Shahjahan and Jamal Uddin under sections 302/201/34 of the penal Code.

On consideration of the role played by the convict-accused-persons, namely, Lt. Col. (retired) Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander (retired) Masood Rana, Noor Hossain, Nayek Md. Bellal Hossain, Habilder Md. Emdadul Haque, ROG Md. Arif Hossain, Lance Nayek Md. Hira Mia, Sepoy Md. Abu Taiyab, Constable Md.

Shihab Uddin, S. I. Purnendu Bala, Sainik Md. Abdul Alim (absconding), Sainik Mahiuddin Munshi, Sainik Alamin Sharif and Sepoy Tajul Islam in the appalling, diabolical, inhuman, heartless, unkind and merciless murder of the victim-deceased-persons of the case without provocation from the side of the victims in a pre-planned manner, this Court opines that they deserve capital punishment in the case and as such, the trial Court rightly imposed capital punishment i.e. death sentence upon them.

On consideration of the nature of role played in the murder of the victim-deceased persons and in the alleged occurrence, the sentence of death as awarded to the condemned-prisoners, namely, Sainik Md. Asaduzzaman Noor, Sergeant Enamul Kabir, Md. Mortuza Zaman Churchil, Ali Mohammad, Md. Mizanur Rahman Dipu alias Mizan Md. Raham Ali, Md. Abul Bashar, Salim (absconding), Md.

Sanaula, Manager Shahjahan and Jamal Uddin appears to this Court to be harsh and severe and as such, this Court is inclined to commute the death sentence as awarded to the said convicted-accused-persons to a sentence of imprisonment for life and also with fine. According to this Court, justice will be amply met if the aforesaid condemned-prisoners are sentenced to suffer imprisonment for life and to pay a fine of Tk.20, 000/00 (twenty thousand) thousand, in default, to suffer rigorous imprisonment for another 2 (two) years each.

Before parting with this judgment, this Court is inclined to mention that RAB, an elite force has been playing a pioneering role in maintaining law and order situation in the country. In the estimation of people the force is a symbol of security and trust. So, for the acts of a few aberrated RAB-personnel like those in this case, the glory

and achievement of the force cannot be tarnished in any way. In the present case, the accused RAB personnel acted illegally with individual responsibility and upon personal interest. So the 'RAB', the elite force as a whole did not commit the alleged offence, only some aberrated RAB Personnel i.e. the convicted-accused RAB-Personnel.

In the result, the Death Reference No.03 of 2017 is accepted-in-part.

The sentence of death as awarded to the condemned-accused-prisoners, namely, Lt. Col. (retired) Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander (retired) Mohammad Masood Rana (M.M.Rana), Noor Hossain under sections 120B/302/201 and sentence of death as awarded to the condemned-accused-prisoners, namely, Nayek Md Bellal Hossain, Habilder Md. Emdadul Haque, ROG Md. Arif Hossain, Lance Nayek Md. Hira Mia, Sepoy Md. Abu Taiyab, Constable Md.

Shihab Uddin, S.I. Purnendu Bala, Sainik Md. Abdul Alim (absconding), Sainik Mahiuddin Munshi, Sainik Al Amin Sharif and Sepoy Tajul Islam under sections 302/201/34 of the Penal Code is hereby upheld and confirmed.

The conviction and sentence as awarded to the condemned-prisoners, namely, Lt. Col. (retired) Tarek Syeed Mohammad, Major (retired) Arif Hossain, Lt. Commander (retired) Masood Rana (M.M.Rana) and Noor Hossain under sections 120 B/201/34 is hereby upheld but in view of the death sentence as awarded to them sentences under those sections have become redundant and as such, no separate sentence is being awarded to them under those sections.

The conviction and sentence as awarded to the condemned-prisoners, namely, Nayek Md. Bellal Hossain, Habilder Md. Emdadul Haque, ROG Md. Arif Hossain, Lance Nayek Md. Hira Mia, Nayek Md Bellal Hossain, Sepoy

Md. Abu Taiyab, Lance Nayek Md. Hira Mia, Constable Md. Shihab Uddin, S. I. Purnendu Bala, Sainik Md. Abdul Alim (absconding), Sainik Mahiuddin Munshi, Sainik Alamin Sharif and Sepoy Tajul Islam under sections 201/34 of the penal Code is hereby upheld but in view of the death sentence as awarded to them said sentence has become redundant and as such, no separate sentence is being awarded to them under those sections.

The conviction and sentence as awarded to the convict-accused-appellants, namely, Lance Corporal (force retirement) Ruhul Amin, Corporal Md. Mokhlesur Rahman (dismissed), Sainik Md. Nuruzzaman, Constable Md. Babul Hasan, ASI Md. Kamal Hasan, Constable Md. Habibur Rahman, Habilder Nasiruddin and ASI Md. Bazlur Rahman under sections 364/201/34 of the Penal Code is hereby upheld and confirmed.

.....

The conviction and sentence of death as awarded to the condemned-prisoners, namely, Sainik Md. Asaduzzaman Noor, Sergeant Enamul Kabir, Md. Mortuza Zaman Churchil, Ali Mohammad, Md. Mizanur Rahman Dipu alias Mizan, Md. Raham Ali, Md. Abul Bashar, Salim (absconding), Md. Sanaula, Manager Shahjahan and Jamal Uddin is converted to a sentence of imprisonment for life and to pay a fine of Tk.20,000/00 (twenty thousand) thousand, in default, to suffer rigorous imprisonment for another 2 (two) years each. These convict-accused-appellants be shifted from condemn cell to the normal cell at once. The other order of conviction and sentences as awarded to these convict-accused-appellants will remain as before.

.....
The Criminal Appeal No.660 of 2017,
Criminal Appeal No.695 of 2017, Criminal
Appeal No.703 of 2017, Criminal Appeal No.707
of 2017, Criminal Appeal No.715 of 2017,

Criminal Appeal No.726 of 2017, Criminal Appeal No.738 of 2017, Criminal Appeal No.763 of 2017, Criminal Appeal No.770 of 2017, Criminal Appeal No.809 of 2017, Criminal Appeal No.828 of 2017, Criminal Appeal No.1176 of 2017(arising out of Jail Appeal No.24/17), Criminal Appeal No.1213 of 2017, Criminal Appeal No.1694 of 2017, Criminal Appeal No.2239 of 2017, Criminal Appeal No.2441 of 2017, Criminal Appeal No.2914 of 2017, Criminal Appeal No.3281 of 2017, Criminal Appeal No.3359 of 2017, Criminal Appeal No.5221 of 2017, Criminal Appeal No.5295 of 2017, Criminal Appeal No.5320 of 2017 and Jail Appeal No.13 of 2017, Jail Appeal No.14 of 2017, Jail Appeal No.15 of 2017, Jail Appeal No.16 of 2017, Jail Appeal No.17 of 2017, Jail Appeal No.18 of 2017, Jail Appeal No.19 of 2017, Jail Appeal No.20 of 2017, Jail Appeal No.21 of 2017, Jail Appeal No.22 of 2017, Jail Appeal No.23 of

2017, Jail Appeal No.25 of 2017, Jail Appeal No.26 of 2017, Jail Appeal No.27 of 2017, Jail Appeal No.67 of 2017, Jail Appeal No.68 of 2017, Jail Appeal No.69 of 2017, Jail Appeal No.144 of 2017 are hereby dismissed.

The judgment and order of conviction and sentence as passed in Sessions Case No.103 of 2014 corresponding to G. R. Case No. 328 of 2014 is hereby upheld and confirmed in modified form.

Let the lower Court's record along with a copy of this judgment be transmitted down at once.

Mustafa Zaman Islam, J

I have had the privilege of going through the judgment proposed by my learned brother Mr. Justice Bhabani Prasad Singha. I entirely agree with the conclusions arrived at and the plausible reasoning adopted by him. However, a very limited, but pertinent, question of

law arises for consideration in this reference, in view of the significant legal issues involved in the instant case in the highlighted settled norms of appreciation of evidence in offence, principles of murder cases and the role of judiciary in addressing crime against humanity. While fully endorsing and concurring with the Judgment of my learned brother Mr. Justice Bhabani Prasad Singha, I would like to give my additional reasoning of unprecedented incident of Narayanganj 7(seven) murder case.

.....
Before, we advert to the contentious points, it would be appropriate to highlight factual background of the case, though the entire facts of the case relating to cruel and brutal nature of the crime has already been stated in the judgment of my brother Bhabani Prasad Singha, J.

One Selina Islam, wife of the deceased Nazrul Islam as informant lodged an FIR on

28.04.2014 with Fatullah police Station under District Narayanganj against the accused Noor Hossain and 5 accused persons under sections 170/341/365/34 of the Penal Code. The deceased Nazrul Islam was a panel Mayor and councilor of Narayanganj City Corporation. He had bitter political vendetta and long standing rivalry over local politics with condemned prisoner Noor Hossain, who was also a Commissioner of Ward no.4 of Narayanganj City Corporation. It is stated that after appearing before a Narayanganj Court in a criminal case on 27.04.2014, Nazrul along with three co-accused of the said criminal case. i.e. Maniruzzaman Swapan, Tajul Islam and Liton and Swapan's driver Jahangir Alam were returning to Dhaka by car. Thereafter, Md. Nazrul Islam, a panel Mayor and his four aids were abducted from Dhaka-Narayanganj link road as they reached Khan Shabeb Osman Ali Stadium at Fatullah. It is pertinent to

note that Advocate Chandan Sarker and his driver Ibrahim were also abducted and killed apparently because they witnessed the abduction of Nazrul and others. In shocking turn of event the bodies of Advocate Chandan Sarker and five others were found floating in the Shitalakshmeya river after 3 days on 30.04.2014 and one dead body was found afloat on the following day. The victims were killed and the bodies were dumped into the river. The accused had perforated the victims' bellies and then tied up the bodies with sacks full of brick before throwing the bodies into the water. The victims were blind-folded and their hands and legs were tied with ropes. Another case was filed by Chandan's son-in-law Dr. Bijoy Kumar Paul over the abduction and killing on 07.05.2014 with Fatullah Police Station without mentioning any name of the accused-persons.

SI Md. Fazlul Haque Taluker one of the Investigating Officers was replaced by Md. Abdul Awal, Inspector, District Detective Branch, Narayanganj as an Investigating Officer in respect of 7(seven) murder case of Narayanganj. Thereafter, the Investigating Officer was replaced again by Md. Mamunor Rashid Mandol, Inspector, District Detective Branch, Narayanganj. On an earlier occasion, Dr. Bijoy Kumar Paul and two others filed a writ petition under Article 102 of the Constitution of Bangladesh praying for a direction upon the Government to arrest the perpetrators immediately and also to form an independent and neutral judicial inquiry committee to investigate into the said 7 murder case. It is pertinent to note here that a Division Bench of this Court issued the Suo-Moto Rule being no.18403 of 2014 together with some directions upon the Government. The alleged offence was serious

in nature in which some high ranked RAB personnel of the Government were allegedly involved in collaboration with some miscreants. Mentionably, three RAB men, the then Commanding Officer of RAB-11 in Narayanganj Lt. Col. Tareque Syeed Mohammad and the then Company Commanders of RAB-11 Major Arif Hossain and Lt. Commander Masud Rana were withdrawn from RAB on 29.04.2014 for their alleged involvement in the abduction. In view of the above, this Court issued Rule Nisi on 11.05.2014 on the following terms:-

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the respondents nos.1 to 3 and 5 shall not be directed to effectively consider amendment of the existing law(s) regulating the professional activities of the police, RAB and other law enforcing agencies aiming at updating their various legal provisions

relating to their duties and responsibilities towards ensuring the effective enjoyment of the citizens' rights guaranteed under Articles 31,32,36,42 and 44 of the Constitution and also why the respondent nos.1 to 3 and 5 shall not be directed to ensure uninfluenced and unbiased investigations of the said "7 Murder Case" and, further, to show case as to why respondent no.4 shall not be directed to oversee the performance of the law enforcing agencies with the object of ensuring that human rights standard are not transgressed by the law enforcing agencies in performing their professional duties and responsibilities and/or pass such other or further order or order as to this Court may seem fit and proper.

The Rule is made returnable within 04(four) weeks from date.

However, in view of the fact that a Division Bench of this Court has already issued a Suo-moto Rule in tandem with passing some directions upon the government, including formation of an Administrative Inquiry Committee in addition to the ongoing investigation by the Detective Branch of police, we are not inclined to direct the government to form any further committee to investigate into the said case."

By the Rule issuing order, considering the exigencies, the High Court Division directed the respondent no.5, Inspector General of Police to arrest forthwith (1) Lieutenant Colonel Tarek Syeed Mohammad, Commanding Officer (2) Major Arif Hossain and (3) Lieutenant Commander S.M. Masud Rana (three dismissed officer of RAB-11) under section 54 of the Criminal Procedure Code, if they were not already arrested in connection with any specific charge under the penal Code

or under any other Special Law, and to place them in the custody of the Detective Branch of Police who were carrying out the investigation into the said case under the direction of this Court.

Following a High Court order vide memo. no.4141/Aparadh dated 12.05.2014 of the office of Police Super, Narayanganj, RAB personnel namely, Tarek and Arif were arrested on 17.5.2014 and lieutenant Commander Masud Rana was arrested on 18.5.2014. Be it mentioned here that Noor Hossain, ward Councilor of Narayanganj city corporation, ward no.4 fled away immediately after the occurrence out of the country. Thereafter, he was brought back to the country. Accordingly, charge-sheets, in the two cases were submitted and charges were framed. To prove the charge, prosecution examined as many as 106 witnesses while the defence examined none. These cases were heard

simultaneously. After considering the evidence and on materials on record, the trial Court found all the accused guilty of the offence in respect of charges framed against each of them. The trial Court, on consideration of the materials placed before it, found all the 35 accused-persons including 25 former RAB personnel and Noor Hossain guilty of abduction and murder of seven victims and disappearance of evidence and awarded death sentence to 26 accused-persons and also to pay fine of various amount and sentenced the rest 9 other accused-persons to suffer various terms of imprisonment from 7 years to 10 years and also to pay fine.

Learned Sessions Judge, Narayanganj made references to this Court for confirmation of death sentence as per section 374 of the Code of Criminal Procedure. The references have been numbered as Death Reference nos.3 of

2017 and 4 of 2017 and the other convicted-accused-persons filed appeals against their conviction for various offences and the sentences as awarded to them.

In the light of the overwhelming arguments as placed by the prosecution on behalf of the State and the accused-appellants I shall deal with and address the aspect of Criminal conspiracy.

I have given my most anxious consideration in this case that in the administration of justice, judges and lawyers play equal rules. Like judges, lawyers also must ensure that truth triumph in the administration of justice. Truth is the soul of justice. Truth alone should be the foundation of justice. The entire judicial system has been created to find out the real truth. Moreover, speedy justice and fair trial to a person accused of a crime are integral part of the constitution. These are

the imperatives in dispensation of justice. In every criminal trial, procedural law has to be followed, the law of evidence have to be adhered to and an effective opportunity to the accused to defend himself must be given.

As could be seen from the reasoning portion of the Judgment and order of conviction and sentence that the trial Court found all the accused guilty of the offence of abduction followed by 7 (seven) murder under sections 302/120B of the Penal Code and awarded death or life imprisonment along with fine to each of the convict. It is necessary to mention here that though the Criminal conspiracy is not easy to prove but the conspirators invariably deliberately, plan and act in secret over a period of time. It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from start to finish. What is important is that

they were involved in the conspiracy or in other words. There is a combination by agreement which may be express or implied or in part express or in part implied. The moot question is whether the accused can be convicted under sections 302/120B of the Penal code relying upon the confession of the co-convicts. I would say that they are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable. For disposal of the case, it would be profitable to mention concept of conspiracy as defined in section 120A of the Penal Code which reads under:-

"120A. Definition of criminal conspiracy:- When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided

that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120B being pertinent is reproduced below:-

120B. Punishment of criminal conspiracy
(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

For establishing the charge of conspiracy, therefore, it has to be established that there should be an agreement between two or more persons to commit an illegal act or an act which is not legal by illegal means. Prosecution, therefore, has to establish meeting of minds between two or more persons either by tacit or other kind of agreement to do illegal acts. The Apex Court of the sub-continent laid down parameters in establishing the case of conspiracy. The Apex Court in 'NIRBHAYA GANG RAPE' case i.e Mukesh and another Vs. State for NCT of Delli and others and its judgment has observed under:-

"From the law discussed above, it becomes clear that the prosecution must adduce evidence to prove that-

(a) The accused agreed to do or count to be done an act.

(b) Such an act was illegal or was to be done by illegal means within the meaning of Penal Code.

(c) Irrespective of whether some over act was done by one of the accused in pursuance of the agreement.

Interpreting the provisions in section 120A and 120 B of the IPC, this court in the case by Yash Pal Luttal Vs State of Panjab (1977) 4 Scc 540 in para 9, made the following observation:-

"The offence of Criminal conspiracy under section 120A is a distinct offence introduced for the first time in 1913 in chapter V-A of the Penal Code. The very agreement concert of league is the ingredient of the offence. It

is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the conspiracy. There may be so many decisions and techniques adopted to achieve the common goal of the conspiracy." We are in respectful agreement with the above observations with regard to the offence of Criminal Conspiracy. Keeping in view the ratio of the judgments in the said cases, we shall now examine the evidence which has been brought on record by the prosecution. In this case, PW72 Sainik Milon Hossain has stated that on 20.04.2014 at about 10.am, Major Arif called him along with DAD (Admin) Salim Khan (the PW70) and CSI Abdus Sattar (the PW71) and directed not to depute SI. Purnedu Bala, Habilder Emdad, AB Arif, Sainik Alim, Sainik Al-Amin, Sainik Mohiuddin, Sepoy Taiyab, constable Shihab, Lance Nayek Hira and Belal to any duties

until further order and they would work directly under the accused Major Arif. Accordingly, on 27.04.2014, Major Arif sir directed DAD Salim Khan as P.W 70 to call said accused persons and DAD directed him and PW71 CSI Abdus Satter to bring them. All of them got into a blue colour HIACE microbus at about 10.30 am under the leadership of Major Arif, they started from camp. All the accused persons in the bus on the date of the incident. It is clear that accused Major Arif along with RAB personal had an execution of conspiracy. Moreover, the PW69 has stated that on 27.04.2014 at about 10:30 pm accused MM Rana directed the PW69 Md. Atiar Rahman sending 6 members civil team to the accused Arif at Narayanganj Court area. Pursuant to that civil team was sent to the accused Major Arif and the accused Rana sir also directed L.S. Samad to go to Kanchpur Bridge with trawler and the PW65 Md. Abdus Samad has

stated that he operated trawler under the command of the accused Arif and M.M. Rana. The PW63 Lance Nayek Md. Azam Ali corroborated the same.

In criminal case the onus lies on the prosecution to prove that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by the accused. It is the settled law that act or action of the accused cannot be used as evidence against other accused, however, an exception has been made out under section 10 of the evidence Act in the case of conspiracy. To attract the applicability of section 10 of the evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against other accused.

Section 10 reads:-

"10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was party to it."

In the case of *Sardar Sardul Singh Caveeshar vs. State of Maharashtra* reported in AIR 1965 SC 682 the provision contained in section 10 of the Evidence Act, 1872 was analyzed and made the following observation:-

"In short the section can be analyzed as follows:-

(1) There shall be a prima-facie evidence affording a reasonable grounds for a Court to believe that two or more persons are members of a conspiracy;

(2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;

(3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them;

(4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and

(5) it can only be used against a co-conspirator and not in his favour."

The prosecution heavily relied on two circumstances to convict the appellants i.e one is recovery of materials used in the commission of offence in pursuance of evidence and judicial confession made by the co-convicts before Magistrate. It is to be seen that the accused have been charged with the offence of conspiracy to commit the offence of abduction followed by 7 murder. But there is no specific evidence to prove that there was prior meeting of minds of all the accused persons and that they had conspired together to commit offence by pushing 'Suxa' injection into the body of the victims and subsequently killing the 7 victims. Therefore, all the accused-persons cannot be held guilty of the offence of conspiracy of murder. It appears from the evidence of the PW22 and the PW 23 that in

their presence brick, cords, cloths etc. were seized and that the recovered dead bodies were tied up with brick and cord.

The accused-persons Mortuza Zaman Churchil, Md. Raham Ali, Ali Mohammad and Md. Abul Basher who are the associates of the accused Noor Hossain made confessional statements in the case. The accused Mortuza Zamam Charchil stated in his confession that due to political reason the accused Noor Hossain had conflict with Councilor Nazrul (Victim); that Shajahan, Ali Mohammad and Sanaulla Sana were very much close to Noor Hossain, more so, Nur Hossain would consult everything with the aforesaid three persons; that three persons used to say often about the killing of Councilor Nazrul but Noor Hossain used to tell them that it was not their headache and that he would do everything; that the accused Arif of RAB used to come to the residence and office of Noor

Hossain 8/10 days in a month. He also stated that 5/7 days prior to the occurrence, Noor Hossain went to EPZ; that CO of RAB-11 called Noor Hossain and they went to the office of the CO of RAB-11; that when they reached the EPZ gate Noor Hossain asked Bashar about RAB office and Noor Hossain went to the RAB office several times.

The accused Md. Raham Ali stated in his confession that Major Arif generally used to come in the evening and would stay upto 9/9:30 pm in the office of the accused Noor Hossain.

The accused Md. Abul Bashar stated in his confessional statement that two months before the occurrence Noor Hossain and his mates made attempt to endanger the life of Nazrul and Noor Hossain and Nazrul had political enmity resulting in increased enmity day by day. He also stated that 6/7 months before the occurrence Major Arif of RAB used to come

4/5 days in a month to the office of Noor Hossain.

The accused Ali Mohammad, in his confessional statement corroborated the manner of killing of the Councilor Nazrul and 6 others stating that there was telephonic conversations between the accused Noor Hossain and the accused Major Arif and Noor Hossain; that he along with the other associates of Noor Hossain went to Kanchpur Bridge and found 7 dead bodies loaded in a trawler and after that sacks containing brick and cord were also loaded in the trawler.

From the above discussion, it is seen that section 10 of the Evidence Act, 1872 will come into play in this case suggesting that there is a reasonable ground to believe that two or more persons have conspired together to commit this offence as such, prosecution could prove the charge of conspiracy against the accused Tarek Syeed

Mohammad, C.O of the RAB-11, the accused Major Arif, the accused M.M. Rana and the accused Noor Hossain. But the prosecution could not prove the charge of conspiracy against the other accused persons. In this regard, suffice it to note that there is no sufficient materials on record to bring charge of conspiracy against the other convicts.

In the light of aforesaid discussion, a strong message needs to be sent to the perpetrators of grotesque crimes and inhuman conduct in ghastly manner against humanity so that no such gravest crime of extreme brutality as committed by the convicted-accused persons of this case is committed by anybody else in future and that none is above law.

Thus, I agree with the opinion of my brother **Bhabani Prasad Singha, J.**

Mustafa Zaman Islam, J.

.....

