

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Abu Bakar Siddiquee
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

JAIL APPEAL NO.12(A) OF 2014.

(Arising out of Jail Petition No.12 of 2014)

(From the judgment and order dated 10.10.2013 passed by the High Court Division in Death Reference No.62 of 2008 with Criminal Appeal No.4028 of 2008 and Jail Appeal No.721 of 2008)

Md. Aminul Islam : Appellant.

=Versus=

The State: Respondent.

For the Appellant: Mr. A.B.M. Bayezid, Advocate,
instructed by the Court.

For the Respondent: Mr. Biswajit Debnath, Deputy
Attorney General,
instructed by Mr. Haridas
Paul, Advocate-on-Record.

Date of hearing : 08-07-2021

Date of judgment : 12-07-2021

JUDGMENT

Hasan Foez Siddique, J: Jail Petition

No.12 of 2014, which was converted to Jail Appeal NO.12(A) of 2014, was preferred by condemned prisoner Md. Aminul Islam, who is

unrepresented, thereby, we had appointed Mr. A.B.M. Bayezid, learned Advocate on his behalf to represent him at State expense.

The appellant was convicted under section 302/380/411 of the Penal Code and sentenced to death and to pay a fine of taka 1,00,000/- by the Druto Bichar Tribunal No.4, Dhaka in Druto Bichar Tribunal Case No.17 of 2007 arising out of Dhanmondi Police Station Case No.24 dated 07.03.2005. No separate sentence was awarded under Section 380/411 of the Penal Code. The Tribunal sent the case record in the High Court Division for confirmation of sentence of death under Section 374 of the Code of Criminal Procedure which was registered as Death Reference No.62 of 2008 . The appellant preferred Criminal Appeal No.4028 of 2008 and Jail Appeal No.721 of 2008 in the High Court Division. The High Court Division heard the death reference and criminal appeal and jail appeal together and, by the impugned judgment and order dated 10.10.2013, accepted the death reference and dismissed the criminal appeal and jail

appeal. Against which, the appellant has preferred this appeal.

The fact of this case, as revealed by the prosecution, shocked the judicial conscience. At about 8 p.m. on 9th March, 2005, in their apartment located in the midst of the City bearing holding No.13/1, West and Street, Central Road, Dhaka Dr. Nazneen and her maid servant Paraveen were allegedly brutally murdered by the appellant, who is the bhagna (sister's son) of victim Nazneen's husband Dr. Afsaruzzaman who brought the appellant in his house for helping him. On 06.03.2005, Dr. Afsaruzzaman went to Bogra on an official tour and the other members of his family were staying in the said residence. On 07.03.2005, at around 10.45 p.m., the informant P.W.1 got information that the victim Nazneen and maid servant had been killed. He rushed to the spot and found the dead bodies of the victims. P.W.1 came to know from P.W.5 Md. Jahangir, P.W.4 Nur Alam and others that on the fateful night at about 8.00 p.m. Md. Moslem Uddin (P.W.20) security guard of

building, found accused Aminul Islam leaving the building in a restless and perplexed condition. In course of investigation, accused Aminul Islam was arrested by the Police from a village of Faridpur district. Later on, he made confessional statement recorded under section 164 of the Code of Criminal Procedure by a Magistrate. P.W.24 Kazi Abdus Sabur, Assistant Superintendent of Police, submitted charge sheet being No.96 dated 15.05.2007 against the accused under section 302/380/411 of the Penal Code.

To prove the Charge, the prosecution examined as many as 24 witnesses, while the defence examined none. From the trend of cross examination of the P.Ws. it appears that the defence case was that the appellant was falsely implicated in the case and confessional statement of the appellant was not voluntarily made. The Tribunal convicted and sentenced the appellant as noted at the outset. The High Court Division by the impugned judgment and order, accepted the death reference and dismissed the appeal and jail appeal preferred by the appellant. Thus,

the appellant has filed the instant Jail Petition which was subsequently converted to Jail Appeal.

Mr. A.B.M. Bayezid, learned Counsel appearing on behalf of the appellant, submits that the confessional statement of the appellant was not voluntarily made, the same was not true and not recorded following the provisions under section 164 and 364 of the Code of Criminal Procedure. He further submits that there is no eye witness of the occurrence and prosecution has failed to prove the chain of circumstances against the appellant wherefrom it could be said that none else the appellant had killed the victims. He, lastly, submits that considering the age of the appellant his sentence may be commuted from death to imprisonment for life.

Mr. Biswajit Debnath, learned Deputy Attorney General appearing with Mr. Haridas Paul learned Advocate-on-Record on behalf of the State, submits that the confessional statement of the appellant was voluntarily made and the statement made was true and the same was recorded upon due compliance of the

provisions provided under sections 164 and 364 of the Code of Criminal Procedure. He submits that prosecution has been able to prove chain of circumstances beyond reasonable doubt that at the relevant time, the appellant was staying in the flat, he brutally killed the unfortunate victims assaulting them mercilessly. He further submits that the bloodstained wearing apparels and mobile phone of victim Dr. Nazneen were recovered from the custody of the appellant who after the occurrence absconded and thereafter, he was arrested in a remote village of district Faridpur which was enough to connect him with the occurrence. He lastly, submits that the victims were killed most horrifying and diabolic manner and the High Court Division rightly confirmed the sentence of death.

In this case, the prosecution has examined 24 witnesses out of 38 charge sheeted witnesses to prove the charge. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by

the Yardstick of probabilities, its intrinsic worth and the animus of witnesses. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely. In a case where the offence alleged to have been committed is a serious one, the prosecution must provide greater assurance to the Court that its case has been proved beyond reasonable doubt. The prosecution case, as it appears from the evidence, is based on (1) the confessional statement, (2) circumstantial evidence and (3) recovery of incriminating materials from the custody of the appellant at the time of his arrest.

Let us see at first the contents of confessional statements which are reproduced below:

“ডাঃ আফছার আমার আপন মামা । ডাঃ নাজনীন আমার মামী সে ডাঃ আফছারের ২য় স্ত্রী । মামা আমাকে লেখাপড়া করানোর জন্য ঢাকা আনে এবং তার বাসায় রাখে । আমাকে মোহাম্মদপুর কেন্দ্রীয় বিশ্ববিদ্যালয় কলেজে ভর্তি করায় । আমার মামা মামী ২ জনেই চাকুরী করেন । তারা অফিসে গেলে কাজের বুয়াকে রুমে তালা দিয়ে রেখে যেতেন । সকল রুমে তালা দিত । বারান্দায় থাকতাম তখন ।

আমাকে আমার মামী অনেক অত্যাচার করতো-মারতো। গত ৭/৩/০৫ তারিখ পূর্বের মত কাজের বুয়াকে এক রুমে তালা দিয়ে মামী অফিসে যায়। আমি বারান্দায় থাকি। সারাদিন খাইনি। খিদে লাগে আমার আমি একপট চাউল নিয়ে বাসার দারোয়ানের চুলায় গিয়ে রান্না করে খাই। সন্ধ্যার দিকে মামী অফিস থেকে এসে আমার রান্নার কথা জানতে পারে। আমাকে ভীষন ভাবে গালিগালাজ করে। আমি এর প্রতিবাদ করি। মামী তার সেভল দিয়ে আমাকে মারে। ঝাডু দিয়েও আমাকে মারে। আমার সম্মানে আঘাত লাগে। আমি ঝাডু মামীর হাত থেকে কেড়ে এনে তার পায়ে আঘাত করি মামী ব্যথা পায় এবং মেঝেতে পরে যায়। আমি রান্নাঘর থেকে দা (বটি) এনে মামীর গলায় পোচ দেই- রাত্র ৮.০০ টায় মামী জবাই হয়ে যায়। এই ঘটনা কাজের বুয়া দেখে ফেলে এবং ঘটনা বলে দিবে বলে জানায়। আমি ভয় পাই এবং গোপন রাখার জন্য কাজের বুয়া পারভীনকেও কোপ দেই। সে মাটিতে পরে যায় তার গলায় পোচ দেই। আমি জ্ঞান হারিয়ে ফেলি। আর কিছু মনে পরে না। রাত্র অনুমান ৮.০০/৮.৩০ টার দিকে জ্ঞান ফিরিলে দেখি মামীর ও বুয়ার লাশ পরে আছে। আমি গাড়ীর সিট কভার দিয়ে ২টি লাশ ঢেকে দেই এবং আমার জামা কাপড় পাল্টায়ে দরজায় বাহির থেকে তালা দিয়ে চলে যাই। রাত্রে বগুড়া চলে যাই। বগুড়া গিয়ে চিন্তা করি বাড়ী যাওয়া ঠিক হবে না। ৮/৩/০৫ তারিখ বাসে ফরিদপুর যাই। এই আমার জবানবন্দী।”

It is the legal obligation of confessional statement recording Magistrate to take every precaution to prevent forcible extraction of confession by the prosecuting agency and to comply the provisions of 164 and 364 of the Code of Criminal Procedure not

only in form, but in essence. Before recording confession, a searching enquiry must be made from the accused as to the treatment he had been receiving in Police custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution. Magistrate should ask the accused as to why he wants to make a statement which shall go against his interest in the trial. Here in this case the appellant in his statement made while examining him under section 342 of the Code of Criminal Procedure that he was arrested at about 9 a.m. on 13.03.2005 but I.O. produced him in the Court on 15.03.2005 keeping him in custody for 2 days unauthorisedly and the Police extracted confessional statement after severe torturing. From the evidence of P.W.19 S.I. Md. Abu Sikder, who was serving in Detective Branch of Police, Faridpur, arrested the appellant on the basis of G.D. No.124 dated 13.03.2005 under section 54 of the Code of Criminal Procedure and informed the same to D.M.P. authority and on that at

about 12.30 p.m. a team of Police under the leadership of P.W.22 S.I. Shahadat Hossain of Dhanmondi Police Station rushed to Faridpur and arrested the appellant in connection with this case. In his cross examination, P.W.22 said that at about 22.30 hours on 13.03.2005 they left Faridpur and reached Dhaka at about 12.35 p.m. on 14.03.2005 and on the next day, he produced the appellant before the Magistrate. The explanation offered by the P.W.22 as to production of the appellant on 15.03.2005 before the Magistrate appears to be not unreasonable.

From the confessional statement it appears that the appellant was arrested at about 11.30 p.m. on 13.03.2005 from the Char Dakkhin Madhobdia, Faridpur Sadar and he was brought at Dhanmondi Police Station on 14.03.2005 at about 12.30 p.m. He was produced before the Metropolitan Magistrate (P.W.6) on 15.03.2005. He was allowed time for reflection and, thereafter, the Magistrate put some questions assuring the appellant saying that he is not Police but a Magistrate; the appellant is not bound to

make any confession; if he makes so the same may be used against him. Then P.W.6 put a question as to whether any one influenced him to make such confession or not. The appellant replied, "no". P.W.6 assured the appellant that he would not be handed over to Police. From the confessional statement, it appears that at the time of making confessional statement he was aged about 24 years. After recording confessional statement, the Magistrate made an endorsement with the following words:

“আসামী সুস্থ ছিল। জবানবন্দী লেখার সময় আমার কক্ষ অন্য কেহ ছিলনা। আসামীকে চিন্তা করার জন্য পর্যাপ্ত সময় দিয়া হয়। আসামীকে তার জবানবন্দী পাঠ করে শুনানো হলে শুদ্ধ স্বীকারে স্বাক্ষর করে। আমার বিশ্বাস জবানবন্দী স্বেচ্ছা প্রনোদিত।”

P.W.6 proved the confessional statement (exhibit-2) and his signature (exhibit-2/1 series) and in his cross examination he stated that, he allowed 3(thee) hours time to the appellant for his reflection. At the relevant time only his office peon was present in his chamber. He denied the defence suggestion that he did not take effective step to make the appellant's condition normal. From the confessional statement and

the evidence of P.W.6 it appears that the confession was recorded upon taking full caution. It further appears from the judgment and order of the Courts below that both the Courts below considered the evidence of P.W.6 and the contents of confessional statement as well as prosecution story and, thereafter, they found that confessional statement was voluntarily made, the same was recorded after due compliance of provisions of sections 164 and 364 of the Code of Criminal Procedure and the same was true. If the confession made by the accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and a conviction of the accused can be solely based on it. Such confessional statement is admissible as a substantive piece of evidence. Even the retracted confessions are good confessions if held to have been made voluntarily and in accordance with the provisions of law. A confession can obviously be used against the maker of it and is in itself sufficient to support his conviction. If it is found that the

confession was made voluntary and was free and genuine there would remain nothing to be done by the prosecution to secure conviction. The allegation made by Mr. Bayezid as to coercion and threat after long lapse of time is after thought and products of ingenuity by the defence.

Now let us examine the other evidence. We have already found that the prosecution examined as many as 24 witnesses. Of them, P.W.1 is the informant of the case who narrated the prosecution case and added that at about 8.30 p.m. P.W.17, Saleha Khatun, mother of the victim Nazneen called the victim through telephone but she did not respond. Then she sent her maid servant Manzila (P.W.2) to the victim's apartment who rushed there and pressed the button of the calling bell of the apartment where the victims had been living. At that time, the security guard P.W.20, Muslem Uddin told her that he had heard outcry at about 7.30 p.m. and, some times thereafter, accused appellant Aminul left the building carrying a bag on his shoulder in a perplexed condition.

P.W.2 Monzila in her testimony stated that as per direction of P.W.17 Saleha, mother of victim Nazneen she rushed to her apartment. Security guard Muslem Uddin (P.W.20) opened the gate and, thereafter, she went to the 2nd floor where the victims Dr. Nazneen, her husband, accused Aminul and house maid Parul had been living. She pressed the button of the calling bell of the apartment, but could not get any response. Then she met P.W.20 who told that accused Aminul had left the house putting a bag on his shoulder. Hearing so, the P.W.2 returned to her house.

P.W.3 Jashimul Haque, a staff of Lab Aid Hospital, in his testimony stated that receiving information Masud (P.W.15) and he rushed to the apartment of the victims and pressed the button of the calling bell but could not get any response from inside the apartment. Thereafter, they returned to the ground floor and met the security guard who said that at about 8.30 p.m. accused Aminul having a bag on shoulder left the house being perplexed. This witness called a mechanic

and broke the lock of the apartment and, thereafter, entered into the apartment and found the dead bodies of victims under the seat cover of a car. Then this witness informed the matter to Dhanmondi Police Station. Police rushed to the place of occurrence and took steps accordingly. P.W.4 Nurul Alom Bhuiyan, another staff of Lab Aid Hospital, in his testimony, stated that getting information as to the killing of the victims , he went to their apartment and found P.W.3 and others at the place of occurrence. P.W.5 Jahangir Hossain Bhuiyan another staff of Lab Aid Hospital stated that getting information of killing of the victims he rushed to the place of occurrence and heard about the occurrence from the people present there and helped the Police to shift the dead bodies of the victims to Dhaka Medical College Hospital. In his presence, police recovered bloodstained "boti" and seat cover of a car. He also stated that security guard Muslem Uddin saw accused Aminul keeping a bag on the shoulder to leave the house being perplexed. P.W.7 Constable Abdul

Mannan accompanied the dead bodies at the time of shifting to the Morgue of Dhaka Medical College and Hospital.

P.W.8 Dr. Fazlul Karim, holding autopsy of the dead body of victim Dr. Nazneen, found following injuries in her person:

"(1) Multiple (05 in number) incised wounds transversely placed on the front of the right side of neck. One below the other manner such measuring 4" X $\frac{3}{4}$ " X soft tissue, 05" X 1" X soft tissue 4 $\frac{1}{2}$ " X 1" X bone, 2' X $\frac{1}{2}$ " X bone, 1 $\frac{1}{4}$ " X $\frac{1}{2}$ " X bone.

(2) 03(3) incised wounds placed lower most part of the front of right side of neck, 2" blow and $\frac{1}{2}$ " right of the thyroid cartilage, each measuring 1 X $\frac{1}{3}$ " X soft tissue, $\frac{1}{2}$ " X $\frac{1}{2}$ " X soft tissue, $\frac{1}{2}$ " X $\frac{1}{2}$ " X soft tissue,

(3) One incised wound measuring 3 $\frac{1}{2}$ " X $\frac{1}{4}$ " X soft issue on right side of face over the mandibular region (a long line of mandibul).

(4) One incised wound measuring $2" \times \frac{1}{2}"$ X $\frac{1}{4}"$ X soft tissue front of the left shoulder joint.

(5) One incised wound measuring $1\frac{1}{4}"$ X $\frac{1}{2}"$ X soft tissue on left shoulder joint, $\frac{1}{3}$ lateral of the wound number 4 (four)

(6) One incised wound measuring $\frac{1}{2}"$ X $\frac{1}{2}"$ X soft tissue on dorsum of right hand.

(7) One incised wound $\frac{1}{2}"$ X $\frac{1}{4}"$ X soft tissue on dorsum of right middle finger.

(8) One incised wound measuring $1" \times \frac{1}{4}"$ X soft tissue on dorsum of the right middle finger.

On dissection:

All the structures on the right side of front of the neck including all vessels were found sharply cut. All the internal organs found pale. Mentioned injuries were antimortem in nature."

He opined that death was caused due to haemorrhage and shock as a result of above mentioned wounds which were anti mortem and homicidal in nature. He proved the Postmortem report exhibit-6 and signature exhibit-6(1).

He also held Postmortem examination of the person of victim Perveen alias Parul along with other doctors and found the following injuries on her person:

"(1) One incised wounds 5" X 2" X soft tissue, front of upper neck of left side, just, below the line of left mandible $\frac{1}{3}$ above and $\frac{1}{2}$ " left of the thyroid cartilage.

(2) One incised wound measuring 3" X $\frac{1}{2}$ " X $\frac{1}{2}$ " soft tissue on antro lateral part of neck of left side, $1\frac{1}{2}$ " below and 1" left of the thyroid cartilage.

(3) One incised wound measuring $2\frac{1}{2}$ " X $\frac{1}{2}$ " X soft tissue, on right side of front of neck, $\frac{1}{2}$ " above and $\frac{1}{3}$ right of thyroid cartilage.

(4) One incised wound measuring $2\frac{1}{2}$ " X 1" X soft tissue on right side of front of neck 1" below the thyroid cartilage, this wound extended from the right side to the mid line of the body.

(5) Lower part of left ear sharply cut.

(6) One incised wound 2 $\frac{1}{2}$ " X $\frac{1}{2}$ " soft tissue on lower part of back of left arm.

(7) One incised wound $2\frac{1}{2}$ " X 1" X soft tissue on lateral aspect of left fore arm, just below the left elbow.

(8) One incised wound $1\frac{1}{4}$ " X $\frac{1}{2}$ " X bone on extensor surface of left wrist joint, left ulnar bone found sharply cut.

(9) One incised wound 2" X $\frac{1}{2}$ " X soft tissue on extensor surface of right fore arm, 2" below the right elbow joint.

(10) One incised wound 1" X $\frac{1}{4}$ " soft tissue on left mid lateral chest.

(11) One incised wound $\frac{1}{2}$ " X $\frac{1}{4}$ " soft tissue on left mid lateral chest.

(11) One incised wound $\frac{1}{2}$ " X $\frac{1}{4}$ " X soft tissue on dorsum left side of right hand.

(12) One incised wound $\frac{1}{2}$ " X $\frac{1}{4}$ " X soft issue on dorsum left index finger.

(13) One incised wound $\frac{1}{2}$ " X $\frac{1}{4}$ " soft tissue on dorsum of left middle finger.

(14) One incised wound $\frac{1}{2}$ " X $\frac{1}{4}$ " X soft tissue on the little finger.

(15) Distal phalange of left little finger sharply cut (absent).

(16) One incised wound 1" X $\frac{1}{2}$ " soft tissue on right mid clavicle portion.

17) 04 (four) incised wounds each measuring 4" X $\frac{1}{2}$ " bone, 1 $\frac{1}{2}$ X $\frac{1}{2}$ " X bone , 1" X $\frac{1}{2}$ " X bone, $\frac{1}{2}$ " X $\frac{1}{2}$ " X bone found on right parieto occipital, right parieto occipital, right parietal, and right temporal region respectively.

(18) One incised wound 2" X $\frac{1}{2}$ " X bone on left parietal region.

On dissection:

Haematoma on both parietal occipital and right temporal region. Both parietal occipital and right temporal bones sharply cut. Meninges found sharply. Cut on right parietal region. Diffuse subdural and sub arachnoids bleeding found over the brain. Brain was found pale. All the structure on both sides of the neck found sharply cut. All the visceraes were found pale. Mentioned wounds were anti mortem."

It was opined that death was caused due to haemorrhage and shock as a result of above mentioned wounds, which were anti mortem and homicidal in nature. P.W.8 proved the reports of post mortem examination (exhibits-8 and 9 respectively).

P.W.9 Abdul Kader Fakir is a resident of village Madhobdia under Kotwali Police Station, Faridpur. He stated that on 13.03.2005 the appellant was arrested from Madhobdia when he was serving as day labourer hiding his identity mentioning his fake name as Saraiful. Police after arresting the appellant seized a mobile and blood stained wearing apparels from his custody. He identified the appellant on dock. P.W.10 Md. Sazzad Hossain S.I. of Police of Dhanmondi Police Station prepared inquest of the dead bodies of the victims and sent the dead bodies to Dhaka Medical College Hospital for holding autopsy. P.W.11, a resident of Mostadangi, Faridpur, is a seizure list witness in whose presence Police recovered blood stained wearing apparels and mobile phone from the custody of the appellant. Police prepared seizure list in presence of this witness. He proved the seized articles which were material exhibit- III, IV and V. P.W.12 Md. Nozrul Islam, another resident of village Mostofadangi, is also seizure list witness, like P.W.11. In his presence,

Police recovered blood stained wearing apparels and mobile phone from the custody of the appellant. P.13 Chand Miah Fakir of village Charmadhobdia is also seizure list witness of seizing wearing apparels and mobile phone from the custody of the appellant.

P.W.14 is the maternal uncle of the victim Dr. Nazneen who in his testimony stated that he used to look after Dr. Nazneen, who once told him that appellant had become rowdy and made illicit relation with her house maid victim Parul. This witness advised Dr. Nazneen to inform the matter to her husband and, accordingly, she told the matter to her husband but he did not take any step. P.W.15 Abu Hanif Masud, another staff of Lab Aid Hospital, deposed that Chairman of Lab Aid Hospital informed him to send a car saying that Dr. Nazneen was not receiving their telephone . Then this witness rushed to the apartment of the victim along with P.W.1 and others and after breaking the lock of the door they found the dead bodies of victims . He also came to know from the

security guard P.W.20 that Aminul had left the house putting a bag on his shoulder being perplexed.

P.W.17 Saleha Ahmed, mother of victim, in her testimony stated that on 07.03.2005, after completing official duties, her daughter Dr. Nazneen went to her house and having lunch she left for her apartment assuring this witness that she would again meet her after Magrib prayer but, at about 8.30 p.m., when she found that Dr. Nazneen was not going to her house, she called her through mobile phone 4(four) times but Nazneen did not respond. Then she sent her maid servant Manzila (P.W.2) and house guard to the apartment of Nazneen who went there and pressed the button of the calling bell but did not get any response from inside the flat. They met security guard of that building who told her that appellant Aminul had left the house putting a bag on his shoulder in a perplexed condition. Thereafter, P.W.3 and others went there and found no response after pressing the button of the calling bell of the apartment of Dr.

Nazneen. Thereafter, they brought mechanic and unlocked the key. They, entering into the apartment, found dead bodies of the victims. Getting such information, she rushed to the place of occurrence and found the dead bodies. She also stated that 10/11 months before the occurrence, Dr. Nazneen's husband brought her sister's son Aminul in her apartment. 2/3 months thereafter, Aminul became desperate. Dr. Nazneen told about his behaviour to her husband but he became furious upon Dr. Nazneen. This witness also stated that Dr. Nazneen told her that earlier Aminul abused her but her husband did not take any step. P.W.18 Security guard of Lab Aid Hospital in his testimony stated that knowing about the story of killing the victims he rushed to the place of occurrence. Police prepared inquest report of the victims. This witness put his signature in the inquest report.

P.W.19 Md. Abu Sikder is a S.I. of Police. At the relevant time, he had been serving in D.B. Office, Faridpur. Getting information that accused Aminul had taken

shelter in village Madhobdia, Faridpur, he lodged G.D. No. No.124 dated 13.03.2005 with Faridpur Kotwali Police Station . Along with other Police personal he rushed to that village and arrested him and informed the matter to Dhaka Metropolitan Police authority. Thereafter, the Investigating Officer rushed to Faridpur and brought him in Dhaka.

P.W.20 Md. Moselm Uddin in his testimony stated that at the relevant time he had been serving as security guard of the spot building. At about 8.30 p.m. on the date of occurrence, he found Aminul having a bag on his shoulder coming out from the apartment of the victims and leaving the area. On query, Aminul replied that he was going to his mami's house. P.W.20 saw the exit of the accused appellant from the crime scene. He had conveyed this valuable information to P.Ws.2, 3, 4, 5, 17 and 21, Younger sister of Dr. Nazneen. Two staffs of Lab Aid Hospital went there and found the apartment of Dr. Nazneen locked. They met this witness. This witness also told the aforesaid facts.

Thereafter, they opened the door by breaking the lock by hired mechanic and found the dead bodies of the victims. P.W.21, sister of victim in her testimony stated that getting message from her mother, she rushed to the place of occurrence and pressed the button of the calling bell of apartment of victim but no one respond from inside the apartment. Then they met Muslem, security guard of the house, who told that Aminul had left the house having a bag on his shoulder. Thereafter, she informed her mother, P.W.17 and Masud P.W.15 and, thereafter, she again went to the apartment of the victims and after bringing a mechanic broke the lock and found the dead bodies of the victims. She raised alarm and became senseless.

P.W.22 Shahadat Hossain, S.I. of Police, had been serving with Dhanmondi Police Station who held investigation of the case partly, thereafter, handed over the C.D. to P.W.23 who also held investigation in part, thereafter, handed over the C.D. to P.W.24 who, after completing the investigation, submitted charge sheet against the appellant.

From the evidence discussed above, it appears that, at the relevant time, appellant Anamul was staying in the apartment of victim Dr. Nazneen. Security guard of the building namely, Moslemuddin (P.W.20) saw the appellant leaving the building putting a bag on his shoulder. At the time of leaving the building the appearance of the appellant was perplexed and restless. On query of P.W.20, the appellant replied that he was going to his "mami's" house. From the testimonies of P.Ws. 2, 4, 5, 15, 17 and 19 it appears that the P.W.20 narrated those P.Ws. the fact of leaving the appellant from the apartment of the victims at about 8.00/8.30 p.m. on the night of occurrence with perplexed and worried condition. P.W.20 observed the appellant's unusual behaviour. The defence failed to shake the intrinsic worth of his testimony. Appellant's such conduct is a strong factor to prove his guilt.

It further appears from the evidence that appellant was arrested from village Char Madhobdia, a remote village under Kotwali Police Station, Faridpur. The appellant is a

resident of village Akborpur, Police Station Patnitola, District- Naogoan. From confessional statement it appears that after the occurrence he, at first, went to Bogra. He thought it better not to return his house. He went to a remote village of Faridpur and started maintaining himself serving as day labourer. It has been argued on behalf of the State that after commission of the offence the appellant absconded, therefore, the inference can be drawn that he was guilty. The act of absconding is relevant piece of evidence to be considered along with other evidence. In this case police recovered blood stained shirt, lungi and mobile set of victim Dr. Nazneen from the custody of the appellant which was enough to connect him with the occurrence. Particularly, recovery of mobile phone of Dr. Nazneen from the appellant can be held as a determining link in completing the chain of circumstantial evidence which proved beyond reasonable hypothesis that of the guilt of the appellant.

The circumstances, as appeared from the facts and evidence discussed above, that (i) the appellant was staying at the time of occurrence in the apartment of the victim, (ii) security guard P.W.20 Moslemuddin saw the appellant leaving the apartment with puzzled condition and (iii) bloodstained wearing apparels and mobile set of the victim Dr. Nazneen were recovered from his custody, are taken cumulatively, formed a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the appellant and none else. Here in this case, the circumstances unerringly pointed towards the guilt of the appellant. There is no gap left in the chain of evidence.

We have critically analysed the confessional statement of the appellant; testimonies of the witnesses and the various circumstances. The circumstantial evidence of the instant case could not at all be said to be qualitatively inferior in any manner. It is well settled that if there is clinching and reliable circumstantial evidence, then

that would be the best evidence to be safely relied on. Conviction can be based solely on circumstantial evidence. In such circumstances, we are of the view that the learned courts below rightly convicted the appellant.

The decision as to the appropriate penalty to impose in the case of murder should be taken by the judge considering the nature of charge and it is a fundamental principle of just sentencing that the punishment imposed on a convict should be proportionate to the gravity of the offence on which he has been convicted . In this case from the post mortem reports we have seen that the appellant assaulted the victims mercilessly. The attack was brutal and the same established that the accused left no chance for survival who may figure as a witness. Dr. Nazneen received 14 injuries and Parveen received as many as 21 injuries. That the murders were committed in an extremely brutal, frightful, shocking and cowardly manner. These were cold blooded murder and the victims were helpless and

undefended. The offence committed was of an exceptionally depraved and heinous character. Unfortunate victim Dr. Nazneen and her husband gave shelter of the appellant in their house for the sake of his better education, who got his early education from Madrasha definitely for being educated following Islamic ideology, he had answered the generosity of victim Dr. Nazneen by killing her brutally and horrendously. The subsequent conduct and his movements show that the appellant is a clear criminal prepared to go to any extent. He committed the instant murder causing great horror.

There are the moralists who say that as Almighty Allah has given life, Allah alone has the right to take it away and this privilege cannot be usurped by any human being . There are others who believe that the death sentence cannot be taken as a retributive or deterrent factor. Fact is that death penalty is on the statute book. It has to be awarded provided the circumstances justify it. Here, two helpless women, who permitted the appellant to live with them for

helping him to take better education, were killed inhumanly. One of them, was a brilliant rising doctor of the country. In our opinion this is one of the case in which the extreme penalty of death is called for.

Accordingly, the appeal is dismissed. The judgment and order dated 29.05.2008 passed by the Druto Bichar Tribunal No.4, Dhaka in Druto Bichar Tribunal Case No.17 of 2007 arising out of Dhanmondi Police Station Case No.24 dated 07.03.2005 corresponding to G.R. No.144/2005 affirmed by the High Court Division in Death Reference No.62 of 2008 with Criminal Appeal No.4028 of 2008 and Jail Appeal No.721 of 2008 are hereby maintained. However, order of payment of fine is set aside.

C.J.

J.

J.

J.

J.

J.