

**IN THE SUPREME COURT OF BANGLADESH**  
**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Syed Mahmud Hossain,**

**Chief Justice**

**Mr. Justice Hasan Foez Siddique**

**Ms. Justice Obaidul Hassan**

**CRIMINAL APPEAL NOS.09-10 OF 2013 WITH JAIL PETITION NO.08 OF 2013.**

(From the judgment and order dated 29.11.2012 passed by the High Court Division in Death Reference No.53 of 2007 with Jail Appeal Nos.763, 764, 765 of 2007 and Criminal Appeal No.3341 of 2007.)

Aziz @ Azizul @ Azid	:	Appellant. (In CrI.A.No.09/13)
Mintu @ Kalu	:	Appellant. (In CrI.A.No.10/13)
Aziz @ Azizul @ Azid and others	:	Petitioners (In J.P. No.08/13)

**=Versus=**

The State	:	Respondent. (In all the cases)
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For the Appellant (In CrI.A.Nos.09 & 10/2013)	:	Mr. Oziullah, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.
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For the Petitioners (In J.P.No.08/2013)	:	Mr. Jainul Abedin, Advocate-on-Record.
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For the Respondent (In CrI.A. Nos. 09 &10/2013)	:	Mr. Sheikh Mohammad Murshed, Additional Attorney General instructed by Mrs. Mahmuda Begum, Advocate-on-Record.
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For the Respondent (In J.P.No.08/2013)	:	Mr. Sheikh Mohammad Murshed, Additional Attorney General.
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***Date of hearing on*** : **23.02.2021 & 24.02.2021.**

***Date of judgment on*** : **24.02.2021.**

**J U D G M E N T**

**Hasan Foez Siddique, J:** These two Criminal Appeals and Jail Petition are directed against the judgment and order dated 29.11.2012 passed by the High Court Division in Death Reference No.53 of 2007, Criminal Appeal No.3341 of 2007 preferred by accused Sujon with Jail Appeal No.763 of 2007; Jail Appeal No.764 of 2007 preferred by accused Aziz @ Azizul @ Azid and Jail Appeal No.765 of 2007 preferred by accused Mintu @ Kalu.

The prosecution case, in short, was that the victim Komela Khatoon aged about 40 years was a widow. After death of her husband, she along with second victim Fingya Begum, aged about 40 years, widow of late Rahim Mondal and Bhadia Begum widow of late Azmat had been maintaining their livelihood depending on the business of sarees. Occasionally, they worked as day labourers. Sometimes, victim Komala stayed night in the house of Fingya or Bhadi Begum. On 28.09.2003, at about 10.00 a.m., the informant Nargis Begum, daughter of victim Komela Khatoon, was informed that, the slaughtered dead bodies of her mother Komela Khatoon and Fingya Khatoon were lying in the field of Gabtali and Muchipara respectively. Receiving such information, the informant, her husband Azad Mondal, mother-in-law Zaheda Begum, sister-in-law Hajera rushed to the place of occurrence and identified the dead bodies of her mother Komela and Fingya. Thereafter, the informant lodged the first information on 28.09.2003 at about 11.05 hours with local police Fari. Said F.I.R. was registered with the Alamdanga Police Station at about 12.45 hours on 28.09.2003.

Sub-Inspector Khaled Hossain was entrusted for holding investigation of the case who went to the place of occurrence, prepared inquest report on the dead bodies of the victims, prepared sketch map with index, sent the dead bodies to the morgue for autopsy, sized alamats and deputed sources for finding out assailants and motive of killing the victims. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. In course of investigation, the Investigating Officer Khaled Hossain was transferred and Sub-Inspector Swapan Kumar Saha was entrusted for completing investigation who arrested accused Azizul

who admitted his involvement with the killing of the victims and disclosed the names of co-accused Mintu, Aziz and Sujan. Accused Mintu and Azizul made confessional statements disclosing the facts of committing rape upon the victims as well as by co-accused Sujan and Mahir. They also admitted that, after commission of rape, they had killed the victims. The Investigating Officer, completing investigation, submitted charge sheet against the appellants and accused Mahir who died during trial.

The case record was transmitted to the Nari-O-Shishu Nirjatan Daman Tribunal, Chuadanga which was registered as Nari-O-Shishu Case No.39 of 2004. The learned Judge of the Tribunal framed charge against (1) Sujan(2)Mahir (since dead)(3) Aziz alias Azizul 4. Mintu under sections 9(3)/30 of the Ain, 2000. The charge was read over to the accused persons who pleaded not guilty and claimed to be tried.

The defence case was of innocence and that they have been implicated in the case falsely.

The prosecution examined in total 19 PWs in support of its case. Of them, the informant was examined as P.W.1, who was not the witness of occurrence, P.Ws.2,3, 4 and 5 are the witnesses of seizure lists and inquest reports, P.W.6 was tendered by the prosecution and the defence did not cross-examine him, P.Ws.7,8,9,10 and 13 had not uttered anything implicating the appellants with the occurrence. P.W.11 Md. Saleh Uddin was Magistrate, First Class, Chuadanga at the relevant time who recorded the statements of accused appellants Mintu @ Kalu and Abdul Aziz @ Azizul under Section 164 of the Code of Criminal Procedure (Ext.6 and 7) respectively. P.W.12 Tapan Mollick in his testimony stated that his mother-in-law victim Fingya gave loan of tk.6000/- to accused Mohir. A quarrel

was taken place between accused Mohir and victim Fingya over the matter, that is why, he had killed his mother-in-law. He further stated that Mohir, Sujan, Kalu and Aziz had killed the victim Fingya. In cross-examination he stated that he heard about the occurrence. P.W.14 Constable Amzad Hossain accompanied the dead bodies of the victims at the time shifting to the morgue for holding autopsy. He proved challans (exts 8 and 8Ka). P.W.15 held autopsy of the dead bodies of the victims. He proved the autopsy reports (Ext.9 and 9Ka). P.W.16 S.I. Kazi Jalaluddin recorded the F.I.R. on 28.09.2003. P.W.10 was the then officer-in-charge of Alamdanga Police Station. He received F.I.R. at the place of occurrence from the informant and sent the same to the Police Station for recording the same. P.Ws.18 and 19 are the Investigating Officers of the case.

The Tribunal, considering the evidence and hearing the submissions of the parties, convicted the accused Sujon, Aziz @ Azizul @ Azid and Mintu @ Kalu under Section 9(3)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentenced each of them to death and to pay a fine of tk.2,00,000/-.

Against the said judgment and order of conviction, the appellants and petitioner preferred above mentioned appeals and jail petitions in the High Court Division. The Nari-O-Shishu Nirjaton Daman Tribunal sent the case records in the High Court Division for confirmation of sentence which was registered as Death Reference No.53 of 2007. The High Court Division, by the impugned judgment and order, upheld the order of conviction and sentence passed by the Tribunal. Then accused Aziz @ Azizul @ Azid preferred Criminal Appeal No.09 of 2013, Mintu @ Kalu

preferred Criminal Appeal No.10 of 2013 and they along with accused Sujon preferred Jail Petition No.08 of 2013 in this Division.

Mr. Oziullah, learned Advocate appearing for the appellant in Criminal Appeal No.10 of 2013, submits that there was no eye witness of the occurrence and accused Mintu @ Kalu has been convicted and sentenced only on the basis of his confessional statement. From his confessional statement, it appears that he slaughtered the victim Fingya Begum after killing her by the co-accused, so, the order of conviction and sentence of Mintu @ Kalu is liable to be set aside.

Mr. Joynal Abedin, learned Advocate-on-Record appearing for the appellant in Criminal Appeal No.09 of 2013 and Jail Petition No.08 of 2013 submits that the accused Aziz @ Azizul @ Azid made an attempt to flee away from the place of occurrence after killing of victim Fingya Begum, so he had no intention to kill the victim Fingya Begum and subsequent killing of victim Komela Khatun. In such view of matter, the judgment and order of conviction of Aziz @ Azizul @ Azid is liable to be set aside. He further submits that the accused Sujon has been convicted and sentenced only on the basis of the confessional statement of the co-accused which is not admissible against him, so the judgment and order of the conviction of Sujon is liable to be set aside.

The charge against the appellants and petitioner was that they, in collusion with each others, raped and, thereafter, killed the victims Fingya Begum and Kamela Begum at the place of occurrence at about 11 P.M. on 28.09.2003. Since the occurrence was taken place in the mid night in a field of village Gabtola-Muchipara there was no eye witness of the occurrence.

The convict appellants have been convicted on the basis of their confessional statements.

It is relevant here to reproduce the contents of the confessional statement of accused Mintu @ Kalu for perusal which run as follows:

“ঘটনার দিন দিবাগত রাত ১০.০০ টার দিকে মহির আমাকে ডেকে নিয়ে যায়। অনিল মুচির কলা বাগানে সেখানে পূর্বের কথামতো ফিঙ্গে এবং কমলা ছিল। মহির নিয়ে অসামাজিক কাজ করলো আমি দাড়িয়ে ছিলাম সুজন কমলাকে নিয়ে একটু দূরে হয়ে একই কাজ করে। তারপর সুজন আসলে আজিজ অসামাজিক কাজ করে কমলার সাথে।

তারপর সুজন এবং মহির ২ জনে মিলে গামছা দিয়ে ফিঙ্গে গলায় ফাস দেয় দুজন টান দেয় গামছা বাধিয়ে ফিঙ্গে নিশ্বাস বন্ধ হয়ে যায় মারা যায়। তখন মহির, সুজন আমাকে বলে গিয়ে জবাই কর। আমি অস্বীকার করিলে ভয় দেখায়। বলে তোকে মেরে ফেলবো। আমি মৃত ফিঙ্গেকে হাসুয়া দিয়ে জবাই করি। ফিঙ্গের কোন সাড়া শব্দ ছিল না।”

In his confessional statement, the accused Aziz @ Azizul @ Azid stated as follows:

“ঘটনার দিন দিবাগত রাতে মহির, সুজন আমাকে অনিল মুচির কলাবাগানে নিয়ে যায়। সেখানে মহির, সুজন, মিন্টু, ফিঙ্গে, কমলা ছিল। সুজন কমলাকে নিয়ে অবৈধ কাজ করে। তারপর এসে মহির ও সুজন মিলে ফিঙ্গেকে ফাস দিয়ে মেরে ফেলে পরে মিন্টু জবাই করে। কমলার সাথে আমি অবৈধ কাজ করি। পরে মহির ও সুজন কমলাকে মেরে ফেলতে চায় ফিঙ্গে হত্যার সাক্ষী না রাখার জন্য। আমি কমলাকে নিয়ে পালানোর চেষ্টা করি। এক পর্যায়ে সুজন মহির সামনে যায়। সুজন মহির কমলাকে ধরে ফেলে। মোশারফ মেস্বারের শ্যালো মেশিনের নিকট কমলাকে নিয়ে যায়। মহির সুজন কমলাকে গামছা দিয়ে গলায় ফাস দেয়, মেরে ফেলে। পরে মহির ও সুজন জবাই করে। আমি দাড়িয়ে ছিলাম।”

From confessional statements of both accuseds it appears that they told their names and addresses. It further appears that the Magistrate cautioned them by saying that confessional statements would be used against them as evidence. They said that they knew about it. They were assured that the confessional statements recording officer was not police and he was Magistrate. They replied that they knew it. They were also assured that they would not be sent to police custody again. In both the statements, the Magistrate noted that the confessions were made voluntarily. From Exts 6 and 7(confessional statements) and the evidence of the Magistrate (P.W.11) it appears that after the compliance of requirements set under Section 164 and 364 of the Code of Criminal Procedure, the confessions of both the convicts were recorded. The learned Advocate for the appellants did not make any objection regarding true character of the confessional statements and as to the procedure followed in recording those statements. There is no such allegation for the appellants and petitioner that confessional statements were not made voluntarily. There was no external pressure particularly by the police, that the convicts' mindset while making confession was influenced by any external factors. Simple submission of Mr. Oziullah so far the accused Mintu @ Kalu concerned is that he slaughtered victim Fingya Begum after her death.

It is relevant here to quote the post-mortem report of victim Fingya Begum which runs as follows, "Death was due to shock and hemorrhage due to injury which was ante mortem and homicidal in nature".

From injury as mentioned in the post-mortem, it appears that the doctor found :

“1. Incised wound over the front neck measuring 6” X 2” X 4”  
cut by at under by lay vessels, throat Vertebra and another  
injury is laceration of the perineuma vulva.”

So it is difficult to accept the submission of Mr. Md. Oziullah that at the time of slaughtering Fingya Begum was not alive.

From post-mortem report of victim Kamela Begum it appears that cause of the death was due to neurogenice shock and hemorrhage due to injury No.1 which was ante mortem and homicidal in nature.

Mr. Joynal Abedin, learned Advocate-on-Record appearing for the appellant Aziz @ Azizul @ Azid submits that Aziz made an attempt to flee away from the place of occurrence taking victim Kamela Khatun but it appears from the contents of his confessional statement that before killing he raped Kamela Khatun against her will. That is, all the accused persons, taking two victims, went the places of occurrence and raped them against their will and, thereafter, they conjointly killed the victims.

It appears that both the Courts below satisfied that the confessional statements were voluntarily made and that the statements were true. When the voluntary character of the confession and truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. A confession may form the legal basis of conviction if the court is satisfied that it was true and was voluntarily made.

Considering the contents of the confessional statement we are of the view that the same is consistent with the prosecution case and the learned Courts below rightly convicted the accused Mintu @ Kalu and Aziz @ Azizul.

So far the accused Sujon is concerned it appears to us that except the confessional statement of co-accused, there was no other evidence on record to connect him with the occurrence. So far the confessional statements of convicts Aziz @ Azizul @ Azid and Mintu @ Kalu are concerned those can be brought on record under section 30 of the Evidence Act to use those confessions against Sujon only. If marshalling the evidence excluding those confessions altogether from consideration it is believed, a conviction could safely be based on it, in such event, the Judge may call in aid the confession and use it to lend assurance to the other evidence. Since confessional statement of the co-accused is not admissible against the accused Sujon and there was no other substantive evidence to connect him with the occurrence, we are of the view that the learned Courts below committed an error of law in convicting accused Sujon.

Instant offence had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. The Court will be failing in its duty if appropriate punishment is not awarded for an offence which had been committed not only against the unfortunate victims but also against the society to which the criminals and victims belong. It is the duty of the Court to respond to the cry of the society and to settle what would be a deterrent punishment for an abominable punishment. Two widows, having had no male member of their families and had been maintaining their livelihood by selling sarees in different villages, were somehow brought in a field in the late night and the convicts not only raped them but also killed them mercilessly. Both the victims died with a painful death. Considering the nature of crimes, we do not find any mitigating circumstances to commute the sentence.

In view of the aforesaid facts and circumstances, we do not find any merit in Criminal Appeal No.09 of 2013 and 10 of 2013. We also do not find any merit in Jail Petition No.08 of 2013 so far the same relates to accused Mintu @ Kalu and Azizul @ Azid @ Aziz. However, we find substance in the Jail Petition No.08 of 2013 so far the same relates to accused Sujon.

Thus, the Criminal Appeal No.09 of 2013 and 10 of 2013 are dismissed. The Jail Petition No.08 of 2013 is disposed of. The said petition is dismissed so far the same relates to convicts Mintu @ Kalu and Azizul @ Azid @ Aziz. The said Jail Petition No.08 of 2013 is disposed of in respect of the accused Sujon. The accused Sujon is acquitted of the charge. He may be set at liberty at once, if not wanted in connection with any other case.

**C.J.**

**J.**

**J.**