

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL APPELLATE JURISDICTION)**

**Present:**

**Mr. Justice Jahangir Hossain**

**And**

**Mr. Justice Razik-Al-Jalil**

**Death Reference No. 06 of 2009**

The State

**-Versus-**

Md. Saiful Islam and one another

.....Condemned-Prisoner

**Mr. Zahirul Haque Zahir, D.A.G with**

**Mr. Md. Atiqul Haque [Salim], A.A.G**

.....for the State

**Mr. Md. Shahidul Islam Sarder and**

**Mr. Jotirmoy Barua, Advocates**

.....for the Informant

with

**Criminal Appeal No. 577 of 2009**

Md. Bulu

**-Versus-**

The State

**Mr. Syed Mamun Mahbub, Advocate**

.....for the appellant

with

**Criminal Appeal No. 846 of 2009**

Md. Saiful Islam and another

**-Versus-**

The State

**Mr. Talukder Ayub Ali, Advocate**

.....for the appellant

with

**Jail Appeal No. 106 of 2009**

Md. Saiful Islam

-Versus-  
The State  
And  
**Jail Appeal No. 107 of 2009**  
Md. Feroz Miah  
-Versus-  
The State

**Heard on: 01-02.11.2015, 04-05.11.2015, 08-09.11.2015, 11-12.11.2015, 15-16.11.2015.**

**Judgment on: 25-26.11.2015, 29-30.11.2015, and 02.12.2015**

**Jahangir Hossain, J**

In order to confirm the death sentence under section 374 of the Code of Criminal Procedure [hereinafter referred to as Cr. P.C] the learned Judge of Druto Bicher Tribunal No.03, Dhaka referred this matter to the High Court Division and subsequently the same has been numbered as Death Reference No. 06 of 2009. Having concluded the trial the learned Judge of Druto Bichar Tribunal, Dhaka found accused persons namely Md. Saiful Islam and Firoz Alam guilty of the charge leveled under sections 302/201/34 of the penal

code sentencing them to death. The learned trial Judge also found accused Bulu Miah guilty of the charge under sections 201/34 of the Penal Code sentencing him to suffer rigorous imprisonment for a period of 5[five] years with a fine of Taka 5,000/-, in default, to suffer rigorous imprisonment for 1[one] year more.

Condemned prisoners Md. Saiful Islam and Firoz Alam thereafter preferred Criminal Appeal No.846 of 2009. They also filed two Jail Appeals bearing Nos. 106 of 2009 and 107 of 2009 respectively. Accused Md. Bulu Miah as appellant filed a Criminal Appeal No.577 of 2009 separately.

As the matter has been arisen out of the judgment and order passed by the learned Judge of the Druto Bichar Tribunal No.03, Dhaka in Druto Bichar Tribunal Case No.31 of 2008 arising out of Dhanmondi P.S case No. 61(1) 2008, corresponding to G.R No.61 of 2008, the Death Reference no.06 of 2009 along with criminal appeal Nos. 846 of 2009, 577 of 2009 and jail appeal

Nos. 106 of 2009 and 107 of 2009 have been heard together and are being disposed of by this single judgment.

The prosecution case as described in the FIR, in brief, is that on 17.01.2008 one Mrs. Firoza begum lodged an ejarah with Dhanmondi police station alleging inter-alia that her eldest son Dr. Mufakkharul Ahmed alias Sohel was serving as registrar in the surgery department of Bangladesh Medical College Hospital at Dhanmondi. On 11.01.2008 around 8:30 am he left the house for his working place but did not come back home thereafter. They suspected that in order to financial gain her son was abducted and disappeared by assailants. On quarry, the security guard told that before missing incident, caretaker Md. Saiful of the house sent him to fetch cigarette from shop in the late night at about 3.00 to 3:30 am and thereafter Saiful got down again from the 3<sup>rd</sup> floor of the house looking for someone around 5:45 am. At about 9.00 am having sent

guard Mohiuddin again to the shop for bringing breakfast, Saiful went out with vehicle [private car] and sometimes after, he came back with the said vehicle. On the same day around 12:00 am Saiful left the house in the name of towards Gazipur. It was further described by guards and others that on 10.01.2008 in the evening Firoz, cousin of Saiful, was seen roaming in front of the house. Nevertheless, the informant came to know from mobile calls that Saiful had conversations with his close one Shaheen for last few days although she heard about her son Dr. Sohel's departure to Bangladesh Medical College Hospital in the morning of 11.01.2008 but it was not sure of her son's departure from the house asking each and everybody. After having such information she suspected that in order to gain over, caretaker Saiful, his cousin Firoz and Shaheen abducted and disappeared her son in a pre-planned manner. She was in American when the occurrence took place. She came back from America on 16.01.2008. Knowing the

facts from her relatives she made some delay to file the ejahar with the police station. It was also stated that Bangladesh Medical College Hospital authority lodged a GD entry bearing no. 802 dated 12.01.08 regarding missing news of her son.

Upon receiving the ejahar police registered Dhanmondi Police station case no.61 dated 17.01.08 under sections 364/34 of the penal code. Thereafter, police started investigating the alleged incident and during investigation police apprehended the accused and recovered three limbs of the dead body of the deceased, blood stained wearing apparels and weapons pointed out by the accused themselves. The investigating officer arranged for recording confessional statements of two accused persons under section 164 of the Cr. P.C and also visited the places of occurrence, prepared seizure list of weapons used in the killing of the victim, sketch maps with separate index thereof, examined the witnesses and recorded their statements under section

161 of the Cr. P.C and after conclusion of investigation submitted charge sheet being no.118 dated 17.03.2008 against the present condemned prisoners and one co-convict under sections 302/201/34 of the Penal Code as a prima face case was found.

It is to be noted here that two limbs of the dead body were recovered from Karatoya River and Shimul Toli respectively. Trunk of the dead body was recovered from Karatoya River under Fulhaar village. In connection with recovery of trunk of the dead body a case being Gobindagonj police station case no.28 (1) 2008 was started by an order of the concerned court below and that case was subsequently merged with the present case after submitting final report [true].

It is also mentioned here that a GD entry being no. 802 dated 12.01.2008 was lodged with Dhanmondi police station by Bangladesh Medical College Hospital authority about the missing incident of the deceased. When the case was ready for trial, it was transmitted to

the Metropolitan Sessions Judge, Dhaka, who took cognizance of the offence and sent the case to the Additional Metropolitan Sessions Judge, 2<sup>nd</sup> Court, Dhaka for trial and disposal. Thereafter, it was transmitted to the Druto Bichar Tribunal, No. 03, Dhaka, by dint of Bangladesh gazette SRO No. 121 Ain, 2008 dated 28 May, 2008, under section 6 of the Druto Bichar Tribunal Ain, 2002 and Rule 18(1) of Emergency Power Rules, 2007.

The learned Judge of the Druto Bichar Tribunal framed charge against the 3[three] accused as under:

**Summary charge:** That on 11.01.2008 at mid night the accused [1] Md. Saiful Islam [2] Md. Firoz Miah and [3] Md. Bulu in collusion with each other killed Dr. Md. Mufakkharul Ahmed alias Sohel, son of Dr. Mozaffar Ahmed and Mrs. Firoza Begum in a pre-planned manner at house no. 775, Sat Mosjid road, 3<sup>rd</sup> floor under Dhanmondi police station. Dead body was cut into three pieces which were packed in suitcase and



sack in order to disappear and were taken to Palash Bari Police Station areas under Gaibandha District through Shaymoli Bus. The trunk and lower portion of the dead body were dumped under water of the Karatoya River and amputated head was dumped under banana tree at Shimul Tola. Three pieces of amputated dead body and some blood stained clothes were recovered from the above mentioned places at the showing of the accused and thereby, charge has been framed against the accused under sections 302/201/34 of the Penal Code.

The said charge was read over and explained to the accused present to which they pleaded not guilty and claimed to be innocent in the trial and demanded justice.

In the event of proving this charge leveled against them, the prosecution side examined as many as 34[thirty four] live witnesses in the case, while defence examined none.

On closure of evidence of the prosecution witnesses, the accused on dock were examined under

section 342 of the Cr.P.C. This time they also reiterated their innocence.

The defence case as it transpires from the trend of cross- examination of the prosecution witnesses that the accused are innocent and they are not involved with the murder incident. In order to gain over property and money of the deceased any third party might have abducted and killed him subsequently. At the instigation of third party, the prosecution implicated them falsely in the case screening the real fact of the incident. It also appears that the defence tried to take a plea that second wife's son of the father of the deceased might have been involved in the killing for grabbing the property as well and they also tried to say that the deceased had an affair with one school teacher named Setu who might have been involved in the killing of the victim.

Having considered the facts, circumstances and the evidence on record the trial Judge of the Druto Bichar Tribunal no.03 Dhaka convicted and sentenced

the present condemned prisoners to death and another one for five year's rigorous imprisonments as stated above.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence dated 21.01.2009 passed by the learned Judge of Druto Bichar Tribunal No.03 Dhaka, condemned prisoners namely Md. Saiful Islam and Md Firoz Miah as appellants filed Criminal Appeal No.846 of 2009 in a single petition and they also separately preferred Jail Appeal Nos.106 of 2009 and 107 of 2009 respectively. Accused Md. Bulu Miah as appellant filed a Criminal Appeal No.577 of 2009 separately.

Mr. Md. Zahirul Haque Zahir, learned Deputy Attorney General, along with Mr. Md. Atiqul Hauque [Selim], Assistant Attorney General assisted by Md. Shahidul Islam Sarder and Jatirmoy Barua, learned Advocates, appeared on behalf of the respondent [The

State] supporting the Death Reference and opposing the Criminal Appeals as well as Jail Appeals.

They first placed before us the FIR, charge sheet, impugned judgment and order dated 20.01.2009, the testimony of prosecution witnesses, confessional statements of condemned prisoners, inquest reports, post-mortem reports and other relevant papers available in the paper book. Thereafter, the learned Deputy Attorney General contends that:

[a] The prosecution could establish its case against the condemned prisoners and one co-convict beyond all reasonable doubt and as such there is nothing to show by the defence to interfere by this Court with the impugned Judgment and order of conviction and sentence dated 20.01.09 passed by the learned Judge of the Druto Bichar Tribunal.

[b] There are sufficient evidence against the condemned prisoners and another to show that they

were real perpetrators in the killing of the victim and disappearance.

[c] Confessional statements of condemned prisoners Md. Saiful Islam and Md. Firoz Miah are absolutely inculpatory in nature and that these confessional statements are also voluntary and true. Learned DAG has referred to the decision in the case of Islam Uddin -Vs- State, reported in 13 BLC [AD]81. He further submits that there is no cogent ground to disbelieve their confessional statements which had been completed following all provisions of sections 164 and 364 of the Cr. P.C before it was recorded under section 164 of the Cr.P.C.

[d] Time, place and manner of the occurrence have been proved by the prosecution evidence beyond reasonable doubt and there is no single discrepancy in the evidence of the prosecution witnesses as to time, place and manner of the occurrence.

[e] Both the confessing accused [condemned prisoners] directly played heinous role in the death of the victim in a pre-planned manner. They never hesitated to amputate the dead body into three pieces and as such the learned Judge of the Druto Bichar Tribunal rightly found them guilty of the offences under sections 302/201/34 of the Penal Code and sentenced them there under.

He further contends that their act and conduct in the commission of offences are so heinous that does not deserve any kind of sympathy from the court upon them.

In support of these submissions learned Deputy Attorney General has referred to the decisions in the cases of Abed Ali -Vs- the State, reported in 42 DLR [AD] 171, Bakul Chandra -Vs- State, reported in 45 DLR [AD] 260, and Hazrat Ali and others -Vs- State, reported in 44 DLR [AD] 51. The learned DAG has further contended that during examination of the

accused under section 342 of the Cr. P.C, the condemned prisoners and another did not state anything when the trial Judge invited them to say about their defence plea upon hearing of the incriminating evidence and they were completely silent as to that effect. They only claimed that they were innocent which indicates that they were involved in the commission of offence as disclosed by the prosecution witnesses. In this regard Mr. Zahir has referred to the decisions in the case of Mizanur Rahman and others -Vs-the State, reported in 16 BLD 293, in the case of Nawser Ali Sardar -Vs- State, reported in 39 DLR [AD] 194, and in the case of Khalil Miah –Vs- State, reported in 4 BLC [AD] 223.

Mr. Atiqul Haque [Selim], learned Assistant Attorney General has said adding that Md. Bulu was all through present at the time of disappearance of the evidence i.e. amputated head of Dr. Sohel. He further argues that according to confessional statements of both the condemned prisoners accused Md. Bulu Miah has

involvement in disappearance of the amputated head as well as some wearing apparels of the victim and his house. In support of his contention he has referred to the decision held in the case of Dr. A.K.M Akther Azam-Vs-State, reported in 6 BLC-231. Mr. Selim lastly contends that the sentence given by the trial court may kindly be upheld for the ends of justice.

On the other hand, Mr. Ayub Ali, learned defence lawyer appearing on behalf of the condemned prisoners submits that the prosecution utterly failed to prove the case against the condemned prisoners beyond reasonable doubt.

He argues that it is absurd that only because of filthy language used by the deceased with the condemned prisoner Saiful who could go to the extreme level like committing murder. The entire prosecution story has been formulated exclusively on circumstantial evidence on the basis of confessional statements made by the condemned prisoners and the said confessional



statements though have been prayed to be retracted but the same was refused by the trial court. The motive of the murder is so silly that the murder in question could be held by the convicts which created serious doubt over the prosecution story. He has further contended that in the instant case though maid servant Gulshan Maiya and boy servant General were named in the charge sheet but they were not produced to give the evidence in support of the prosecution case. Even though defence prayed by filing application before the trial court to summon them for their evidence but it was rejected as well. Therefore, in the absence of vital evidence of the said two witnesses the prosecution case becomes doubtful. In support of this contention, the learned defence lawyer has referred to the decision in the case of the State –Vs- Abdus Sattar and others, reported in 16 BLT [AD] 255. He has argued that there are so many contradictions between the sketch map along with index of the p.w-33 and p.w-34 and

therefore, the prosecution failed to prove the place of occurrence as well as recovery of the weapons as allegedly used in the so called killing of the victim. More so, police keeping Saiful secretly in their custody, forwarded his cousin Firoz towards Palash Bari to recover alamat of the dead body. Between these times third party might have played a vital role with regard to the victim. In such a situation it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt adding that by the said action it proves that the last investigating officer [p.w 34] of the case was somehow convinced to do something wrong against the condemned prisoners in order to divert the real fact of the killing incident. He further submits that P.w-17, recording Judicial Magistrate of the confessional statements did not ask the confessing accused whether they were not under police custody and whether they were tortured by police before they were brought to him and the confessional statements were not recorded by

the judicial magistrate in accordance with law. Therefore, it cannot be said that those confessional statements are to be voluntary and true.

The learned Advocate prays for rejection of the death reference and allowing the Criminal Appeals as well as Jail Appeals and further prays for setting aside the impugned judgment and order of conviction and sentence dated 20.01.2009 so far as it relates to the condemned prisoners. Before conclusion of his argument he lastly prays to the court for showing sympathy upon the condemned prisoners as there are so many contradictions as well as ambiguities in the testimony of the prosecution witnesses. He concludes his argument to the effect that as the condemned prisoners are in the long suffering of the pangs of death in the condemned cell and the ages of the condemned prisoners are of 25 and 27 respectively, they may be exonerated from the highest punishment imposed by the learned Judge of the Druto Bichar Tribunal. In

support of this submission he has referred to the decision held in the case of Manik Miah -Vs- the State, reported in 35 BLD [AD] 63.

In support of convict-appellant Md. Bulu Miah none has come forward to argue at the time of hearing of the instant reference. It reveals from record that in favour of the said Md. Bulu Miah an appeal bearing no. 577 of 2009 was presented by learned Advocate Mr. Syed Mamun Mahbub and at the time of admission of the said appeal the convict-appellant Md. Bulu Miah was granted ad-interim bail for a period of 3[three] months by an order dated 24.02.2009 and subsequently it was not extended any more as the convict-appellant did not take further step in this regard. However, at the beginning of hearing of the present reference, this court has summoned the conducting lawyer of the said convict-appellant and accordingly, learned Advocate Sayed Mamun Mahbub expressed his desire to assist the Court in support of his client convict-appellant Bulu

Miah but finally he failed to turn up to assist the court during hearing of the appeal filed by him.

We have already narrated that in order to prove the instant allegation and to bring whom the culpability of the alleged accused, the prosecution has placed on record the two confessional statements and also plethora of testimony by examining as many as 34[thirty four] live witnesses in the case.

As the crime as alleged by the prosecution is so heinous in nature and a long history of the crime is involved in the instant case, it would be wise to briefly discuss the evidence adduced by the prosecution witnesses before evaluation and findings, which are as follows:

**Mrs. Firoza Begum**, the informant of the case as p.w-1 testified that deceased Dr. Mofakkarul Ahmed Sohel is her son who was working in surgery department of Bangladesh Medical College Hospital as registrar at Dhanmondi, Dhaka. She lived along with her eldest son

victim, maid servant Gulshan, boy servant Saiful and another boy named Genarul. The house is five storied but half of the construction of fourth floor is incomplete. They lived in third floor. There is a dental clinic on the ground floor, while office of the Real Estate business organizations and ISIS Health Products are on the first and 2<sup>nd</sup> floor respectively. She was in America at her daughter's house when her son went missing and subsequently was killed. On 13.01.2008 her daughter told her to come back to Dhaka. On 16.01.2008 they arrived in Dhaka. On her return in Dhaka she came to know from her daughter that Soheli was not seen in Dhaka since last 11.01.08. Security guard Mahiuddin told on query that he did not see him [Soheli]. She also asked maid servant and guards of first and second floors. All of them told her that they did not see Dr. Soheli going out of the house. Then she suspected that her son [Soheli] did not go out of the house, obviously he had gone missing or someone

disappeared him. From guard she came to learn that Firoz, cousin of Saiful, along with his friend Shaheen was roaming in front of the house in the night of 10 January. She asked her relatives and Saiful but none could reply properly.

However, guard informed that Sohail came back home at about 10:30 pm and in the late night at around 3.00 am Saiful sent him to bring cigarette. Taking cigarette Saiful went up stairs and again came down following for some one. He then went up stairs again and came to the ground at 9.00 am sending guard to bring breakfast. Guard saw Saiful going out with vehicle when he came back with breakfast. After a long while Saiful came back. Saiful often drives the car as driver as his master taught him driving. Around at 12.00 o'clock he again came to the ground.

He slept up to 12:00 am after coming back from outside which he [guard] heard from maid servant. When he was going outside guard Mohiuddin asked him

where he goes. In reply he said “Gazipur”. Guard again asked him whether he told anybody about his departure to Gazipur. He replied that he told mama [Dr. Sohel]. He used to address Sohel as mama [Uncle]. She suspects that in order to financial gain some people with Saiful are involved in the abduction. Being informed she lodged the case with Dhanmondi police station on 17.01.08 at the evening. On 12.01.08 Bangladesh Medical College Hospital authority also filed a GD entry no. 802 on missing.

On 18.01.2008 around 8/08:30 am her cousin Biddyut Chowdhury from Palash Bari informed that DB police went to Palash Bari along with Firoz. In the evening she came to know that Bulu and Firoz showed the several parts of the dead body of her son. Amputated head from Choto Shimul Tola, blood stained clothes and body were recovered from Karatoya River. Trunk of the dead body was found in Karatoya River on 15.01.2008. She also came to know that DB



police arrested Firoz in front of her house. Firoz told that he himself, and Saiful both jointly killed her son and took away the dead body after being packed in sack. On 18.01.08 around 10:00 pm police came with Saiful to her house.

Thereafter, Saiful by his own hands brought out two knives of which one is partially broken, two chapatti of which one is blood stained spot at the top of it wrapped up by old news paper from his bed under a divan in presence of many people in the house and admitted killing of her son with the assistance of Firoz. Police seized the above weapons. Seized vehicle and fan were returned on bond. Ejahar has been marked as exhibit- 01 and her signature as exhibit 01/01. All accused on dock have been identified by her.

In cross-examination she replies that she went to America on 17.11.2007. She has two sons and one daughter. Only Sohail was living in the country. She came to know from her daughter about missing news of

her son after coming back home from America directly on 16 January. She stated in the FIR that on 11.01.2008, Friday at about 8.30 am her son having left the house for Bangladesh Medical College Hospital did not return any more. Such fact she wrote in the FIR upon hearing from someone. She was confirmed on hearing from Daroan [Guard] about her son in not going outside of the house. Father of Sohel was alive. He is a doctor who lives at Mohamadpur with his second wife but he used to come to her house. Sohel was aged of 45 years. Maid servant and boy servant used to sleep in her house. None of the relatives either lodged case nor GDE regarding missing of her son before the ejarah was filed by her. Saiful stayed in her house for about 13/14 years. Because of long stay he knew about many of their family events. He came to her house at the age of 11/12 years. Dead body was found in the River on the date of 16. She has denied the suggestions that in her absence a lady school teacher used to come to her son regularly that

she knew or she has family dispute with her husband and because of that, her son was abducted or third party might have killed her son or on being instruction by informant party she has given false evidence against the accused.

**P.W-02 Md. Ainal Haque** deposes that he works as security guard of Everest Holding situated at house no.775, Sat Masjid Road. On 18.01.2008, DB police brought accused Saiful, a driver-cum-caretaker of Dr. Sohel, to the house after arrest. It was then about 10 o'clock at night, witness Masudur Rahman entered the room of Dr. Sohel along with guard Hazrat Ali. In the presence of many other persons, accused Saiful confessed on being asked about the incident stating that on 10.01.2008, Thursday at night his cousin Firoz gave a blow on the head of Dr. Sohel while he was watching T.V and he [Saiful] having given blows with knife killed Dr. Sohel. After killing they took the deceased into the bath room where they slaughtered his neck and

separated the trunk of the body from lower part i.e. legs with chapatti and separated parts of the body of Dr. Soheli were packed in suitcase and sack and put the same under stairs of the house having brought down from upstairs and sent the security guard to bring cigarette from shop at 3 o'clock at night.

In the meantime, accused Saiful put the amputated parts of dead body of Dr. Soheli in the back hole of the private car. Thereafter, having come back home, he cleaned the blood stained two knives and two chapatti keeping in his using cot by wrapping with sack.

The next morning at around 9:00 am Saiful along with Firoz driving car went to Shaymoli bus counter at Gabtoli. Taking ticket from bus-counter put the sack and boxes in the luggage box of the bus. Saiful came back home and again went to Hanif counter at Gabtoli at around 12.30 pm. Having collected ticket from there he started towards Palash Bari. He could see Firoz and Bulu waiting for him at Palash Bari and they

took sack and suitcase to a banana garden where they dumped the head of Dr. Sohel while trunk of the dead body and legs dumped in the water of the river. Saiful came to Dhaka after having thrown the blood stained clothes into the river. He brought out the weapons from his bedding under a divan by his own hand. Weapons were wrapped up by old Ittefaq newspaper and a genzi. Everybody saw this being present there. DB police seized the two chapatti and two knives having held seizure list. Masudur Rahman, Hazarat Ali and he signed the seizure list which is marked as exhibit-03 and his signature as exhibit-3/1. 24" knife with wooden butt is marked as material exhibit-I, a blood stained knife containing 3[three] pieces with wooden butt is marked as material exhibit-II, a blood stained chapatti measuring around 15" with wooden butt is marked as material exhibit- III while an unused chapatti with plastic butt has been marked as material exhibit- IV, copy of 'Dainik

Ittefaq' as material exhibit- V and a genzi as material exhibit- VI. He has identified the accused in the dock.

In cross-examination he has responded that he is doing job as security guard in Everest Holding for about 4 years. Office starts from 9.00 am and ends at 5.00 pm. Their duty is classified by rotation. There is another guard for the same purpose. His name is Hazrat Ali. On 10.01.2008 officers and personnel left the office locking all the rooms. On that day he entered his room after 8.00 O'clock at night. On 18.01.2008 they were in the guard room and DB police took them on call. Prior to that, nobody of the house asked them regarding Dr. Soheli. On 11.01.2008 in the morning at 8/9 hours guard Mohiuddin of Dr. Soheli told him that they were not getting trace of Dr. Soheli. DB Police brought two persons on call. He has denied the suggestions that Saiful did not disclose anything in his presence at night or Saiful did not bring out the chapatti or knife as

deposed by him or he has given false evidence against the accused after being tutored by RAB or Police.

**P.W-03. Md. Hozrat Ali** has testified that he has been deployed as guard in Everest Holding of house no. 775, Sat Masjid Road, Dhanmondi. Dr. Sohel was traceless from 11.01.2008. Abdul Mannan, driver of Dr. Sohel's private car, searched at different places and informed his relatives. On 18.01.2008 at 10.30 pm DB police came to the house of Dr. Sohel along with Saiful. DB police along with Ainal and he himself asked Saiful whereabouts the weapons hidden by him to bring those out.

Then, Saiful brought out two knives and two chapatti covered with old news paper and genzi from under the mattress. At that time DB police, Ainal Haque, mother, sister, relatives and friends of Dr. Sohel and many others were present. In the presence of all, Saiful confessed that on 10.01.2008 at 12.30 hours at night while Dr. Sohel was watching T.V in the drawing

room, Firoz gave a knife blow on the head of Dr. Soheli which was missed and at that moment Saiful gave a knife blow in the abdomen of Dr. Soheli and pressed on his mouth with bed cover and he died on the spot.

Wrapping the dead body in bed cover was taken to bath room where Saiful amputated head, trunk and legs [lower portion of the body] of Dr. Soheli with chapatti. Then the same was packed in sack and suitcase covering with polythene. Thereafter, Saiful and Firoz cleaned the blood of drawing room as well as bath room. At about 3 ½ O'clock at late night packed dead body was taken to the bottom of the house by Saiful who sent guard Mohiuddn for bringing cigarette from shop. Upon getting such scope Saiful and Firoz put the packed dead body in the back hole of the private car of Dr. Soheli. Then they went up stairs of the house. At about 9.00 in the following morning Saiful and Firoz went to Gabtoli by private car. Having collected ticket of Shaymoli bus, they put the sack and suitcase of the



dead body in the luggage box of the bus and Firoz left for Palash Bari in that bus. Saiful, Firoz along with Bulu dumped the head of Dr. Sohel under banana tree and trunk and legs under water of the river and threw the blood stained apparels into the river. Thereafter, Saiful came back home. Saiful made this statement in the presence of DB police who seized chapatti, knives along with old newspaper and prepared seizure list. His signature is marked as exhibit 3/2. He has identified accused Saiful, Firoz and Bulu in the dock.

On cross-examination he replies that he worked as guard at house no.775 for 2[two] years. 10.01.2008 was Thursday, on that day office was open up to 09:00 pm from 09.00 am. On 10.01.2008 from 06.00 am to 2.00 pm he was on duty. He received the missing news of Dr. Sohel from guard Mohiuddin at 03.00 pm. They are three guards in number having shifting duty. On 18.01.2008 Ainal and he were present while Tariqul was outside. Having come to the place, DB police called

them. Mother of Dr. Sohel was not in the house on the day when he received the missing news. Maternal uncle, aunt and friend Mahabub came on 11.01.2008 before mother of Dr. Sohel returned on 16.01.2008. He has denied the suggestions that Saiful used to collect rent as caretaker from the tenants who had altercation with him or on 18.01.2008 Saiful did not state anything regarding killing of Dr. Sohel in their presence or he has given false evidence.

**P.W- 04 Md. Mohiuddin** deposes that he had been in service as guard for the last 13 years at house no. 775, Sat Masjid Road. He used to look after main gate of the house. There were maid servant named Gulshan, a domestic help named Generul and another domestic help cum-caretaker Saiful.

Dr. Sohel and his mother used to stay in the house. On 10.01.2008 Thursday, Dr. Sohel returned from Bangladesh Medical at about 10.00-11.00 pm. He [witness] opened the gate. After his return Abdul Malek,

an employee of Bangladesh Medical came to meet him going upstairs. After a while Kollan, a friend of Dr. Sohel, came to meet him. About 15/20 minutes later, Abdul Malek left getting down while he [witness] opened the gate. Having shut down all gates he laid in his bed in the garage where vehicle retained. Saiful called him at night then he woke up from bed. Saiful told him to bring cigarette for mama [Dr. Sohel]. Having verified by asking Saiful, he brought cigarette within 10/11 minutes. It was at about 3 or 3½ hours at late night.

Saiful then left for upstairs locking collapsible gate. He [witness] also went to garage and lay in bed locking the main gate. On 11.01.2008 morning at 5.45 am Saiful got down on the ground. In response to a query, Saiful replied that a guest would come, and he had to drop him. He waited for 10/15 minutes there and again went upstairs. Thereafter, at around 8.45 am he went upstairs to have breakfast and key for washing private car. Domestic help came forward as he made

calling bell. When he asked to give him key and breakfast, then Saiful was coming towards him with key of the private car.

Saiful told him that he was going outside for important work and there was no scope to wash vehicle now. Then he returned to down stairs. At about 9.00 O'clock in the morning Saiful got down from upstairs and asked him to bring breakfast from shop as he did not have breakfast in the house. Saiful told further that guest would come, breakfast was required quickly.

He then went for bringing breakfast. Having brought the breakfast within 10/11 minutes he asked Romesh at the gate about the private car. In reply, he told that Saiful took away the car. He then asked Romesh whether Doctor [deceased] went with him. Then he told that Saiful went alone. At about 10.00 am Saiful came back home with private car. He then told Saiful that he brought breakfast asking him to take.

Saiful then went upstairs with breakfast. Within a moment he came back and asked him where mama [Dr. Soheli] went locking door. He replied 'do you have key' you enter inside the house by opening the door with key. He [Saiful] asked, did you not see mama going outside. Saying this he went up stairs. He asked him where he was going as he had come down stairs again. He replied, he would go to Gazipur. He then asked him, did you tell Dr. Soheli? He said yes. He asked about it twice. He replied in a same voice. He started towards Gazipur without car. He [witness] took lunch at about 3.00 o'clock after bringing the same from outside. His brother Mannan driver came to him at 9.00 pm who made call through mobile to Dr. Soheli. It rang once, and then switched off. He got switched off ringing it twice more. Getting the mobile phone's switched off Mannan presumed that he was in the operation room, telling such he left the place. Dr. Soheli did not return home on 11.01.2008 till 3.00 at night, he then went for

bed. On 12.01.08 Saturday in the morning, he went to Bangladesh Medical College Hospital to find him. He asked Dr. Khaled stating that he did not see Dr. Sohel going outside from house and did not return home. He [Dr. Khaled] rang him again telling that he rang in the morning once but switched was off. Mannan also made call to him but he also found switched off. Dr. Sohel himself did not ring to his house. His mother was not in the house. She went to her daughter in America. He requested Dr. Khaled to do something quickly. Mother of doctor Sohel came back home from America on 16.01.2008. Sajib, Mahbub, friends of Dr. Sohel and his peon Rahim came on her return from America. Driver Mannan came getting message. Mahbub and Sajib with vehicle left the house in order to inform the relatives of Dr. Sohel. Dr. Sohel's peon made a mobile call to Saiful but he did not respond though it was ringing. In such a situation at about 1/1.30 pm Saiful came back by a rickshaw. People present there asked him where he had

gone, he said Gazipur. Telling this he went upstairs. Then they told Titu Shaheb for asking him. He does not know what Titu asked going upstairs. Khalamma [aunt] filed a case with Dhanmondi police station on 17.01.2008 after her return from America. She asked him on the day of her return. He told her everything which he has deposed today.

DB police took Saiful along with Ainal and Hazrat to the house on call. Other witnesses told him that Saiful in their presence confessed the occurrence stating that he along with Firoz had killed Dr. Sohel. Firoz gave a blow first and then Saiful in the abdomen. Trunk and legs were dumped in Karatoya River while head was dumped under banana garden at Palash Bari. Saiful brought out two knives and chapatti [dagger] by his own hand from under cot which he used as his bedding. Head of a knife was broken. Witnesses told him further that in their presence Saiful brought out the weapons covered by newspaper and admitted that they both

chopped the dead body taking to bath room into 3[three] pieces like head, trunk and legs. They put three portions of the dead body under staircase after being packed in briefcase and sack. When he went to bring cigarette, then they put the same in the back hole of the private car in order to take the same to Rangpur which Saiful admitted in presence of the witnesses. He has identified Saiful and Firoz in the dock.

In cross-examination he has replied that he is known to the family members and relatives of Dr. Sohel as he served for last 13 years. They have two brothers and one sister. On 10.01.2008, Thursday Dr. Sohel came back home at around 10.00 to 11.00 pm. He opened the gate. Having down from upstairs Saiful asked him for bringing cigarette. He did not ask Saiful whether mama [Dr. Sohel] was sleeping. Dr. Sohel used to smoke cigarette.

On 12.01.2008 at 07.30 to 08.00 am he went to Bangladesh Medical College telling Dr. Khaled that he



did not see at what time Dr. Sohel went out of the house on Friday. He rang but phone switched was off and the same he got thereafter. They came under anxiety. He then told him to take necessary measure. He heard from Dr. Khaled about filing of GDE. Police asked him on 18.01.2008. When mother of Dr. Sohel came then Saiful was not there. He has denied the suggestions that on 10.01.2008 at late night Saiful did not send him to bring cigarette from paddler or Saiful did not tell him to bring breakfast in the morning on 11.01.2008 or he has given false evidence on being tutored as he worked in that house.

**Maksudur Rahman as P.W- 05** testifies that deceased doctor Mofakkharul Ahmed Sohel was his nephew. They were not getting his [Sohel] trace since 11.01.2008 and they searched at different houses of their relatives as well as friends. His sister returned to Bangladesh along with her daughter on 16.01.2008. Her daughter's name is Tanjina Ahmed Mila. On 17.01.2008

his sister lodged FIR. Saiful worked in her sister's house since his boyhood. On 18.01.2008 they along with mother, sister and aunt of Dr. Sohail were talking about his murder. In the meantime, they heard that Saiful and Firoz both jointly had killed Dr. Sohail. First of all Firoz gave a blow on the head of Dr. Sohail with knife and then Saiful pressed the mouth of Dr. Sohail and gave many blows on different parts of the body with knife. His body had been amputated into three pieces taking the same to the bath room after being killed. Thereafter, parts of the body were packed in briefcase and bag. Guard was sent to bring cigarette at about 03.00 o'clock at night. In the meantime, three pieces of the dead body were put in the back hole of the private car. At 9 o'clock Saiful went to Gabtoli taking the vehicle. Firoz took the pieces of the dead body packed in bag to Palash Bari by a Shaymoli Bus. Saiful returned home with vehicle. He again went to Palash Bari in a Hanif bus at 12.00 am. After going there Saiful, Firoz and Bulu all of them hid

the head in a place of Shimultoli village and wearing apparels hidden in the water of the river. Trunk of the body dumped in the river while lower limb in another place. Saiful himself brought out two knives and two chapatti covered by Ittefaq paper and old genzi from hiding place under a divan. During preparing the seizure list deceased's sister Tanjina Ahmed Mila put question to Saiful, 'why did he kill her brother'. In reply he said out of greed they killed Dr. Sohel stating that at first Firoz gave a blow on the head of doctor then he pressed his mouth and gave blows on the chest and different parts of the body. As a result, doctor died. These facts narrated by Saiful in front of them. Saiful told them further that he killed mama [Dr. Sohel] urging to give him any punishment, which he would accept under any circumstances. Investigation officer prepared a seizure list thereof where his signature is marked as exhibit 3/3 and the seized cot is marked as material exhibit-VII. Under this cot arms had been hidden. The seized

weapons brought out by Saiful on that day, have been identified by him in court.

In course of cross-examination he has replied that Dr. Sohel was the son of his sister. Father of Dr. Sohel got married to another lady and they lived in Mohammadpur. His brother-in-law [Dr. Sohel's father] is also a doctor who got married second time about 10/12 years back as per consent of his sister. He does not know why consent has been given by his sister. Dr. Mahbub informed him about his nephew's missing as he was known to him on being friend of Dr. Sohel. Dr. Sohel and Dr. Mahbub both together used to read in Rangpur Medical College. He has denied the suggestions that Saiful did not bring out two knives and two chapatti covered by Ittefaq paper and old genzi from hiding place under a divan or during preparing the seizure list deceased's sister Tanjina Ahmed Mila put question to Saiful, 'why did he kill her brother' or Saiful told them that he killed mama [Dr. Sohel] urging to give him any

punishment, which he would accept under any circumstances or they knew about Dr. Sohel abducted by third party ignoring such facts they did not lodge FIR before his sister returned from America and at the instigation of third party he has given false evidence against the accused.

**P.W-06 Dr. Md. Mahbub Hossain** states that he is a friend of Dr. Mofakkharul Ahmed Sohel. On 12.01.2008 at about 09.00 am at first driver Mannan and then Sohel's friend Dr. Sonjib Kumar Roy informed him over telephone that the trace of Dr. Sohel was not getting since 11.01.2008 morning. He had reached the house of Sohel at about 10-11 am. He talked to Mohiuddin who told him that they were not getting trace of Dr. Sohel. By this time Dr. Sonjib Roy and driver Mannan reached there. Thereafter, he along with others went to Bangladesh Medical College and had talks with Dr. Khaled, a colleague of Dr. Sohel who told that he once rang him through mobile phone getting

switched off. Having talked with Khaled he along with driver Mannan went to the house of Dr. Sohel's aunt. He informed aunt about missing news of Sohel. By this time one Titu from Sohel's house informed them that Saiful has come. They came back to the house of Sohel after informing aunt to give information to other relatives. On 16.01.2008 Sohel's mother returned home from America. On 17.01.2008 his mother filed a case with Dhanmondi police station. On 17.01.2008 at noon DC of DB came to the house of Sohel and had talks with his mother to know the fact of the occurrence. He was present there at the relevant time. DC of DB told him to let it know over telephone if they find any clue. He had seen Firoz in the house of Sohel on 17.01.2008 at evening. Thereafter, he made phone call to DC, DB who sent an Assistant Commissioner along with some police personnel and they left with Firoz after having talked with him. On 18.01.2008 DC, DB informed him over telephone that Firoz admitted about the murder

and according to his confession head of Dr. Sohel was recovered from Shimul tola under Palash Bari. On 18.01.2008 at about 09.00 pm DB police brought Saiful to the house of Sohel through opening gate and started searching the house after Saiful was set on a mora. Saiful brought out two packets covered by news paper and a genzi kept under a divan of which two knives in one packet and two chapatti in another packet found. At the time of departure of DB police Sohel's younger sister Tanjina Ahmed Mila asked Saiful as to why he killed her brother. Saiful then bended his head first and started dropping tears from his eyes. Thereafter, he confessed that in a pre-planned manner he along with Firoz killed Sohel. Thereafter, DB police got down along with Saiful and they examined and seized the vehicle of Sohel used by Saiful after killing. On 18.01.2008 around 22.30 hours sitting in the drawing room of Sohel DB police prepared seizure list of vehicle no. Dhaka Metro-Ga-13-9596, a white colour stand fan having five drops of

blood at its different places and a blood stained copy of list of bazaar dated 09.01.2008 seized which is marked as exhibit no.04 and his signature as exhibit 4/1. The car was in the compound of the court. He has also identified accused Firoz and Saiful in the dock.

In cross-examination he replies that driver Mannan and Dr. Sonjib informed him over telephone about the missing news of Soheli at 09:00/9:30. Getting such news he went to Soheli's house one hour later. He along with Soheli's friend Sonjib and driver went to Bangladesh Medical to know whereabouts of doctor Soheli as he served in that medical. He did not file any case or G.D.E with police station about the missing news of Soheli. He has denied the suggestions that he did not tell investigating officer that Dr. Khaled got switched off of Soheli or Soheli's younger sister Tanjina Ahmed Mila asked Saiful why did he kill her brother or Saiful stood bending his head and dropping tears from his eyes or later Saiful admitted that he along with Firoz



killed Sohel in a pre-planned manner. He has further denied the suggestions that to grab money and property of Sohel third party killed him or they have implicated Saiful to hide the real fact making a false story by filing false case and handing Saiful over to police.

**P.W. 07 Kazi Mohammad Rofiquzzaman Chowdhury** testifies that he is the uncle [khalu] of deceased Dr. Mofakkharul Ahmed. They were not getting trace of Dr. Sohel from 11.01.2008. They made search in the houses of relatives and friend circles at different places. At the relevant time, Sohel's mother was in America. From their house Tanjina Ahmed Mila was informed over telephone that Dr. Sohel was traceless. Mila along with her mother came to Bangladesh on 16.01.2008. She had talks with relatives and friends of Dr. Sohel about his missing. On 17.01.2008, mother of Sohel being informant lodged an FIR with Dhanmondi police station under section 364 of the Penal Code. On 17.01.2008 at house no. 775 they

were discussing about Sohel's missing. At the moment Biddyut Chowdhury, cousin of the informant, from Palash Bari informed that DB police apprehended one Firoz who was taken to Palash Bari. At his [Firoz] identification one Bulu was arrested. DB police went to Shimultola at Palash Bari and according to their confession police recovered head of deceased Dr. Sohel. Thereafter, at their showing blood stained apparels were recovered from Karotoya River.

DB police with Saiful came to the house of Sat Mosjid Road at Dhanmondi on 18.01.2008 at 10.00 pm and Saiful confessed in their presence that he along with Firoz both in a pre-planned manner killed Dr. Sohel on 10.01.2008 at night in between 12.00 pm to 01.00 am while he was watching TV sitting in the drawing room. Accused Firoz at first gave a knife blow on Sohel and the butt of the knife was broken. Thereafter, Saiful gave blows one after another pressing his mouth closed to confirm his death. Thereafter, dead body was taken to

bath room where they cut the same into three pieces. Head and legs were separated from the trunk of the body. After cleaning the blood, pieces of the dead body were packed in suitcase and sack. Thereafter, at 03.00 o'clock in the night Saiful sent guard in order to bring cigarette. Getting such opportunity packed suitcase and sack were brought down under stairs case and kept them in the back hole of the private car. They took shower thereafter and the following day in the morning Saiful went to Gabtoli bus stand with car and bought ticket of Shyamoli bus having boarded the suitcase and sack in the luggage box of the bus and Firoz left. Saiful returned by private car. At noon he went to Palash Bari in Hanif bus by collecting ticket and discussed with Bulu seeking help from him. They three jointly dumped the head at Shimul tola and remaining limbs dumped in the river Karatoya.

Saiful brought out the knives and chapatti from under a cot which he used as his bed in the house. This

witness has identified knives and chapatti seized by DB police. On 18.01.2008 at about 10.00 to 10.30 DB police seized vehicle vide no. Dhaka Metro-Ga-13-9596, a white colour stand fan and a copy of list of bazaar. In the seizure list he has put his signature marked as exhibit No. 4/2. The vehicle used by them is in the court compound marked as material exhibit- No. VIII and fan marked as material exhibit-IX. He has identified the accused in the dock.

In cross-examination he replies that driver Mannan over telephone informed his eldest brother-in-law that they were not getting trace of Soheli since 11.01.2008. After getting missing news he went to that house at 05.00 o'clock afternoon and found close relatives of Dr. Soheli. A fan was seized as there was sign of blood spots. It is not true that the seizure list was not prepared at that time at the place of occurrence and for that reason it seems to be tore and over writing and he did not go to the place of occurrence on 18.01.2008 or

in his presence DB police did not bring Saiful or Sohel's father had a quarrel with his mother over financial transaction or knowing well he has described falsely or an interested group abducted Sohel for grabbing the Dhanmondi house and clinic or Saiful, Firoz knew nothing about the abduction of Dr. Sohel.

**P.W-08 A.K.M Mokshed Chowdhury @**

**Biddyut** testifies that the deceased was his nephew. He came to know over telephone on 11.01.2008 that his nephew Dr. Sohel was not at home, none was getting his trace. He along with his nephew Babu, Liton went out to find him in their relative's houses. He received news from Dhaka that the cell phone used by Dr. Sohel indicated alarm within Grameen mobile tower under Dinajpur district area. Getting such news he informed the officers-in-charge of Kheya Ghata, Gobindagonj and Palash Bari police stations who then started to find. He started towards Dhaka on 16.01.2008 at 3.00 pm and came to know from his nephew Babu through mobile

on his way that a headless dead body was floating near the shore of the river Karatoya, at fulhaar village under Gobindagonj police station. Then and there he informed officer-in-charge of Gobindagonj police station over telephone.

Having recovered the said headless dead body, S.I of Gobindagonj police station brought the same to the police station. Next [Friday] early morning at 05.00 am on the information of officer -in-charge of Palash Bari police station he along with his nephew Babu having gone to the Baghmara Bridge at Shimul tola could see DB police from Dhaka including officer-in-charge and S.I Rafique along with many others assembled thereof. On asking Firoz and Bulu having pointed at the assembled banana trees brought out the separated head of Dr. Sohel from thereunder. Having seen the amputated head as his nephew Dr. Sohel, S.I Rafique made the inquest report thereof taking his signature. Inquest report is marked as exhibit -05 and

his signature as exhibit 5/1. Then and there he informed the matter to his brother Maksud Reza at Dhaka. Thereafter, Firoz and Bulu were taken to western side of the Trimohani Bailey Bridge. At their [Firoz and Bulu] showing trunk of the body and lower limb including legs and blood stained apparels dumped there under, were recovered by sweeper Raton of Ghoraghata P.S along with 2/3 others. They could see entrails floating in the water. S.I Abdul Bari seized blood stained apparels and entrails and prepared inquest report. Thereafter, on 24.01.2008 at evening hour he along with officer-in-charge and Humayun Kabir, Sujon, Himel, Babu all together having gone to the river Karatoya at Cherenga village saw the lower limb of Dr. Sohel floating in the water within the fish zone. S.I Rafique prepared inquest report upon recovery of the same taking his signature thereon which is marked as exhibit 06 and his signature as exhibit 6/1 and the same were sent to Rangpur Medical for an autopsy. He took the lower portion of

the dead body back after being examined on 25.01.2008. S.I Shajahan of DB recorded his statement on 16.02.2008. He has identified Firoz and Bulu in the dock.

On 18.01.2008 he came to know from the mouth of Firoz at Palash Bari police station that he along with caretaker Saiful killed Dr. Sohel at around 12.00 pm on 10.01.2008. They cut the dead body into three pieces with kiris taking to the bath room and took the same in a bus to Palash Bari next morning. He has identified accused Saiful in the dock. Firoz and Saiful with the help of Bulu dumped trunk and lower limb of the dead body of Dr. Sohel and blood stained apparels in the mud near the Trimohani Bailey Bridge of Karatoya river and head in the land of Sofu master under banana trees.

In cross-examination he replies that on 11.01.2008 he was in Palash Bari Thana area. He heard from his nephew Babu that Dr. Sohel was traceless. He knew



about mobile number of Dr. Sohel which he saved in his mobile set. At that time he did ring to the number of Dr. Sohel. He informed every police station separately. He has denied the defence suggestions that he has suppressed actual killing incident or given false evidence against the accused after being tutored by the informant.

**Md. Abdus Sobhan Sarkar as PW-09** states that on 18.01.2008 morning at around 6:00 am he along with Liton in a motor-cycle started towards Palash Bari. They stopped seeing police and many persons in the land of Safu master in the east-southern side of Bagmara Bridge when they reached there. An amputated head of human being was recovered from the land of Safu master under banana tree pointed by Firoz. Biddyut Chowdhury and Babu recognized the head as Biddyut Chowdhury's nephew. From there they along with police rushed to the bank of Karatoya River, near Trimohani Bridge. At the showing of Firoz three persons got down in the river and recovered a sack from where blood stained

apparels including screen, blazer, lungi found after open the sack. He heard that on 16.01.2008 a body was found in a place under fulhaar mouja in Karatoya River and he also heard that on 24.01.2008 lower limb of dead body of Dr. Sohel was found in the river at Cherenga. He has identified Firoz and Bulu in the dock. Firoz told at the police station that Firoz and Saiful killed Dr. Sohel at Dhanmondi residence in Dhaka.

In cross-examination he has responded that he is a teacher of primary school and also member of local union parishad. He knew Firoz previously [since before] but did not know Bulu. Firoz used to stay in Dhaka. He had seen the amputated head from 5/6 yards distance. He has no relation with Dr. Sohel. It was around 06.00 when he saw withdrawing the head. Police took the head to the police station after being recovered. On 16.02.2008 S.I of DB recorded his statement at Palash Bari. He has denied the defence suggestion that he has given false evidence.

**P.W- 10 S.I Subrata Kumar Sarkar** has testified that he is now working in Gobindagonj police station of Gaibanda district as sub-inspector. On 15.01.2008 while he was on duty at 23.30 hours at night he came to know through mobile phone that a material like dead body was floating in Kheyaghat area at Balu para of Fulhaar village. Getting such news he along with S.I Kutubul Alam and other forces went to Fulhaar village after lodging a G.D entry being No. 637 dated 15.01.2008. Chowkider Ratan, Belal, Dilip along with Sunil went to Balu para Kheyaghat.

On 16.01.2008 at about 01.45 am they called Raza Miah and Khabir Uddin who were catching fishes in Kheyaghat area with the help of 'Hejak light' and they could see a material like dead body floating in the river. In the presence of locals dead body was withdrawn to the bank of the river with the help of van driver Milon and could see by removing the same that was a trunk of a human being without having head and lower part

including legs and the hands of the dead body were tied with nylon rope embracing the hands with white cloth.

It seemed to be a dead body of male person by seeing hair on the chest. His accompany S.I Kutubul Alam by arranging lighter prepared inquest report in the presence of witnesses. S.I Kutubul Alam along with Constable Abu Musa took the dead body to Gaibandha Sadar Hospital for autopsy. A case being Gobindagonj P.S case No. 28 dated 16.01.2008 under sections 302/201 of the Penal Code was started in this connection. And S.I Kutubul Alam took over the charge of the case to investigate. Ejahar has been marked as exhibit-08 and his signature as exhibit- 8/1.

In cross-examination he replies that Babu Para Kheyaghat is 18-20 kilometers far from Gobindagonj police station. Skin of the dead body having erased became white at different places. Bad smell had been going out from the dead body as being decomposed. Having taken dead body Kutubul Alam and constable

went to Gaibanda Sadar. He has denied the suggestions that he did not go to the place of occurrence and he lodged ejahar on hearing from others.

**P.W-11 S.I Md. Kutubul Alam** testifies that he is presently working in Fulchhari police station under Gaibandha district as sub-inspector. He prepared inquest report of partial dead body of Gabindagonj P.S case No. 28(1)08 and he is the investigating officer. According to Gobindagonj P.S G.D No. 637 dated 15.01.2008 he along with S.I Subrata Kumar and other constables went to Balu para, Kheyaghat of Majhipara village and could see something like a dead body of human being floating in the water about 5 yards far from the bank of the Karatoya River. They did not have enough light. Thereafter, they with the help of two fisher men and others brought the material to the foreshore under Hejak light. Then van driver Milon brought it up from the water. Having seen it they found that it was a trunk of human being [body] without head

and lower limb including legs. They presumed to see the hair of the chest as the dead body of a male person.

After arranging sufficient light from the people they prepared inquest report on the spot and took signatures from witnesses. The inquest report is marked as exhibit-10 and his signature as exhibit- 10/1. He along with constable Musa took the same to the morgue of Rangpur Medical Collage for autopsy and came back after handing over the same. On 16.01.2008 the investigation was endorsed to him by officer-in-charge in this connection. Getting such charge of the case he had prepared sketch map with index on 17.01.2008 marked as exhibit-13, his signature as 13/1 and index as exhibit-14 and his signature as exhibit-14/1. He recorded statements of some police personnel and public witnesses who had seen the recovery of trunk of the dead body. He handed over the case docket because of his transfer to other place.

In cross-examination he replies that 15.01.2008 he was on duty as in-charge of police investigation centre of Bairaghir Hat. G.D No. 637, dated 15.01.2008 had been stated in the inquest report. He went straight way to the bank of the river. Hejak light was given by fishermen who were catching fishes in the river. It took around one hour time to withdraw and prepare inquest report of the dead body as it was a night in the winter. Case was filed on 16.01.2008 at 08.35 am. After taking charge over the case for investigation he again went to the scene on 17.01.2008 at 1.45 pm. He has denied the suggestions that he did not visit the necessary places or did not have torch light or did not investigate properly or sitting in police station he prepared documents and he has given false evidence.

**P.W-12 Md. Abdul Majid** has deposed that on 18.01.2008 at around 5/5.30 pm on hearing siren of police vehicle he came out of the house opening the door and then police told that dead body would be

recovered 'come with them'. When they went to Bagmara Bridge they could see a vehicle of police and a white colour micro-bus thereon. Thereafter, they along with police went to the banana garden of Safu master where they saw Bulu and Firoz standing having hand cuffs. Police took off hand cuffs from them and tied the waist with rope. Both the accused brought out a head of human being from under banana tree. Bidyut Chowdhury told them to see that the head was his nephew taking the same in his hand. Police took his signature after being prepared the paper, marked as exhibit-05 and his signature as exhibit-5/2. He has identified Bulu and Firoz in the dock.

During cross-examination he has replied that his house is two hundred yards far from Bagmara Bridge. Vehicle of police was on the bridge. He knew the land of Safu master previously. There was no other tree around the said land. He knew Bidyut Chowdhury. He



has denied the suggestion that he has given evidence as per police dictation.

**P.W-13 Md. Ohedul** has stated that on 18.01.2008 at 05.30 to 06.00 am on hearing sound of siren he came out of the house and saw police. He went onto the road with them and saw police van and a microbus thereon. He went to the banana land of Safu master with police and could see two accused detained and their waists were tied with rope after removing hand cuffs. They could see hair of head when the accused started removing banana trees one by one. Having seen the head Biddyut Chowdhury told that it was his nephew's head with moustache. There seemed to be small dust with the head but it could be identified. Police offered a paper in which he put signature, marked as exhibit-05 and his signature as exhibit-5/3.

Thereafter, police took the amputated head keeping in polythin bag to police station. He has identified accused Bulu and Firoz in the dock, who had

been seen by him on that day. He heard later that the dead body was cut into three pieces, eventually dumped the same separately at three places.

During cross-examination he has replied that they recognized the police to see their uniform. He can sign only. He saw two accused at the scene wherefrom the head was recovered. He has denied the suggestions that he did not go to the place of occurrence or did see nothing or has given false evidence at the instigation of Bidyut Chowdhury.

**P.Ws-14, 15 and 16** have been tendered.

**P.W. 17 Md. Imran Hossain Chowdhury** has deposed that he is presently working in Rangpur as Joint District Judge. On last 23.01.2008 he was working in Dhaka CMM Court as Metropolitan Magistrate. On that day he recorded confessional statement of accused Md. Firoz Miah son of Abdul Quddus Bina under section 164 of the Cr. P.C observing all formalities as per section 364 of the said code. The confessional

statement, in total, contains eight pages including two pages of form. Confessional statement has been marked as exhibit-15 and his eight signatures as exhibits- 15/1 to 15/8 and seven signatures of the accused as exhibits 15/9 to 15/15. On 24.01.2008 he holding the same post recorded confessional statement of accused Md. Saiful Islam son of Abdus Sattar under section 164 of the Cr. P.C after observing all formalities as per section 364 of the said code. The said statement contains eight pages and the same has been marked as exhibit-16 and his seven signatures as exhibits-16/1 to 16/7 and seven signatures of the accused as exhibits-16/8 to 16/14.

During cross-examination he has narrated that in the statement of Firoz Miah there are date, name and seal of title on the first page but there is no signature on it. He received the accused at 12.00 o'clock which he noted in the form. G.R.O brought the accused along with case record to him. According to law he gave all instructions to the accused keeping him in the custody

of peon, he set in the court. He started recording statements after giving three hours reflection time to the accused. He recorded the statement in the language of the accused. He did not mention 'inverted coma' in the statement in respect of direct comment. It was complete at about 04:15 pm. He rendered certificate in the column 8 after recording statement and read over the same to the accused who signed after finding it correct. Thereafter, seal was given and he signed therein. He has denied the suggestions that he did not fill up the form and white paper and record the statement in accordance with law and the confessional statement was not given by the accused voluntarily.

**P.W-18 Sree Showpan Chandra Sarkar** has stated in his examination-in-chief that on 15 January, 3<sup>rd</sup> Magh at late night he woke up from bed when some villagers and chowkider knocked his door. He wanted to know from them why they were calling him. In reply, they said there was dead body in the river to be

withdrawn. The dead body was enclosed with winds of tree used for catching fish. There were 5/6 villagers, 4 chowkider, a sweeper, a van driver and 4/5 police personnel including daroga Kutub and Abdul Jalil who came in motor-cycle. They all went to the scene and brought on call two fishermen catching fish in the river with the help of hejak light. Thereafter, dead body was brought to the shore of the river with the help of a bamboo. Then they saw two hands of a dead body tying with rope and it had no head and legs from waist. There was hair on the chest but the skin was erased at different places signing infection. Police prepared document in which he signed. Daroga prepared the paper in his presence. This document is marked as exhibit-10 and his signature as exhibit-10/2. Daroga took the dead body in a van.

In cross-examination he has replied that chowkider and police woke them up from sleep. His house was situated at the southern bank of Karatoya

River. They all together came to the bank of the river. The distance of the water level from the bank of the river was 20/30 yards. The bad smell was coming out from the dead body. He did not check the dead body whether it was decomposed or not. He has denied the suggestions that he did not see anything and has given false evidence on being tutored by police.

**P.W-19 Dilip Chandra Das** has stated that perhaps in the month of 2<sup>nd</sup> or 3<sup>rd</sup> Magh last year, police along with chowkider woke them up from bed telling that there was a dead body near the shore of the river to be withdrawn. They called the men who catching fishes in the river through hejak light, to help them for withdrawing a dead body enclosed with a fence. Thereafter, they brought it to the bank of the river through a bamboo. Hands of the dead body were tied enclosing with a part of white tore genzi. It had no head and lower limb from waist. It was a male dead body having hair with it. Skin of the body was erased at

different places and injuries were found on the abdomen. He along with Sunil, Shawpan, village chowkider Ratan and two fishermen were present at that time. Daroga prepared document on which he has given thumb impression with the help of hejak light. Daroga came to him next day for verifying his name and address.

In cross-examination he has replied that Karatoya River is 10/15 yards far from his house. Police came to his house in two motor-cycles at late night. On that day motor-cycles were on the road. Dead body was 4/5 bigha far from his house enclosing with a part of tore genzi. The dead body was decomposed. They saw the dead body at a distance of 3/4 yards. He has denied the suggestions that he did not go to the place of occurrence or did not see anything or has given false evidence as per instruction of the police.

**P.W-20** has been tendered.

**P.W. 21 Raton Basfor** has deposed that by profession he is a sweeper. On 18 January this year at 08.00 am police came to him from police station and took him to Trimuhani Bridge. They showed him two accused. There was something else inside the sack floating in the water. They recovered a sack from the mud in the water after searching for long time and found blood stained bed cover, genzi, coat and other apparels after opening the same. A blood stained blouse and a kamij were also found. After having seen these apparels they packed again in the sack. Police left the place with those apparels. He has identified two accused persons in the dock.

In cross-examination he has replied that he has no identity card or appointment letter as sweeper. Thana is half mile far from Ghoraghat. The bank of the river is ten yards far from the water level and 15/16 yards far from mud under water. There were around 7/8 police personnel. It was found in the mud on being searched



under water. He has denied the suggestions that he has narrated untrue statements or has given false evidence on being tutored by police or did not go to the place of occurrence on the alleged date.

**P.W-22 Safiul** has stated that he is doing business. The date of occurrence is in the month of July 18. He used to do morning walk as he was a diabetic patient who had seen that sweeper Raton got down in the river looking for something. Upon Raton's quarry the accused gave him definite indication of the place. Thereafter, a sack from mud was withdrawn containing blood stained bed cover, petty coat and 2/3 other things which he had seen. From that place an entrails was also withdrawn. S.I Abdul Bari prepared the document in which he signed, marked as exhibit-17 and his signature as exhibit-17/1 and a sack is marked as material exhibit-X and a blood stained old bed cover as material exhibit-XI and printed sheet as material exhibit-XII, coat as material exhibit-XIII, sweater as material exhibit-XIV,

kamij as material exhibit-XV, two printed screens as material exhibit-XVI, an old lungi as material exhibit-XVII and a blouse as material exhibit-XVIII. All of them had been recovered by Raton at the showing of the accused. He has identified two accused in the dock.

In cross-examination he has replied that when the sack was opened it found bed cover, petty coat and 2/3 other things. He has denied the suggestions that he was not present on that day or has given signature later on or has given evidence under instructions of police.

**P.Ws- 23 and 24** have been tendered.

**P.W-25 S.I Md. Abdul Jalil** has deposed that he is presently in-charge of Boiragir Hat Investigation Centre under Gobindagonj police station of Gaibandha district. On 11.02.2008 officer-in-charge endorsed him to investigate Gobindaganj police station case No. 28, dated 16.01.2008. Having received he analyzed the case docket and submitted final report [true] No. 23 dated 24.02.2008 after receiving application forwarded by

investigation officer of Dhanmondi police station and handed over the same to him.

In cross-examination he has replied that previous investigating officer visited the place of occurrence and prepared sketch map. He did not prepare sketch map newly. He submitted final report in the court of Gaibandha district.

**P.W-26 Abu Musa** has deposed that he is presently on duty in Boiragir Hat Investigation Centre under Gobindhaganj police station of Gaibandha district. On 16.01.2008 he, Daroga Kutubul Alam and S.I Subrata along with their forces went to Fulhaar mouza near Karatoya River and saw a dead body floating in the water recovered by them. Dead body was brought to police station in a van. Next day dead body was taken to Gaibandha Sadar Hospital. Challan of dead body is marked as exhibit-11 and his signature as exhibit-11/2. After completing post-mortem

examination, the alamot was handed over to the police station which has been mentioned in the challan.

In cross-examination he has replied that he was present with rescue party. From Boiragir Hat he and daroga Kutub went to the scene and daroga Subrata from Gobindhagonj. Dead body was recovered from Karatoya River under Fulhaar mouza. The rescued limb was not decomposed, only skin was erased. It started coming out some bad smell. Kutubul Alam prepared the inquest report on the bank of the river. They brought the dead body from nearby river in a van of one who always pulls dead bodies. He along with two others and van driver were in the van. He has denied the suggestion that he has given evidence under instruction of Kutubul Alam.

**P.W-27 S.I Abdul Bari Pradhan** has deposed that he is presently serving in Goraghat police station under Dinajpur district. On 18.01.2008 upon getting information he arrived under Karatoya Bridge from

Goraghat police station. At the showing of accused Firoz Miah, sweeper Raton Basfor withdrew materials from the shore of the river and he prepared seizure list, marked as exhibit-17 and his signature as exhibit-17/2. He has recognized the goods [materials] in the court and identified accused Firoz Miah in the dock.

In cross-examination he has replied that he got news about the death occurred in Dhaka. There were dead body and apparels. There are three witnesses in the seizure list namely 1. Shafiul Alam, 2. Md. Mahinur Islam and 3.Md. Bodir Hossain whose houses are 2/3 hundred yards far from the bridge and their addresses are at different places. There is no petty coat of female person in the seizing goods. He has denied the suggestion that he did not go to the place of occurrence.

**P.W-28 S.I Mir Azad Rafiqul Hasan** has stated that he is now serving in Ration Store in the district of Jessore as officer-in-charge. On 18.01.2008 he was on duty in Palash Bari police station under Gaibandha

district. On that day at around 06.30 am as per identification of one Bidyut he along with his forces went to the banana tree garden at Shimultola from where an amputated head was recovered at the showing of accused Firoz Miah and he prepared inquest report [exhibit-5 and his signature as exhibit-5/4] in the presence of relatives of the deceased. Thereafter, on 24.01.2008 at night around 21.30 hours they recovered amputated lower limb of the body including legs from the Karatoya River and prepared inquest report [exhibits-6 and his signature-6/2] after it was withdrawn onto the bank of the river. Autopsy report was sent to Dhanmondi police station through S.C.D containing three pages, marked as exhibit-18 and his signature as exhibit-18/1.

In cross-examination he has replied that in the prepared inquest report there is no number of G.D of Palash Bari police station or C.C number mentioned. He has denied the suggestions that on 18.01.2008 the

inquest report was not written by his own hand as the written words and signature are not similar to each other and ink of signature and inquest report's words differ from each other and he did not go to the scene or did not write inquest report.

**P.W-29 Dr. Md. Abdul Jalil** has deposed that he is now serving in the forensic department of Rangpur Medical College as Assistant Professor. While he was on duty in the same hospital he along with Dr. Md. Munsur Rahman as chairman and Dr. Abdus Samad, as member by forming a board examined an amputated head upon getting from police personnel and they gave autopsy report after examining the same. During examination they found the following injuries;

1. Mouth partially closed, eyes putrefied, partially decomposed, scalp hair partly removed and matted with blood and mud over the face and head moustache somewhere green in colour.

2. Head including neck [partly] were separated at the cervical 4<sup>th</sup> vertebra level which was post-mortem in nature. On detailed dissection no external and internal injury could be found present brain matter was liquefied.

No definite opinion could be possible to be given from the autopsy of head as it was a post-mortem separated head. The cause of death has given previously in autopsy report of the trunk of the body. Autopsy report is marked as exhibit-19 and his signature as exhibit-19/1. There are signatures with seal of two other members of the board in it. Their signatures are known to him.

In the same place when he was on duty on 17.07.2008 constable 575 Abu Musa brought an unknown dead body of a male person aged about 45 years which they examined by forming three members board. On examination they found the injuries as under:



*Height-5'-1", partially decomposed mutilated. Trunk of the body, chest hair some are gray in color, upper both limbs were tied with rope at the arm and fore arm [Nylon rope] with the body.*

*1. Both upper limbs with Ht. or Humerus*

*Head and partly neck at the level of the 4<sup>th</sup> cervical spine were de captivated which was post-mortem in nature. Waist of the body was separated from the body at in between 3<sup>rd</sup> and 4<sup>th</sup> lumber vertebra i.e just below the umbilicus was postmortem in nature.*

*[1] One stab wound was situated at just below the Rt. Costal cartilage in the epigastric region which was obliquely placed measuring 3½" X 1½" X abdominal cavity.*

*[2] One stab wound on Rt. epigastrium below the injury No. 1, size 1½ " X ½ " abdominal cavities.*

[3] *One oblique stab wound on the Rt. lumber region just above and lateral to the umbilicus size 4½" X 2" abdominal cavity from the Rt. to the midline direction with coming out the omentum through the wound.*

[4] *One stab wound the anterior fold of axilla in the Lt. Lateral wall of the chest size 2½" X 1" X chest cavity.*

[5] *One incised wound on the just above and lateral aspect of right wrist joint size X 1½" X ½" bone.*

[6] *One incised wound on the thinner aspect of the palmer surface of Rt. hand size 2½" X 1" X bone.*

[7] *One incised avulsion wound on the tip of Lt. Thumb at palmer aspect.*

[8] *One chop (incised) wound on the back of the Rt. side of abdomen*

*in the loin size 8" X 2" X abdominal cavity.*

*[9] One stab wound on the middle of the Rt. lateral chest wall wholly lies in the 8<sup>th</sup> to 12 intercostals space size 1½" X ½ " 1 X chest and abdominal cavity obliquely placed.*

On detailed dissection extravasations clotted blood found present at the site of the injuries. Tip of 8<sup>th</sup> and 9<sup>th</sup> ribs were cut down at the Rt. side, liver, Lungs, stomach intestine. Rt. Kidney found injured. Dark and fluid blood was hugely found present in the chest cavity and abdominal cavity. A portion of muscle and of Rt. Hummers was presumed for D.N.A test and handed over to the escorting police for sending it to the DNA, DMC in a proper way.

Opinion: Death in our opinion was due to shock and hemorrhage as a result of the above mentioned injuries which were ante-mortem and homicidal in nature.

Autopsy report has been marked as exhibit-20 and his signature as exhibit-20/1. There are signatures of chairman and members in the report.

In the same place holding the same position he along with chairman of forensic department and assistant professor Abdus Samad by forming a board completed examination upon receiving dead body from constable no. 421 Md. Nazrul Islam. In examination they found injuries as under:

Partially decomposed separated body from the 4<sup>th</sup> lumber vertebra up to lower limbs, left foot except great toe. Rt. foot and external genitalia partly eaten by aquatic animals, all the injuries were postmortem in nature, on detailed dissection no external and internal injury was found.

Opinion: No definite opinion could be possible to be given from the autopsy of the lower part of the body as it was postmortem separation the cause of death was

given previously in autopsy report of the trunk of the body.

Autopsy report has been marked as exhibit-21 and his signature as exhibit-21/1. In it there are signatures of chairman and members. Inquest report of 18.01.2008 has been marked as exhibit-5 and his signature as exhibit-5/5, inquest report of 24.01.2008 has been marked as exhibit-6 containing signature of Dr. A. Samad. Inquest report of 16.01.2008 has been marked as exhibit-10 and his signature as exhibit-10/3.

In cross-examination he has replied that the postmortem examination was held by forming a board headed by a chairman with two members. The part of dead body of 26.01.2008 examined by them was not mentioned in the challan of whose dead body was and it was nameless. Then witness said name is there. Identification was made by Constable Nazrul Islam. They examined part of unknown decomposed body. The report was written by chairman of his own hand.

They started examining dead body on 26.01.2008 at 11.00 am. He did not mention when it was ended. It was partially decomposed and part of the same eaten by aquatic animals. Investigation report of 19.01.2008 was written by chairman of his own hand. The head including neck was received on 19.01.2008 at 10.35 am. They did not find any sign of injury in and around the head including neck. Chairman of the board did not write in the autopsy report regarding description of lip, teeth, ear, tongue and nose. He has denied that they did not give opinion after being examined properly.

**P.W-30 Md. Ali Akbar Dewan** has deposed that he was a teacher by profession, now on retirement. On 20.01.2008 at around 2.00 pm he went to next door of his house to attend a death anniversary. Law enforcing persons came there with accused Firoz. Having gone there they called sister of accused Firoz who then told his sister to bring back the pant which he gave her earlier to keep. Then it was brought out and instantly a

seizure list was prepared in which he put his signature. Seizure list is marked as exhibit-24, his signature as exhibit-24/1, and full pant as material exhibit-XIX. He has identified accused Firoz in the dock.

In cross-examination he has replied that sister of accused Firoz brought out the pant when she was told to bring out the same. He signed sitting thereof and there were more people. He does not know anything more rather than knowing about saying to bring out the pant by the sister of accused Firoz.

**P.W- 31 Keshob Ali** has stated that he is doing business of fire wood. In the first part of January at about 12.30/12.45 pm he was at home. Having come to his shop he could see many people including DB police with accused Firoz behind his shop. One laborer named Julhash got down in the drain near his shop looking for anything. On searching he brought out a full pant and a full shirt from there. He signed paper upon finding the shirt and pant. Seizure list is marked as exhibit- 25, and

his signature as exhibit- 25/1, full shirt as material exhibit- XX and full pant as material exhibit-XXI. He has identified accused Firoz in the dock. Julhash brought those out from drain at the showing of the accused.

In cross-examination he has said, the written seizure list shows that the shirt was tore and blood stained pant was of ash colour. Both are of different colours like light and deep which have not been written in the seizure list but it has spot with the pant. The witness at one stage showed the red colour of the pant. He has denied the suggestions that he did not see from where those alamats were recovered or he does not know anything or has given evidence as per instruction of DB police.

**P.W- 32 Md. Julhash** has deposed that he is a laborer. Police went to Chandura Polli Biddyut Centre where accused pointed the cloth. As per police directive he got down in canal and withdrew a shirt and a pant.



He recognized the same in court. He has signed the paper and his signature is marked as exhibit-25/2. Police took the signature from the owner of the fire wood shop. He has identified accused Firoz in dock.

In cross-examination he has told that he can sign only. He has denied the suggestions that he did not sign or get down in the canal or did not bring up anything or has signed under police threat or has given false evidence.

**P.W-33 S.I Md. Reazuddin** has stated that he is presently serving in Dhanmondi police station as sub-inspector of police. On 17.01.2008 he was on duty in the same police station. He received Dhanmondi police station case no. 61 dated 17.01.2008 by virtue of an endorsement to him on that day to investigate and he analyzed the ejahar, visited the place of occurrence and prepared sketch map along with index. He knows the hand writing of recording officer S.I Amzad Ali Khan who filled up the FIR form, marked as exhibit-26 and

there are two signatures of recording officer in it known to him. In the main ejahar his signature is present. On 18.01.2008 he prepared the sketch map of the place of occurrence and descriptions of it are in the index. Sketch map has been marked as exhibit-27, his signature as exhibit-27/1, index as exhibit-28 and his signature as exhibit-28/1. He seized the alamot and recorded statements of three witnesses of the occurrence. He tried to arrest suspect accused. He handed over the case docket on 18.01.2008 under instruction of the higher authority.

In cross-examination he has replied that he analyzed the ejahar and FIR form. He received the case to investigate on 17.01.2008 at 23.15 hours. He did not prepare sketch map along with index of the place of occurrence at night of 17.01.2008. Next morning at 07.00 am he prepared the same. He went to the place of occurrence at 23.45 hours of the night and stayed therein till 01.00 pm and recorded statements of three

witnesses namely General, Ms. Gulshan Maiya and Mohiuddin. He looked for suspect accused Saiful, Firoz and Shaheen. He has denied the suggestions that he prepared the index at the instance of someone else or he stated Cha, Umma instead of Ka in the index on being tutored or did not work in the investigation by his own authority or did not go to the place of occurrence or had made the sketch map along with index sitting in the police station.

**P.W-34 S.I Md. Shajahan** has testified that he is presently serving as Sub-Inspector of police at DB, DMP Dhaka. On 18.01.2008 he was on duty at the same place. He took over the charge of Dhanmondi police station case no. 61, dated 17.01.2008 at the order of DC, DB. During investigation apprehending accused Saiful Islam and Firoz Miah admitted that they killed Dr. Mofakkharul @ Sohel with sharp cutting knife and dagger at house no. 775, Sat Masjid Road and having taken the dead body to bath room amputated head and

body. Thereafter, they took the same to Palash Bari under Gaibandha district and dumped the head at Choto Shimultola and trunk and lower limb including legs and blood stained apparels under Karatoya River near the Trimuhani Bridge with the help of accomplice accused Bulu. DB police with the help of local police personnel had recovered those amputated pieces of dead body along with blood stained apparels on admission and identification of accused Firoz Miah and Bulu Miah from the places under Gaibandha district. Accused Saiful admitted that he hid the using knives and daggers under a divan after killing Dr. Sohel at the place of occurrence house.

In order to recover the said weapons, he took Saiful to the place of occurrence and in the presence of local witnesses Ainal Hoque, Masudur Rahman and Hazrat Ali, Saiful confessed the killing incident and brought out a blood stained 24" knife, 22" knife with broken butt 15½ inches long chapatti with butt having

blood spot at the top of it along with a brown colour genzi and a copy of Dainik Ittefaq of January 2008 containing three pages covered by them and unused 11½ inches chapatti at 22.50 hours at night. He seized the same by preparing seizure list in the presence of the witnesses. Seizure list is marked as exhibit-3 and his signature as exhibit-3/4. He identified the pocket of lower part of the divan along with knives and daggers, one of which is divided into three pieces and Ittefaq newspaper and genzi are also in the court room. He handed over the seizing private car bearing no. Dhaka Metro Gha 13-9596 on 18.01.2008 at 22.30 on bond. Seizure list is marked as exhibit-4 and his signature as exhibit-4/3, Jimma nama as exhibit-2 and his signature as exhibit- 2/2.

Accused Firoz admitted that he threw the wearing apparels like pant and shirt of accused Saiful, who wore at the time of committing the murder, in the dust canal of Chandura. The accused persons were taken on police

remand on 19.01.2008. He newly prepared sketch map and index separately as the previous sketch map and index are being inconsistent with each other. His prepared sketch map is marked as exhibit-29, his signature as exhibit- 29/1, index as exhibit-30 and his signature as exhibit-30/1. On 20.01.2008 at about 12:00 o'clock he took accused Firoz to the bank of Chandura dust canal at Kaliakoir and through witness Julhas blood stained pant and shirt of accused Saiful had been recovered from the said canal at the showing of accused Firoz. The seizure list is marked as exhibit-25 and his signature as exhibit- 25/3. On the same day at 14:05 pm at the showing of accused Firoz a black full pant of Dr. Sohel was rescued from the house of Anower and he prepared seizure list marked as exhibit-24, his signature as exhibit-24/2, and he identified alamats in the court room.

He produced both accused Md. Firoz Miah and Saiful Islam before the court on 23.01.2008 and

24.01.2008 respectively when they willingly expressed to confess the incident. They disclosed the name of accused Bulu in their confessional statements. On 16.02.2008 he visited Palash Bari police station and collected autopsy reports of recovered 3[three] pieces of dead body of Dr. Sohel and photo copies of inquest reports of the same. With the help of sub-inspector Rafiqul Islam of Palash Bari police station he visited Choto Shimul Toli from where the dead body was recovered and prepared sketch map with index marked as exhibit-31 and his signature as exhibit-31/1.

On the same day he visited the place of Kismat Cherenga village wherefrom the legs [lower part] of the dead body was recovered and prepared sketch map with index, marked as exhibit-32 and his signature as exhibit-32/1. On 17.02.2008 he went to Boiragir Bazar Investigation Centre and had discussions with the investigation officer of Gabindagonj police station case no. 28(1)08 and visited the place of occurrence where

from the trunk of the dead body of Dr. Sohel was recovered. Having come to Palash Bari area he recorded statements of witnesses after examination. He received the case docket of Gabindagonj police station case no. 28(1)08 as per order of the court. Having satisfied with evidence and confessional statements as well as other documents including alamats he submitted police report being charge sheet no. 118 dated 17.03.2008 against accused Saiful Islam, Md. Firoz Miah and Md. Bulu Miah under sections 302/201/34 of the Penal Code. He has identified the accused in the dock.

In cross-examination he has responded that he received the case docket on 18.01.2008 at 18:30 pm by dint of written order. He examined accused Saiful at DB office after receiving the docket at 8:30 pm of 18<sup>th</sup> January. Before getting case docket he did not know regarding arrest of accused Saiful. He first visited the place of occurrence on 19.01.2008 at 9.00 am. It has been stated in the ejahar that Dr. Sohel left the house on



11.01.2008, Friday at about 8:30 am for Bangladesh Medical College Hospital and did not come back home anymore. Prior to his visit, previous investigation officer prepared sketch map along with index of the place of occurrence. He found Saiful in Dhanmondi police station on 18.01.2008 at 11:59 pm. Firoz and Bulu were arrested by DB under leadership of ADC Mr. Masaduzzaman.

Previous investigating officer could not state the definite place of occurrence in his sketch map. He [this witness] has located the definite place of occurrence after arrest of the accused. In his sketch map there are 'A' and 'A-1'. He has denied the suggestions that he did not prepare the sketch map with index properly and failed to locate exact place of occurrence both in Dhaka and Gaibandha district or those who are competent witnesses to prove the case, have not been cited as witnesses or before lodging ejahar accused Saiful and Firoz were physically tortured by different law enforcing

agencies after their arrest and handed them over to him or he did not know whereabouts of the accused before he took over the charge of investigation or submitted charge sheet at the instance of higher authority or has been influenced by the relatives of the victim or he did not properly investigate the case.

Upon scrutiny of the evidence adduced by the aforesaid 34[thirty four] live witnesses along with exhibits as well as material exhibits it has emerged that the learned defence lawyer has cross-examined them [witnesses] thoroughly to ascertain their veracity and credibility. Now the question is before us whether the prosecution has been able to prove the instant charges including time, place and manner of the occurrence against them without any iota of doubt. Let us carefully examine and analyze the evidence adduced by the prosecution witnesses, to come to a conclusion in the proper dispensation of justice.

It appears from record that out of 34[thirty four] witnesses, p.ws 14, 15, 16, 20, 23, 24 have been tendered by the prosecution. Admittedly there is no eye witness in this case to have seen the accused in the killing of the victim. So, the justice will be met on the basis of circumstantial evidence along with confessional statements of the accused.

P.W-1 Mrs. Firoza begum alias Firoza Ahmed is the mother of the deceased, lodged the FIR [exhibit-1] on 16.01.2008 though she was not present at the place of occurrence when her son went missing. At the relevant time she was in America. Soon after coming back from America she filed the instant case with the Police Station knowing the missing story from other witnesses, without any delay.

According to Evidence Act, her evidence may not be treated as ocular evidence but on 18.01.2008 when DB police brought accused Md. Saiful Islam in her house she was present. And Saiful in her presence and others

confessed that he along with accused Firoz in a pre-planned manner killed her son Dr. Sohail at the alleged place of occurrence at mid night of 10.01.2008. It is also evident that in their presence Saiful brought out the using knives and chapatti along with other materials kept in his bed under a divan.

It is also found in her evidence that Saiful disclosed their conduct of disappearance of 3[three] limbs of the dead body within the areas of Gaibandha District. In course of cross-examination this witness has replied that perhaps her brother's son wrote the FIR in which she put her signature. It is quite natural that a mother when comes to know that her son has been killed by perpetrators then from her part it is very difficult to write anything due to her mental condition and that was done by someone at her dictation.

Nevertheless, she has narrated in her deposition by supporting FIR story and also subsequent facts of the killing described by accused Saiful in her presence

after lodging FIR. This witness has denied all the suggestions given by defence that 3<sup>rd</sup> party or her son's friend might have killed in order to gain over their interest. So, the evidence given by this witness has not been controverted or discarded by the defence in any way.

P.W-2 Md. Ainal Hoque, a security guard of Everest Holding, who was present at the time of admission of guilt by accused Saiful stating that he along with his cousin accused Firoz made a plan to kill Dr. Soheli because he [Dr. Soheli] often used abusive language with Saiful and beat him up. Saiful invited his cousin Firoz to join the killing incident. Accordingly, they went to blacksmith workshop for collecting weapons like knife and chappati [chora].

This witness has further evident that having killed the deceased they [accused] took the dead body to the bath room and cut into 3[three] pieces. Subsequently, they packed the same in suitcase and sack for taking out

side of the place of occurrence. Thereafter, they took the same from the house to Palash Bari by applying dramatic events with the security guard Mohiuddin [P.w-4].

During admission of guilt Saiful brought out the using weapons from his bed kept under the mattress. The weapons used in the killing, have been marked as material exhibits-I, II, III and IV respectively. In cross-examination this witness has denied the defence suggestions that he did not see the recovery of weapons used by condemned prisoners and he has given false evidence against them.

It appears from the evidence of this witness that the defence has failed to controvert his evidence exactly what he did not see as to the confession and recovery of used weapons by the accused. More so, his evidence corroborates the evidence of p.w-01, the informant of the case having no major discrepancy in the evidence of both the witnesses.

P.W-03 Md. Hazrat Ali, also a security guard of Everest Holding, was present when accused Saiful confessed his guilt as to the killing of Dr. Sohel, exactly the same voice he [p.w-03] has focused on his examination-in-chief corroborating the evidence of p.w-02. The defence has failed to make the difference between the evidence of p.w-02 and this witness [p.w-03], therefore, it cannot be said, their evidence are not enough to prove the prosecution case. It appears further that p.w-02 and p.w-03 both are seizure list witnesses and their evidence with regard to the weapons recovered, are quite similar to each other. This witness has also described in his evidence how the condemned prisoners took the dead body from the house of the occurrence and subsequently, disappeared the same dumping at 3[three] places within the Gaibandha District areas. This witness has also stated the accurate missing date, time of the victim and place of occurrence where accused Saiful admitted guilt in their presence.

P.W-04 Md. Mohiuddin is a security guard of the house of Dr. Sohel. He is, no doubt, a vital witness in the sense that he used to look-after the house and he had to carry out some responsibility as security guard of the house. As per evidence he had been serving in the house for long time. Although defence did not put any question to him as to the nature of character but he is a responsible security guard of the house. It is found in his evidence that at the alleged mid night he was on duty. He went out of the house to fetch cigarette at the late night on request of Saiful and eventually breakfast the following morning. During those times Saiful would be able to put amputated dead body in the back hole of the private car and took the same out for disappearance. He also heard from the witnesses particularly p.ws 02 and 03 that in their presence Saiful disclosed as to the killing of Dr. Sohel in the alleged night and as such his evidence is being corroborated by the other witnesses especially p.ws-02 and 03 as they told him about the



admission of killing by Saiful and Firoz. The evidence of this witness is emerging that he had every chance to see the shifting of amputated dead body of Dr. Sohel taken by accused Saiful for disappearance but he was defeated by the cleverish conduct of accused Saiful and Feroz.

This witness could have scope to ignore in not carrying the order of his master proposed by Saiful but to carry out the same he asked him [Saiful] whether his master had gone for sleep or not. In reply Saiful told that he was not sleeping, naturally this witness had to believe the information rendered by Saiful as he is a servant of his master. It has also been confirmed by this witness in course of cross-examination that the victim came back home from outside on 10.01.2008, Thursday at around 10-11 pm and this witness opened the gate as security guard. So, there is no question about the deceased that once he went outside from home, he never came back. When there is a disclosure comes

from cross-examination of a witness that cannot be brushed away or to be treated his evidence un-worthy.

In presence of p.w-05 Maksudur Rahman, a maternal uncle of deceased Dr. Sohel, police recovered the weapons from the divan at the showing of accused Saiful who further disclosed that he along with his cousin Firoz in a pre-planned manner killed Dr. Sohel at mid-night on 10.01.2008 in the drawing room of Dr. Sohel while he was watching T.V.

Saiful further disclosed how they brutally killed him with weapons brought from outside earlier and they cut the dead body into 3[three] pieces having taken the same in the bath room of the deceased. He had also disclosed how he took the amputated dead body of Dr. Sohel to Palash Bari by misleading the security guard [p.w-04] in the name of bringing cigarette as well as breakfast. This witness is also one of the signatories of the seizure list. Although he has relation with deceased Dr. Sohel but it finds no interest belonging to him to tell

lies against the condemned prisoners whatsoever. And he had also narrated the story of disappearance of the deceased in his presence therefore it finds exact similarity to the evidence of p.ws 01-04. Defence has not been able to discard his evidence rather given suggestions' have been denied by this witness as well.

P.W-06 Dr. Md. Mahabub Hossain, a friend of Dr. Sohel, was present on 18.01.2008 at the place of occurrence when accused Saiful disclosing the killing story of Dr. Sohel which he expressed in his evidence in the same way as disclosed by the earlier [former] witnesses. He became one of the signatories in the seizure list when Saiful brought out the weapons used in the killing, from his bedding under mattress.

He has further stated that he tried his level best to trace out Dr. Sohel when he heard that his friend went missing. Lastly he along with other relatives of Dr. Sohel became sure of his killing when Saiful brought out the weapons from under divan kept after killing and heard

the fact from Saiful that he along with his cousin Firoz took decision earlier to kill Dr. Sohel as he always used to throw abusive language to him and also for financial gain.

Saiful made the confession of killing before this witness along with other p.w.s like p.w.s 01-03, 05 and police personnel. The evidence of this witness has also corroborated the evidence of the said p.w.s 01-03 and 05 in a same voice. No inconsistent information is found amongst the evidence of the aforesaid witnesses. It has also been stated by this witness that Saiful further disclosed in their presence that by misleading the security guard Md. Mohiuddin [p.w-04] in the name of bringing cigarette and breakfast, they could be able to take out the amputated dead body to Palash Bari for disappearance. This version of evidence of the witness embraces evidence of p.w-04 without any difference.

P.W-07 Kazi Md. Rafiquzzaman is an uncle [Khalu] of the victim and the husband of his maternal

aunt. This witness was present when Saiful confessed his guilt regarding killing of Dr. Soheli. He is one of the signatories of the seizure list relating to private car, stand fan and list of the Bazaar [exhibits-08 and 09]. He has described in evidence that in their presence Saiful admitted killing incident assisted by his cousin Firoz in a pre-planned manner and he brought out the weapons used during killing of Dr. Soheli.

He has further stated that Saiful also narrated the story of disappearance of the deceased. It appears from evidence that this witness has supported the evidence of previous witnesses in a same tune as if they are all of one man. There is no any ambiguity we find in their evidence. Even then, from the defence side no question put to this witness that no private car was ever used by accused Saiful or no blood spot was found at the top of the stand fan. Therefore, the defence has failed to controvert the evidence of this witness as a whole.

There is an admission in the evidence about the killing of Dr. Sohel as the defence has failed to give any denial on it. The defence has never raised any objection by putting question that Dr. Sohel was not killed rather he went missing. Therefore, we find no discrepancies or contradictions in the evidence of aforesaid 7[seven] witnesses who have exactly in a same voice narrated the date and time of the occurrence, and place and manner of the occurrence which has also been supported by sketch map along with index held by the investigating officer who mentioned in it marking the place of occurrence as A1 and inquest reports marked as exhibits 19-21 [recovery of amputated three pieces of dead body of Dr. Sohel] and wearing apparels marked as material exhibits XI-XVIII.

P.W-08 A.K.M Mokshed Choudhury alias Biddyut is the cousin of P.W-01 as well as maternal uncle of the victim. As per his evidence he used to live in Gaibandha District. He received missing news of his nephew Dr.

Sohel on 11.01.2008 over a telephone call. He then engaged himself along with others looking for trace out of his nephew Dr. Sohel since receiving missing news. On 16.01.2008 he started towards Dhaka at 3:00 pm. On the way to Dhaka his nephew Babu through mobile phone informed him that legs and headless dead body was floating near the Shore of Karatoya River at Fulhaar village under Gobindogonj Police Station. Then and there he informed the matter to the office-in-charge of Gobindagonj Police Station and thereafter, the police recovered the said legs and headless dead body [trunk].

On 18.01.2008, Friday early in the morning i.e at around 5:00 am, officer-in-charge of Palash Bari police station informed him to go to the Bagmara Bridge at Shimul Toli village. Getting such information he along with his relatives having gone recovered an amputated head from the banana garden at the showing of accused Firoz and Bulu. Having seen the head he identified that it was the head of his nephew Dr. Sohel. Instantly police

prepared [exhibit-5] inquest report of the said head [exhibit-5] in which he put his signature, marked as exhibit-5/1 and the said amputated head was taken to the hospital for examination.

He further narrated that thereafter, he came to know from Firoz that he along with caretaker Saiful at around 12:00 pm on 10.01.2008 killed Dr. Soheli at his residence and they cut the dead body into 3[three] pieces with kiris [chora] taking the same to the bath room. He further came to learn that next morning Firoz and Saiful took out the amputated dead body from the house and took the same along with blood stained apparels in order to dump under River Karatoya. Thereafter, on 24.01.2008 at evening hour officer-in-charge of Palash Bari police station asked him through mobile phone to come to Cherenga village. Having gone to Karatoya River at Cherenga village they saw lower portion of Dr. Soheli floating in the River and the same was withdrawn from there. Instantly police held inquest



report [exhibit-06] in which he put his signature [exhibit-6/1.]

In course of cross-examination he said confirming that he heard the missing news from his nephew named Babu. He has denied the suggestions given by the defence that he never disclosed anything before the investigating officer as stated above.

It appears from the evidence of this witness that the defence has failed to discard the credibility of the incident. It is a true fact that this witness is the relative of the informant party. Question may arise as to credibility of his evidence but in this regard defence did not raise any claim that he was an interested witness who has given false evidence against the accused because of enmity or any grudge between them. It is pertinent to note here that this witness having relationship with the informant party could be able to identify the victim after getting his amputated head. It is quite natural that unknown face can only be located or

identified by his beloved ones or relatives. For identification of the dead body in the present case this witness is, no doubt, a vital one. And as such there is no scope to brush aside the evidence of this witness for his relationship with the informant party.

P.W-09 Md. Abdus Sobhan is a local inhabitant. In his presence the amputated head of Dr. Sohel was recovered on 18.01.2008 at around 6:00 pm from the land of one Safu Master under banana tree at Shimul toli and that head was identified by earlier witness as his nephew. He has also narrated on hearing that a trunk of the dead body was recovered from the Karatoya River on 16.01.2008 under Fulhaar village and lower portion of the dead body was also recovered from the same river under Cherenga village. In Palash Bari Police Station accused Firoz told that he and Saiful killed Dr. Sohel at Dhanmondi residence in Dhaka.

In course of cross-examination his reply is that the amputated head was recovered at around 6:00 pm and

he was very close to the place from where the amputated head was recovered and the same was taken to Police Station. Such response given by this witness in course of cross-examination has confirmed that the head [body less] of Dr. Sohel was recovered from banana garden at Shimul Toli as alleged in his deposition. So the identification of the deceased made by P.W.08 has been supported by the evidence of this witness without any doubt.

P.W-10 Sub-inspector Subrato Kumar Sarker has narrated in his deposition that he along with p.w-11 and their team with the help of sweeper [pw-21] recovered trunk of the body of Dr. Sohel from the River Karatoya under Fulhaar village on 16.01.2008 at around 1:45 am after being informed. He lodged FIR with Gobindagonj Police Station in this connection.

Thereafter, a case being Gobindagonj Police Station case No.6 dated 16.01.2008 [exhibit 8 and his signature as exhibit-8/1] was started. In cross-

examination this witness has also narrated the condition of the dead body. In reply he has confirmed that he held inquest report at the place from where the trunk of the dead body was recovered. P.W-11 Sub-inspector Md. Kutubul Alam has also narrated in the examination-in-chief that at the time of recovery of trunk of the dead body he was present along with p.w-10 and others.

Thereafter, Officer-in-charge of Gobindagonj Thana endorsed the case to him for investigation and accordingly he prepared sketch map with index, recorded statements of some witnesses and collected post mortem examination report from the authorities concerned. Due to his transfer he handed over the case docket to the officer-in-charge of the said police station. On perusal of the said evidence we do not find any suggestion given by the defence that the alleged trunk of the dead body was not body of Dr. Sohel recovered from the place as alleged in his evidence. Both the

police officers supported each other in respect of recovery of dead body of Dr. Sohel.

P.W-12 Md. Abdul Majid is a local person who was present at the time of recovery of amputated head of Dr. Sohel from the land of one Safu Master under banana tree on 18.01.2008 early in the morning. At the time of recovery p.w-08 was also present. He had signed the inquest report of amputated head of Dr. Sohel [exhibit-5 and his signature exhibit-5/1].

P.w-13 Md. Ohidul is a local person like p.w-12. He has narrated that in their presence the amputated head of Dr. Sohel was recovered and he put his signature in the inquest report [exhibit- 5 and his signature-exhibit-5/2]. Both p.w-12 and 13 are local villagers. They did not have any connection with the informant party to be interested witnesses in any way. Their description as to the recovery of amputated head of Dr. Sohel from banana tree at Shimul Toli and their signatures in the inquest report are absolutely

corroborative evidence and their evidence emerge truthfulness of the evidence of p.w-08 who being vital witness identified his nephew Dr. Sohel with amputated head.

P.W-17 Md. Emran Hossain Chowdhury, was the Metropolitan Magistrate, Dhaka. He recorded confessional statements of accused Firoz on 23.01.2008 [exhibit-15] and accused Saiful on 24.01.2008 [exhibit-16]. In exhibit -15 he has given 8[eight] signatures marked as exhibit-15/1-15/8 and signatures of accused Firoz as exhibits-15/9 to 15/15. In exhibit-16 he has given 7 signatures marked as exhibit-16/1 to 16/7 and the signatures of accused Saiful as exhibits-16/8 to 16/14. In due course of cross-examination he has replied that he received the accused at 12:00 am which he has noted in the form and has given 3[three] hours reflection time to think about his confession. He has further replied that he has completed recording of statements at 04:45 pm. After recording the statements

he read over to the accused who had signed there under. He has denied in cross-examination that he did not follow the provision of law as enumerated in the Cr. P.C. Apart from the deposition this witness has confirmed on cross-examination that he recorded the statements of two accused following all formalities as laid down in the provision of law. Here defence has cleared by putting questions to this witness that there was no negligence on the part of the Judicial Magistrate [p.w-17] in recording the confessional statements of both the accused. So there is no option in hand to disbelieve that this witness did not record their statements properly as judicial magistrate.

In the presence of p.w-18 Sree Showpan Chandra Sarker trunk of the dead body was recovered from Karatoya River at late night of 15.01.2008. He has signed the inquest report [exhibit-10] prepared by the police on the spot and his signature as exhibit-10/2.

P.W-19 Dilip Chandra Das was also present at the time of recovery of the trunk of the dead body from Karatoya River as stated by P.W-18. Both of them [p.ws-18-19] are local villagers who do not have any connection with the informant party to be sided in giving evidence against the accused. The defence has failed to discard the evidence of both the aforesaid witnesses. No difference we find between their testimonies.

P.W-21 Ratan Bashfor is a sweeper by profession. He was asked to come at the spot by police on 18.01.2008 at 8.00 am. He recovered blood stained wearing apparels from the Karatoya River near Trimohani Bridge at the showing of accused Firoz. From his cross-examination it has revealed that there were 7-8 police personnel at the time of recovery of the wearing apparels and he got the same looking at the mud under the water of the river Karatoya but it has not been suggested by the defence that blood stained



apparels of the deceased were not recovered from the place as deposed by this witness.

P.W-22 Safiul is a seizure list witness who saw p.w-20 withdrawing blood stained wearing apparels packed in a sack [material exhibit-X] containing old bed cover [material exhibit-XI] printed shirt [material exhibit-XII], coat [material exhibit-XIII], sweater [material exhibit-XIV], Kamiz [material exhibit-XV], printed two screens [material exhibit-XVI], an old lungi [material exhibit-XVII], and a Blouz [material exhibit-XVIII]. In his presence a seizure list was prepared which he signed, marked as exhibit-17 and his signature as exhibit-17/1. In cross-examination this witness has replied that when the sack was opened, he could see bed cover, petti coat, and three other things. Thereafter, police left the place for police station. This witness has denied the defence suggestion that he has given evidence on being tutored by police. From the said evidence it appears that this witness has supported the

evidence of p.w-21. Evidence of both these witnesses is found to be corroborative as to the recovery of wearing apparels of the deceased and his residence. No denial is found that these blood stained apparels are not of deceased Dr. Sohel and his residence.

P.W-25 SI Abdul Jalil is the investigation officer of Gaibandha police station case No.28 dated 16.01.2004. This witness submitted final report [true] on the basis of application filed by the investigating officer of Dhanmondi police station case No.61 dated 16.01.2008 and handed over the case docket to him [p.w-34]. In course of cross-examination he has stated that he did not prepare sketch map as the previous investigation officer prepared the same before his transfer. It appears from his evidence that the defence failed to suggest that trunk of the dead body, recovered by them from the River Karatoya, was not of Dr. Sohel rather it was somebody's else.

P.W-26 Abu Musa is a local man who was present at the time of recovery of the trunk of the dead body from Karatoya River under Fulhaar Mouja on 16.01.2008. He further stated that Sub-inspector Kutubul Alam and Sub-inspector Subrato [p.w-10] and their forces were present at the time of recovery of the trunk and in the prepared challan [exhibit-11] of the trunk of the dead body he put his signature.

In course of cross-examination he has confirmed that trunk of the dead body was recovered from Karatoya River under Fulhaar Mouja which was not decomposed adding that Sub-Inspector Kutubul Alam held inquest report on the bank of the River. His evidence clearly proves that the trunk of the dead body of Dr. Sohel was recovered from the place as alleged by the informant party.

It appears from the evidence of p.w-27 SI Abdul Bari that he prepared seizure list [exhibit-17] of wearing apparels recovered from the River Karatoya on

18.01.2008. In cross-examination his reply is that on the basis of GD entry No. 633 he went to the spot. He has further confirmed in reply that he received information that Dr. Sohel was killed in Dhaka. So, it is also proved on cross-examination by defence putting question to him that the Dr. Sohel was killed in Dhaka as alleged by the persecution.

From the evidence of p.w-28 S.I Mir Azad Rafiqul Hasan it finds that on 18.01.2008 at 6:30 am, a bodyless head of Dr. Sohel was recovered from the land of Safu Master under banana tree at Shimul Tola at the showing of accused Firoz and on the spot he made inquest report [exhibit-5], wherein he put his signature, marked as exhibit-4/5. He has further stated that in his presence, p.w-08 recognized the head as his nephew Dr. Sohel. On 24.01.2008 at 21:30 hours lower portion of Dr. Sohel including legs had also been recovered and he prepared inquest report marked as exhibit-6 and his signature as exhibit-6/2. It appears from cross-

examination that he has denied the defence suggestion that he did not prepare seizure list on 18.01.2008 and did not go to the spot.

P.W-29 Dr. Md. Abdul Jalil, an assistant professor of Rangpur Medical College Hospital, who was serving in the forensic department of the same institution. He was one of the three [3] Member's board headed by chairman having examined separately the amputated head of Dr. Sohel on 19.01.2008, trunk of the dead body on 17.01.2008 and lower portion including legs on 26.01.2008 respectively. He along with two other members prepared the autopsy reports on examination of the amputated dead body of Dr. Sohel. The autopsy reports have been marked as exhibits- 19, 20 and 21 respectively and his signature as exhibits- 19/1, 20/1 and 21/1. In examination-in-chief he has vividly given descriptions of the amputated dead body of Dr. Sohel. In respect of head, trunk and lower part of the dead

body, he has mentioned the following injuries in the autopsy respectively,

*[a] “Head including neck [partly] separated at the cervical 4<sup>th</sup> vertebra level which was post mortem in nature. On detailed dissection no external and internal injury could be found present Brain matter was liquefied.*

*[b] Both upper limbs with Ht. or Humerus Head and partly neck at the level of the 4<sup>th</sup> cervical spine was de-capitated [captivated] which was postmortem in nature waist of the body was separated from the body at in between 3<sup>rd</sup> and 4<sup>th</sup> lumber vertebra i.e Jst below the umbilicus which was postmortem in nature.*

*[c] Partially decomposed separated body from the 4<sup>th</sup> lumber vertebra up to lower limbs, left foot except great toe. Rt. foot and external genitalia partly eaten by aquatic animals, all the injuries were postmortem in nature, on detailed dissection no external and internal injury was found”.*

Now the question is before us, whether these three limbs [a, b and c] of the dead body are of the same human being. Although it has not claimed by the defence that these limbs do not constitute the dead body as allegedly belonging to Dr. Sohel, the deceased of the instant case, but the post mortem examination reports [exhibits 19-21] of the amputated dead body support the prosecution case that it was none but the victim Dr. Sohel. To make more sure this Appellate Court being a court of continuation of trial of the case, felt an assistance in this regard from an expert and accordingly Dr. A.K.M Shafiuzzaman [Khayer], an Assistant Professor, Forensic Medicine Department, Dhaka Medical College Hospital, has come forward to say that the above amputated 3[three] limbs are of the same human being. So the claim raised by the prosecution as to the body of deceased Dr. Sohel has been supported by not only post mortem examination

reports, it has also been supported by an impartial expert without any ambiguity.

This P.W. 29 has also cited the injuries of the trunk of the body as per post-mortem examination report, which are as follows:

[1] *One stab wound was situated at just below the Rt. Costal cartilage in the epigastric region which was obliquely placed measuring 3½" X 1½" X abdominal cavity.*

[2] *One stab wound on Rt. epigastrium below the injury No. 1, size 1½" X ½" abdominal cavities.*

[3] *One oblique stab wound on the Rt. lumber region just above and lateral to the umbilicus size 4½" X 2" abdominal cavity from the Rt. to the midline direction with coming out the omentum through the wound.*

[4] *One stab wound the anterior fold of axilla in the Lt. Lateral wall of the chest size 2½" X 1" X chest cavity.*



[5] *One incised wound on the just above and lateral aspect of wrist joint size X 1½" X ½" bone.*

[6] *One incised wound on the thenar aspect of the palmer surface of Rt. hand size 2½" X 1" X bone.*

[7] *One incised avulsion wound on the tip of Lt. thumb at palmar aspect.*

[8] *One chop (incised) wound on the back of the Rt. side of abdomen in the loin size 8" X 2" X abdominal cavity.*

[9] *One stab wound on the middle of the Rt. lateral chest wall wholly lies in the 8<sup>th</sup> to 12 intercostals space size 1½" X ½ " 1 X chest and abdominal cavity obliquely placed.*

The cause of death of the victim mentioned by the board as under:

*“Death in our opinion was due to shock and hamorrhage as a result of the above mentioned*

*injuries which are ante-mortem and homicidal in nature”.*

It appears from the evidence of this witness that the death of the victim was caused due to aforesaid nine injuries occurred by the condemned prisoners as evident in their confessional statement as well as circumstantial evidence given by P.Ws. 1-7. It has also evident in reply to this witness that having formed a board consisting of 03[three] members examined the amputated three limbs of the dead body brought to them on different dates by prosecution witnesses who recovered the same from three places at Shimultola and Karatoya river within the district of Gaibandha and the witnesses have already described in their evidence in a corroborative tune how they recovered the amputated head, trunk and lower portion of the body in the presence of witnesses of inquest reports.

In due course of cross-examination this witness has replied that post-mortem examination was held by forming a board headed by a chairman with two

members. In reply he has also said that the report was written by chairman of his own hand and they found 09[nine] marks of injuries with the trunk of the body as stated above. From his evidence it is revealed that no suggestion or denial has been given by the defence that the amputated three limbs of the body were not belonging to Dr. Mofakkarul Ahmed Sohel. It appears further that the defence avoided to raise the claim that the body was not of Dr. Mofakkharul Ahmed Sohel. Nevertheless, exhibit-5 is the inquest report of head, exhibit-10 is the inquest report of trunk and exhibit-6 is the lower portion of the dead body examined by medical board, were also proved by its makers and witnesses. Therefore, there is no ambiguity that he was none but Dr. Sohel, deceased of the case, as claimed by the prosecution.

P.W-30 Md. Ali Akbar Dewan is a retired teacher. In his presence a full pant was recovered from the possession of Firoz's sister at his [Firoz] instance and he

signed the seizure list which is marked as exhibit-24 and his signature as exhibit-24/1 and the full pant is marked as material exhibit-XIX. In cross-examination this witness has shown the red spot [blood] in the pant. It is evident that at the time of commission of the offence accused Saiful was wearing this pant.

P.W-31 Keshob Paul is a shopkeeper of fire wood. He has a shop at Chandura. In the month of January police came to his shop and in his presence a shirt and a full pant were recovered from a drain behind his shop. Police prepared seizure list [exhibit-24] in which he put his signature marked as exhibit-25/2 and the alamats are marked as material exhibits-XX and XXI respectively. It is further evident that at the time of recovery of the same accused Firoz was there. He has identified Firoz on dock. The articles as stated above were withdrawn from drain by Md. Julhas [p.w-32]. At one stage in course of cross-examination this witness pointed out the red spot lying with the pant. But the defence has failed

to suggest or deny that there was no red spot of human blood.

P.W-32 Md. Julhas is a labourer by profession. He withdrew a pant and a full shirt from the canal, pointed out by accused Firoz under guidance of police and he has identified the same in the court room. He also signed the seizure list marked as exhibit-25/2. In his deposition he has deposed that p.w-31 had a shop of fire wood near the canal. So, on the assertion of the evidence of both p.w-31 and 32 no contradiction is found in respect of recovery of the pant and shirt.

P.W-33 S.I Md. Reaz Uddin is serving as sub-inspector of police. On 17.01.2008 he was on duty in the Dhanmondi police station. He was authorised to investigate Dhanmondi Police Station case No.61 dated 16.01.2008 under instruction of the higher authority. Subsequently, he analyzed ejahar filed by the informant [p.w-01], visited the place of occurrence and held sketch map along with index on 18.02.2008. And thereafter, he

handed over the case docket on the same day under instruction of the higher authority. In course of cross-examination he has replied that he received charge of investigation on 17.01.2008 at 23:15 hours and went to the place of occurrence at 23:45 hours of that night and stayed therein.

He has denied the defence suggestions that he did prepare index under supervision or instruction of someone and he has stated Cha and Umma instead of Cha in the index on being tutored or did not work in respect of investigation by his own authority or did not go to the place of occurrence. This witness disagreed with the defence suggestion that the sketch map along with index prepared by him sitting in the police station. As the defence has tried to disown the sketch map along with index prepared by this witness there is no need to rely upon this sketch map along with index in order to compare between the earlier one and the later one prepared by p.w-34, the main investigation officer of the

case, who submitted the police report against the accused persons upon finding prima facie case against them.

P.W-34 S.I Md. Shahajan who narrates in his examination-in-chief that he was serving as sub-inspector of police at DB office in DMP, Dhaka. While he was on duty on 18.01.2008 he took over the charge of Dhanmondi police station case No.61 dated 18.01.2008 at the order of Deputy Commissioner, DB. During his investigation he captured accused Saiful and Firoz in his custody who admitted the killing of Dr. Sohel with sharp cutting knife and dagger at the residence of house No.775, Sat Masjid Road. Having taken the dead body to bath room they amputated the same into 3[three] pieces. Thereafter, they took the same to Palash Bari under Gaibanda district and dumped the slaughtered head at Choto Shimul Tola and trunk of the body in the River Karatoya under fulhaar Mouja and lower portion of the body as well as blood stained

apparels dumped in the Karatoya River near the Trimohoni Bridge. He has further stated in his deposition that DB police with the help of local police personnel had recovered those amputated pieces of the dead body along with blood stained apparels on the admission and identification of accused Firoz and Bulu Miah from the above places.

Accused Saiful confessed that he hid the knives and daggers used in the killing of Dr. Sohel under a divan of the house. In order to recover the same he took accused Saiful to the place of occurrence and in the presence of witnesses and others including witness Ainal Huq, Masudur Rahaman and Hazrat Ali, Saiful confessed the killing incident and brought out the blood stained 24" knife with butt broken into 3 pieces, 15½" chapatti with butt having blood spot at the top of it alongwith brown colour genzi and a copy of "Dainik Ittefaq" of January, 2008 containing 3[three] pages covered by it and unused 11" chapatti at about 22:50



hours. He prepared a seizure list marked as exhibit-3 and his signature as exhibit-3/4. He has also identified the sack in which lower portion of the divan, knives and daggers, old newspaper and genzi packed, in the court room.

He has further deposed that he seized the private car bearing No. Dhaka Metro. Ga-13-9596 of Dr. Sohel and instantly he handed over the said vehicle to the informant of the case on bond on 18.01.2008 at 22:30 hours and that seizure list is marked as exhibit-4 and his signature as exhibit-4/3, jimma nama as exhibit-2 and his signature is exhibit-2/2. On the same day he visited the place of occurrence at the showing of accused Saiful and Firoz. He newly prepared sketch map with index as the previous sketch map along with index was not found consistent with each other. His sketch map is marked as exhibit-29 and his signature as exhibit-29/1, index as exhibit-30 and his signature as exhibit-30/1.

He took the accused on police remand on 19.01.2008. On 20.01.2008 at about 12 o'clock he took accused Firoz to the bank of Chandura dust canal at Kaliakoir and through witness Md. Julhas he recovered a blood stained pant and shirt of accused Saiful from the said canal. He prepared seizure list therein which is marked as exhibit-25 and his signature as exhibit-25/3. On the same day at around 4.05 pm he also recovered a black full pant of Dr. Sohel from the house of one Anowar upon pointing out by accused Firoz. He prepared seizure list which is marked as exhibit-4 and his signature as exhibit-4/2 and he has identified those alamats in the court room. During interrogation on police remand accused Md. Firoz Miah willingly agreed to confess in respect of murder incident.

One day before expiry of police remand he produced accused Firoz Miah before the Metropolitan Magistrate on 23.01.2008 and also produced accused Saiful Islam on 24.01.2008. In their confessional

statements they mentioned the name of accused Bulu. Thereafter, on 16.02.2008 he visited Palash Bari and collected autopsy reports of the amputated dead body of Dr. Sohel and photocopy of Surathal reports of the same. With the help of S.I Rafiqul Islam of Palash Bari police station he visited Choto Shimul Toli from where the dead body was recovered and he prepared sketch map with index which is marked as exhibit-30 and his signature as exhibit-30/1. On the same day he visited the place of Kismot Cherenga village where from the lower portion of the dead body was recovered and he prepared sketch map with index which is marked as exhibit-32 and his signature as exhibit-32/1. He had also spoken to the investigation officer of Gobindagonj police station case No. 28(1)08 and visited the place from where the trunk of the body of Dr. Sohel had been recovered.

Having come from Palash Bari area he recorded statement of some witnesses after examining them. He

also received the case docket of Gobindagonj police station case No. 28(1)08 by the order of the court. After being satisfied with the evidence of witnesses, confessional statements as well as other documents including alams and weapons he got prima facie case against the accused persons and submitted the police report vide charge sheet No. 118 dated 17.03.2008 under sections 302/201/34 of the Penal Code. In course of cross-examination he has replied that he received the case docket on 18.01.2008 by a written order of his higher authority. In reply he further said his first visit was on 18.01.2008 at 9:00 pm at the place of occurrence. It was beyond his knowledge as to whether the accused were apprehended before he took over the charge of the case. He has replied in cross-examination that previous investigating officer could not properly locate the place of occurrence as mentioned in his sketch map and that is why he newly prepared the sketch map along with index after arrest of the accused.

He has denied the defence suggestions that the accused were physically tortured by different law enforcing agencies after their arrest and he did not properly investigate the case and submitted police report at the instigation of higher authority or has been influenced by the relatives of the victim.

On perusal of the evidence adduced by this witness we do not find any lacuna on his part during investigation as investigating officer. It is found in the case in hand that there are two places of occurrence. One was in Dhaka in respect of murder of the victim at his own residence and another was at Gobindagonj and Palash Bari police station areas under Gaibanda district in respect of disappearance of the dead body. It has revealed from the evidence of this witness that the defence did not claim directly or indirectly that during police remand this witness gave any pressure on the confessing accused or they had been compelled to give confession before the Judicial Magistrate under any

threat made by this witness, investigation officer of the case.

The defence has simply suggested that they [accused] confessed before the magistrate after physical torture by different law enforcing agencies but it is not evident in course of cross-examination by which particular law enforcing agency physically tortured or gave pressure on the body of the accused so that they felt compelled to confess against their willingness. Even the defence has failed to suggest to the witnesses particularly p.ws 08-13, 17-19, 20-22, and 25-32 that this witness [investigating officer] did not visit Gaibandha district areas and record the statements of the said witnesses. Therefore, it is crystal clear that this witness as an investigating officer of the case, duly visited the place of occurrence, discussed with other police personnel and recorded the statements of witnesses who came forward to the court for giving evidence in respect

of the recovery of amputated dead body as well as wearing apparels and other things.

Having considered the evidence of the said witness we find no cogent reason to disbelieve him that he was not at all, impartial investigating officer in the case. It has also revealed that there is a combination in the evidence of p.w-08 together with p.ws-09, 12, 13, 26 and 28 for recovery of head of the deceased. And similar circumstances we find in the evidence of p.w-10 with p.ws-11, 19 and 26 regarding recovery of trunk of the dead body from Karatoya River under Fulhaar Mouja. In course of cross-examination of the aforesaid witnesses defence has failed to suggest that this trunk of the dead body was not belonged to Dr. Soheli and exact similar version we find in the evidence of p.ws-08 and 28 in respect of recovery of lower portion including legs of Dr. Soheli. More so, p.w-29 as an expert has also stated in his evidence that 3[three] portions of the dead body are of a same human being that means the deceased of

the case. So, we do not find any ambiguity as to the identification of Dr. Sohel that he did not belong to the 3[three] amputated pieces of dead body recovered from the 2<sup>nd</sup> place of occurrence. The above witnesses have said categorically that amputated head from Shimul Toli, trunk of the body from Karatoya River under fulhaar Mouja and legs from the Karatoya River within the area of Kismat Cherenga Mouja, were recovered that would perfectly contrast a human being who was Dr. Sohel.

Upon a careful scrutiny as well as evaluation of the evidence of the said witnesses we find further that there is a chain of combination in the recovered dead body of Dr. Sohel.

Now let us examine the confessional statements of two accused one by one whether both the statements were recorded in accordance with law and whether these were seemed to be voluntary, true and exculpatory in nature. It alleged that the trace of victim was not found since 11.01.2008. Subsequently, it felt anxiety among the



relatives and friends of the victim having no trace of him. For which the authority of his working place lodged a G.D entry bearing No. 802, dated 12.01.2008. P.w-01, mother of the deceased, coming back from America lodged FIR on 17.01.2008 at 23:05 hours.

As per record of the case, DB police apprehended Firoz on 18.01.2008 and took him on police remand for 5[five] days by the order of the Metropolitan Magistrate, Dhaka dated 19.01.2008. Investigating officer [p.w. 34] produced accused Firoz before the Metropolitan Magistrate, Dhaka on 23.01.2008 for recording his confessional statement under section 164 of the Cr. P.C.

According to his confession it is found that he worked since his boyhood at the residence of Dr. Sohel's aunt at Uttara in the capital, Dhaka. Accused Saiful is his cousin who invited him to kill Dr. Sohel as he often used to throw abusive language to him and beat him up. He [Firoz] tried to take preventive measure but Saiful did not dare to consider it. Then both of them

went to blacksmith workshop at Basila under Mohammadpur police station from where they collected two knives. Earlier Saiful arranged by purchasing two more chapatti, polythene bag, white cloth, dettol, naphtholin etc. It was Thursday he came to the residence of Dr. Sohel at 10:30 pm and both of them went onto the roof of the house and decided how and under what manner they would kill Dr. Sohel. According to their decision he first gave knife blow on the head of Dr. Sohel but it did not properly hit the place of the head targeted by him, knife was broken. At the moment Saiful pressed the knife in hand into the abdomen of Dr. Sohel and pressed his mouth with clothes for sometimes. After a while Dr. Sohel stopped breathing, and then they took his dead body to the bath room where they separated head, trunk and lower limb of the dead body packed in a sack and suitcase using cotton, naphtholin and perfume.

They jointly took the same to the ground floor and sent the security guard for bringing cigarette and in the meantime put the sack and suitcase in the back hole of the private car. Then he went up stairs and took shower. In the meantime Saiful checked whether any blood spot remained in the house. He came out of the house the following morning at 9:30 am and went to Shaymoli bus stand where Saiful came in private car of Dr. Sohel. Having collected ticket he left for Pirgonj keeping packets in the luggage box of the bus. Saiful told his brother-in-law Bulu to go to Pirgonj with taka 500/-[five hundred].

When Bulu came to him, he disclosed in details of the incidence. But Bulu told him not to involve him in the event. Then they came to Palash Bari soon after evening and Saiful came there from Dhaka. Thereafter, they went to Shimul Toli in a van and hid the amputated head by digging a hole under banana tree. Then they went to near Trimohani Bridge in another village. From

their Bulu left in a van. Taking body from suitcase they dumped in the River and threw the suitcase into the River at a long distance. Lower limb including legs was dumped in the River and dust wearing apparels were also dumped into the River. Thereafter, they came back to Dhaka after spending one night in a hotel of Palash Bari. And he along with Saiful went to Chandura in his cousin's house from where Saiful returned.

From the said confessional statement we find vivid description of the occurrence. As per his confession he accepted the invitation offered by Saiful for killing Dr. Sohel as he along with Saiful went to collect the knife from Basila. According to their plan he first gave a blow on the head of the deceased though it was missed. Subsequently, Saiful pressed dagger into the abdomen of Dr. Sohel and closed his mouth with clothes giving pressure for stopping breath. After a while he stopped breathing. Thereafter, the dead body

was cut into 3[three] pieces in the bath room and taken to Palash Bari for disappearance.

Now the question is before us whether this confessional statement given by the accused is seemed to be voluntary, true and inculpatory and whether it was recorded following all the provisions of law.

P.W-17 is the Metropolitan Magistrate, Dhaka who recorded the confessional statement of this accused. He has narrated that he alerted the accused by saying that he [accused] was not bound to confess and it might be used against him as evidence. And this p.w-17 as recording officer gave him 3[three] hours reflection time before recording his statement. He had also complied with all provisions of law provided under section 164 read with section 364 of the Cr. P.C. On his quarry accused Firoz did not complain of any kind of police torture or threat at the time of recording his confessional statement.

During police remand accused Saiful Islam also agreed to confess before the Judicial Magistrate willingly. And as such the investigating officer of the case [p.w-34] produced him before the Judicial Magistrate on 24.01.2008 just one day after accused Firoz. It appears from record that DB police apprehended this accused [Saiful] on 18.01.2008 and took him on police remand for 5[five] days by an order dated 19.01.2008 of the Metropolitan Magistrate, Dhaka.

It has been disclosed by said accused Saiful in his confessional statement that he worked at the residence of Dr. Sohel from his boyhood life. Mama [Dr. Sohel] often used to clap him and beat him up with filthy language. One day he along with his cousin Firoz made a plan to kill Dr. Sohel in order to financial gain. Once by firing or administering medicine they thought. Lastly both of them sitting in the house planned to kill him. They collected knives from blacksmith workshop at

Mohammadpur and kept the same in the house. It was Thursday Firoz came at 8:30 am and then they set together on the roof of the house and made a plan how to execute it. When Saiful gave miss-call through mobile phone Firoz came from upstairs. Firoz hid himself in the screen of the drawing room as per plan. Firoz gave a knife blow on the head first but it was missed and the knife was broken. Then and there he pressed the knife into the abdomen of Dr. Sohel and also pressed mouth with cloth then Firoz gave another blow and two more blows. They took him in a bed cover to the bath room.

They cleansed the blood spots after coming back from bath room. Thereafter, they cut the dead body into 3[three] pieces and packed the same in sack and suitcase using dettol, naphtholine, polythene bag and rope which were arranged earlier. On cleaning bath room they took the same to the ground floor and sent the security guard for bringing cigarette. In the meantime, he put the suitcase and sack in the back hole of the private car and

he went up stairs and cleansed everything before having shower. He then saw Firoz looking for key of the almira. He [Firoz] became angry with him finding no key. Thereafter, he sent Firoz to road No.27 at 8/9 am on following day morning from where he picked him up to Shaymoli bus stand and put the pieces of dead body in the luggage box of the bus. Firoz left in a bus. Having come back house in private car he rang Bulu to give Firoz taka 500/-. Thereafter, having shower he went to Palash Bari in Hanif Paribahan and at evening he found Firoz and Bulu there. He described everything to Bulu. Thereafter, they took the dead body to the banana garden at Shimul Tola and dumped the head therein.

Then they took remaining limbs of the dead body to the Karatoya River in a van from where Bulu left and they dumped the trunk and lower limb of the dead body in the River and threw the suitcase in the River at a distance. Having spent the night in a hotel at Palash Bari they came to Chandura. From there he took shower and



arrived in Dhaka. Firoz took his wearing apparels and mobile set in hand for throwing out side.

It has revealed from the said confession of accused Saiful that he invited Firoz to kill Dr. Sohel as he often misbehaved with him with filthy language and beat him up. He along with Firoz had gone to Basila, at Mohammadpur for arranging weapons to be used in the killing of Dr. Sohel. As per their plan they arranged everything before execution. On 10.01.2008 at around 12:30 am when Dr. Sohel was watching T.V in the drawing room Saiful placed a list of bazar before him. At the moment Firoz gave a knife blow on the head of Dr. Sohel but it did not hit the targeted place, then Saiful pressed a knife blow into the abdomen of Dr. Sohel and closed the mouth with clothes. At the same time Firoz gave another blow and two more blows on the body of Dr. Sohel. As a result he stopped breathing forever. Having taken the dead body in a bed cover to his bath room where they slaughtered the head and

trunk then separated lower limb from the dead body and subsequently, they dumped the amputated dead body at three different places in the Karatoya River and under a banana garden at Shimul Tola in Gaibandha district.

The recording Magistrate alerted the accused stating that he was not bound to give confession and if he would confess it might be used against him as evidence. Three [3] hours reflection time was given to him before recording confessional statement. P.W-17 further stated in his testimony that he complied with all provisions of law provided under sections 164 and 364 of the Cr. P.C. And on asking by him, the accused did not complain of any kind of police torture or threat before or during recording his confessional statement.

As it appears from both the confessional statements that there has been no different information or conduct in the killing of the victim as well as disappearance given by each of them. One statement

corroborated another. Both have given similar statements as to the commission of offence involving them there under. So there is no doubt to say that these confessional statements are inculpatory in nature.

The statements given by them do not show any kind of irregularity made by the recording magistrate. Both the accused did not place any sort of complain of police torture or they became under any threat to confess beyond their will. Even then recording Magistrate gave them sufficient reflection time to think that if they confess it would go against them as evidence. Therefore, it can be said firmly that the confessional statements given by them are absolutely voluntary and true.

It finds support from the decision in the case of Islam Uddin-Vs- State, reported in 13 BLC [AD] 81, which is as follows,

*“It is now the settled principle of law that judicial confession if it is found to be true and voluntary can form the sole basis of conviction as against the maker of the same. The*

*High Court Division has rightly found the judicial confession of the condemned prisoner true and voluntary and considering the same, the extra judicial confession and, circumstances of the case, found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”*

Learned Advocate for the condemned prisoners contends that they filed retraction application before the trial court but it was not considered. As the present appeal is a part of continuation of trial, this court has checked the fate of the said application. It is found from record that the retraction application was filed around six months long after their confessions and in the retraction application they failed to state the elaborate reasons as to why they were going to retract their confessional statements. More so, claim of the defence is further that it was not considered by the trial Judge as having no order on it. But we find in the impugned judgment that the trial Judge made some remarks on it saying that it was a belated application filed by the accused after thought. So there is no question about those statements are found to be true and voluntary. In this regard we find support from the decision in the case

of Bakul Chandra Sarker -Vs- State, reported in 45 DLR 260 it was held as under:

*“If a statement recorded under this section is true and voluntary, the same alone is sufficient for convicting the confessing accused. Retraction of confession is immaterial once it is found to be voluntary and true.”*

We find more support from the case of Shamim Beg -Vs- State, reported in 13 BLC [AD] 84 in which the Apex Court opined as follows:

*“It is on record that the appellant retracted his confession in writing subsequently which clearly goes to show that he made the judicial confession. In the opinion of recording Magistrate, the confession is true and voluntary. The High Court Division upon correct assessment of the materials on record arrived at a correct decision and, as such there is no cogent reason to interfere with the judgment of the said Division.”*

It is also found in the examination of accused under section 342 of the Cr. P.C that the learned trial Judge asked them to express their views on confessional statements and evidence adduced by the prosecution witnesses against them. But they expressed no comment and declined to give anything in reply. If the trial court draws the attention of the accused to the incriminating pieces of evidence adduced by the witnesses against them, mere any omission on the part of the trial court to draw attention of the accused, does not cause prejudice to the accused. It finds support from the decision in the case of Mezanur Rahman and others -Vs- State reported in 16 BLD [AD]293 it was held that,

*“Although the Trial Court should draw the attention of the accused to the main incriminating pieces of evidence against him, particularly the confessional statement, while examining him under section 342 Cr. P.C, mere omission on the part of the trial Court to specifically draw the*

*attention of the accused to his confessional statement does not always cause prejudice to the accused.”*

And also in the case of Khalil -Vs- State reported in 4 BLC [AD] 223 it has been held that,

*“After the confession the condemned-prisoner was sent to Munshiganj Sub-Jail. The confession was specifically brought to the notice of the condemned-prisoner while examining him under section 342 of the Code of Criminal Procedure, but he did not complain anything regarding the nature of his confession. Both the trial Court and the High Court Division therefore rightly believed the confession to be true and voluntary.”*

On a careful scrutiny of the evidence in the instant case we find that the accused gave extra judicial confession before the witnesses particularly p.ws 01-03, 05-07, 33 and 34 at the place of occurrence in Dhaka and accused Firoz before p.ws.08-10,12-13,21-22,28,30-32 at Palash Bari Thana areas. At the same time we find

true, voluntary, and inculpatory confessional statements of the said two accused. Having analyzed and assessed both the evidence and confessional statements it finds concrete corroboration by each other without any doubt on it. We also find chain of circumstances in the given evidence of the prosecution witnesses and confessional statements made by the accused in the instant case. Relying upon those material particulars it can form a basis for conviction. In this connection, we find support from the decision in the case of Islam Uddin-Vs-State, reported in 13 BLC [AD] 81 it was held as under:

*“Extra judicial confession and, circumstances of the case, found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”*

It has also been held in the case of Nausher Ali – Vs-State, reported in 39 DLR [AD] 1994 which is as follows,

*“Surrounding circumstances are ordinarily the only material*



*from which the inference of confession may be drawn.”*

As the condemned prisoners made the confessions soon after their apprehension it can be said that there was no pressure on them to confess before the judicial magistrate. It is also supported by the evidence of p.w.s as to the recovery of wearing apparels of the deceased as well as the condemned prisoners. In this regard we find support from the decision in the aforementioned case of Khalil Miah-Vs- State,

*“The recovery of other wearing apparels and toiletries of the deceased at the showing of the condemned-prisoner while in police custody leads to the irresistible conclusion that the condemned-prisoner had the most intimate relationship with the deceased and that wearing apparels and toiletries of the deceased must have been either in the possession of the condemned-prisoner or within his knowledge as to where those articles were. These recoveries are*

*admissible in evidence under section 27 of the Evidence Act.”*

The learned defence lawyer contends by referring section 114 (G) of the evidence Act 1872 and decision in the case of The State –Vs-Abdus Satter and others reported in 16 BLT [AD] 30 that the prosecution failed to produce vital witnesses like maid servant Gulshan Maiya and boy servant General. It appears from record that although the defence filed an application for producing them before the court. But the application was rejected on hearing. To make it clear on this issue raised by the learned defence lawyer this court has seen the rejection order in the record and found that after rejection of the same no step was taken by defence challenging the same before the higher forum. Nevertheless, this court has also look into the statements of these two witnesses recorded under section 161 of the Cr.P.C finding that they were not eye witnesses as they did not see the occurrence. They were sleeping in the corner room [servant room] of the 3600

square feet house when the occurrence took place. The given aforesaid decision reported in 16 BLT [AD] by the defence is not applicable in the present case as the fact discloses that direct eye witness who was with the victim on the motor bike at the time of commission of offence did not come forward to give evidence. However, such statements are not evident and not admissible in law unless the witnesses are confronted with the said statements while deposing on dock. It has held in the case of the State-Vs- Md. Mohim Ullah and others, reported in BCR 2005[AD] 239 which is as under:

*“Confession of a co-accused though not a substantive evidence against other accused, the Court may take such confession into consideration and use the same to lend assurance to other evidence for the purpose of conviction. The statement of an accused person which is not a confession but contains an admission of certain relevant facts is admissible under sections 18-21 of the Evidence Act, provided it is voluntary, even though retracted, if found to be true by the trial*

*Court which is required to be corroborated by evidence of other witnesses in order to be the basis for conviction of the co-accused respondents and as regards statement under section 161 of the Code of Criminal Procedure the same is a statement and is not an evidence in the case and as such not at all admissible in law unless the witnesses are confronted with the said statement while deposing on dock having deposed contrary to the said statement, the same could not be of any avail to the prosecution but the statement could be utilized under section 162 of the Code of Criminal Procedure to contradict the witness in the manner provided under section 145 of the Evidence Act.”*

Now question is before us whether it was a pre-planned murder having intent with before the incident took place. It has revealed from the evidence of p.ws. 01 to 07 that in their presence Saiful confessed killing incident of Dr. Sohel executed in a pre-planned manner and before execution of the plan he along with Firoz went to a blacksmith workshop at Mohammadpur,

Dhaka where from they collected long size knives, chapatti [dagger] and they also collected polythene, naphtholine, dettol, white clothes and perfume etc. to use with amputated dead body so that no smell or blood could come out from it. It has also been supported by material exhibits-I, II, III, IV [knives and chapatti] and VIII old newspaper and a genzi.

According to confession made in front of the witnesses Saiful brought out the using articles [weapons] kept in his bed of divan under mattress which he usually used as his bed all the time. Nevertheless, Saiful and Firoz both in their confessional statements admitted that before executing their plan they had gone to arrange knives and chapatti from blacksmith workshop at Basila under Mohammadpur police station which proves that for killing Dr. Sohel they both organized together how to succeed in their plan. The evidence given by p.ws 08-13, 18-19, 21-22 and 25-32 regarding recovery of amputated dead body and blood stained

wearing appeals belonged to both of the deceased and the accused has substantial sequences to be believed without any doubt. Therefore, this court finds material substances to be said that the prosecution has been able to prove the charge brought against the condemned prisoners in the instant case.

It has emerged in the confessional statements of condemned prisoners that Saiful asked accused Bulu over telephone to give Tk.500/- to Firoz while Firoz was going towards Palash Bari. Thereafter, Firoz and subsequently Saiful narrated the killing story to accused Bulu who then asked them not to involve him in the crime committed by them. After a while he left them in a van. Earlier we have considered the said two statements given by condemned prisoners as voluntary and true. If that be so, their information about Bulu does not constitute an offence under section 201 of the Penal Code. Although some witnesses said at the time of recovery of amputated dead body Bulu was with

Firoz who showed the same along with wearing apparels of Dr. Sohel and other things. But p.w-09 has stated in his examination-in-chief that,

“ফিরোজের দেখানো মতে ছফু মাস্টারের জমির পশ্চিম পার্শ্বে কলা গাছের মোতার পালার ভিতর থেকে মানুষের একটি খন্ডিত মস্তক উদ্ধার করে।.....”

Here we find no involvement of accused Bulu in the recovery of the amputated head. It is also found in the evidence of p.w-27 who has said in his deposition that,

“আসামী ফিরোজ মিয়া এর দেখানো মতে স্থানীয় সুইপার রতন বাসফোর এর উঠানো মতে নদীর কিনার হইতে উঠানো মতে প্রাপ্ত মালামাল জব্দ করেন।.....”

P.w-28 has stated in his examination-in-chief that,

“ঐ দিন সকাল ৬. ঘটিকার সময় জনৈক বিদ্যুৎ এর সনাক্ত মতে মৃত সোহেলের খন্ডিত মাথা উদ্ধার করার জন্য ছোট শিমুলতলী যান সঙ্গীয় কং- ২০৫ মিজানুর রহমান সহ ছোট শিমুলতলা কলাবাগানে কলা গাছের মোতার নিচে মাটির মধ্য হইতে মাথা যাহা ফিরোজ মিয়ার দেখানো মতে উদ্ধার করিয়া মৃতের আত্মীয় স্বজনদের সম্মুখে সুরতহাল প্রস্তুত করেন।.....”

From the said evidence it is found that accused Bulu was in no way involved in the disappearance of dead body of Dr. Sohel.

Mr. Atiqul Haque [Selim], learned Assistant Attorney General has drawn our attention by referring to the case of Dr. AKM Akther Azam –Vs-State, reported in 6 BLC 231. We have gone through the contents of the said case decision wherefrom it finds that without ascertaining the real cause of death by standard mode of method, Doctor [accused] issued the certificate with the heading ‘Death Certificate’ and his conduct goes to show he issued the certificate for screening the accused from legal punishment when in all reasonableness it was known to him that death did not occur to the deceased due to the disease narrated by him in his certificate.

The said doctor was no doubt an authorized person who had to take permission from the respective authority to practice as a doctor. His accountability is quite different and extra-ordinary because all the times he deals with man’s life. On perusal of the said case it reveals further that he wanted to save the perpetrator



from the legal punishment. But in the case in hand the accused [Bulu] himself reacted saying that not to involve him in the commission of offence while he heard the history of the occurrence from the condemned prisoners. It is pertinent to note here that accused Bulu would have scope to disclose the matter to others when he heard the same though he was a simple villager having no authority like licensing doctor of the aforementioned referred case.

Apparently it appears from evidence with regard to the involvement of accused Bulu that he had no intention after hearing the history of occurrence to disappear the dead body of the deceased or wearing apparels in anywhere. Section 201 of the Penal Code clearly stipulates giving emphasis to the motive or intention that whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender

from legal punishment, or with that intention gives any information respecting in the offence which he knows or believe to be false. To commit an offence under this section of the Penal Code there must have intention of the perpetrator. But we do not find any incriminating evidence from the witnesses or the confessional statements of the condemned prisoners that he [Bulu] made an attempt to commit offence like disappearance of evidence of the dead body. Mere presence with other accomplices does not mean that he intended to be participated in the commission of offence. It appears further from one or two witnesses that though the accused Bulu was present at the time of recovery of an amputated head of Dr. Sohel but nothing was found pointed out by him from the place of recovery.

More so, there are many contradictions found in the evidence as to the involvement of accused Bulu Miah in the offence of disappearance. It also reveals from record that the accused Bulu after taking ad-

interim bail from this court had gone into hiding as he did not take steps to get his ad-interim bail extended because of his hiding the Court has been deprived of getting assistance from his side during hearing of the appeal. His conducting lawyer Mr. Syed Mamun Mahabub has also not extended his hands to assist the Court due to unknown reasons although he has assured the court to do so. However, hiding by itself is not the conclusive proof of guilt of the accused. It is not always wise to find a person guilty in the assertion of his absconding. There are long lines of decisions held by our Apex Court on it. We have considered the matter in accordance with law. In this regard we find support from the case of State-Vs- Lalu Miah and others, reported, in 39 DLR [AD] 117 it was held that:

*“Abscondence by itself is not an incriminating matter even an innocent person if implicated in the ejahar for a serious crime sometimes absconds to avoid*

*harassment during investigation by the police.”*

It has also been held in the case of the State-Vs-Safiqul Islam 1991 BLD [AD] 121 which is as follows,

*“Abscondence of the accused since the date of occurrence itself he is not exclusive proof of his guilt or guilty conscience, but it lends weight to the circumstantial evidence against him.”*

The conduct of accused Bulu after knowing the fact poses to be an ideal expected extensively under duress because those who did such heinous offence could be able to further proceed for destroying subsequent evidence like accused Bulu. Therefore, we find in evidence of the prosecution witnesses that are not enough to form conviction upon accused Bulu. Hence, we are constrained to hold that the prosecution has not been able to prove the charge leveled against accused Bulu beyond reasonable doubt.

Learned defence lawyer Mr. Talukder Ayub Ali lastly has argued for the condemned prisoners that the

sentence given by the trial Judge to be modified, if they were found to be guilty in the alleged commission of offence. He has referred to the decision in the case of Manik-Vs- the State, reported in 35 BLD [AD] 63, contending that since the condemned prisoners are under age and in the meantime they have suffered long pangs of the death in the contemned cell for more than 5[five] years and as such they may be exonerated from the painful event like hanging.

Mr. Zahirul Haque Zahir along with his team appearing on behalf of the respondent-State submits that the offence committed by the condemned prisoners is so heinous that can suffice not to show any kind of sympathy from this Court. In this contention, it finds reliance upon a case of Islam Uddin -Vs-State, reported in 13 BLC [AD] 81. It was held by our Apex Court that,

*“The High Court Division considered the argument of the learned Counsel for the condemned prisoner that the condemned*

*prisoner being a young man of 33 years, the ends of justice would be met if the sentence of imprisonment for life was awarded on him instead of death sentence. But the High Court Division opined that in the facts and circumstances of the case and the heinous nature of offence, the condemned prisoner deserved punishment as has been imposed upon him by the trial Court.*

*The High Court Division upon correct assessment of the materials on record accepted the death reference and dismissed the jail appeal. There is no cogent reason to interfere with the same.”*

We also find support from the case of Major Bazlul Huda –Vs-State, reported in 62 DLR [AD] 1 [paragraphs 273 and 286] our Apex Court opined that,

*“In order to satisfy ourselves we have called for the records of the High Court Division and perused the order sheet. We noticed that the appellants never made any endeavour to dispose of the appeals either in the High Court Division or*

*in the Appellate Division. It was the State that frequently prayed for fixation of the death reference in the High Court Division and on its prayer a Bench was constituted for hearing the death reference. After the death reference was disposed of by the High Court Division, the appellants after filing leave petitions did not take any step for hearing of their petitions. It was only on the prayer of the State that the leave petitions were heard and the appeals were also heard. Over and above, the appellant Md. Bazlul Huda and Mohiuddin (Lancer) remained in absconcion in course of the trial and at the time of hearing of the death reference Mohiuddin (Lancer), after many years, filed leave petitions with a prayer for condonation of delay. The delay, in the premises, was not due to the laches on the part of the State. Since the condemned prisoners did not take any steps for hearing of the death reference and their appeals at any point of time, so they are not*

*entitled to submit that by reason of their detention in condemned cell they have been subjected to “torture or cruel, inhuman, or degrading punishment or treatment. Further they also did not raise this point at any point of time, rather from their conduct it is apparent that they have tried to delay the disposal of the appeal.”*

*“As it appears the principles laid down in the above decisions are not applicable in the present applying as the principles of due process of law as applicable in a common law jurisdiction is not applicable to our legal judicial system since we have modified laws on the subject and (2) there are uniform decisions of our Superior Court that mere delay is not legal ground for commutation of a sentence.”*

It was the duty on the part of the condemned prisoners to place the reference before a competent Division Bench of this Court for early disposal as they preferred criminal appeal as well as jail appeals before



this Court. But they did not do so although they have sought for commuting sentence given by trial court. It also finds support from the case of *Abed Ali -Vs-State*, reported in 42 DLR [AD] 171, it was held that,

*“Delay of about two years or so in the disposal of the Death Reference Case and the Jail Appeal in the High Court Division, cannot by itself be ground for awarding lesser sentence.”*

Practically it is very difficult assignment on the part of a Judge to decide what would be the quantum of sentence in awarding upon an accused for committing an offence when it is proved beyond reasonable doubt. But it is not possible to show any cut and dry formula for imposition of sentence upon the accused. In this regard, we find support from the case of the *State-Vs-Rokeya Begum @ Rokeya Begum* [condemned prisoner], reported in 13 BLT [HCD] 377, it was held as under,

*“Sentencing discretion on the part of a Judge is the most difficult task to perform. It is, also, not possible to lay down any cut and dry formula for imposition of sentence, but the object of sentence should be to see that crime does not go unpunished and the victim of crime as, also, the society has the satisfaction that justice has been done. It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and cruel act perpetrated by the offenders. To give lesser punishment to the condemned-prisoners who stand convicted in a shocking and revolting crime would render the justicing System of the country suspect. Under sympathy to impose inadequate sentence would do more harm to justice System to undermine public confidence in the efficacy of law.”*

In the instant incident it finds that one human life was taken away forever by these two condemned

prisoners. The pain the victim felt at the time of attack was so cruel and heinous in nature. When a man is suffering, at a moment, from not taking breath upon a severe pressure on him by using some clothes the pain he could feel how much it was.

P.W-01 as the mother of the victim became under serious shocking after knowing the killing news of her son from the servant condemned-prisoner Saiful who was grown up by their extending hands and assistance. As per evidence of prosecution witnesses condemned prisoners liquidated the victim in cold blood brain. But no end of their mission was only liquidation. It was their further inhuman brutality they showed having cut the dead body of Dr. Sohel into 3[three] pieces. It was also a barbarous as well as heinous exceptional crime committed by them in a civilized society. It was also an act of horrendous cruelty. The condemned prisoners committed such a crime in a pre-planned manner with their full knowledge of the consequence. Furthermore,

both the condemned prisoners were grown up staying in the care of the informant party for a long time, whereas, they did not bother to show any kind of sympathy even on the body of the victim after murder and for their subsequent action was an attempt to take away the religious right of the informant party so that they [informant party] could not bury the dead body of Dr. Sohel properly. More so, the condemned prisoners are neither old nor teenagers nor they are physically unfit because of suffering from severe diseases. Therefore, we do not find any extenuating circumstances to save them from gallows. For which they do not deserve any kind of special sympathy in awarding the sentence.

In the result, the Death Reference No.06 of 2009 is accepted and the order of conviction and sentence of death against condemned prisoners namely [1] Md. Saiful Islam and [2] Md. Firoz Miah, passed by the learned Judge of the Druto Bichar Tribunal No.03 Dhaka is hereby confirmed. The criminal appeal No.846

of 2009 along with jail appeal Nos. 106 of 2009 and 107 of 2009 filed by the condemned prisoners is hereby dismissed and the Criminal Appeal No. 577 of 2009 is allowed.

It appears from the impugned judgment that the trial court found the condemned prisoners guilty under sections 201/302/34 of the penal code but did not impose sentence separately upon them for proving section 201 of the penal code as death penalty has given to them.

But that was not the way of solution in restraining from awarding sentence upon them since the allegation of disappearance of evidence was proved by the prosecution beyond reasonable doubt. The trial court ought to have imposed penalty upon the perpetrator if it is found to be guilty of the offence under section 201 of the penal code. In the instant case it is proved by the prosecution that the condemned prisoners after killing the victim, took amputated limbs of the dead body to

the Gaibandha district areas with the intention of screening themselves from legal punishment and dumped the same at different places to destroy evidence of the dead body and apparels of Dr. Sohel. Therefore, the condemned prisoners are found to be guilty under section 201 of the penal code. Hence, they are sentenced to suffer rigorous imprisonment for a period of 07 [seven] years and to pay a fine of Tk. 5000/. However, as and when sentence to death will be executed, the sentence to rigorous imprisonment for 07[seven] years with a fine of Tk.5,000/- would naturally get merged into the sentence to death, executed.

At the end we intend to express our sincere appreciation to Mr. Zahirul Haque Zahir, learned Deputy Attorney General along with Mr. Md. Atiqul Haque, learned Assistant Attorney General and Mr. Talukder Ayub Ali, the learned defence lawyer, for their

lucid expression of law and also invaluable assistance to this Court.

Let a copy of this judgment and order along with lower court records be sent to the Druto Bichar Tribunal No.03 Dhaka for information and necessary action at once.

**Razik-Al-Jalil, J**

I agree