

**IN THE SUPREME COURT OF BANGLADESH**

**APPELLATE DIVISION**

**PRESENT:**

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

**JAIL APPEAL NO.10(A) OF 2014**

**(Arising out of JAIL PETITION NO.10 OF 2014).**

(From the judgment and order dated 18.11.2013 passed by the High Court Division in Death Reference No.78 of 2008 with Criminal Appeal No.5919 of 2009 and Jail Appeal No.812 of 2008.)

Md. Zahangir @ Thotkata Zahangir: Appellant.

**=Versus=**

The State Respondent.

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

For the Respondent: Mr. S.M. Munir, Additional  
Attorney General instructed by Mr.  
Haridas Paul, Advocate-on-Record..

**Date of hearing and judgment : 08-07-2021**

**JUDGMENT**

**Hasan Foez Siddique, J:** Sessions Judge, Noakhali  
in Sessions Case No.185 of 2007 arises out of  
G.R. Case No.301 of 2007 corresponding to  
Sudharam Police Station case No.15 dated  
14.03.2007 convicted the appellant Md. Jahangir @

Thotkata Zahangir under section 302 of the Penal Code and sentenced him to death.

The trial Court sent the case record in the High Court Division for confirmation of sentence of death of the appellant which was registered as Death Reference No.78 of 2008 and the appellant preferred Criminal Appeal No.5919 of 2009 in the High Court Division and the High Court Division, by the impugned judgment and order dated 18.11.2013, accepted the Death Reference, dismissed the appeal and, thereby, confirmed the sentence of death. The appellant, then preferred Jail Petition No.10 of 2014 in this Division which was subsequently converted to Jail Appeal No.10(A) of 2014.

Victim Arafat Hossain aged about 9 years, a student of Noorani Hafizia Madrasha, Maizdhi was brutally killed within 6.30 p.m. to 6.45 p.m. on 13.03.2007. It was the time for Magrib prayer, the victim's mother and the victim were staying in their house. Appellant Md. Zahangir @ Thotkata Zahangir, a neighbour, went to their house and requested the mother of the victim to say her Magrib prayer. When she was saying her Magrib prayer, appellant Md. Zahangir calling

Arafat Hossain went out from their house and, thereafter, killed the victim by a sharp cutting weapon. He concealed the dead body of the victim in a graveyard. The victim's mother, after saying her prayer, finding the victim untraced started searching for him. At one stage, the informant and others proceeded towards the graveyard for searching the victim but they were prevented by the appellant which created a doubt amongst the people present there. All the people suspected the appellant and rushed to the graveyard and found the dead body of the victim. The people apprehended the appellant and, on interrogation, the appellant admitted that he himself had killed the victim causing injuries by a sharp cutting "dao" and threw his dead body in the graveyard. Getting information, Police rushed to the place of occurrence and arrested the appellant and recovered the "dao" used for killing the victim, as per indication of the appellant. The Police also seized the wearing apparels of the appellant, prepared inquest of the dead body of the victim and, then, sent the same to morgue for holding autopsy. Thereafter, F.I.R. was lodged by the P.W.1, father of the victim.

In course of investigation, the appellant made a confessional statement recorded under section 164 of the Code of Criminal Procedure. Upon holding investigation, the Investigating Officer submitted charge sheet against the appellant under section 302 of the Penal Code . The case was ultimately tried by the Sessions Judge, Noakhali, who framed charge against the appellant under Section 302 of the Penal Code and the appellant pleaded not guilty and claimed to be tried.

The prosecution examined 17 witnesses out of 21 witnesses cited in the charge sheet. The defence case as it appears from the trend of cross examination of P.Ws. that the appellant had been impleaded in the case falsely and that he was innocent.

The trial Court convicted and sentenced the appellant as mentioned earlier and sent the record in the High Court Division for confirmation of sentence of death. The appellant preferred criminal appeal. The High Court Division, by the impugned judgment and order, upheld the judgment and order of conviction and

sentence. Thus, the appellant filed jail petition which converted to jail appeal.

Mr. A.B.M. Bayezid, learned Advocate was appointed by the State to represent the appellant since the appellant failed to engage any lawyer to represent him.

Mr. Bayezid submits that in this case there is no eye witness of the occurrence and the confessional statement of the appellant was not voluntarily made and the same was not true. He, lastly, submits that sentence of the appellant is at any rate too severe. On the other hand, Mr. S.M. Munir, learned Additional Attorney General, appearing for the State, submits that the appellant made confessional statement voluntarily and the same was true. He submits that in this case circumstantial evidence is so strong against the appellant that none else but the appellant had killed the innocent child. He, lastly, submits that sentence awarded by the Courts below should not be disturbed considering the gravity of the offence.

In this case , out of 17 prosecution witnesses, P.W.1 Md. Babul Khan is the father of the victim and informant of the case who in his testimony

stated that at about 11.30 a.m. on 13.03.2007 when he was discharging his duty as security guard of Noakhali Zilla School, the appellant met him and demanded taka 17,000/-, unpaid consideration of his sold land. He replied that he had no money in hand. He paid taka 20/- only. At about 7.30 p.m., he was informed that Arafat was missing. He rushed to his house and started searching. When this witness and others were going towards Graveyard for searching Arafat, appellant Jahangir tried to resist them suspiciously. Thus, people present there and this witness rushed to the Graveyard. He focused the torchlight and found a toy gun (material exhibit-1) and, thereafter, they found the dead body of victim Arafat. At the time of recovery of dead body of victim Arafat, appellant was present and he became perplexed. Many people rushed there and found perplexed condition of appellant. They confined him. At that time, P.W.4 Mostafa Chowkider, P.W.5, Hafiz Member, P..W. Abdul Khan, P.W.7 Ismail, P.W. 3 Elias, and P.W.6 Moyen Uddin were also present there. Chowkider Mostafa, confining the appellant, informed local Police about the matter. Police rushed to the

place of occurrence and arrested Jahangir. At that time, Rupbarna(P.W.11) told that she saw Jahangir in the evening with different dress which had been subsequently changed. Police recovered earlier used dress of the appellant as per his pointing out from his almira. They also recovered a "dao" from his kitchen (material exhibit-2), Genzi (material exhibit-3) and Lungi (material exhibit-4) in presence of the witness. Jahangir admitted that he had killed the victim. He proved the F.I.R. (exhibit-2).

P.W.2 Md. Abdul Khan, brother of P.W.1 in his testimony stated that when they started searching in the Graveyard, appellant obstructed them and, thus, they suspected him. They searched the Graveyard and recovered the dead body of Arafat. At that time Jahangir became puzzled. On interrogation, he admitted that he had killed the victim. P.W.3 Md. Elias in his testimony also stated that at the time of recovery of dead body, appellant became puzzled. In his presence, the Police recovered toy gun (material exhibit-1), "dao" (material exhibit-2), "genzi" (material exhibit-3) and "lungi" (material exhibit-4). He proved the seizure list (exhibit-3). P.W.4 Md.

Hafizuddin mamber, in his testimony, stated that on interrogation, appellant admitted that he had killed the victim. He identified the victim on dock. He also stated that in his presence a seizure list was prepared after a seizing toy gun (material exhibit-1), "dao" (material exhibit-2), "genzi" (material exhibit-3) and "lungi" (material exhibit-4). He proved the seizure list (exhibit-3). P.W.5 Golam Mostafa Chowkider corroborated the testimonies of P.Ws.1, 2, 3 and 4. P.W.6 Md. Mainuddin, maternal uncle of the victim, in his testimony stated that getting information about killing of the victim through Mobile phone he rushed to the house of P.W.1 and heard about the occurrence. Inquest over the dead body of victim was made in his presence.

P.W.8 is the confessional statement recording Magistrate who in his testimony stated that at the relevant time, he had been serving as First Class Magistrate, Noakhali. On 18.03.2007, Police produced the appellant before him for recording his confessional statement. He allowed 3(three) hours time for his reflection. He told the appellant that he is Magistrate not a Police. If he makes confession he may be punished on the

basis of the same. This witness also assured the appellant that he would send the appellant to jail hayat and would not hand him over again to the Police. He did not find any mark of violence on the person of the appellant. The appellant was physically and mentally well. He proved the confessional statement which was marked exhibit-5. In cross examination, this witness stated that after giving 3(three) hours time for reflection, he started recording confessional statement and at that time no Police personal was present in his chamber. He denied the defence suggestion that the appellant told him that Police had tortured him before making confession. In cross examination, he further stated that appellant made confessional statement voluntarily. The contents of the confessional statement are reproduced below:

“আমি কাঠ মিস্ত্রি হিসাবে কাজ করতাম। আমি মিস্ত্রির কাজ ছেড়ে দেয় গত কোরবানী ঈদের ৪/৫ দিন আগে। আমি সর্বশেষ নিজে নিজে দন্তের হাটে কাজ করতাম।

বাদী বাবুল মিয়া ও আমার বাড়ি পাশাপাশি। আমার বড় বোন রয়েছে, আমার বাবার আমি একমাত্র ছেলে। আমার বাবা বুর্চি কাজ করতেন। গত রোজার আগে আমার বাবা পক্ষাঘাত হয়। আমাদের সংসারে টানা পোড়া শুরু হয়। আমাদের সম্পত্তির ০৯(আট) কড়া বিক্রির কথা হয় বাদীর সাথে। তার কাছ থেকে বাবার চিকিৎসার জন্য এবং সংসার খরচের জন্য বিভিন্ন সময় টাকা নেয়।

০৮ কড়া জমি ৮০,০০০/- টাকা বিক্রয় কথা হয়। বাবুলের কাছে থেকে বিভিন্ন সময় টাকা নেওয়া বাবদ আমাদের হিসাব মতে ৬০,০০০/- আদায় হয়েছে, কিন্তু সে বলে যে ৭০,০০০/- টাকা দিয়েছি। তারপর আমরা হিসাবে বসি, সালাউদ্দিন ডাক্তারের দোকানে। দোকানটি শিবপুর বাজারে। হিসাবে মতে আমি ৪২০০/- টাকার মতো জমি বাবদ পাওনা হয়। আমরা ০২(দুই) বার রেজিস্ট্রি করার জন্য যায় কিন্তু জমা খারিজ না থাকায় তা রেজিস্ট্রি হয় নাই।

গত ১৩/০৩/০৭ তাং মঙ্গলবার আমি বাবুলের বাড়িতে গিয়ে তাঁর বউকে টাকা লাগবে মর্মে বলে আসি। আমি ঐদিন সকালে ৭.০০ টার দিয়ে যায়। পরে আবার ৮.৩০ টার দিকে গিয়ে বাবুলের বউকে জিজ্ঞাসা করি তখন ভাবী বলে যে তোকে মাইজদী যেতে বলেছে। আমি কথা মতো মাইজদী আসি। অনেক খোঁজে তাকে পাই নাই। পরে ১২/১২.৩০ টার সময় জেলা স্কুলের সামনে তার সাথে দেখা হয়। তখন সে আমাকে ২০/- (বিশ) টাকা দিয়ে বলে টাকা চাইলে কি পাওয়া যায়। আমি বলি বাবাকে ডাক্তারের কাছে নেব। তবু সে ২০/- টাকা দেয়। আমি বাড়িতে চলে আসি। বাড়িতে দুপুরের ভাত খাই। বাড়িতে কাজ করি। তাঁর উপর (বাবুলের) আমার মেজাজ খারাপ হয়। আমি বাড়িতে কাজ শেষে ছেনি (বড় দা) বাবুলের বাড়িতে তার চাচা বিল্ডিং এর ভিতরে পাতার নীচে রেখে আসি-তাকে মেরে ফেলার ইচ্ছা হয়।

আমি আসর এর নামাজের পর আবার বাবুলের বাড়িতে যাই। আমি সেই বাড়িতে দুষ্টুমি করি সবার সাথে। মাগরিবের নামাজের আজান হলে আমি বাড়িতে চলে আসি। আমি নামাজ পড়ে আবার বাবুলের বাড়িতে যাই।

বাবুলের ছেলে আরাফাত তখন ঘরের বাহিরে ছিল। আমি ছেনি বাহির করি। আমি আরাফাতকে একা দেখে আমার কাছে ডাকি এবং ছেনি দিয়ে মাথায় বাড়ি দেয়। এরপর কোপ ও পড়ে। আমি তাকে কবরস্থানে রেখে বাড়িতে চলে যাই। আমি ছেনি বাড়িতে গিয়ে আমাদের পাকের ঘরে রাখি।

বাবুলের লোকজন তার ছেলেকে খোঁজাখুঁজি করে। তখন রাত ৯/৯.৩০ ১ হবে। আমিও খুঁজতে বের হয়। আমি সবাইকে কবরস্থানের দিকে নিয়ে যাই। ছেলেকে দেখে আমি চিৎকার দেই। আমি বাড়ি চলে যাই এবং জ্ঞান হারিয়ে

ফেলি। পরে আমার মাথায় পানি দেওয়া হয়। পুলিশ এসে এবং আমাকে ধরে নিয়ে যায়।

এই আমার জবানবন্দি।”

P.W.9 Constable Abdus Samad escorted the dead body of the victim to the Morgue of Noakhali Hospital. P.W.10 Beauty Begom, mother of victim Arafat in her testimony, stated that accused Jahangir went to their house at the time of Magrib prayer. Jahangir drew her attention to say Magrib prayer. At that time, Arafat was playing in the courtyard. After saying Magrib prayer, she did not find Arafat in the courtyard and started searching. Getting information, her husband and others rushed to their house and started searching. At the time of searching, appellant Jahangir was present and told that it would not be possible in the night to find the whereabouts of the victim. People present there suspected him. Jahangir obstructed them from going towards Graveyard. Then the people present there rushed to the graveyard and found dead body of victim. After recovery of deadbody, Jahangir became puzzled. Some one informed matter to local police and the Police rushed to the place of occurrence and brought the dead body of victim to her house.

P.W.11, Rubarna Begum in her testimony stated that considering behaviour of Jahangir people present there suspected him. This witness also said that earlier in the evening she saw Jahangir in different dress but at the time of recovery of dead body she found him wearing new dress. On the face of interrogation by the Police, he brought out the earlier dress from his house. P.W.12 Siraj Uddin was a witness of recovery of "dao". He stated that as per pointing out by the appellant "dao" was recovered from his kitchen which was marked material exhibit-2. At the time of recovery of "dao" the same was bloodstained. He proved the seizure list (exhibit-3-Ka). P.W.13 Md. Salahuddin is also witness of proving material exhibit-2. He corroborated the testimony of P.W.12 as to recovery of "dao". P.W.14 A.S.M. Nurul Alam Talukder is the F.I.R. recording Officer and was examined on behalf of investigating Officer, since the investigating Officer Anowar Hossain, at the relevant time, was serving in East Timor under the U.N. Mission.

P.W.15, 16 and 17 are the doctors who were the members of Medical Board and held Postmortem examination on the person of victim Arafat.

P.W.15 Sheikh Khairul Kabir proved the Postmortem report (exhibit-6). They found the following injuries on the person of the victim:

"(1) Sharp cutting injury in the Right scalp, Left scalp left cheek, Eye ranging for (3" X 1" X bone depth to 1" X 1" by Bone depth cutting Scalp Skin Muscles vessels.

(2) Sharp cutting injuries in left chest (3" X  $1\frac{1}{2}$ " ) upto chest both of Trachea Rt.  $1\frac{1}{2}$ " X1" upto Bone deep. Rt  $1\frac{1}{2}$ " X 1" upto Bone depth.

(illegible) of the back lower part of chest (4" X 2") up to bone depth.

(3) Multiple Sharp cutting injury upper lower limb ranging from (2" X 1") upto bone depth, (1" X 1") upto bone depth cutting skin, muscle, vessel (illegible)."

They opined that death was caused due to haemorrhage and shock caused by above mentioned injuries which were antimortem and homicidal in nature.

From the confessional statement (exhibit-5) as proved by the P.W.8 Hasan Mahmud it appears that the appellant made statement consistent with prosecution case as to its date, time and manner of occurrence. The appellant gave vivid

description as to his motive, plan and manner of occurrence and as well as in respect of his subsequent conduct. P.W.8 after recording confessional statement endorsed that, “ আসামীৰ শৰীৰেৰ কোন প্ৰকাৰ আঘাতেৰ চিহ্ন ছিল না। আসামী শাৰীৰিক ও মানসিকভাবে সুস্থ ছিল।” Thereafter, he stated, “আমি আসামীকে বার বার বুঝিয়ে দিয়েছি যে তার স্বীকারোক্তি তার বিরুদ্ধে যেতে পারে তবু সে স্বেচ্ছায়, স্বীকারোক্তি দিয়েছেন।” That is , same was voluntarily made. It further appears that the same was recorded following provisions of section 164 and 364 of the Code of Criminal Procedure. The perusal of his statement makes it clear that before recording his confessional statement, he was informed that he was not bound to make confessional statement and the same could be used against him in future. P.W.8 was satisfied that the appellant was not forced to make any statement. He was not allured in any way. We do not find anything in evidence on record to disbelieve the confessional statement. If the confessional statement is found to be voluntarily made and true and has been recorded in due compliance of provisions of sections 164 and 364 of the Code of Criminal Procedure, the conviction can be awarded relying on such confession.

Moreover, it appears from the testimonies of P.W.4 Hafiz Member, P.W.12 Sirajuddin and P.W.13 Sahehuddin that the Police recovered blood-stained "dao" and wearing apparels of the appellant from his house as per pointing out by the appellant preparing seizure lists (ext. 3Ka and 3 Ga). Those seized articles were marked as material exhibits-2, 3, and 4. That is, the preconditions as to admissibility in evidence regarding recovery of weapon used to kill the victim and other incriminating materials as per disclosure made by the accused appellant had been satisfied. Provisions of Section 27 of the Evidence Act impose conditions for unwrapping the cover of ban against admissibility of statement of the accused to the Police which are (1) a fact should have been discovered in consequence of the information received from the accused; (2) he should have been accused of an offence, (3) he should have been in custody of a Police Officer when he supplied the information, (4) the fact so discovered should have been deposed to by the witness [State of Rajasthan V. Bhup Sing, (1997) IO SCC 675]. The material brought on record showed that the appellant was in the custody of

the investigating agency. The statement by way of extra judicial confession made in police custody which relates to the facts discovered is admissible in evidence against the accused. In this case, there is no explanation by the accused as to how the blood stained "dao" and wearing apparels were concealed in his house. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an accused, such a discovery is a guarantee that the information supplied by the accused is true. The witnesses who have deposed with regard to the recoveries have remained absolutely unshaken and, in fact, nothing has been elicited from them to disprove their creditworthiness.

It appears from the testimonies of P.Ws.1, 2, 4, 10 and 11 that the appellant became puzzled at the time of recovery of dead body and tried to obstruct those witnesses from going to graveyard for searching. In such situation those witnesses rushed to the graveyard and recovered dead body of victim. P.W.11 Ruborna Begum who was present at the time of recovery of dead body in her testimony sated "ঐ সময় আসামী জাহাংগীরকে আমি কাঁপতে দেখি।" She

further stated that she saw the appellant in the evening wearing "lungi" and "ganzi" but at the time of recovery of dead body, he was found with different dress. On interrogation, the appellant produced those wearing apparels from his almirah. Section 8 of the Evidence Act makes clear that subsequent conduct of any party to a proceeding is relevant if it is in reference to such proceeding or is in reference to any fact in issue therein or relevant thereto . However, such evidence will have to be tested and scrutinized like any other piece of evidence. Criminal intention may be inferred from subsequent conduct of the accused.

From the confessional statement of the appellant , which was direct acknowledgement of the guilt of the crime charged and was made voluntarily and consistent with the prosecution case and recorded following the relevant laws, the recovery of "dao" used for killing the victim as per pointing out by the appellant, subsequent conduct of the appellant after the occurrence and the circumstantial evidence clearly proved the charge against the appellant beyond all reasonable of doubt. Thus, we do not find

anything to interfere with the judgment and order of the High Court Division.

Children are vulnerable and defenseless class of victims, deserving of special protection. The children are the future of every nation. The children not only need the protection of their parents, but also need to be protected by the society at large. Killing of a child needs to be condemned and deprecated in the harshest terms legally, morally and socially. The criminal law is general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. In recent years, the rising crime rate particularly violent crime against children has made the criminal sentencing by the courts a subject of concern. The measure of punishment in a given case must depend upon the atrocity of the crime; conduct of the criminal and the defenceless and unprotected state of the victim. Having played with life of a child the appellant does not deserve any leniency and for him sympathizing on the ground sought for will be wholly uncalled for. In this case the appellant has betrayed the trust of the society and of the child. In the

case at hand, the appellant killed the victim in a brutal and barbaric manner. The nature of the crime and the manner the same was committed inhumanly. It is not only betrayal of an individual trust but destruction and devastation of social trust. We, therefore, affirm the view taken by the High Court Division.

Accordingly, the appeal is dismissed.

The judgment and order of the High Court Division in Death Reference No.78 of 2008 and Criminal Appeal No.5919 of 2009 affirming the judgment and order dated 14.03.2007 passed by the Sessions Judge, Noakhali in Sessions Case No.185 of 2007 arising out of G.R. Case No.301 of 2007 corresponding to Sudharam Police Station Case No.15 dated 14.03.2007 is hereby upheld.

**C.J.**

**J.**

**J.**

**J.**

**J.**

**J.**

**The 8<sup>th</sup> July, 2021**

hafim/words- 3639/