

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(CRIMINAL APPELLATE JURISDICTION)

Present

MR. JUSTICE JAHANGIR HOSSAIN

And

MR. JUSTICE MD. JAHANGIR HOSSAIN

DEATH REFERENCE No. 93 of 2015

with

Criminal Appeal No. 9126 of 2015

with

Criminal Appeal No. 9235 of 2015

with

Criminal Appeal No. 9346 of 2015

with

Criminal Appeal No.10,748 of 2015

with

Criminal Appeal No.10,049 of 2015

With

Jail Appeal No. 251 of 2015

With

Jail Appeal No. 252 of 2015

With

Jail Appeal No. 253 of 2015

The state

----- Appellant

Versus

(1) Qamrul Islam @ Qamrul son of late Abdul Manik (2) Sadik Ahmed @ Boro Moyna @ Moyna son of late Mobu Ullah @ Mobu Ullah (3) Muhid Alam @ Muhit son of late Abdul Manik (4) Ali Haider @ Ali son of late Abdul Manik (5) Shamim Ahmed @ Shamim son of late Abdul Manik (6) Tajuddin Ahmed @ Badol, son of Sultan Miah, (7) Nur Ahmed @ Nur Miah son of Md. Nizam Uddin, (8) Ayaz Ali son of late Mostafa Ali @ Pecha, (9) Ruhul Amin @ Ruhel son of late Shahab Uddin, (10) Zakir Hossain @ Pabel Raju (absconding) son of Oliur Rahman @ Oli Ullah, (11) Dulal Ahmed son of late Ala Uddin Ahmed, (12) Firoz Ali son of late Mojid Ullah, (13) Azmat Ullah son of late Selim Ullah

----- Condemned Prisoners and
accused appellants.

Mr. Zahirul Haque Zahir, D.A.G with
 Mr. Md. Atiqul Haque (Salim) with
 Mr.Nizamul Haque Nizam, A.A.Gs

----- For the State

Mrs. Shirin Afroz, Advocate

-----For the State Defence.

Mr. S.M. Abul Hossain with

Mr. Md. Abdur Rashid with

Mr. Belayet Hossain with

Mr.M.A. Shahid Chodhurywith

Mr. K.B. Shahriar Ahmed with

Ms. Mazada Khatun with

Ms. Lubna Yesmin with

Ms. Parvin Akter, Advocate

----- For the condemned
 prisoner and accused-appellants.

Heard on 30.01.2017, 31.01.2017,
05.02.2017, 06.02.2017, 07.02.2017,
12.02.2017, 13.02.2017, 14.02.2017,
15.02.2017, 19.02.2017, 20.02.2017,
22.02.2017, 27.02.2017, 01.03.2017,
05.03.02017, 06.03.2017, 07.03.2017,
08.03.2017 and 12.03.2017.

Judgment on 11.04.2017

Md. Jahangir Hossain,J:

This judgment will dispose of the death reference No. 93 of 2015 passed by the Metro Sessions Judge, Sylhet for confirmation of the sentence of death imposed on condemned prisoners (1) Qamrul Islam @ Qamrul son of late Abdul Manik, (2) Sadik Ahmed @ Boro Moyna @ Moyna son of late Mob Ullah @ Mobu Ullah, (3) Tajuddin Ahmed @ Badol son of Sultan Miah, and (4) Zakir Hossain @ Pabel Raju (absconding) son of Oliur Rahman @ Oli Ullah, filed Criminal Appeal No. 9126 of 2015 and Criminal Appeal No. 9235 of 2015 and Jail Appeal No. 252 of 2015, Jail Appeal No. 253 of 2015 and Jail Appeal No. 251 of 2015 preferred by condemned prisoners against their conviction under Section 302/34 of the Penal Code and sentencing them to death and fine of Tk.10,000.

They preferred aforesaid criminal appeals against the judgment and order of conviction sentence to death dated 08.11.2015 passed by the learned Metropolitan Sessions Judge, Sylhet in Sessions Case No.931 of 2015 arising out of Jalalabad Police Station Case No.04 dated 08.07.2015 convicting the appellants under Section 302/34 of the Penal Code and imposing death sentence condemned prisoners appellants and to fine of Tk.10,000/- (ten thousand) each, and also convicted co-accused Noor Ahmed under Section 109 read with sections 302/34 of the Penal Code and sentenced him to suffer imprisonment for life with a fine of Tk. 10,000/- (ten thousand) in default to suffer rigorous imprisonment for 2 (two) months more, convicted co-accused Sadik Ahmed @ Boro Moyna @ Moyna, Shamim

Ahmed @ Shamim, Ali haidar @ Ali and Muhid Alam @ Muhit under Section 201/34 of the Penal Code and sentenced them to suffer imprisonment for 7 (seven) years with a fine of Tk. 10,000/- (ten thousand) in default to suffer rigorous imprisonment for 2 (two) months more, and also convicted co-accused Sadik Ahmed @ Boro Moyna @ Moyna, Ayaz Ali and Dulal Ahmed under sections 342/34 of the Penal Code and sentenced them to suffer imprisonment for 1(one) year with a fine of Tk. 1,000/- (one thousand) in default to suffer rigorous imprisonment for 2(two) months more along with above Criminal Appeals and Jail Appeals.

The prosecution case in brief is that on 08.07.2015 one S.I. Md. Aminul Islam, Jalalabad Police Station, S.M.P. District-Sylhet as

informant lodged a First Information Report, with Jalalabad P.S. of District Sylhet against 2 accused persons and surrounding people of workshop excluding the appellant alleging, inter alia, that on 08.07.2015 while the informant along with his companion forces mentioned in the F.I.R on day siyara-21 duty received a news over Radio that a dead body of unknown persons laying in Micro-Bus in the Road in front of grocery shop owned by one Belal at Kumargaon Residential Area under Jalalabad Police Station, that the informant party instantly reached to the place of occurrence at 14.00 hours and have seen that Microbus being No. Dhaka Metro-Cha-5400515 beside the road, that sensing the presence of the informant party, while driver of the said Microbus named Muhit Alam, son of

Abdul Manik, village-Sheikhpara, Police Station–Jalalabad, District-Sylhet trying to flee away by running arrested him and took in own custody and saw on came to Microbus that a dead body of a person laying inside the Microbus, that on interrogation of arrested accused he did not answer satisfactorily, that the informant in presence of local people prepared a Surathal Report and sent the dead body to morgue of M.A.G. Osmani Medical College Hospital for autopsy to determine the real cause of death, seized the Microbus by preparing a seizure list and brought the seized Microbus and accused to the police station, that on interrogation, local people informed that unknown person on 08.07.2015 at about 06.00 while stealing van-gari from Garage of Ali

situated at opposite to Kumargaon Jame Mosjid under the Jalalabad Police Station, night guard in charge of said garage Moyna Miah, son of late Mobu Ullah of Village-Pirpur, Police Station-Jalalabad, District-Sylhet with neighbouring peoples at about 06.10 took the unknown person to beside workshop owned by Sudip Koplai and beat causing seriously injured and thereafter succumbed, that a regular case is necessary to be started because the unknown accused persons with same intention after killing unknown person and with a view to conceal dead body brought the same by Microbus for unknown place committed offence that there is a delay in lodging F.I.R due to busy with preparing Surathal Report and for completing necessary step for holding autopsy. On the basis of aforesaid F.I.R,

Jalalabad Police Station Case No. 04 dated 08.07.2015 under sections 302/34 of the Penal Code was started.

Subsequently another supplementary F.I.R. was filed by the father of the deceased Shamiul Alam Rajon (14) on 09.07.15 (hereinafter it will be treated as 2nd or supplementary F.I.R). It is stating interalia that on 08.07.2015 at about 8.00 A.M. the deceased went out of the house for Taker bazar with a view to selling vegetables but he did not return to home. Local people apprenended the accused Mohit Alam red handed at Kumargaon residential area while he and others were carrying the dead body through a Microbus in order to conceal the dead body. Police being informed took the custody of the accused Mohid Alam and sent the dead body of

Rajon to Sylhet MAG Osmani Medical College Hospital Morgue for post mortem examination. Accused Mohid Alam on interrogation disclosed the name of the other accused persons.

2nd F.I.R. was not treated as F.I.R. with the police station; it was rather entree as Jalalabad P.S. General Diary No. 536, dated 09.07.2015.

Police after holding a perfunctory investigation submitted charge sheet against the appellants and others under Section 302/201/34 of the Penal Code being Charge Sheet No. 81.

Eventually the case was transferred to the Court of learned Metropolitan Sessions Judge, Sylhet for trial and there the case was numbered as Sessions Case No. 931 of 2015 and framed charge under sections 302/201/34 of the Penal Code and read over it to the accused present in

the Court, who pleaded innocent and claimed to be tried.

The case of the defense as it appears from the trend of cross-examination of the witnesses that accused persons are innocent and they have been falsely implicated in the instant case.

During investigation Police arrested Azmat Ullah Firoz Ali, Ali Haidar, Ayz Ali, Sadik Ahmed @ Moyna @ Bora Moyna, Dulal Ahmed, Nur Ahmed and Mohit Alam @ Mohit and recorded statement under Section 164 of the Code of Criminal Procedure and that the prosecution in order to prove the case examined as many as 36 witnesses out of 38 witnesses cited in the charge sheet.

After conclusion of trial the learned Metropolitan Sessions Judge, Sylhet found the

appellants and others are guilty of the charge and convicted the appellants and other co-accused by judgment and order dated 08.11.2015.

The accused Qamrul Islam @ Qamrul, Sadik Ahmed @ Boro Moyna @ Moyna, Tajuddin Ahmed @ Badol and Zakir Hossain @ Pabel @ Raju (absconding) are hereby convicted and sentenced under sections 302/34 of the Penal Code to suffer death sentence with a fine of Tk. 10,000/- each. They will be hanged by their necks till death. As the convict Zakir Hossain @ Pabel @ Raju has been absconding the punishment of death sentence will be effected from the date of arrest or surrender of the convict before the Court as the case may be. The convicts may prefer appeal within 7 (seven) days (Article 150 of the Limitation Act).

The accused Noor Ahmed @ Noor Miah is hereby convicted and sentenced under section 109 read with sections 302/34 of the Penal Code to suffer imprisonment for life with a fine of Tk. 10,000/- in default to pay the fine imposed to suffer additional imprisonment for 2 (two) months.

The accused Sadik Ahmed @ Boro Moyna @ Moyna, Shamim Ahmed @ Shamim (absconding), Ali Haidar @ Ali and Muhit Alam @ Muhit are hereby convicted and sentenced under sections 201/34 of the Penal Code to suffer rigorous imprisonment for 7 (seven) years with a fine of Tk. 10,000/- each, in default to pay the fine imposed to suffer additional imprisonment for 2(two) months.

The accused Sadik Ahmed @ Moyna @ Moyna, Ayaz Ali and Dulal Ahmed are hereby convicted and sentenced under section 342/34 of the of the Penal Code to suffer rigorous imprisonment for 1 (one) year with a fine of Tk. 1,000/- each, in default to suffer additional imprisonment for 2(two) months.

The accused Firoz Ali, Azmat Ullah and Ruhul Amin @ Ruhel are hereby acquitted from the charge brought against them. The punishments inflicted in the case of convict Sadik Ahmed @ Boro Moyna @ Moyna would run concurrently.

The period for which the convicts have been in jail hajot will be deducted from the actual punishment inflicted (Section 35A of the Cr .P.C).

In the case of absconding convict Shamim Ahmed @ Shamim the punishment inflicted will be effective from the date of his arrest or surrender before the Court as the case may be.

We have heard at length the submission of learned counsels of both the parties. Perused the record and connected all documents. It transpires that prosecution has examined as many as 36 witnesses including the informant S.I. Aminul Islam and father of the deceased Sheikh Md. Azizur Rahman Alam, who submitted 2nd F.I.R. There are 8(eight) confessional statement of the accused under Section -164 of the Code of Criminal Procedure. Recording Magistrate Mr. Shahidul Karim and Mr. Anwarul Haque were also examined as P.Ws.

P.W.1 Aminul Islam as informant deposed that on 08.07.2015 at 13.45 he received information that one unknown dead body laying inside the microbus and it was on the road of komar gown residential area in front of the shop of Belal. Then he rushed towards that place and found the microbus Dhaka Metro ৮ -54-0516 on the road. At that time driver of the microbus Muhit Alam was trying to flee away but they apprenended him and take him in the police custody.

Police found one dead body inside the microbus. Police asked about the dead body but Muhit could not answer properly. Then in presence of the local people informant Sub Inspector Aminul Islam prepared inquest report and sent the dead body for post mortem to the

M.A.G Osmani Medical Hospital, Shyhet. He seized the microbus and took the Muhit Alam to the Jalalabad Police Station. Police interrogate accused Muhit and found information that on 08.07.2015 at about 6.00 am at the time of stealing one rickshaw van from the garage this victim was caught red handed by the security guard Md. Moyna Mia. Thereafter Moyna and other local people took the victim to the workshop of Sodip Kapali and beat him mercilessly where he became seriously wounded and consequently he succumbed. Where unknown persons with the same intension beat the victim and killed him. Thereafter they took the dead body in the microbus for concealment and take it to another place and they have committed offence. There must be an

investigation for this offence and he filed FIR before the Jalalbad Police Station for regular case.

Thereafter on 09.07.2015 victim's father Sheikh Md. Azizur Rahman Alam filed another petition before the police station stating inter alia on 08/07/2015 at about 8.00 am the deceased Rajan went out of the house for Tokerbajar for selling vegetables but he did not return to home.

It is also mentioned that the local people arrested the accused Mohit Alam red-handed while Mohit and others were carrying the dead body through a microbus in order to conceal the dead body. Police being informed took the custody of the accused Mohit Alam and sent the dead body of Rajan to Sylhet M. A. G Osmani Medical Hospital morgue for post mortem

examination. It is also mentioned that the accused Mohit Alam on interrogation disclosed the name of the other accused persons. The Investigation Officer Mr. Alamgir Hossain Police Inspector Suranjit Talukder of DB Sylhet investigated the case and latter on submitted the charge sheet No. 81 dated 16.08.2015 against the accused Kamrul Islam and other 12 accused under section 302, 201, 34 of the Penal Code finding prima facie ingredients of commission of crime and taking deposition of witnesses recorded under section 161 of the Criminal Procedure.

In the fact of this case it transpires that 1st F.I.R has been placed on 08.07.2015 and the 2nd or supplementary F.I.R has been placed on 09.07.2015. There are several decisions of our

apex Court regarding the 2nd F.I.R. Where there are many information as to an occurrence which of them would be considered as a F.I.R depend upon the fact and circumstances of the case. The police may suo moto lodge a F.I.R and earlier vague and indefinite information were not considered as F.I.R. It reveals in 38 DLR at 289, 21 BLD (AD) at page 103.

In the subsequent F.I.R lodged by Sheikh Azizur Rahman Alam father of the deceased Rajan on 09.07.2015 the name of the accused Mohit Alam, Ali miah, Qamrul Islam and Moyna Miah gaurd are specifically mentioned in the F.I.R. Further mentioned that 5/6 unknown persons were with them in the occurrence. On the above fact and circumstances and considering the referred decisions we find substance to treat the

2nd F.I.R as supplementary F.I.R. In the instant case the F.I.R lodged by father of the deceased Rajan may either be considered a 2nd F.I.R or supplementary F.I.R.

Prosecution examined the 1st informant Police Inspector Md. Aminul Islam as P.W. 1. He has stated the case is made out in the 1st F.I.R has indentified the F.I.R and his signature on it which are marked as Exhibit 4 and 4/1 respectively. He deposed that he arrested the accused Mohit Alam while he attempted to flee away. He came to know from local people on interrogation that on 08.07.2015 at about 10.00 am the accused Mohit Alam, Mayna Miah along with other unknown accompanies beat to death child Rajon at the workshop of Sodip Kopali. He further stated that local people confined the microbus through

which the dead body was being carried for the purpose of concealment. He also prepared a seizure list of microbus and marked it as Exhibit-2 and his signature on it as Exhibit 2/1. He also identified the chalan and marked it as Exhibit-3 and his signature on it as Exhibit 3/1.

He got the identity of the dead body of the accused as Sheikh Samiul Alam Rajan son of Sheikh Md. Azizur Rahman Alam and filed a petition to the head of the forensic department, Sylhet in this regard. The said petition is marked as Exhibit-5 and his signature there in marked as Exhibit-5 /1. He identified accused Muhi on the dock.

In cross he stated that 6.15 am is the time of occurrence and 8.40 pm is the time of filing of the case.

He mentioned the name of two accused particularly and other persons of the neighbor workshop in the FIR. Deceased was confined at the time of stealing the rickshaw-van by the night guard Moyna Miah and took him to the workshop of Sudip Kopali and he was beaten there as a result he became seriously wounded and succumbed there.

He further stated in-cross that it is not true that deceased was beaten by the people for stealing the rickshaw-van and his dead body was not found in the Microbus. Specifically the name of accused Qamrul was not in the FIR. Pre-plan and intention of murder and what materials used for assault were not mentioned in the FIR. He saw the ejhar filled by Rajon's father subsequently.

P.W.2 Sheikh Md. Azizur Rahman Alam father of the deceased Rajon deposed that in the very down Rajon went out from the house for

selling the vegetables to the Tukerbazar but he did not return to home. He searched different places for Rajon but failed. Lastly at about 11.00/11.30 p.m. he went to Jalalabad P. S. where the duty officer informed him that 01 (one) dead body of a boy was carrying by a microbus then the local people apprehended the accused Mohit Alam red-handed, while he and his accomplices Ali Haidar, Qamrul Islam and Sadik Ahmed @ Moyna Chowkidar were carrying the dead body. Rest 03 (three) accomplices were able to flee away. He lodged another F.I.R with Jalalabad P. S. and mentioned the name of the accused Qamrul Islam, Mohit Alam, Ali Haidar, Sadik Ahmed @ Moyna and also mentioned there that other 5/6 persons also involved in the occurrence.

He further deposed that 8.00 A.M was wrongly computer composed instead of 6:00/6.15

A.M. He identified his F.I.R. and marked it as exhibit- 6 and his signature on it marked as exhibit- 6/1. Subsequently he came to know that accused Qamrul Islam, Sadik Ahmed @ Moyna, Mohit Alam, Ali Haidar, Shamim Ahmed, Noor Ahmeed, Dulal Ahmed, Ayaz Ali, Firoz Ali, Azmat Ullah, Zakir Hossain @ Pabel, Ruhul Amin beat Rajon to death by fastening with a Pillar at the place of occurrence i.e. workshop of Kapali Babu. Accused Tajuddin Ahmed @ Badol told him about the video recording of the beating by the accused Noor Ahmed and spread the said video recording in the facebook. At the negligence of the informant S.I. Aminul Islam and I.O. inspector Alamgir Hossain the accused Qamrul Islam was able to flee away to Saudi Arabia.

In-cross P.W.2 stated that his son Rajon went out from home at the very dawn which he told to the

writer of the ejahar but he could not say whether it was written or not. Babul, Shahin and others told him about the occurrence and about 100 people including his brother Al-Amin witnessed the video recording. He stated that he has been blessed with 02 sons and the deceased Rajon was elder of them.

The name of the accused Azmat Ullah, Shamim, Zakir Hossain are not specifically mentioned in his supplementary F.I.R. The place of occurrence workshop falls on the way to Tukerbazar from his residence. He also stated in-cross examination that he did not mention as to error in his supplementary F.I.R by furnishing and affidavit. He can not say the name of the computer operator and he is not also the named as witness. He denied enmity and personal grudge with the accused Qamrul Islam. In-cross he further stated that the

accused Moyna and Qamrul Islam wanted to commit Sodomy on the deceased Rajon.

P.W. 3 Lubna Aktar mother of the deceased deposed that on 08.07.2015 the deceased Rajon went out of the house after Fazar prayer with vegetables in order to sell the same at Tukerbazar. She informed her husband on returned home before Iftar about the Rajon for went out to selling the vegetables. Her husband went to Jalalabad P.S. at 11.00 p.m and identified the dead body of the deceased Rajon. Subsequently she came to know about the involvement of the accused Qamrul Islam, Mohit Alam, Moyna Chowkidar, Shamim along with 5/6 others of the occurrence. Her son Rajon was beaten to death by fastening from his behind with an iron pillar. The accused Mohit Alam and 02 or 03 other were carrying the dead body of the deceased by a microbus towards Kumargaon where

the local people apprehended the accused Mohit Alam red-handed with the dead body and the said microbus. The rest accused persons were able to flee away.

On 09.07.2015 at the time of Johar prayer her brother Ruhel and other relatives brought the dead body of the deceased to their residence and it was engraved after performing Namaj-e-Janaja. Accused Qamrul Islam was arrested in the Saudi Arabia and she identified the accused Moyna and Mohit Alam in the dock of the court. She identified the ganjee and half pant of the deceased Rajon in the court and marked as material exhibit- I & II.

P.W.3 in her cross examination stated that her husband drives microbus. Some others were also with Rajon's father for searching the deceased Rajon. She witnessed the occurrence of beating in the mobile phone set of her brother-in-law Al-Amin.

She was told at to getting the dead body of the deceased Rajon in a microbus by her inmates and the local people of Sheikhpara. She admitted that her family has no enmity with the family of the accused Qamrul Islam. She does not know the accused Qamrul Islam before the occurrence.

P.W.4 Ziaul Haque deposed that he has Emon Traders to the east of Lalai Miah Market near Kumargaon, Borogaon Jame Mosque, that is, near at the place of occurrence. On 08.07.2015 he came to his shop at 10:30 a.m. and saw gathering of people beside his shop and he saw a microbus of white colour going out towards the east. He heard talking as to carrying dead body of a boy by the microbus after murder by beating. Thereafter he heard as to apprehension of the accused Mohit Alam and detention of a microbus with the dead body by the local people.

He further deposed that Khan Engineering Workshop and the restaurant situated to the east of his shop and other two workshops belonging to Sudip Kopali and the accused Shamim Ahmed stand behind his shop. He identified the accused Mohit Alam, Firoz Ali, Azmat Ullah, Ruhul Amin, Noor Ahmed, Ayaz Ali Haidar, Dulal and Moyna in the dock of the court.

In-cross examination P.W.4 stated that he knows accused persons. But he did not see the occurrence. The distance between Kumargaon and Temukhi is about $\frac{1}{2}$ kilometer. He can not say whether the accused Firoz Ali was involved in the occurrence or not. He also knows the accused Sadik Ahmed @ Moyna the Security Guard of Lalai Miah Market.

P.W.5. Mashuk Ahmed deposed that one Nazim and he own a workshop at Lalai Miah

Market. He came to the place of occurrence workshop at 11:00/11:50 a.m. He also deposed that accused Mohit Alam left the key of his workshop on a tool. He heard that the deceased Rajon was murdered by beating at the workshop of Kopali Babu. Police arrested the accused Mohit Alam, Ali Haidar, Sadik Ahmed @ Moyna Chowkidar, Dulal Ahmed, Ayaz Ali, Firoz Ali and Azmat Ullah. He can not say whether they are involved in the occurrence or not. This witness is declared hostile by the prosecution.

In-cross examination by the defence he stated that he did not disclose the name of accused Firoz Ali, Ayaz Ali, Quamrul Islam, Sadik Ahmed @ Moyna, Shamim Ahmed, Zakir Hossain @ Pabel and Azmat Ullah. He further stated he did not witness the occurrence.

P.W.6 Sheikh Al-Amin uncle of the deceased Rajon deposed that on 08.07.2015 he went out of home after Johar prayer and returned home before Iftar. Rajon's mother told him as to missing of Rajon. Thereafter he searched for Rajon to & fro and at the residence of their relatives. His brother went to Jalalabad P. S. at about 11:00 p.m. and at about 12:00 midnight informed him over mobile phone as to showing of photo of the dead body of the deceased Rajon.

Thereafter Ishtiaque Ahmed Chowdhury Rayhan, he and 2(two) others went to the police station and saw the photograph of the deceased Rajon. Police told them as to the fact of recovery of the dead body of deceased with microbus and arrest of the accused Mohit Alam. Other 3 accomplices were able to flee away. He knows the accused Mohit

Alam. He also heard as to the confessional statement made by the accused persons.

He further deposed that the informant (Rajon's father) lodged supplementary F.I.R disclosing the name of the accused Mohit Alam, Qamrul Islam, Shamim Ahmed and Sadik Ahmed @ Moyna Chowkidar. The scene of beating of the deceased Rajon was recorded in the CD by downloading from mobile set belonging to Ishtiaq Ahmed Chowdhury (Rayhan). He has identified the CD materials exhibit- III.

He handed over the CD of one minute 54 seconds to the investigation officer who prepared a seizure list (exhibit- 8). This witness identified his signature in the seizure list marked as exhibit- marked as 8/1.

He has mentioned the name of 13 accused persons in his chief. He heard that the accused

persons beat the deceased to death at Khan Engineering Workshop belonging to Kopali Babu by fastening his hands from his behind with an iron pillar.

In cross P.W 6 stated that he did not witnesses the occurrence of apprehending the accused Mohit Alam but the police told him that the dead body was sent to Sylhet Osmani Medical College Hospital Morgue at 2:00 p.m. He saw the accused Mohit Alam in the lock-up of police station.

He also heard that the accused Mohit Alam was apprehended from By-pass point of Temukhi while he attempt to flee away. He can not say who told him the name of accused Firoz Ali and Ayaz Ali. He can not say whether video can be edited, modified, added, partly excluded or not by applying modern technology. He further stated in the in-cross

examination that their families have no enmity with the accused Qamrul Islam.

P.W.7 Ishtiaq Ahmed Chowdhury deposed that on 08.07.2015 at about 12:00 midnight being informed by Al-Amin, he along with 6/8 persons went to Jalalabad P.S. Rajon's father identified the dead body of deceased Rajon by seeing the photo shown to him by police.

He heard that the deceased Rajon was beaten at a workshop of Lalai Miah Market. He witnesses the video recording. He further deposed that he handed over the said DVD to the I.O. and he recorded in the DVD from his mobile phone set. He identified his signature in the seizure list (exhibit- 8) marked as exhibit- 8/2. He also identified the DVD marked as material exhibit- III. He is a student of Madan Mohan College, Sylhet.

In-cross examination P.W.7 stated that Tukerbazar is about 02 kilometer away from their residence. The said video recording submitted by him the said Rajon was seen alive. He can not say whether he told the name of accused Ayaz Ali to the I.O. or not. He can not say whether the video recording can be edited, added, modified or partly deleted/excluded or not. He has denied that the deceased Rajon was caught by the public at the time of stealing rickshaw-van and he was beaten to dead by the local mob.

In-cross he further stated that he uses facebook and he down- loaded the said video recording from the facebook of his friend. The place of occurrence workshop falls on the way to Tukerbazar from the residence via bridge. The place of occurrence workshop stands near by-pass point.

P.W.8. Abdul Johir is a U. P. Member of Kandigaon Union Parishad. He deposed that at about 2:00 a.m following 08.07.2015 the deceased's father Aziur Rahman told him over mobile phone as to the murder of deceased Rajon and he went to Jalalabad P. S. at 2:30 a.m. He was told to the effect that the accused Mohit Alam, Qamrul Islam, Ali Haidar, Sadik Ahmed @ Moyna along with 8/9 persons are involved in murdering the deceased Rajon. Local people apprehended the accused Mohit Alam red-handed.

He further deposed that he was told as to beating by the accused Mohit Alam, Qamrul Islam, Ali Haidar, Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel, Dulal Ahmed, Tajuddin Ahmed @ Badol on the deceased Rajon and murdered him at Lalai Miah Market. The video recording of beating was spread in the facebook. They arranged protest

meeting, they saw posturing at Temukhi by-pass point on 11.07.2015. He identified the poster marked as material exhibit- IV. He identified 4 still pictures of the accused person with Rajon marked as material exhibit- V series.

He further deposed that he handed over the DVD recording to the informant who handed over the same to the Investigation officer. He identified his signature on the seizure list and which is marked as exhibit- 9/1. He identified the accused Dulal Ahmed, Sadik Ahmed @ Moyna, Mohit Alam in the dock of the court.

In-cross examination he stated that local people printed the said posters. He also witnesses the video recording. He saw the deceased Rajon alive in the DVD recording. In-cross he further stated that he could not witness the occurrence though saw the occurrence by the blessing of video

recording and heard from the people at large. He further stated in-cross examination that most of the accused persons are the inhabitant of Tukerbazar Union Parishad area. He admits in-cross examination that he did not tell to the I.O. the name of accused Shamim and Azmat.

P.W. 9 Nizam Uddin neighbors of the deceased Rajon deposed that he along Istiaq Ahmed Chowdhury @ Rayhan, Mashuk Ahmed, Al-Amin went to Jalalabad P. S. and also saw the deceased's father in the Police Station. He heard that 12/13 miscreants along with the accused Mohit Alam, Qamrul Islam, Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel and Dulal Ahmed beat the deceased to death. He also witnessed video recording on mobile phone set while it was spread hand to hand. A half-pant and ganjee of the deceased Rajon were seized on 09.07.2015 at the

Police Station. He has identified the seizure list (exhibit- 10) and his signature therein marked as exhibit- 10/1.

He saw the accused Mohit Alam in the lock-up of the police station. He further deposed that he identified the accused Sadik Ahmed @ Moyna, Qamrul Islam, Dulal Ahmed and Zakir Hossain @ Pabel in the video recording. He also identified the accused Mohit Alam, Sadik Ahmed @ Moyna, Dulal Ahmed in the dock of the court. In-cross examination P.W. 9 stated that he witnessed the occurrence by the blessing of video footage.

In the statement recorded under section 161 of the Cr.P.C this witness has disclosed the name of the accused Sadik Ahmed @ Moyna, Qamrul Islam, Dulal Ahmed, Zakir Hossain @ Pabel, Mohit Alam and others. But he has not specifically mentioned in the statement that he saw the accused Qamrul Islam,

Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel and Dulal Ahmed in the video footage.

P.W. 10 Ruhul Ahmed Panki deposed that he is an employee of “The Daily Prothom Alo” newspaper office, Sylhet being instructed by Mr. Ujjal Mehdi, Head of the office of the said newspaper, came to the accused Noor Ahmed for collecting video recording at East Jangail Village.

He heard that the deceased Rajon was beaten to dead in Khan Engineering Workshop by fastening hands from his behind with a pillar. He also heard that the local people apprehended the accused Mohit Alam, The accused Noor Ahmed transferred the mobile recording to his mobile. Thereafter he showed it to Ujjal Mehdi who published a report in “The Daily Prothom Alo” newspaper. This video recording was spread from mobile to mobile a crossing the boundary of Bangladesh. He further

deposed that he identified the accused Qamrul Islam, Sadik Ahmed @ Moyna, Dulal Ahmed and Zakir Hossain @ Pabel by watching the video footage. He also identified the accused Dulal Ahmed and Sadik Ahmed @ Moyna in the dock of the court.

In-cross examination P.W 10 stated that he did not see the accused Mohit Alam, Noor Ahmed, Ali Haidar, Ruhul Amin and Tajuddin @ Badol in the video footage. He further stated that it is not true that he did not disclose the name of accused Moyna, Pavel, Kamrul that he saw them in the vedio footage or they are not involve with the occurrence in the statement under section 161 of the Code of Criminal Procedure.

P.W. 11 Babul Miah deposed that he is an inhabitant of Kumargaon area and on hearing hue & cry he went to the place of occurrence and saw the

dead body of the deceased Rajon under the seat of a microbus. He heard that the local people apprehended the accused Mohit Alam but the accused Sadik Ahmed @ Moyna, Ali Haidar and Shamin Ahmed were able to flee away. He identified his signature on the inquest report (exhibit-1) marked as exhibit-1/2.

He heard that accused Qamrul Islam, Ali Haidar, Mohit Alam, Shamim, Moyna and other beat the deceased Rajon to death. He also stated that the accused Qamrul Islam and Shamim Ahmed are absent in the dock of the court. In-cross examination he stated that he can not recollect whether he saw the accused Mohit Alam, Ali Haidar, Tajuddin @ Badol, Noor Ahmed, Ruhul Amin, Dulal Ahmed in the video footage or not. But in-cross stated that he watched the accused Sadik Ahmed @ Moyna,

Qamrul Ialam and Shamim Ahmed in the video footage.

P.W.12. Kacha Miah is an inhabitant of Kumargaon residential area. He has identified his signature in the inquest report (exhibit-3) and marked as exhibit-3/1.

He also heard that the Workshop belonging to Kopali Babu opposite to Borogaon Jame Mosque is the place of occurrence. He saw the dead body of the deceased Rajon inside the microbus. The accused Mohit Alam was apprehended while he was carrying the dead body of the deceased Rajon for concealment.

He further stated that the police seized the microbus in his presence and he has identified his signature in the seizure list marked as exhibit- 2/2. He has identified the accused Mohit Alam, Moyna, Azmat Ullah, Firoz Ali in the dock of the court.

In-cross examination P.W. 12 Kacha Miah stated that he has betel-nut shop at Temukhi by-pass area near Fabia Restaurant. He watched video footage in mobile phone set and he saw the accused Mohit Alam and Sadik Ahmed @ Moyna in the video footage. He signed on the seizure list and inquest report at the instruction of police officer. It was not read over to him. He denied the suggestion to the effect that accused Qamrul Islam, Sadik Ahmed @ Moyna and Zakir Hossain @ Pabel did not beat the deceased Rajon.

P.W. 13 Lutfur Rahman deposed that he saw the dead body of a boy of about 12 years inside the microbus. He heard that the local people apprehended the accused Mohit Alam and 3 other accomplices were able to flee away. He heard that the deceased Rajon was beaten to death at Lalai

Miah Market and 12/13 accused persons involved in the occurrence.

He also heard that the accused Qamrul Islam, Sadik Ahmed @ Moyna, Zakir Hossin @ Pable, Ruhul Amin @Ruhel and others were involved in the occurrence. In-cross examination he denied the suggestion that the general people beat the boy (Rajon) for the charge of stealing rickshaw-van.

P.W. 14 Kacha Miah Kochi deposed that on 08.07.2015 he heard as to murdering a boy by beating in front of Khan Engineering Workshop for the charge of stealing. He heard that Rajon's father lodged supplementary F.I.R involving the accused Sadik Ahmed @ Moyna, Mohit Alam, Qamrul Islam, Shamim Ahmed and other. He also heard that the accused Mohit Alam was apprehended at Kumargaon area while carrying the dead body of the deceased Rajons for concealing. The parents of

Noor Ahmed handed over the accused Noor Ahmed to the police. Police seized the mobile phone set along with memory card and sim from the accused Noor Ahmed. He has identified the seizure list (exhibit-11) and his signature therein marked as exhibit-11/1. He also identified the mobile phone set, memory card with sim marked as material exhibit-IV series.

He further deposed that the said memory card contains the video recording/footage of the occurrence. He heard that accused Sadik Ahmed @ Moyna, Qamrul Islam, Mohit Alam, Ali Haidar, Shamim Ahmed, Noor Ahmed, Dulal Ahmed and some other beat the deceased Rajon. In-cross examination he stated that he watched video footage but he did not see the accused Noor Ahmed in recording to the video footage but he heard that the accused Noor Ahmed recorded the video footage.

He further stated that he saw the accused Qamrul Islam, Dulal Ahmed and Sadik Ahmed @ Moyna in the video footage. He did not see the accused Mohit Alam, Shamim Ahmed and Noor Ahmed in the video footage.

P.W.15 Anwarul Haque. He heard that 13 accused persons including the accused Qamrul Islam, Moyna are involved in murdering the deceased Rajon by beating at the workshop of Kopali Babu of Lalai Miah Market. He saw the video footage and poster.

He further deposed that the police recovered a mobile phone set, memory card with sim and battery from the accused Noor Ahmed and prepared a seizure list thereof. He identified his signature in the seizure list (exhibit-11) marked as exhibit-11/2. He further deposed that the seized mobile phone set was used to record the sceneries of the occurrence. He

admits his statement to the investigation officer. He has identified the accused Noor Ahmed in the dock of the court and alat (mobile phone set, battery, sim and memory card).

In-cross examination he stated that the parents of the accused Noor Ahmed handed over the accused Noor Ahmed to the police. In the statement recorded under section 161 of the Cr.P.C. this witness has stated that the accused Qamrul Islam, Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel detained the victim Rajon and beat him to death.

P.W. 16 Belal Ahmed an inhabitant of Kumargaon residential area. He deposed that on 08.07.2015 he saw gathering of 200/300 peoples including police at the place of occurrence. He saw a dead body of a child of about 13/14 years inside the microbus. He also heard that the local people apprehended the accused Mohit Alam and 3 of his

accomplices were able to flee away. Later on, he came to know that the dead body was of the deceased Rajon beaten to death at a workshop of a market opposite to Kumargaon Borogaon Jame Mosque. This witness is declared hostile by the prosecution.

P.W. 17 Abdul Mannan deposed that he heard that accused Qamrul Islam, Sadik Ahmed @ Moyna and 10/12 others beat the deceased Rajon to death in a workshop of Lalai Miah Market. He saw gathering of 12/14 persons in front of Lalai Miah Market at 7:00/8:00 a.m. on 08.07.2015. In-cross examination he recognized the suggestion that accused Qamrul and Moyna was involved with the occurrence.

P.W. 18 Md. Kurban Ali deposed that at about 1:00/1:30 p.m. on 08.07.2015 the local people apprehended the accused Mohit Alam and 3 other miscreants were able to flee away they were

carrying the dead body deceased Rajon for the purpose of the concealment by the microbus. He has identified the accused Mohit Alam and Moyna in the dock of the court. The accused Mohit Alam is the brother of the accused Qamrul Islam they handed over the accused Mohit Alam to the police. He saw a dead body of child of about 12 or 14 years inside the microbus and the dead body was kept concealed under the seat there of.

He has identified his signature in the inquest report (exhibit-1) marked as exhibit-1/4. Later on, he heard that 12/13 accused persons murdered the deceased by beating thereafter the miscreants carried the dead body by a microbus for the purpose of concealment. He further deposed that he saw the accused Qamrul Islam, Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel, Shamim Ahmed beating the deceased Rajon in the video footage. The inquest

report was prepared after shifting down the dead body from the microbus.

In-cross he stated that he did not physically witness the 1st occurrence. But he watched in the video footage that the accused Qamrul Islam, Sadik Ahmed @ Moyna, Zakir Hossain @ Pabel and one or two other beat the deceased Rajon. He knows the accused Qamrul Islam earlier and he was a Saudi Arabian emigrant.

It is found that P.W. 18 Mr. Kurban Ali is a vital witness as because he saw the dead body of the deceased Rajon inside the microbus. He also saw that the local people apprehended the accused Mohit Alam and 3 others miscreant were flee away from the microbus and he is the witness of the seizure list of the inquest report moreso he is the witness of video footage where he saw that the accused Qamrul Islam, Sadik Ahmed @ Moyna, Jakir Hossain @

Pabel, Shamim Ahmed were beating the deceased Rajon in the video footage. It appears that in the cross examination defence could not able to shaken this witness.

P.W. 19 Aftab Miah an inhabitant of Kumargaon residential area has deposed that he saw a dead body of a boy of 13/14 years inside the microbus. He heard that the accused Mohit Alam, Ali Haidar, Qamrul Islam, Sadik Ahmed @ Moyna, Shamim Ahemd were in the microbus. The accused Mohit Alam was apprehended by the local people and later on handed over to the police. Other 3 accused were able to flee away. He identified his signature in the inquest report marked as exhibit-1/5. He saw swelling or bluish injuries on the head, hands, legs and all over the body of the deceased. He heard that the deceased was beaten to death by

fastening his hands from his behind with a pillar in front of Khan Engineering Workshop.

In-cross examination he says that about 300 persons gathered in the occurrence place. He denied the suggestion of stealing rickshaw-van from the garage of Ali Haidar @ Ali.

P.W. 20 Abdul Karim deposed that at about 1:30 p.m. he saw a dead body inside the microbus standing in front of the shop of Belal. He heard that the accused Qamrul Islam, Mohit Alam, Shamim Ahmed, Sadik Ahmed @ moyna beat the deceased to death and they were carrying the same for concealment.

He watched the video footage of the occurrence. He further deposed that he watched the accused Mohit Alam, Sadik Ahmed @ Moyna, Qamrul Islam, Ali Haidar and some other in the video footage. He identified the accused Mohit

Alam, Sadik Ahmed @ Moyna, Ali Haidar in the dock of the court.

In-cross examination he stated that he downloaded the video recording in his mobile phone set from a shop at Tukerbazar. The video footage was of 34 minutes. He saw the microbus and the dead body of the deceased but he did not witness the occurrence. He did not see the accused Mohit Alam and Ali Haidar in the video footage.

P.W.21 Gias Uddin an inhabitant of Sheikhpara and a U.P. Member of Ward No. 1 of Tukerbazar Union Parishad. He deposed that on 08.07.2015 at about 12:30/1:00 p.m. at the instruction of S.I. Aminul Islam he came in front of the shop of one Belal and saw a microbus there. He also saw a dead body of a boy about 13/14 years. He heard from people that the accused Mohit Alam took the microbus to place of occurrence and the

local mob apprehended him and handed over to the police. Thereafter police prepared an inquest report (exhibit-1) in his presence and he identified his signature therein marked as exhibit- 1/7. He also identified his signature on seizure list marked as exhibit- 2/3. He heard that deceased Rajon was beaten at Khan Engineering Workshop and a garage of one Kopali Babu situated at Lalai Miah Market opposite to Borogaon Jame Mosque. He further deposed that he watched the accused Qamrul Islam, Sadik Ahmed @ Moyna and others in the video footage.

In-cross examination he stated that the accused Qamrul Islam and others are his villagers and he is the U.P. Member thereof. He heard that the accused Sadik Ahmed @ Moyna and others beat the deceased for the false charge of stealing in fact, for not consenting to the ill proposal of sodomy. He

further stated the seizure list was prepared after shifting down the dead body of the deceased from microbus. He also stated that the police did not read over to him the contents of inquest report and seizure list.

P.W.22 constable Moniruzzaman deposed that he was the companion of S.I. Aminul Islam and they were on duty, they reached at the place of occurrence at about 2:00 p.m. They saw a dead body inside a microbus of white colour and gathering of 200/300 people there. The apprehended accused Mohit Alam was handed over to them.

S.I. Aminul Islam (informant) prepared an inquest report of the dead body and a seizure list of microbus. They returned to the police station with the microbus along with the apprehended accused Mohit Alam. Later on, he came to know that the dead body was of the deceased Rajon. Subsequently

he heard that the accused Qamrul Islam, Mohit Alam, Sadik Ahmed@ Moyna, Dulal Ahmed and others beat the deceased Rajon to the death at a garage of Kumargaon area.

P.W. 23 Constable Md. Zakir Hossain deposed that on 08.07.2015 he carried the dead body of the deceased Rajon received from S.I. for sending it to the hospital Morgue for autopsy. He is identified his signature in the chalan (exhibit-3) marked as exhibit-3/2. He further deposed that the dead body of Rajon was handed over on 09.07.2015 to his uncle Ruhel Ahmed. He identified C.C (exhibit-12) and his signature therein marked as exhibit-12/1.

In-cross he stated that he took the dead body to the Forensic Department of Sylhet Osmani Medical College Hospital and also took it to mortuary of cold storage of the said hospital.

He cannot say who was in charge of cold storage at that time.

P.W. 24 Abdul Mannan deposed that he is the owner of the seized microbus bearing no. Dhaka-Metro-Cha-54-0516. He further deposed that he sent the said microbus to the workshop of Shamim for repair and one Shahab Uddin @ Shajai was his driver. He told him that this microbus was detained at Kumargaon area with a dead body and the accused Mohit Alam was apprehended by the local mob.

He saw the occurrence in the television and mobile phone set. He has admitted his statement to investigation officer. In-cross he stated that he did not see the accused Mohit Alam in the video footage. But he saw the accused Qamrul Islam in the video footage.

P.W. 25 Sudip Kopali deposed that he owns a workshop at the market of Lalai Miah, the workshop of Shamim Ahmed stands behind his workshop. Khan Engineering Workshop stands in front of his workshop. He came to his workshop at 12:30 p.m on 08.07.2015 and heard that a boy was murdered there by fastening him with a pillar situated in front of his workshop. He also heard that 10/12 persons including the accused Qamrul Islam and Sadik Ahmed @ Moyna beat the boy to death and thereafter the dead body were being carried by a microbus for concealment. The local people apprehended the accused Mohit Alam red-handed. He identified the accused Mohit Alam, Sadik Ahmed @ Moyna in the dock of the court. He knows the accused Mohit Alam earlier.

In-cross examination he stated that he did not witness the occurrence. He knows the accused Shamim and Qamrul Islam.

It appears that P.W.19 Aftab Miah, P.W.20 Abdul Karim and P.W.21 Gias Uddin are Member of that local area deposed that they saw the said microbus and dead body of Rajon and accused Muhit Alam in the occurrence place of Kumargaon. It is found that they also support and corroborate the evidence of P.W.18 and the confessional statement of the accused Muhit Alam.

P.W.29 Constable Faisal Ahmed deposed that he was a companion of S.I. Aminul Islam (informant) and went to Kumargaon residential area with him. . He saw the dead body of a boy of 14/15 years age in the microbus o white

colour. The accused Muhit Alam was apprehended by the local people and handed over to them. He was apprehended at the time of carrying the dead body by a microbus for concealment. He heard that the accused Sadik Ahamed @ Moyna, Shamim Ahamed, Ali Haider fled away.

In-cross he stated that the informant S.I. Aminul Islam was suspended. The dead body of the deceased was sent to the Morgue of Sylhet Osmani Medical College Hospital.

P.W.30 Akter Hossain Officer in charge of Sylhet Jalalabad Police Station deposed that on 09.07.2016 Sheikh Md. Azizur Rahman Alam, father of the deceased Samiul Alam Rajon, lodged an F.I.R. against 9/10 persons specifically disclosing the name of accused Muhit Alam, Ali

Haider, Qamrul Islam, Sadik Ahamed @ Moyna. He identified his 2 signature on the said F.I.R. (exhibit-6) marked as exhibit-6/2 series. He recorded the F.I.R. as G.D. entry No.356 dated 09.07.2015 because, S.I. Aminul Islam filed the F.I.R. on 08.07.2015 in respect the same occurrence. He appointed Mr. Alamgir Hossain to investigate the case. He admits that S.I. Aminul Islam is on suspension.

In-cross he stated that in the F.I.R. of Rajon's father shown the date, time and place of occurrence on 08.07.2015 at about 8.15 A.M. and Temkuhi by-pass point near bridge respectively.

P.W.31 S.I. Ariful Haque deposed that he verified the name, address and P.C.& P.R. of the accused Muhit Alam , Sadik Ahamed @ Moyna, Ali Haider, Tajuddin Ahamed @ Badol, Noor

Ahmed @ Noor Miah, Ruhul Amin @ Ruhel, Ismail Hossain @ Abdul, Ahmed Ullah, Lipi Aktar and Qumrul Islam are found it correct.

In-cross the witness is declined by defence.

P.W.32 S.I. Mohadeb Bachar deposed that on the basis of enquiry slip he verified the name, address and P.C. & P.R. of the accused Zakir Hossain @ Pabel @ Raju.

P.W.33 S.I. Sahmim Akanjee and P.W.34 S.I. Sohel Rana deposed that on the basis of enquiry slip they verified the name, address and P.C. & P.R. accused Ayaz Ali and accused Firoz Ali are found correct.

P.W.28 Dr. Tahmina Islam deposed that she is a student of Diploma Course of Forensic Medicine Department of Sylhet Osmani Medical

College Hospital. She with the assistance of Assistant profession Dr. Abu Ahmed Adiluzzaman and Lecture Dr. Shamsul Islam held post mortem examination of the dead body of deceased Samiul Alam Rajon(15) on 09.07.2015 at about 1.00 p.m. and found 64 multiple bruises of variable sizes and shapes at different parts of the body especially forearm, thigh, legs, hands, chest, abdomen, forehead which were found under lape. Maximum length was 7 inches and minimum length is 2" inches pale was 3" inches and maximum 2" inches. All bruises were fresh before death and bluish red in colour. Scalp was found injured, skull was found fissured fractured red over the left parietal bone. Meanings was found injured, sub-dural hemorrhage was marked, pale was due to effect

of multiple bruises. Brain and spinal cord were found injured. Pale was due to effect of multiple bruises. Sub-dural hemorrhage was compressing the brain thoracic cages, ribs, cartilage were found injured. She opined that the cause of death was due to shock neurogenic and extensive hemorrhage as a result of above-mentioned multiple injuries of the whole body which were ante mortem and homicidal in nature caused by blunt weapon. She identified the post mortem examination report (exhibit-21) and her 4 signature therein marked as exhibits21/1-4 series. She also says in chief that Constable Zakir Hossain brought the dead body to the hospital morgue. The case of the prosecution is that the accused was mercilessly beaten to death caused by blunt weapon. The post mortem examination

report also speaks the prosecution case of causing injuries with blunt weapons.

She says in cross-examination that she is a student of Diploma Course of Forensic Medicine Department. She can sign the post mortem examination report. She also says in cross-examination that Dr. Abu Ahmed Adiluzzaman and Lecturer Dr. Shamsul Islam have not put their signatures on it. In the inquest report it is mentioned that it was prepared at Kumargaon area and thereafter the dead body of deceased was sent to the morgue of Sylhet Osmani Medical Hospital through Constable Zakir Hossain after preparing the inquest report. In the F.I.R the informant S.I Aminul Islam has also mentioned that after preparing inquest report he sent the dead body to the hospital morgue. She

says in cross-examination that in the order of DM .DC. It is stated that the students of Diploma Course of Forensic Department shall hold as many as 150 post mortem examinations and put signatures on these. She admits in cross-examination that in the report of the name of Dr. Abu Ahmed Adiluzzaman and Dr. Shamsul Islam are not mentioned.

P.W.26 Mr. Md. Shadedul Karim, Metropolitan Magistrate 1st Court, Sylhet deposed that he recorded the confessional statement of the accused Ajmat ullah, Firoz Ali, Haider ali and Ayaz Ali on 14.07.2015, 14.07.2015, 23.07.2015 and 28.07.2015 respectively by observing all legal formalities enunciated in section 164 of the Code of Criminal Procedure . He gave a certificate at the

end of the confessional statement to the effect that the same to be true and voluntary. He has indentified the statement of the accused Azmat Ullah (exhibit-13) and his signature on it marked as exhibit 13/1 series. He also identified two signature of the accused Azmat Ullah therein marked as exhibit13/A series. In the confessional statement the accused Azmat Ullah has stated that.... “গত বুধবার সকাল ৮.০০ টার দিকে আমার স্ত্রী ঘুম থেকে জাগিয়ে বলে যে, গেরেজে কামরুল একটি ছেলেকে মারছে। উঠে আমি সেখানে যাই। গিয়ে দেখি ময়না আর কামরুল একটি ১২/১৩ বছরের বাচ্চাকে খুটির সাথে বেধে রুল ও লাঠি দিয়ে মারছে। কি হইছে জানতে চাইলে ভ্যান চুরি করেছে বলে জানায়। আসামীর ভ্যানচুরি করেছে বলে ছোট ছেলেটাকে মারছিল। আমি ভ্যানটাকে ঐখানে ছিল দেখি। তাই বাচ্চাটাকে ছেড়ে দিতে বা পুলিশে দিতে বা তার বাবা-মাকে বিচার দিতে বলি। তারা না শুনে উলটোও চোরের লগে বাধি পিটামু বলে ভয় দেখায়। আমার স্ত্রী আমাকে নিয়ে যায়।

আমি জাল ফেলতে চলে যাই। ৯.০০ টা -৯.৩০ টার সময় স্ত্রী কান্না করতে করতে জানায় যে, বাচ্চাটাকে তারা মেরে ফেলছে। আমি বাসায় এসে দেয়ালের উপর দিয়ে দেখি বাচ্চাটার লাশ পড়ে আছে। একটু পরে একটা মাইক্রোবাস আসে। কামরুল, মুহিদ কামরুলের ভাই আলী গাড়ির ভিতরে ছিল। ড্রাইভারকে দেখিনি। গাড়িতে লাশ তুলে তারা চলে যায়। দুপুরবেলা পুলিশ লাশ উদ্ধার করে বলে শুনেছি। আমি এতটুকু জানি।”

P.W.26 further indentified the confessional statement of accused Firoz (exhibit-14) and his 7 signature marked as exhibit-14/1 series. He also identified that the accused Firoz Ali put 3 thumb impressions on it. In the confessional statement the accused Firoz Ali has stated that “আমি কুমারগাঁও শরীয়ত আলীর বিল্ডিং এর কেয়ার টেকার হিসাবে থাকি। গত বুধবার সকালবেলা জাল পেতে সকাল অনুমান ৮.০০ টার দিকে বাসায় ফিরি। হঠাৎ পার্শ্ববর্তী গেরেজ থেকে ও মাইগো ও মাইগো পনি খাইতাম বলে একটা বাচ্চা ছেলের কান্না শুনি। আমি এক বোতল

পানি নিয়ে গিয়ে দেখি বাবুর দোকানের সামনে একটি ১২/১৩ বছরের বাচ্চাকে খুটির সাথে পিছমোড়া করে বেধে কামরুল কালো একটি রুল দিয়ে, আর ময়না একটা লাঠি দিয়ে মারছে। সেখানে আরো প্রায় ২০ জন মানুষ ছিল। কি হইছে জিজ্ঞাস করলে হে ভ্যান চুরি করেছে বলে ময়না মিয়া জানায়। পায়ের পাতা থেকে মাথা পর্যন্ত সারা শরীরে এই দুইজন ছেলেটাকে মারে। আমি পানি দিতে চাইলে ময়না মিয়া আমাকেও মারতে উদ্যত হয়। আমি একটু দূরে সরে আসি। ময়না মিয়া ছেলেটার গায়ে একটু করে পানি ছিটা দেয় কিন্তু পানি খেতে দেয় না। ঐ পানি বাচ্চাটা হাত দিয়ে মুছে নিয়ে খাওয়ার চেষ্টা করে। তারপরও তাকে পানি দেয়া হয়নি। আমি বিল্ডিং এ চলে আসি। একটু পরে ৯.৩০ টার দিকে দূর থেকে দেখি তাদের সাথে পাশের দোকানের মুহিত ও যোগ দিয়েছে। তবে তাকে মারতে দেখিনি। আমি ফেরত চলে আসি। আসার সময় দেখি বাচ্চাটা কাঁত হয়ে মাটিতে পড়ে আছে। দুপুর অনুমান ১১.৩০/১২.০০ টার দিকে শোরগোল হয়। লোকজন দৌড়াদৌড়ি করে। বেরিয়ে দেখি অনেক মানুষ। পুলিশ এসেছে কুমার গাঁওয়ে। শুনি মুহিদকে ঐ বাচ্চাটির লাশসহ থানায় নিয়ে গেছে। আমি এতটুকু জানি। আমারও ৫টি সন্তান

আছে। এই ছোট বাচ্চাকে মারার সময় ভয় পেয়ে গিয়ে কোন চিৎকার
করলাম না। সেই জন্য আজ আমার শাস্তি।”

It appears this is ex-culpatory statement. He tried to give water to the thursty deceased for drinking. But Moyna does not allow him to do so. Apart from that he has no participation over the beating and killing of the victim Razon and there is no any evidence against him. In such fact and circumstances he might have been a good witness of this case instead of an accused. But his statement presented one real picture of the activities of the accused in this case. Though ex-culpatory statement has no importancy in the eye of law.

P.W.26 Mr. Md. Shedul Karim,
Metropolitan Magistrate, 1st Court, Sylhet
identified the confessional statement of the

accused Ali Haider @ Ali (exhibit-15), his 7 signature on it marked as exhibit 15/1 series and three signature of the confessing accused Ali Haider therein marked as exhibit-15/A series. In the confessional statement the accused Ali Haider @ Ali has stated that “সকাল অনুমান ৬.৩০/৭.০০ টার সময় আমার ভাই শামীম এসে জানায় যে, বাজারের চৌকিদার ময়না তাকে জানিয়েছে আমার ভ্যানগাড়ি চুরি করার সময় তারা একজনা চোর ধরেছে। ভ্যানগাড়ি নিয়ে গেছেন? জিজ্ঞাস করলে, নিতে পারে নাই, জানায়। চোরকে কি করবাম? জানতে চাইলে ছাইড়া দাওয়া বলে আমি ঘুমিয়ে পড়ি। এর প্রায় আধা ঘন্টা পরে চৌকিদার আমার আবার ফোন করলে শামীমে আমারে কইছেরেবা তারে ছাড়ি দে, বলে আমি আবার ঘুমিয়ে পড়ি। প্রায় ১০.০০ দিকে শামীম আবার আসিয়া বলে তারাতো পুয়ারে বেহুশ কইরা লাইছে। ক্যারে তারে হাসপাতালে নিল না আমি গাইল পাড়ি। শামীম আর আমি গিয়ে পুয়ারে বাবুর ওয়ার্কশপে পড়া দেখি। আর নড়ন চড়ন আছিল না। মহিত তার দোকানের বারা (বাহিরে),

ময়নারে রাস্তায় দেখি। পরে মেডিকেল নিবার লাগি গাড়ি আনতে যাই। ময়না পালাইতে চায়। তুই পালাছ কিতার লাগি, বলে তারে আটকাই। শামীমের ওয়াকশপের লাইটস নিয়ে সে ড্রাইভিং এ বয় (বসে) মুহিত আর ময়না রাজনের লাশ গাড়িতে তুলে। গাড়ির ভিতরে আমি, মুহিত, ময়না বই(বসি)। আমি হাসপাতালে যাইতে কইলে শামীম আর মুহিত কয়, এটি মরি গেছে। লাশ অন্য জায়গায় নিয়ে ফালাইতে অইব। এ বলি গাড়ি কুমারগাঁও এর দিকে চালায়। পথে তিনজনে পহেলা গাড়ি আটকায়। সুযোগ পাইয়া আমরা পালাই। গোপনে চলে যাই। পরে চিন্তা করি একদিন না একদিন ধরা খাইম, তার তন পুলিশের কাছে ধরা দিলেনি আল্লাহ আমার মাফ করে। এ চিন্তা তন (চিন্তা থেকে) এলাকার মেস্বারের মাধ্যমে ঈদের আগের দিন পুলিশের কাছে ধরা দেই।”

The recording Magistrate P.W.26 has indentified the confessional statement of Ayaz Ali (exhibit-16), and his 7 signature on it marked as exhibit -16/1 series. He says in chief that the confessing accused put his 2 thumb impressions

in the confessional statement. The confessing accused Ayaz Ali has stated in his confessional statement that “আমি সেহরী খেয়ে নামাজ পড়ে লায়েকের দোকানে যাই। সেদিন বুধবার ছিল। গিয়ে তার দোকানে ভীড় দেখি। লায়েকের অনুরোধে সি.এন.জির চাকার লিক কাটছিলাম। তখন চৌকিদার ময়না এসে টান দিয়ে আমাকে দাড় করিয়ে হাতের ইশারায় একটা ১২/১৩ বছরের ছেলেকে একটি ভ্যানগাড়ি চালাইতে দেখায়। বাচ্চা খেলছে, তাতে কিতা অইছে, বলে আমি আবার আমার কাজে লেগে পড়ি। ১০/১৫ মিনিট পরে ময়না ঐ ছেলেকে ধরে নিয়ে রশি আছেন, বলে জিজ্ঞাস করে। আমি রশি বের করি। ছেলেটা চোর বলে ময়না তাকে রশি দিয়ে বাধিতে বলে। রাস্তার উলটো পার্শ্বে নিয়ে গিয়ে বাবুর ওয়ার্কশপের একটি সিমেন্টে পিলারের সাথে ঐ ছেলেকে বাধি। ময়না ধরে রেখেছিল, আমি বেধেছি। ময়না ছেলেটাকে কয়েকটা চড় মারে। আমি সেখানে থেকে চলে আসি। বাড়ি চলে যাই। দুপুরবেলা শুনতে পাই যে, তারা ছেলেটিকে পিটিয়ে মেরে মাইক্রোবাস দিয়ে লাশ নিয়ে গুম করার চেষ্টার করার সময় জনগন লাশসহ মুহিতকে আটক করে। এই আমার জবানবন্দি।”

P.W.27 Mr. Md. Anwarul Haque, Metropolitan magistrate, 2nd Court, Sylhet stated that he recorded the confessional statement of the accused Sadik Ahmed @ Moyna, Dulal Ahmed, Noor Ahmed and Muhit Alam on 20.07.2015, 21.07.2015 and 27.07.2015 respectively observing all legal formalities mentioned in sections 164 and 364 of the Code of Criminal Procedure.

He has given certificate to each of the confessional statement to the effect that he found their confessional statements true and voluntary. He has identified the confessional statement of the accused Sadik Ahmed @ Moyna (exhibit-17) his 6 signature on it marked as exhibits-17/1 series and 4 signatures of the confessing accused are marked as exhibits-17/A series. In the

confessional statement of the accused Sadik Ahmed @ Moyna stated that “ঘটনার দিন অর্থাৎ ০৮-০৭-২০১৫ ইং তারিখ সকাল অনুমান ৬.০০ ঘটিকার সময় উক্ত মার্কেটের লায়েক এর ভলকানাইজিং দোকানের সামনে বসা ছিলাম। উক্ত ওয়ার্কশপ মার্কেটের আমি নাইট গার্ড। লায়েক এর দোকানে তখন হালকা-পাতলা লম্বা গড়নের একজন লোকও বসা ছিল। আমি তার নাম জানি না। লায়েক ভাই তার নাম জানে। উক্ত লোকের বয়স অনুমান ৫০ বৎসর হইবে। উক্ত লম্বা লোকটি তখন কইছে, আলীর দোকানে একজন মানুষ হামাচ্ছে। তাকাইয়া দেখি একজন পোয়া ভ্যানগাড়ি চালাইয়া আগ-পাছ করতাছে। লম্বা লোকটি বলে ভ্যানগাড়ি লইয়া যারগি(নিয়া যাইতেছে)। লম্বা লোকটি এবং আমি দৌড়াইয়া রাজন নামের ছেলেটিকে ধরি। তখন বাই-পাসের লগের ওয়ার্কশপ মার্কেটের নাইট গার্ড ফিরোজ চৌকিদার (কালো বৃদ্ধ মানুষ) দৌড়াইয়া আমাদের কান্দায় (ধারে) এবং বলে ভাতিজা চোরের বাইন্দা থ। লম্বা লোকটি তখন লায়েকের দোকান থেকে নাইলন দড়ি (যার রং কালো) নিয়া আসে। আমাদের মার্কেটের সাক্ষির হাজীর বড় ভাইয়ের দোকানের বারান্দায় রাজনকে নিয়া

যাই। আমি দুইহাত পিছন দিয়া ধরছি আর লম্বা লোকটি রাজনকে খুটির সাথে বান্দিছে। এরপর আমি আলীর আপন ভাই শেখপাড়ার শামীমরে ফোন দিছি। শামীম তখন বলে বাইন্দা রাখ, আমি আইরাম (আসিতেছি)। সাথে সাথে কামরুল ঘটনাস্থলে আসে পাবেলকে নিয়া। কামরুল হলো আলীর আপন ভাই। পাবেল শেখপাড়ায় ভাড়া থাকে। তার মূল বাড়ি দিরাই, সুনামগঞ্জ। সে সিলেট ডাব ও তাল বেচে। কামরুল আসার পর আলীকে ফোন দেই। আলীও বলে বাইন্দা রাখ, আমি আইরাম। কামরুল এবং পাবেল আইসা রাজনের গালে চড় থাপ্পড় মারে। আমার হাতে কালো টেপ পেছানো একটা লাঠি ছিল। কামরুল আমার হাত থেকে উক্ত লাঠিটি নেয়। কামরুল তার পরনের লুঙ্গি মুড়াইয়া লাঠিটিকে পিছনে ঘুরাইতাছে এবং কইতাছে আমি নায়ক এবং খল নায়ক। কামরুল প্রথমে রাজনকে লাঠি দিয়া গোথা মারে। নুর আহমদের ওয়াকর্শপ থেকে নুর আহমদ আগাইয়া আইছে। নুর আহমদ তখন তার পকেট থেকে মোবাইল বার করছে। সাথে সাথে কামরুল জোড়ে কইছে, বন্ধু বিদেশ থেকে আইছি, হাতে চুলকায়, তুই ভিডিও কর। কামরুল তখন আমার লাঠি দিয়া মাইর শুরু করছে। ১০/১৫ মিনিট পর কামরুল আমাকে কুদান দিয়া (ধমক

দেয়) কয় শালারে মার্কেটের পিছনে লইয়া যা। আমি, রাজনের বান্দ
খুলছি। তখন রাজনের বান্দ খুলিয়া পিছনে নিয়া যাই। তখন
আমাদের সাথে ছিল নুর আহমদ, পাবেল, লম্বা লোকটি, দুলাল নাম
অজানা অনেক লোক ছিল। মার্কেটের পিছনে বাবুর ওয়াকশপে নিয়া
আমি ও কামরুল আগের মত করে তাকে বান্দিছি। নুর আহমদ
আবার ভিডিও করা শুরু করে। কামরুল রাজনকে মারে আর
জিজ্ঞাসা করে, তোর মার নাম কিতা, বাবার নাম কিতা, তোর মাকে
আবার সাথে বিয়া দিবিনি? তোর বোনকে আমার সাথে বিয়া দিবিনি
রাজন কামরুলকে দুলাভাই ডাকলে কামরুল মারে আর কয় আমি
তোর দুলাভাই না। রাজন আর ও বলছে আমার মারে বিয়া দিমু
তোমার সাথে। কামরুল মারেতেই থাকে। পাবেলও মারে রাজনকে
। আমিও রাজনের গালে চড় থাপ্পড় মারি দুইহাত দিয়া। কামরুল
এবং পাবেল মারেতেই থাকে। রাজন পানি চায় কামরুলের কাছে।
কামরুল তখন পাবেলের হাতে লাঠিটা দিয়া কয় ড্রেন থেকে লাঠিটা
ভিজাইয়া আন। পাবেল লাঠিটা ড্রেন থেকে ভিজাইয়া আনিয়া
রাজনের মুখে দেয়। পাবেলের উক্ত লাঠির পানি রাজন মুখে নিয়া
চাটিয়া খায়। কামরুল এরপর আবার মারে। রাজন তখন বলে, ও

মামা, আমারে পানি খাওয়াও। কামরুল তখন রাজনরে কয়, কুত্তার বাচ্চা ঘাম পুচিয়া খা। তখন রাজনের মুখের ঘাম মুছিয়া খায়। তারপর আমি পিছন থেকে মার্কেটের সামনে আইছি। প্রায় ১০ মিনিট পর আবার পিছনের জায়গায় গেছি। তখন গিয়া দেখি শামীমের ওয়াকশপের পোয়া চুল লম্বা, পান বেশী খায়, তার নাম বাদল। সে রাজনরে ঘুরে ঘুরে পিছন দিক দিয়া উক্ত কালো লাঠি দিয়া মারে। ফালাইয়া ফালাইয়া (লাফিয়ে লাফিয়ে) বাদল মারছে রাজনকে। রাজন এর মাইর দেখিয়া আমার মায়া লাগায় আমি বাদলরে নিষেধ দেই। কামরুল তখন আমারে কুত্তার বাচ্চা কইয়া ঠেলিয়া সামনের দিকে সরাইয়া দিছে। আমি প্রায় ১৫/২০ মিনিট আবারো মার্কেটের সামনে বইয়া রইছি। সেই সময় কামরুলের আপন ভাই শামীম আসে, আলী আসে। তারা আইসা আমারে জিগাইছে, চোর পোয়া কোথায় (কোথায়)? আমি কইছি পিছনে যাও। তোমার ভাই কামরুল এরা মারামারি কররা (করতেছে)। তারা প্রায় সকাল ৮.০০-৯.০০ ঘটিকার মধ্যে আসে। কামরুল এবং আলী পিছনে রাজনের কাছে গেছে তখন। আমি সেই আলী, কামরুল শামীমের আপন ভাই মুহিতর দোকানের সামনে দাঁড়ানো আছলাম (ছিলাম)।

মুহিদ দোকানের ভিতরে ঢুকে। মুহিত দোকানের ক্যাশবাক্সে বসা ছিল। সেই সময় আলী, শামীম কামরুল এরা পিছন থেকে তার দোকানের বারান্দায় আসে। আলী তখন মুহিতকে বলে কামরুলের লইয়া বাড়ীত যা। তখন দেখি আলী এবং শামীম একবার পিছনে যায় আবার মার্কেটের সামনে আসে। কিছুক্ষন পর কামরুলকে রাখিয়া মুহিত আবার দোকানে আসে। সেই সময় আমার দিলে বাড়ি মারছে এবং আমি মার্কেটের পিছনে রাজনের কান্দায় (ধারে) যাই। গিয়া দেখি রাজনের বান্দ খোলা অবস্থায় মাটিতে পড়িয়া আছে। রাজন আমারে তখন বলছে, আমারে বাড়ীত নিয়া যাওরেবা। আমি রাজনরে বলছি তোমার বাড়ীর ঠিকানা আমারে দাও। তারপর দেখি রাজন আস্তে আস্তে কি যেন করতাছে। তার এই অবস্থা দেখিয়া আমি ভয় পাইয়া দৌড় মাইরা মার্কেটের সামনে চইলা আইছি। আসামী শামীম ও মুহিতরে কইছে পোয়ার (রাজনের) অবস্থা খুবই খারাপ তারে নিয়া মেডিকেলৈ যাও। আলী তখন আমারে বলে কুত্তার বাচ্চা তুই বেশী মাতছ কেনে। গাড়ী আইতাছে ফোন দিছি। তারা ঘন ঘন চক্কর দিতাছে। প্রায় ১০ মিনিট পর আবার রাজনের কাছে গিয়া দেখি রাজন মাটিতে পড়িয়া আছে, কোন সাড়া শব্দ নাই। আমি সামনে

গিয়া মুহিত , আলী, শামীমের রাজনের এই অবস্থা জানাই।তখন দেখি মুহিতের ওয়াকর্শপের (পাবেলের দোকান) সামনে থাকা সাদা লাইটসটি শামীম ষ্টার্ট দিচ্ছে। আলী মিয়া আমারে চড় মাইরা লাইটসের ভিতরে তুলছে। গাড়ী নিয়া তারা রাজনের কাছে গেছে। আলী, শামীম, আমি রাজনের গাড়ীর ভিতরে উঠাইছি। লোকজন জিজ্ঞাসা করলে তারা জানায় মেডিকেল নিয়া যাইরাম (যাচ্ছি)। মুহিত তখন গাড়ী চালায় ।লাইটস নিয়া কুমারগাঁও জনতা ব্যাংকের পিছন দিয়া ঢুকে তেমুখী রাস্তাতে উঠার আগমনে লোকজন লাইটস আটক করে। দরজা খুলে আমি বের হয়ে বাড়ীতে চলে যাই। দুপুর প্রায় ১২.০০ ঘটিকার সময় হাত পা ধুইয়া বাড়ীতে ঘুমাইয়া থাকি। বিকালবেলা রুহুল আমিন ৩ রুহেল আমাদের বাড়ীতে যায়। রুহেল হল কামরুলের খালাতো ভাই। সে আমারে বলে মুহিত মিয়ারে পাবলিকে ধরিয়া থানায় দিছে। তুই গা ঢাকা দে। তারা কইছন তারাও ভাগতাছে। টাকা পয়সা দিয়া এইগুলো শেষ কইরালামু। দুলাল রাজনের আশেপাশে ঘুরাঘুরি করছে। পরে আমার মা এলাকার লোকজন আমাকে ধইরা দিছে। আমি পালাইয়া সুনামগঞ্জ গেছিলামগা। নৌকার মধ্যে ছিলাম। এই আমার স্বীকারোক্তি।”

P.W.35 Alomgir Hossain, Officer in charge of Jalalabad Police Station is the first Investigation Officer. He went to Kumargaon Residential Area and prepared sketch map and index. He identified his signature on it as exhibit-23/1. He also prepared sketch map of first place of occurrence the workshop of Sudip Kapoli. He identified the sketch map and index of the occurrence and his signature on it marked as exhibit 24/1 and 25/1 respectively. He saw father of the deceased Rajon at the Police Station and came to know that Shamiul Alom Rajon is the deceased. The father of the deceased filed an ejahar on 09.03.2015 and he also sent said Information Report to the Cognigenceable Court. He came to know on 07.09.2015 that the accused Qamrul Islam might have fled abroad. He

arrested the accused Muhit Alam, Ismail Ali, Abrus @ Afruz, Lipi Begum, Azmat Ullah, Firoz Ali, Sadik Ahmed @ Moyna Chowkider, Dulal Miah, Noor Ahamed @ Noor Miah and handed over them to the court. Thereafter on 15.07.2015 from Jangail area he arrested the accused Nur Ahamed and recovered the mobile phone, memory card, sim card and the battery. He identified his signature in the seizure list marked as exhibit 11/3. He stated that the said memory card contends the vedio footage of murdering the deceased Rajon at the place of occurrence. He also identified the mobile phone set, memory card, sim card marked as material exhibit-IV series. He recorded the statment of 8 witnesses during his investigation. He handed over the C.D.

on 16.07.2015 to the 2nd Investigation Officer Suranjit Talukder of D.B.

In-cross he stated that Temukhi By-pass Road Bridge has been shown the place of occurrence in the F.I.R. by the father of accused Rajon and he says that Engineering Workshop and workshop of Sudip Kopali stand side by side. In-cross he further stated he recorded the statement of witnesses on 08.07.15, 09.07.15, 10.07.15 and 15.07.15. He went to Kumargaon Residential Area on four occasions. He watched the video footage containing the memory card of the accused Noor Ahamed. He saw the accused Sadik Ahmed @ Moyna, Qamrul Islam, Zakir Hossain @ Pabel, Dulal Ahmed in the video footage. But he could not identify the rest accused persons. He further stated in the cross-

examination that 'Ka' 'Ka (1)' are marked as place of occurrence in the sketch map and 'Kha' is marked as "Khan Engineering Workshop". He further stated in cross-examination that the explanation is not given in the index but the explanation of index is with the Case Diary. He could not seize any rope from the place of occurrence. He did not recover any stick, screwed by black plastic costap and bag of vegetable. The motive of beating the deceased Rajon is not mention in the F.I.R. He further stated in his cross-examination that in 2nd sketch maps has been shown 3 place of occurrence.

P.W.36 Surajit Talukder Police Inspector of D.B., Sylhet deposed that he was appointed as 2nd Investigation Officer. He perused the Case Docket, inspected the place of occurrence and

took the alampats in his custody. During investigation he took the accused Sadik Ahmed @ Moyna, Ali Haidar, Muhit Alam, Dulal and Noor Ahmed on police remand for interrogation and sent them to the Magistrate for recording their confessional statements under section 164 of the Code of Criminal Procedure. The accused Noor Ahmed recorded the occurrence of beating by the mobile phone set in front of the workshop of Sudip Kopali. The accused Qamrul Islam, Pabel, Badol, Sadik Ahmed @ Moyna beat and slapped the deceased mercilessly. The accused Sadik Ahmed @ Moyna, Ali Haidar, Muhit Alam carried the dead body by microbus for the purpose of concealment. The said microbus and the dead body of the deceased were recovered from

Kumargaon Residential Area. The accused Muhit Alam was apprehended by the local people. The accused Ali Haidar, Shamim, Moyna were able to flee away. He submitted charge sheet no.81 dated 16.08.2015 under section 302/201/34 of the Penal Code against 13 accused-persons after perused inquest report, post mortem report, video footage, statement of the witnesses recorded under section 161 of the Code of Criminal Procedure. On the other hand confessinal statments of the confessing accused persons recorded under section 164 of the Code of Criminal Procedure. He indentified the VCD record marked as material exhibit-III and his signature therein marked as exhibit III/1. He futher stated that the accused Qamrul Islam escaped to Saudi Arabia. The Bangladeshi

immigrants in Saudi Arabia and the local people thereof apprehended the accused Qamrul Islam on 13.07.2015 and subsequently he was sent back to Bangladesh through Interpol. He got the investigation of 1st Investigation Officer is correct. In the petition (Supplementary F.I.R.) Rajon's father has shown 'By-pass Road and Bridge' the place of occurrence.

In-cross he further stated that Muhit Alam was taken to police custody for 12 days in 2(two) occasions. Ali Haidaer was taken to police remand for 11 days in 2 (two) occasions. He took the accused Dulal, Noor Ahamed on police remand for 7 days. He recorded the statement of as many 28 (Twenty eight) witnesses. In-cross he further stated that he did not seize any nylon rope, pillar, stick from the place of occurrence.

He did not get the proof of allegation of stealing Rickhsha Van.

It appears from testimony of Magistrates P.W.26 and P.W.27 and the exhibits 13,14,15,16,17,18,19,20 that the confessional statments were recorded in accordance with law. But some of statements are exculpatory and some are inculpatory in nature. The confessional statements of the accused Ali Haidar, Sadik Ahamed@ Moyna and Muhit Alam are found inculpatory in nature. The confessional statement of the accused Ayaz Ali is found inculpatory in natue to the effect that he gave rope and fastened the hands of the deceased Rajon from his behind with a pillar. It appears from the testimony of P.Ws. 26 & 27 and confessional statements (exhibits13-20) that the recording Magistrate

recorded the confessional statements almost observing all legal formalities. In the instant case, 8 confessional statements are found signed by the respective confessing accused persons and by the recording Magistrate as well giving a certificate to the effect that the confessional statement in their views are true and voluntary. Among the confessing accused persons, the confessional statements of the accused Sadik Ahmed @ Moyna were not at all retracted.

We have scrutinised carefully the confessional statement of accused Sadik Ahmed @ Moyna and found that it is an inculpatory statement in nature and it is a very important one statement. These statements also found true and voluntary. There are whole sceneries of the fact and occurrence in this statement. The accused

Firoz Ali, Ayaz Ali, Noor Ahmed, Ali Haidar, Muhit Alam have prayed for retraction of the confessional statements at the time of examination under section 342 of the Code of Criminal Procedure not at the earlier stage, that is, during judicial custody.

At this stage of argument learned Deputy Attorney General referred below cases 13 BLC (2009) 81 where it is held that “ It is now well settled principle of law that judicial confession if it is found to be true and voluntary can form the sole bears of conviction.”

39 DLR (AD) 195 where it is held that “Pre-requisite of judicial confession the required formalities have been duly complied duly been observed”

39 DLR (AD) 195 held that “confession of co-accused confession when proved against confessing accused can be taken into consideration against the co-accused in the same offence. These confessions have been rightly considered against the co-accused also, under section-30, Evidence Act. We therefore find that the conviction these three appellants have been based on strong evidence and that the High Court Division rightly confirmed their conviction for murder.”

It is held in 48 DLR, Page-305 that “Retraction of confession once confession is found to be true and voluntary, a belated retraction will be of no help to the confessing accused.”

We do not find any different statement revails in the four corners of the confessional statements. There is no sign of evidence in chief and cross of the Magistrate P.Ws.26&27. Moreso Magistrate observed all formalities in this regard. It is found that the statements were true and voluntary. It appears to us that the Trial Court has taken right decision on the confessional statements and retraction petitions.

Learned Counsel for the accused referred 27 DLR (AD) 29 where it is held that confession of a co-accused not evidence as defined in section 3 of the Evidence Act. Confession of a co-accused cannot be treated as substantive evidence against another accused but that it can only be used to lend assurance to other evidence.

In this case it reveals that there are other witness and corroborative and circumstantial evidence against the offence of the accused persons which substantiate the confessional statement of the co-accused.

Learned Counsels for the accused persons referred PLD-1956 SC (Ind)186, 14 DLR (HD) 121, 11 MLR (AD) 270, 13 BLT (HD) 146, 39 DLR (AD) 1987 Page-195.

We have carefully examined the above referred cases.

Since we find the confessions are voluntary and true and we have considered some inculpatory confessional statements. So we do not find the referred cases are fit with this case. These referred cases of learned defence counsils are quite different with this case.

P.W.6 Sheikh Al-Amin, P.W.7 Isteyak Ahmed P.W.8 Abdul jahir, P.W.9 Nijam Uddin, P.W.10 Rahul Ahmed Ponkhi deposed that they have watched the video record of beating where accused Qamrul, Moyna, Tajuddin Jakir @ Pabel were beating the victim Rajon by fastening with a pillar. P.W.14 Kacha Mia Kochi deposed that the police arrest accused Nur Ahmed and recovered the video record, mobile phone, sim card from him. Police made a seizure list and he is a witness of the seizure list and signed on it.

In this case 8 (eight) accused persons have been examined under section 164 of the Code of Criminal Procedur. Some of them gave confessional statement as exculpatory and some of them are inculpatory. Most vital statement has been given by accused Moyna Mia who at first

caught the victim and fastened him with a pillar. Another vital statement has given by accused Nur Ahmed who took the video footage of the beating occurrence. These two confessional statements are inculpatory in nature. Accused Moyna stated in his confessional statement that he at the very down caught the victim Rajon in the charge of stealing of a rickshaw-van and fastened his hand with a pillar in the Lalai Mia market in front of Khan Engineering workshop and he also beat and slapped the victim Rajon. He gave description of the barbarious beating by the accused Qamrul Islam. The confessional statement of the Moyna clearly disclosed his participation in the occurrence and gave the description of heinous, barbarous activities and beating of the accused Qamrul Islam and others

on the deceased. Accused Qamrul beats the child Rajon with a stick which was wrapped by black costap. It is found as many as 64 injuries on the body of the child Rajon. It reveals that a furious animal character had been grown up at the time of beating inside the accused Qamrul and other accused. The description of beating and scenario stated by the accused Moyna in the confessional statement has been supported by the testimony of P.W. 6, 7, 8,9,10. They saw the video footage of the beating by the accused Qamrul, Moyna Miah, Tajuddin, Jakir on the deceased child. In this case the confessional statement of the accused Moyna Mia is the mirror of true and real picture of the murder and real fact of the case. We have carefully examined the confessional statement of Moyna and evidence of the Magistrate and

others. We find the statement was true and voluntary and inculpatory in nature. In such a situation this statement is enough to prove the offence of killing. Moreover the testimony of the Pws.6-10 and other said confessional statement and video footage and other circumstantial evidence proved the offence of murder.

In the post mortem report it is found that the inflection of as many as 64 multiple bruises and swelling injuries over the entire body including of the vital part such as forehead and head of deceased Rajon. In such condition it is not always necessary to find intention and premeditation of long before would be the criteria for consideration of a murder. The matter may be different in case to case. In this case it appears from the fact and evidences that

intention had been grown up at the time of occurrence. As we know intention may develop at the very spark of the moment of the occurrence or murder. In this case the accused Qamrul took vital part of the offence of murder and soon after the occurrence he fled away from Bangladesh to Saudi Arabia. It is evident from the video footage and the evidence of P.W. 6-10 and from the confessional statement of the accused Moyna, Noor Ahmed and others that the accused Sadek Ahmed @ Baro Moyna @ Moyna, Tajuddin Ahmed @ Badol and Jakir Hossain @ Pabel @ Raju (absconding) directly participated in the heinous beating with accused Qamrul Islam @ Qamrul. They jointly participated in the offence of killing the child

Rajon in the place of Lalai Mia market that is first occurrence place.

The description of the beating stated in the confessional statement of Moyna reveals the accused Qamrul beats Rajon for a long time and he became so furious that at that time he used ugly, angry, heinous words referring the mother and sister of the deceased. Even at the time of merciless beating while the child became about to die he did not allow child Rajon to drink the water. We find the furious inhuman and heinous description of offence of beating and torture of the accused Qamrul and participated other accused. Accused Moyna fastened the child and beat him. Accused Tajuddin Ahmed @ Badol gave blows on the body of the deceased by the same strong stick and the accused Jakir Hossain

@ Pabel @ Raju gave blows on the body of the deceased Rajon. It also reveals that they participated with the accused Qamrul in the offence and killed the child on the spot.

Accused Moyna illegally confined the child Rajon and fastened the child two times and two places and beat him and supplied his strong wrapped stick to the accused Kamrul for beating the child Rajon. He also participated in the beating and atrocious activities of the killing of the victim.

It appears from the above discussed evidences and said video footage that accused Qamrul, Moyna, Tazuddin, Zakir @ Pavel became as like as a group of animal like নেকড়ে বাঘ । They lost their humanity and human character and became as like heinous character of animal.

As a result they inhumanly, atrociously killed a helpless, poor child Rajon. None has any right to take law in his own hand. Every person of the country has to follow the procedure of law of the land. In support of above offence learned Deputy Attorney General referred 44 DLR (AD)-287 where it is held that “Number of injuries caused by the different accused-The fact that some of the accused had caused fatal injuries and others caused minor injuries is immaterial if the act was done in furtherance of their common intention. The nature of injuries had nothing to do as the two accused are found to have shared the intention of other accused whose acts resulted in the death of the victim”

We are inclined to hold that the intention of killing sparked at the time and moment of

heinous torture and merciless beating on the poor, helpless victim child Rajon, in the mind of accused. In support of this it may be referred 44 DLR (AD)-287 where it is held that “Pre-plan not essential ingredient- It is true in this case there was no pre-plan of the accused to kill the victim-their common intention to kill developed on the spot when they all simultaneously fell upon the victim as soon as he appeared on the scene”.

Learned Counsels for the accused persons at their argument vehemently opposed the documentary evidence of video recording which is very vital evidence in this case. They submit that there is no law where video record or video footage is admissible as evidence in the eye of law in our country.

Per contra learned Deputy Attorney General submits that now it is well settled that video record is very much admissible evidence in the eye of law. In support of that he referred 37 DLR Khaleda Akter Vs. State Page-275 where it is held that “A video cassette is a document within the meaning of the Evidence Act and is accordingly admissible in document. The Supreme Courts both in India and Pakistan approved of a tape record being used in evidence and that the use of the evidence by tape-recording in a proceeding before a court of law. The process of tape recording records only sound, whereas a video cassette or video records both sound and pictures. If sound be recorded on a tape is admissible in evidence, we do not see any difference in principle why the record of

sound and pictures should not be equally admissible in evidence.”

In the above circumstances we do not find any logic in the argument of learned counsels for accused Kamrul, Moyan, Tazuddin and Zakir regarding the evidence of video footage. So we are also inclined to hold that a video record footage is a document within the meaning of the Evidence Act and is accordingly admissible if otherwise relevant in the course of a trial of proceeding.

Learned Counsels for the accused refer to some important decisions and make submission on those cited cases which are as follows:-

38 DLR (AD), Page-311 **about 2nd F.I.R. 2**
BLC, Page-255, Para-25 **about intention**, 14
DLR(HD), Page-139, 37 DLR(AD), Page-261,

42 DLR(AD), Page-31, 53 DLR (HD), Page-559, 55 DLR (HD), Page-382, 1984 BLD(AD), Page-193.

11 MLR (AD), Page-270, 13 BLT(HD), Page-146, 6 BLD(HD), Page-225 **about confessional statements and co-accused confessional statements.** 47 DLR (HD), Page-198, 42 DLR (HD), Page-171, 58 DLR (AD), Page-176, 53 DLR (AD), Page-113 **about sections-302 and 304 of the Penal Code.**

In this case we have discussed about the following issues that is-

- (A) Intention and participation in the offence of murder.
- (B) Inculpatory and ex-culpatory confessional statement of the accused.

- (C) Video record admissibility as evidence in this case.
- (D) True and voluntaryness of the confessional statement and retraction matter.
- (E) Co-accused confessional statement supported by the documentary and other circumstantial evidences.

We have scrutinised the above referred cases of the learned counsels of the accused. It appears the fact and circumstances of this case in hand is quite different with the referred said cases of the defence.

We have discussed the evidences and it appears to us that accused Qumrul Islam, Sadik Ahamed @ Moyna, Pabel and Tazuddin @ Badal

killed the victim Rajon (child) with cruelty, atrocity and inhumanly.

They have committed offence of murder under sections 302/34 of the Penal Code. The way they took the life of poor, helpless, unprivileged child Rajon the accused deserve capital punishment of death sentence.

Let us see the offence committed by the accused Noor Ahamed in to what extent. It appears to us that this video recording and video footage is very much vital evidence in this case.

The aspects of beating the deceased Rajon by fastening his hands from his behind, senseless hanging condition, non-giving drinking water at his dying condition to quench his thirst, aspect of ridiculous behaviour regarding giving water to drink to the deceased Rajon, taking sweat from

his body at the instruction of the accused Qamrul Islam, pushing the stick into the mouth of the deceased after taking it out from the nearby dirty drain create a storm of hatred and hoot towards the accused persons in the over all territory of Bangladesh. The degrading treatment and cruelty of the said 4 accused persons touched the humanity and the conscience of the people of Bangladesh when the video recording spread hands to hands around the Bangladesh and other country and they witnessed the occurrence by the blessings of modern technology and video record of Noor Ahamed.

It appears from the confessional statement of accused Moyna and confessional statements of the other accused that Noor Ahmed never participated in any type of atrocity. There is no

evidence that accused Noor Ahmed had any role and activities on the above mentioned beating, treatment and cruelty. He never touched the body of child Rajon nor supplied any weapons to any accused or Kamrul for atrocious crime.

We have carefully scrutinised the inculpatory confessional statement of other co-accused and even the confessional statement of this accused Noor Ahmed and testimonies of the P.Ws. But we do not find four corners of the mentioned evidences that the accused Noor Ahmed had any participation with this offence. It appears he never verbally gave any order or encouraged to the other accused persons to beat or kill the deceased Rajon. We do not find any intention of killing and any participation in this offence in any manner. There is no evidence that

accused Noor Ahmed guarded the occurrence or facilitated the accused to commit the offence of murder.

Learned Counsel Mr. Belayet Hossain at his argument stated that accused Noor Ahmed took the video footage by his mobile phone on by chance and out of curiosity. But in the result people found the real fact and picture of the offences. In fact accused Noor Ahmed ought to have the vital witness of this case but not accused. He further stated that this accused should be prized for recording of video footage of the occurrence. Because of the blessings of video recording this occurrence spread to all and evident before the court. He further stated that learned Trial Court did not ask accused Noor Ahmed regarding the charge of offence under

section 109 of the Penal Code and the accused did not find any chance to reply against the charge brought on him. Lastly he submits that the charge brought against him in the trial was unlawful and it has not been proved before the court.

On the above submissions of the learned counsel we find substance in the argument of the learned counsel Mr. Belayet Hossain.

But apart from the above discussion and submission of the learned counsel for the accused Noor Ahamed we have further scrutinised the said confessional statements and evidences regarding the video footage and the participation of the accused Noor Ahmed in this occurrence. It is found that Noor Ahmed first time recorded the occurrence and took video for few time and

thereafter he left the place of occurrence for his personal work. Subsequently after about one hour he came back to the place of occurrence and again took the video footage of the occurrence up to the end. It appears that accused Noor Ahmed obtained sufficient time to inform the police or Magistrate about the occurrence and offences. But it appears he did not inform the matter to the police or the Magistrate or any other public representative to save the victim. In these circumstances it is found that Noor Ahmed knew about all the facts and offences and he took the video footage of the offences. But at the end he never gave any information to the police or the Magistrate rather he was absconding subsequently police apprehended him and recovered the materials of the video recording.

On the above observation we find accused Noor Ahmed has committed offence under section 202 of the Penal Code. It will be appropriate if accused Noor Ahmed is punished and sentenced under section 202 of the Penal Code.

We find the confessional statement of the accused Firoz Ali is exculpatory in nature. Accused Ayaz Ali in his in-culpatory confessional statement admitted that he with the help of the accused Sadik Ahamed @ Moyna fastened the deceased Rajon from behind with the pillar. Moyna also admitted that the accused Ayaz Ali and he caught hold of the deceased Rajon fastened him with the pillar. He also stated that the accused Ayaz Ali supplied nylon rope from the shop of Layek. The accused Sadik

Ahamed @ Moyna also stated that the accused Firoz Ali Chowkider advised them to fasten the deceased Rajon. But it is not admitted by accused Firoz Ali or any other witness or confessing accused persons.

P.Ws. 9, 10, 14 have also given testimony to the effect that they saw the accused Dulal Ahmed in the video footage. None of the witness or the confessing accused persons has stated that the accused Ayaz Ali and Firoz Ali were involved in the beating or torturing the deceased. On the above discussion it reveals to us that they had no common intention to murder the deceased. They are merely offenders of confining the deceased Rajon for the false charge of stealing away the Ricksha Van. On the above discussion it appears to us that the accused Sadik

Ahamed @ Moyna, Ayaz Ali and Dulal Ahmed have committed an offence punishable under section 342 read with section 34 of the Penal Code.

Now let us see the next part of the offence. The prosecution case is that after killing of the victim Rajon, immediately after some accused planned to conceal and screen out the dead body from the 1st place of occurrence that is from the killing place.

We have scrutinized the testimony of the witnesses. It appears P.W.18 Md. Kurban Ali is found as a very much important and innocent witness in this parat of occurrence. He is a businessman of local area. He deposed that he saw the said microbus was carrying the dead body of deceased Rajon and Local people caught

the accused Mohit Alam red-handed while Mohit tried to flee away from the microbus. He further deposed that other 3 (three) accused were able to flee away from the microbus. He saw the dead body of the deceased Rajon in the said microbus. Police prepared the inquest report of the dead body of a boy aged about 13/14 years. Subsequently he came to know that the name of the boy was Rajon. As a witness he signed on the inquest report which is marked as exhibit-1/4. It clearly reveals from the testimony of P.W.18 Md. Kurban Ali that he is an eye witness of the part of this occurrence. In his testimony it is found that dead body of Rajon was taking away from the 1st occurrence place by the four accused persons for concealment and they were able to take away and shift the dead body from the 1st

occurrence place i.e. from the Lalai Miah Market area. Three accused fled away rest one accused Mohit Alam has been caught red-handed by local people. He saw the dead body of Rajon in the microbus. So it clearly found that P.W. 18 is an ocular witness of this occurrence of concealment.

In the cross defence could not shaken the testimony of this witness. We found this P.W.18 Md. Kurban Ali is an innocent witness of this case. It reveals that the confessional statement of the accused Mohit Alam has been corroborated by the evidence of P.W.18. Moreover it is clearly found from the confessional statement of Mohit Alam that other three accused fled away from the microbus and they are named Ali Haider, Moyna and Sahmim. Local people apprehended him from the place of occurrence. Thereafter police

arrested him from there. The statement of accused Mohit Alam under section 164 of the Code of Criminal Procedure, so far relates to the dead body of Rajon and take away by the accused Mohit Alam, Ali Haider, Moyna and Shamim by the said microbus for concealment are corroborative by the eye witness of P.W.18 Md. Kurban Ali. Moreover above fact and evidence is supported by the confessional statement of accused Moyna and Ali Haidar.

P.W.19 Aftab Miah, P.W.20 Abdul Karim and P.W.21 Gias Uddin [Member of that local area] deposed that they saw the said microbus and dead body of Rajon and accused Muhit Alam in the place of Kumargaon. It is found that they also support and corroborate the evidence of

P.W.18 and the confessional statement of the accused Muhit Alam.

We have further scrutinised the confessional statement of accused Muhit and found that the statement is an inculpatory in nature. He admits that he along with other three accused named Ali Haidar, Moyna Miah and Shamim **took the dead body of Rajon in the microbus** and left the 1st occurrence place i.e. the beating and dying place of deceased Rajon i.e. Lalai Miah Market. It is evident from the confessional statement of the accused Ali Haidar @ Ali that “মুহিত আর ময়না রাজনের লাশ গাড়িতে তুলে। গাড়ির ভিতরে আমি, ময়না, মুহিত বসি। শামিম আর মুহিত কয় এটি মারা গেছে। লাশ অন্য জায়গায় নিয়া ফালাইতে হইব। এ বলি গাড়ি কুমারগাড়ুর দিকে চালায়। পথে ৩(তিন) জনে গাড়ি আটকায়। সুযোগ পাইয়া আমরা পালাই।” It is found from the

evidences of P.W.19, P.W.20 and P.W.21 and confessional statement of the accused Ali Haider @ Ali that victim Rajon was already dead at the time of merciless beating in the Lalai Miah Market. Moreover in the confessional statement of the accused Sadik Ahamed @ Moyna and Ayaz Ali also disclosed that the victim Rajon was dead in the 1st occurrence place of Lalai Miah Market. So there is no doubt they were carrying the dead body of Rajon with concealment to screening the evidence only. It appears that they already disappeared and concealed the dead body in the microbus and shifted dead body from the Lalai Miah Market to another place for screening the offenders. If we look into the Section-201 of the Penal Code it is held that:-

“Causing disappearance of evidence of offence, or giving false information to screen offender-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 the offence which he knows or believes to be false,

If a capital offence- shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

In this regard the eye witness and other corroborative witnesses and inculpatory confessional statement of said accused has proved the offence of the accused Ali Haider, Shamim Ahamed, Muhit Alam and Sadik Ahmed @ Moyna. They have committed offence punishable under Section 201/34 of the Penal Code. Moreover it finds support from the decision referred by the learned Deputy Attorney General Mr. Jahir in case of 13 BLT (HCD), Page-136 which is as follows:-“ The confessional statement of the accused may be considered against his fellow accused charged with the same crime in order to base conviction on a non confessing accused. The confession of a confessing accused is required to be corroborated by the other corroborative evidences.”

On the light of above discussion we find that the Trial Court took justified and correct decision in the mentioned offence. Though accused Shamim was absconded and did not face the trial.

In the result we are of the view that the accused Qamrul Islam @ Qamrul, Sadik Ahmed @ Boro Moyna @ Moyna, Tajuddin Ahmed @ Badol and Zakir Hossain @ Pabel @ Raju (absconding) are hereby convicted and sentenced under sections 302,34 of the Penal Code to suffer death sentence with a fine of Tk. 10,000/- each.

As the convict Zakir Hossain @ Pabel@ Raju has been absconding the punishment of death sentence will be effected from the date of arrest or surrender of the convict before the court as the case may be.

The accused Noor Ahmed @ Noor Miah is hereby convicted and sentenced under section 202 of the Penal Code to suffer imprisonment for 6 (six) months with a fine of Tk. 10,000/-(ten thousand) in default imprisonment for 2(two) months more.

The accused Sadik Ahmed @ Boro Moyna @ Moyna, Shamim Ahmed @ Shamim), Ali Haidar @ Ali and Muhid Alam @ Muhit are hereby convicted and sentenced under sections 201,34 of the Penal Code to suffer rigorous imprisonment for 7 (seven) years with a fine of Tk. 10,000/- each, in default to pay the fine imposed to suffer additional imprisonment for 2(two) months.

Section 342 of the Penal Code provides punishment of imprisonment that may extend to

1 (one) year with fine. It appears accused Ayaz Ali, Dulal and Sadik Ahmed @ Moyna have been committed offence under section 342,34 of the Penal Code to suffer rigorous imprisonment for 1 (one) year with a fine of Tk.1,000/- each in default to suffer additional imprisonment for 2 (two) months.

The accused Firoz Ali, Azmat Ullah and Ruhul Amin @ Ruhel are hereby acquitted from the charge brought against them. Let them be set free if they are not wanted in connection with any other case.

The punishment inflicted in the case of convict Sadik Ahmed @ Boro Moyna @ Moyna would run concurrently.

The period for which the convicts have been in jail hajat will be deducted from the actual

punishment inflicted.(Section 35A of the Code of Criminal Procedure)

On the above discussion death reference no. 93 of 2015 is accepted under section 374 of the Code of Criminal Procedure.

As a result Criminal Appeal No.10049 of 2015, Criminal Appeal No.10748 of 2015, Criminal Appeal No.9126 of 2015, Criminal Appeal No.9235 of 2015, Criminal Appeal No.9346 of 2015 and Jail Appeal No.251 of 2015, Jail Appeal No.252 of 2015, Jail Appeal No.253 of 2015 are also dismissed.

Send down the lower court records along with a copy of the judgment to the concerned court immediately for necessary action.

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 (Salim) with Mr.Nizamul Haque

Nizam learned Assistant Attorney Generals and Mr. S.M. Abul Hossain alongwith Mr. Md. Abdur Rashid, Mr. Belayet Hossain, Mr.M.A. Shahid Chodhury, Mr. K.B. Shahriar Ahmed, learned defence lawyers for their lucid expression of law and also invaluable assistance to this court.

[Md. Jahangir Hossain, J]

I agree with my brother Judge on the aforementioned findings and decisions. In Addition I would like to state that if anybody is apprehended by the general public other than the police or the legal force over an allegation of committing crime, he must immediately be sent to the nearest police station or police must be informed so that they can arrest him and bring him into book. Taking a sudden decision on a

mere idea can never bring appropriate result. In this case, it is claimed by the defence against victim Rajon that he tried to steal a Van and for that some angry people killed him by beating him but that has not been proved by the evidence of either party.

When an unusual incident takes place beyond expectation, then it is difficult to retain the situation under control. We must control the environment of our society having awareness and applying basic law, since otherwise society will get a negative message and mass people will take the law into their own hands ignoring the appropriate legal process. In such a situation, innocent people may be victimised even after having no fault of any crime. People should acknowledge from the present case that for such

crime committed by perpetrators they are going to meet the gallows and other punishments.

All of us including the state must be alert to keep the society safe from any kind of untoward incident like Rajon's one. Most of the people of the country do not have the knowledge of the basic law due to lack of education. To bring the people under awareness of law and how to apply it, State owned Media, Electronic and Print Media organisations including journalists, all religious leaders and preachers should come forward to play a significant role. Social movement is also a very important factor in this regard and this awareness of law should be incorporated in the primary education.

[Jahangir Hossain, J]