

**12 SCOB [2019] HCD****HIGH COURT DIVISION****CRIMINAL APPELLATE JURISDICTION**

Death Reference No. 99 of 2015

**The State**

-Versus-

**Oyshee Rahman**

.....Condemned prisoner

with

Criminal Appeal No. 10281 of 2015

Oyshee Rahman

-Versus-

The State

Mr. Afzal H. Khan with

Mr. Sujit Chatterjee, Advocates.

.....for the appellant

Judgment on 05.06.2017

with

Jail Appeal No. 2016 of 2015

Oyshee Rahman

-Versus-

The State

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

Mr. Md. Atiqul Haque [Selim], A.A.G and

Mr. Nizamul Haque Nizam, A.A.G

.....for the State

Heard on: 13.03.2017, 14.03.2017,  
 15.03.2017, 19.03.2017, 20.03.2017,  
 21.03.2017, 22.03.2017, 27.03.2017,  
 28.03.2017, 03.04.2017, 09.04.2017,  
 10.04.2017, 07.05.2017

**Present:****Mr. Justice Jahangir Hossain****And****Mr. Justice Md. Jahangir Hossain**

**Mitigating factors to consider the lesser punishment from death sentence to life imprisonment;**

**This sentence that someone be punished in such a manner is referred to as ‘Death Sentence’, whereas the act of carrying out the death sentence is known as execution. The execution is not only an exemplary punishment alone that can erase the crime from the society forever. Lesser punishments may significantly prevent or reduce the crimes from the society depending on the good governance and awareness of the people.**

**To consider the lesser punishment from death sentence to life imprisonment mitigating evidence or circumstances must be stronger than that of aggravating evidence produced by the prosecution. In this case we find the following circumstances outweigh the aggravating circumstances,**

- 1. Condemned prisoner committed double murder without any apparent motive and was suffering from mental derailment or some sort of mental disorder and also suffering from ovarian cyst and bronchial asthma;**
- 2. Her paternal grandmother and maternal uncle had a history of psychiatric disorders according to exhibit-15;**
- 3. She was around 19[nineteen] year old at the relevant time and the occurrence took place just immediately after her attaining the age of majority;**
- 4. She has no such significant history of prior criminal activity [criminal cases] and**

**5. She had willingly surrendered to the police station soon after two days of the occurrence. ... (Para 83 & 84)**

**JUDGMENT**

**Jahangir Hossain, J**

1. This Death Reference No. 99 of 2015 is the outcome of judgment and order of conviction and sentence dated 12.11.2015 referred to the High Court Division by the learned Judge of Druto Bichar Tribunal No. 03, Dhaka for confirmation of death sentence to condemned prisoner Oyshee Rahman under section 374 of the Code of Criminal Procedure [briefly Cr.P.C].

2. Challenging the said judgment and order of conviction and sentence, condemned prisoner Oyshee Rahman filed a petition of appeal being numbered as Criminal Appeal No. 10281 of 2015 and she also filed Jail Appeal No. 216 of 2015. Death Reference and both the said Criminal Appeals have been heard together and are disposed of by this common judgment.

3. The prosecution case is briefly described as under:

One Md. Moshir Rahman @ Rubel being informant lodged an ejahar with Paltan Model Police Station, Dhaka after consultation with some of his relatives alleging that his elder brother Mahfuzur Rahman, police inspector, along with his wife Shawpna Rahman, daughter Oyshee Rahman, son Ohee Rahman and maid servant Sumi used to reside at Flat No. 5/B, 2 No. Chamelibagh, Dhaka. On 16.08.2013 Iftekharul Alam, brother-in-law of Mahfuzur Rahman, intimated him over cell phone that Mahfuzur Rahman and his wife were missing and further told him that at about 02:00 am at night on 15.08.2013 his niece Oyshee Rahman had informed her aunt Suborna over cell phone that her parents had gone to Rajshahi and she along with her brother was afraid to stay at their residence without their parents. Oyshee also informed Iftekharul Alam that her brother Ohee was staying with her and she had left maid servant Sumi at the Aftabnagar slum. Being afraid after hearing such information, Iftekharul Alam asked his younger brother Rubel to inquire about them through the security guard of the Chamelibagh house and Rubel informed his elder brother Iftekharul Alam that early in the morning of 15.08.2013 Oyshee, Ohee and the maid servant Sumi had left the house for Oyshee's aunt Suborna's Mirpur residence by a CNG auto rickshaw. Iftekharul also told the informant that he had asked many persons regarding the whereabouts of his elder brother and sister-in-law but in vain. Subsequently, Dr. Rayhan, a relative of the informant, made contact with Malibagh office of the Special Branch, workplace of Mafuzur Rahman, who in turn, asked the Palton Model Police Station to look into the matter.

4. Thereafter, police of Paltan police station entered the house of Mahfuzur Rahman at about 05:30 pm on 16.08.2013 by breaking the main door of the house with the help of a locksmith and found the dead bodies of the informant's brother Mahfuzur Rahman and sister-in-law Shawpna Rahman inside a bathroom of their house. Police duly held inquest reports of the dead bodies and sent the same to Dhaka Medical College Hospital for autopsy. Said Dr. Ryhan further asked the informant to come quickly to Dhaka and thereafter the informant rushed to Dhaka same day and found the dead bodies of his brother and sister-in-law lying at the Dhaka Medical College Hospital's morgue. He also found marks of several injuries

inflicted by sharp weapons on the persons of his brother and sister-in-law. The informant further stated in the ejahar that his brother and sister-in-law were killed by some unidentified assailants between 11:00 pm of 14.08.2013 and 04:30 pm of 16.08.2013.

5. Having received the ejahar police started Paltan Model Police Station Case No. 13 dated 17.08.2013 against unknown miscreants under sections 302/34 of the Penal Code.

6. Soon after lodging the FIR, police seized some materials and ornaments relating to the death of the deceased and apprehended maid servant Khadiza Akhter Sumi, Mizanur Rahman Rony and Asaduzzaman @ Jony while Oyshee Rahman surrendered to the police station. During investigation of the case, Oyshee and maid servant Sumi made confessional statements before the magistrate under section 164 of the Cr.P.C and seven witnesses also made statements before the magistrate under the aforesaid section. The investigating officer after completion of investigation, submitted police report being charge sheet No. 64 dated 08.03.2014 against the three accused persons including the condemned prisoner under sections 302/201/212/109/328/380/34 of the Penal Code while separate police report being charge sheet No. 65 dated 08.03.2014 was submitted in Kishore Adalat against Khadiza Akhter Sumi on being minor under sections 302/114/201 /380/328/34 of the Penal Code. Except minor Khadiza Akhter Sumi all other accused persons were put on trial by the learned Metropolitan Sessions Judge, Dhaka in Metro. Sessions Case No. 3380 of 2014.

7. Learned Metropolitan Sessions Judge, Dhaka framed charge on 06.05.2014 against accused Oyshee Rahman under sections 328/302/201/380 of the Penal Code, accused Asaduzzaman @ Rony under sections 302/109/212/34 of the Penal Code and accused Mizanur Rahman @ Rony under sections 302/34/212 of the Penal Code which was read over and explained to them present on dock to which they pleaded not guilty and claimed to be innocent at the trial.

8. Thereafter, the aforesaid case was transferred to Druto Bichar Tribunal No. 03, Dhaka by a gazette notification dated 21.10.2014. Gravamen of charge was again framed after being amended by the Druto Bichar Tribunal on 30.11.2014 against accused Oyshee Rahman and Asaduzzaman @ Jony under section 302 read with section 109 of the Penal Code and accused Mizanur Rahman Rony under section 212 of the Penal Code which was also read over and explained to them while they were present on dock to which they claimed further to be innocent at the trial. The prosecution in order to prove its case, examined 39out of 57 witnesses cited in the charge sheet while defence did not call any witness in their favour, but put their case by way of suggestions to the prosecution witnesses.

9. On closure of the prosecution evidence, the accused persons present in dock, were also examined under section 342 of the Cr.P.C wherein the incriminating evidence and confessions brought to their notices and consequence thereof were explained to them. This time the accused persons present in the dock reiterated their innocence, non-complicity and declined to adduce any evidence in their favour through defence witnesses but accused Oyshee Rahman submitted a written statement depicting that at the relevant time she was 17 year old as per her birth certificate as well as passport and having been drunk by taking whisky she went to her friend's house. During remand she was beaten to state something abnormally before the magistrate, otherwise she would be taken on remand time and again and she knew nothing about her parents' killing. Her sense was not working properly at that time.

10. Considering the evidence including confessions and facts and circumstances of the case, learned Judge of Druto Bichar Tribunal No. 03, Dhaka found accused Oyshee Rahman guilty of the offence punishable under section 302 of the Penal Code and sentenced her to death with a fine of Tk. 20,000/-[twenty thousand] and accused Mizanur Rahman Rony was found guilty of the offence punishable under section 212 of the Penal Code and sentenced him to imprisonment for 2[two] years with a fine of Tk. 5000/-[five thousand], in default, to suffer simple imprisonment for 1[one] month more while accused Asaduzzaman @ Jony was found not guilty and acquitted from the charge leveled against him under section 302 read with section 109 of the Penal Code.

11. Mr. Md. Atiqul Haque @ Selim along with Mr. Md. Nizamul Haque Nizam, learned Assistant Attorney Generals has taken us to the FIR, inquest reports, DNA test, reports of mental condition of accused Oyshee Rahman and her age, autopsy reports, seizure list, seizing articles, testimony of the witnesses, confessional statements, impugned judgment and other connected documents on record wherefrom it alleges that both the victims were killed by the condemned prisoner from 11:00 pm of 14.08.2013 to early in the morning of 15.08.2013 in a pre-planned manner.

12. Having gone through the evidence of all the 39 prosecution witnesses it is found that pw-01 Md. Moshir Rahman is the informant of the case. Deceased Mahfuzur Rahman and Swapna Rahman were his elder brother and sister-in-law [bhabi] respectively. At the time of occurrence he was in the village home under Mymensingh district. Getting news from pw-20 Dr. Md. Rayhan he came to Dhaka and found the dead bodies of the victims in Dhaka Medical College morgue on 17.08.2013. After that he lodged the FIR, marked as exhibit-01 against unknown assailants. This witness could not provide any evidence against the persons by whom the victims were killed. Simply identification of the dead bodies has been made by him. He heard the occurrence from others and in the FIR [exhibit-01] he stated that his elder brother Mahfuzur Rahman and his wife Swapna Rahman were killed in the house of Flat No. 5/B, at 2, Chamelibagh, Dhaka between 11:00 pm of 14.08.2013 and 04:00 pm of 16.08.2013 but he failed to narrate any single word against the condemned prisoner before the trial court whether she was involved with the killing of the victims. The evidence of this witness is silent with regard to the involvement of the condemned prisoner. Because this witness said he had no personal knowledge subsequently, by whom the victims were killed.

13. Pw-12 Md. Amzad Ali who is the manager of the house testified that he made a call over cell phone to the mother of Oyshee who gave permission to allow Oyshee for going outside of the house as she showed interest on 15.08.2013. On 16.08.2013 maternal uncle of Oyshee came and found the door of the flat locked from outside. In his presence and others police broke the lock of the door and found two dead bodies inside Oyshee's bath room. He signed the seizure list prepared by the police on 22.08.2013. Pw-33 recorded the statement of this witness, marked as exhibit-24, under section 164 of the Cr.P.C on 26.08.2013.

14. Pw-13 Md. Shahinur Islam is a security guard who testified that Oyshee went outside when manager allowed her to go on 15.08.2013 in the morning. He could see the door of the flat locked from outside but subsequently relatives of the deceased and the police recovered dead bodies from that flat on 16.08.2013 and he signed the seizure list prepared by the police on 22.08.2013. Pw-35 Keshob Roy Chowdhury, Senior Assistant Judge, recorded statement of this witness, marked as exhibit-29, under section 164 of the Cr.P.C on 26.08.2013.

15. Pw-16 A. Motaleb is also a security guard of the house, who after having breakfast came and saw Oyshee, Ohee and Sumi in front of a CNG. They left with two bags in a CNG on being allowed by manager to go outside on 15.08.2013 in the morning. On 16.08.2013 morning Oyshee informed her maternal uncle that she was in her friend's house and did not turn out. Oyshee was asked to come but she sent her brother Ohee only. Maternal uncle, Ohee and manager went upstairs and found the door of the house locked. In the afternoon police and other relatives broke the lock of the door with the help of a locksmith and found dead bodies of Mahfuzur Rahman and his wife inside the house. Pw-12 recorded statement of this witness, marked as exhibit-12, under section 164 of the Cr.P.C on 26.08.2013. The evidence of these three witnesses namely pws-12, 13 and 16, who were deployed in the house for security purposes, established the time and place of occurrence wherefrom the dead bodies of the victims were recovered by the law enforcing agencies. Even then, their evidence finds the condemned prisoner at the downstairs' of the house and the condemned prisoner very tactfully went out of the house showing dramatic and cleverish attitude to the said witnesses. The door of the house was opened with the help of a locksmith, brought by police, which has been supported by pw-14 A. Hannan, a locksmith by profession. He said in his evidence that he was brought to the place of occurrence house by police in order to open the door of the house on 16.08.2013 and he entered the house after breaking the door and found two dead bodies therein. The evidence of these witnesses in respect of recovery of the dead bodies has been corroborated by the evidence of pw-18 Constable Taslim Uddin and pw-19 Constable Mojibur Rahman both were present at the time of recovery of the dead bodies from the place of occurrence on 16.08.2013. On 16.08.2013 morning pw-20 Dr. Md. Rayhan after being informed went to the place of occurrence building where he found Ohee who did not tell him anything correctly but said Oyshee sent him there. Police recovered dead bodies of Mahfuzur Rahman and his wife from their rented flat at Chamelibagh between 04:32 pm and 05:00 pm. This witness heard later that Oyshee was involved with the murder.

16. Pw-17 Iman Ali is a CNG auto rickshaw driver who started running the CNG auto rickshaw from 12:30 pm on 15.05.2013 under instruction of Oyshee from one place to another place in the capital and handed over the auto rickshaw in the garage at 04:30 pm. Oyshee along with her brother left keeping the maid servant Sumi in the house of the auto rickshaw driver who made a statement [exhibit-13], recorded by pw-32 Md. Mustafizur Rahman, a Metropolitan Magistrate.

17. On 19.08.2013 at 11:30 am pw-10 S.I Shahidullah recovered huge quantity of necessary goods, worn apparels, ornaments and cash money including foreign currency, marked as material exhibits-I-XXXVI [kha] at the showing of accused Oyshee Rahman from the house [tin shed] of 58/36/4, Uttar Mugda, Modinabagh, Washa Road in presence of the witnesses. Recovery of the said articles and ornaments, cash money has been supported by the evidence of pw-04 Bazlur Rahman and pw-05 Kabir Uddin Ahmed and pw-09 ASI Tobibur Rahman being seizure list witnesses.

18. Pw-11 Khokon Mollik testified that on 23.08.2013 at 08:40 pm D.B police along with accused Sumi and Oyshee came in Flat No. 5E and seized pillow cover, napkin and four tea-cups at the showing of the accused. He signed the seizure lists prepared by police in his presence and others. The evidence of this witness has been corroborated by the evidence of pw-15 Dr. Ali Munsur Md. Shoriful Islam.

19. Pw-21 Dr. Nahid Mahjabeen Morshed and pw-22 Dr. Sultana Algin both are associate professors of Department of Psychiatry in Bangabandhu Sheikh Mujib Medical University

[BSMMU], who examined accused Oyshee for ascertaining her mental condition [psychological assessment] following the order of the High Court Division of the Supreme Court of Bangladesh on a Writ Petition No. 9093 of 2013. They rendered report, marked as exhibit 15, after a long examination on her mental condition.

20. Pw-23 Dr. Sohel Mahmud is an assistant professor of Forensic Department of Dhaka Medical College Hospital, who examined the dead bodies of deceased Mahfuzur Rahman and Swapna Rahman on 17.08.2013 and found the following injuries:

**21. Deceased Mahfuzur Rahman-**

**1. Stab wounds on a [front of base of the neck along with midline [1"X ½" X cavity]  
[b] Mid abdomen along with midline 4" above the Umbilicus [1"X ½" X cavity]**

Considering autopsy [exhibit-16] findings and chemical analysis report he opined that the cause of death due to haemorrhage & shock resulting from above mentioned stab injuries which were ante mortem and homicidal in nature and signs of ingestion of Bromazepam found in the dead body which was ante-mortem.

**Deceased Swapna Rahman-**

**01. Body was swollen & initial stage of decomposition [scalp formation].**

**02. Stab wounds on**

**(a) Back of the abdomen 1" right to midline [1½" X ½" X cavity]**

**(b) 3 stab wounds on back of the mid abdomen two are ½" right to midline [1"X ½" X 1½"] another on ½" left to midline [1"X ½" X 1½"]**

**(c) 3 stab wounds on right lateral surface of right lower chest each are 1" a part each other [1½" X ½" X cavity]**

**(d) On left breast ½" right to nipple [1½" X ½" X 2"]**

**(e) On left lateral aspect of lower left abdomen [1½" X ½" X cavity]**

**(f) On front of base of neck ½" right to midline [1½" X ½" X cavity]**

**(g) On front of base of neck ½" left of midline [1½" X ½" X cavity]**

22. Considering autopsy [exhibit-17] findings and chemical analysis report, he opined that the cause of death due to haemorrhage & shock resulting from above mentioned injuries [PM report] which were ante-mortem & homicidal in nature and signs of ingestion of Bromazepam found in the body which was ante-mortem.

23. Pw-24 Md. Kaiser Rahman is a chemical expert who examined the viscera of deceased Mahfuzur Rahman and Swapna Rahman and prepared reports [exhibits-18 and 19] dated 26.09.2013. No poison was detected in the viscera and blood of both the deceased but Bromazepam was found. Residuary of the coffee in the cup was examined and found Bromazepam and its report issued by him, marked as exhibit-20.

24. Pw-25 Tanvir Sultana is an assistant professor who supported the said viscera reports as she is one of the members of the board.

25. Pw-26 Md. Mahmud Hasan, a scientific officer, DNA laboratory prepared DNA test report, marked as exhibits-21 which makes conclusion as under,

26. Among the samples presented to us, exhibit-A (Bloodstain on Cotton Swab from deceased Mahfuzur Rahman), exhibit-B (Bloodstain on Cotton Swab from deceased Swapna Rahman) and exhibit-C (Bloodstain on Bangles) yielded complete DNA profile.

27. However, exhibit-D (Bloodstain on Salower) and exhibit-E (Bloodstain on kameez) yielded mixed DNA profiles.

28. The DNA profile obtained from the bloodstain present on the source of exhibit C (Bangles) matches with the DNA profile obtained from the source of exhibit-B (Bloodstain on cotton Swab from Deceased Shapna Rahman).

29. The DNA profiles obtained from exhibit-D (Bloodstain on Salower) and exhibit-E (Bloodstain on Kameez) reflects a mixed DNA profile of deceased Mahfuzur Rahman (exhibit-A) and deceased Shapna Rahman (exhibit-B).

30. Pw-27 Tasnim Ferdous is an assistant supervisor of Kishore Sangshodhanagar, Gazipur who found accused Oyshee normal between 24.08.2013 and 31.08.2013 and she used to do daily task in a normal condition. This witness saw nothing abnormal with Oyshee to commit suicide when she was in the said organization.

31. Pw-28 Md. Anisul Islam, Sub-Inspector of Detective Branch, visited Khulna Mishuk Clinic on behalf of pw-37 Md. Abu Al Khair Matabber [investigating officer] and seized diary [page 1-424 wherein at page 101 it is written that Swapna Rahman wife of Mahfuzur Rahman of Anjuman Road, Doulatpur, Khulna was admitted on 16.08.1994 at 18:45 hours] and photo copy of license of the said clinic and collected birth certificate of Oyshee issued by Dr. Abdur Rahim in presence of the witnesses and prepared seizure list, marked as exhibit-22. 16.08.1994 is the birth date of accused Oyshee recorded by Mishuk Clinic and its certificate issued by Dr. Abdur Rahman who died on 22.07.2015, have been supported by pw-36 Md. Diderul Islam, Ex-Manager of the said clinic. The birth date of accused Oyshee has also been supported by the evidence of pw-39 Nur Jahan Mery, who deposed that Oyshee was born in her presence at the said clinic on 16<sup>th</sup> August, 1994 and the delivery of her birth was normal.

32. Pw-02 Md. Jony and pw-03 Rakib Hasan are the witnesses of inquest report and seizure list. In their presence inquest reports of both the dead bodies of the deceased were prepared by pw-06 Abu Tahar Bhuiyan, Sub-Inspector of Police, on 16.08.2013 at 17:40 hours. Pw-07 Constable Maleka Begum and pw-08 Constable Mahbub Alam signed the said seizure list and challan of both the dead bodies. Pw-06 also seized many articles including a dagger and some Frence Fries from the house of the deceased on the same day. Pw-29 Md. Jahangir Hossain Sub-Inspector of Detective Branch, pw-30 Md. Golam Mustafa, Sub-Inspector of Special Branch and pw-31 Md. Nazrul Islam, Senior ASP were also present at the time of recovery of the said articles.

33. Pw-37 Md. Abu Al Khair Matabbar after receiving the case docket by the order of DC. DB memo No. 1518 dated 22.08.2013 revisited the place of occurrence, re-examined the sketch map with index [exhibit-31] prepared by the earlier Investigating Officer, seizing goods and materials, re-examined witnesses and examined 34 witnesses, autopsy reports, inquest reports, report of assessment for mental condition of Oyshee, DNA test, report of age relating to accused Oyshee and finally submitted charge sheet being No. 64 dated 08.03.2014 against accused Oyshee Rahman, Asaduzzaman Jony and Mizanur Rahman Rony after finding prima facie case and submitted a separate charge sheet being No. 65 dated 08.03.2014 against minor accused Khadiza Akhter Sumi and on 15.09.2014 a supplementary charge sheet being No. 64/1 was also submitted by him.

34. Pw-38 Md. Monir Hossain being Sub-Inspector of Horirampur Police Station verified the name and address of accused Asaduzzaman Jony.

35. It appears from documents on record that Dr. Meruna Mahjaben and Dr. Farhana Rahman, Forensic Medicine Department, DMCH clinically examined accused Oyshee Rahman to ascertain her age. Considering findings of physical examination and radiological reports they opined that the present age of accused Oyshee Rahman is around 19[nineteen] years.

36. In this case Oyshee Rahman and Khadiza Akhter Sumi made confessional statements before the magistrate during investigation of the case. It reveals from the confessional statement of Oyshee that she having brought sedative tablets from the shop blended with the coffee and administered the same to her mother after Magrib prayer and father after around 11:00 pm on 14.08.2013. She stabbed her mother on her abdomen indiscriminately with a sharp knife at about 02:00 am [15.05.2013] after being drunk from two small bottles of whisky in the master bed room. She took her younger brother Ohee inside bath room when he started crying after waking up. She gave jomjom water to her mother when she wanted to drink. Thereafter, she made some more stabs on her mother and then more blows on her neck. Her mother fell on the ground from the bed and died of sustaining wounds. Her father also died sustaining stabs dealt by her.

37. She did not tell anything to the maid servant Sumi on how her parents were killed and she took shower and the maid servant cleaned the blood stained room of her mother. Both the dead bodies were kept inside the bathroom putting off worn ornaments from her mothers' hands. She told her brother that as mother sustained a small wound, she was taken to a hospital by their father. Failing to communicate with Jony she sought shelter from one Rocky known to her previously. It also appears from her statement that she took her mother's wallet along with ornaments, money and other worn apparels. In the name of going to her aunt's house she along with her brother and maid servant Sumi went out of the house by telling security guard at 08:10 pm.

38. Throughout the day she roamed around in a CNG in order to get shelter and met Rocky and Jony while she spoke with Rony over cell phone. She has also stated in her confession that she retained Sumi under the shelter of the CNG driver in his house at night. Another CNG driver arranged for her to stay in the house of the CNG owner. She also communicated with her aunt Suborna who talked to her maternal uncle Robiul in the night of 15.08.2013. She also talked to her maternal uncle Robiul in the morning of 16.08.2013 and handed over her younger brother to him by a rickshaw. She stayed the night of 16.08.2013 in the house of Rony's aunt Kulsum at Basabo. At night she started to realize repentance [for her wrong doing] and decided to disclose it. Even then, she went to her aunt's house at Uttara and failing to get her available she surrendered to Palton Police Station and disclosed the incident to the police.

39. She has a friend named Jony aged about 25-26 who has a 'step up' named, a dance school at Aftab Nagor. She used to take yaba with Jony who was supplying the same. Rocky aged about 40 years is a businessman of a rent-a-car. Rony aged about 22-24 is a dancer by profession. A distance was created from her parents when she was 12/13 years old and her parents used to beat her up. She fled away from her house more than once and her parents kept her in the house and did not let her go outside. She could not share anything with the inmates of the house rather she shared everything with Jony. She further narrates that 4/5



days before incident she was planning to kill her parents and she shared her plan with Jony who hoped to give her shelter, if required. Before surrendering to the police her worn apparels along with money and ornament were kept in the house of Rony's aunt and police recovered all the things from there by her pointing.

40. The said confessional statement finds the involvement of the maker in the killing of the victims in a pre-planned manner. From the evidence of pw-34 Md. Anowar Shadat, Senior Assistant Judge, it appears that he being a judicial magistrate endorsed her confession that it was made voluntarily and after maintaining all formalities he recorded her confessional statement, marked as exhibit-27 on which he put several signatures and the confessing accused also put her signatures as well and contents of the confessional statement were read over and explained to her who signed the same after having found correct and from the confession it is found that the magistrate made remarks depicting that confession of the accused seemed to be true and voluntary in nature.

41. Before recording her confession, he alerted her saying that it might be used against her as evidence if she confesses. And further told her that he was not a police officer but a magistrate and she is not bound to confess and whether she was tortured by anybody. Having understood the questions she made the confessional statement willingly.

42. Before or after recording the statement she did not make any kind of complaints to him as to whether she was tortured or assaulted by the investigating officer or she was under any duress or coercion to make confession. From the said evidence of this witness and confession of the accused it has revealed that there was no sign of conflict between the recording officer or investigating officer and the confessing accused. And the defence failed to discard the evidence that any authority or interested quarter came forward to compel her to make such confession. So, the arguments made by the learned Advocate Mr. Sujit Bhattacharjee seem to be unworthy in nature. There may have been some minor irregularities in recording the confessional statement of the accused but such irregularities are not being considered as major mistakes. It reveals from confession of condemned prisoner that there was no complaint of police torture or any kind of threat before the pw-34 that she was compelled to confess beyond her willingness, if any violence or inducement is not made by the police then the confession may be regarded as voluntary. Even then, recording magistrate rendered her reasonable time to think that if she confesses it may go against her as evidence. Therefore, it can be firmly said that the confessional statement made by her is absolutely voluntary and true and can form the sole basis of conviction as against the maker of the same. It finds support from a decision held in the case of Islamuddin –Vs–State, reported in 13 BLC [AD] 81 which is run as follows,

**“It is now the settled principle of law that judicial confession if it is found to be true and voluntary can form the sole basis of conviction as against the maker of the same. The High Court Division has rightly found the judicial confession of the condemned prisoner true and voluntary and considering the same, the extra judicial confession and, circumstances of the case found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”**

43. In the present case pw-34 as recording magistrate has been produced before the trial court and examined thoroughly by the defence but nothing is found shaken with regard to the sanctity of the said confession.

44. The expression ‘confession’ has been defined by Stephen in his ‘Digest of the Law of Evidence’ that ‘a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime’. The presence of a magistrate is a safe-guard and guarantees the confession as not made by influence. When a confession is taken by a public servant there is a degree of sanctity and solemnity which affords a sufficient guarantee for the presumption that everything was formally, correctly and duly done. In this case the recording magistrate came forward to give the evidence and there has been found nothing that he failed to give the memorandum as to her confession and pw-34 has been thoroughly cross-examined by the defence as to the genuineness of the confession and memorandum issued by him. It is not necessary that the memorandum as to the confession is to be issued separately. It is enough, if it is inserted in the prescribed form but there must be signature of the recording officer which is found present. So, no question of genuineness of the confession is found present in this case. It finds support from the case of State-Vs-Munir and another, reported in 1 BLC, 345 which is run as follows,

**“.....The confessional statement of Munir Ext. 50 recorded in accordance with the provision of section 164 of the Code of Criminal Procedure was signed by the confessing accused and the Magistrate and, as such, the Court shall presume under section 80 of the Evidence Act that the document is genuine and that the statement as to the circumstances under which it was taken by the Magistrate are true and the confession was duly taken.”**

45. Although the condemned prisoner, subsequently retracted her confession by placing written statement at the time of examination under section 342 of the Cr.P.C that she was compelled to confess before the magistrate under threat of torture by police and she being minor was not stable because of being drunk from two bottles of whiskey. But that does not reflect on her confession made by her because such history of confession was unable on the part of any interested quarter to make falsely in such way. No such clue or document is found in the entire evidence of the prosecution case. More so, if the confession is found to be true and voluntary, the retraction at a later stage does not affect the voluntariness of the confession. The retraction of the confession is wholly immaterial once it is found voluntary as well as true.

46. On a plain reading of her confession it is clearly found that she made the confession involving herself alone in the commission of offence. So, there is no doubt that the confession of the accused is inculpatory in nature. The confession is so natural and spontaneous that one cannot harbor any doubt about its voluntariness. When a confession is found to be true and voluntary and inculpatory in nature without corroborating evidence a conviction can be imposed upon the maker of the statement. It finds support from the case of Mofti Abdul Hannan Munshi @ Abul Kalam and another–Vs-the State, [judgment dated 7<sup>th</sup> December, 2016] reported in 2017(1)LNJ (AD)38 in which the Apex Court opined that

**“Even if there is no corroborative evidence, if a confession is taken to be true, voluntary in nature, a conviction can be given against the maker of the statement relying upon it subject to the condition mentioned above. In view of the above proposition of law, there is no legal ground to interfere with the conviction of the appellants and co-accused since the confessions are not only inculpatory but also true and voluntary. Deliberate and voluntary confession of guilt, if clearly proved, are among the most effectual proofs in the law-their value depending on the sound presumption that a rational being will not make admission prejudicial**

**to his interest and safety, unless when urged by the promptings of truth and conscience.”**

47. From the confession of minor accused Khadiza Akhter Sumi it reveals that Oyshee disclosed to her that she blended medicine with coffee for her mother to sleep and administered the same to her mother in the evening. Oyshee also administered coffee mixed with sedative medicine to her father after 11:00 pm at night. She could see Oyshee stabbing her mother when she once woke up from bed. She became scared and feared on seeing through door's hole while Oyshee committing such acts and went back to her room. Early in the morning Oyshee woke her up by saying that Rony and Jony having come killed her parents but she could see blood stains on the trousers of Oyshee who took the dead bodies inside the bath room with her help. As per instruction of Oyshee she cleaned a room in which victim Swapna Rahman was killed. She was under threat from Oyshee. Having taken ornaments and money from 'almira' Oyshee went out of the house along with her and Oyshees younger brother Ohee next morning by misleading security guard that she was going to her aunt's house. They went to many places throughout the day by a CNG and Oyshee had talks with others. Oyshee put her in the house of the CNG driver giving hope to take back her next morning but did not come to take her back. She stayed in the house of CNG driver for three days and narrated everything to the CNG driver who took her to Badda Police Station. This confessional statement of Khadiza Akhter Sumi indicates that she directly saw the offence of killing committed by Oyshee and in fear of Oyshee she performed some acts after incident.

48. The confession made by the condemned prisoner regarding killing incident of the deceased has been supported by information provided made by Khadiza Akhter Sumi. But this confession of Sumi should not be treated as corroborative evidence. It may be a piece of circumstantial event because such information provided by co-accused in her confession has not been tested on oath.

49. Although defence has claimed that accused Oyshee was minor at the relevant time but evidence of pws 28, 36 and 39 along with diary of Mishu Clinic and her birth certificate and school certificate from Oxford International School strongly proved that she was above 18 years at the relevant time. So the trial of accused Oyshee held by Druto Bichar Tribunal cannot be said quorum-non-judice or beyond its jurisdiction even the medical examination of accused Oyshee for ascertaining her age as around 19 years held by DMCH on 01.09.2013 is forgone as doctor was not examined.

50. Movement of Oyshee throughout the following day of the occurrence by CNG in the capital is one of the circumstances that includes her conduct for coming out of the house early in the morning misleading the security guards including the manager of the 'apartment building' where she along with her parents, younger brother Ohee and maid Sumi used to reside together. Since Oyshee was only the major girl with her parents in the house on the dreadful night she has to explain how her parents were brutally killed in the house and that has been proved by her subsequent conduct surrendering to the police station.

51. Her staying outside locking the door of the place of occurrence flat is un-explained. If Oyshee was innocent as claimed by the learned defence lawyer Mr. Surojit Chatterjee, why Oyshee stayed the night of 16.08.2013 at Basabo in a house of Kulsum Begum wherefrom a huge quantity of worn apparels, small goods, cash money and ornaments were recovered by police at the showing of accused Oyshee and she also admitted that she brought the said

materials from their house after killing her parents. Although only on the basis of confessional statement conviction can be imposed upon the maker as per section 30 of the Evidence Act but it finds support from other circumstantial evidence as stated above. Considering the above evidence, discussions and findings and facts and circumstances of the case we are constrained to hold that the prosecution has been able to prove the case against the condemned prisoner beyond shadow of doubt under section 302 of the Penal Code.

52. Having realized the quality of evidence provided by the prosecution and multiple murder in the case, Mr. Afzal H. Khan, learned Advocate appearing for the condemned prisoner at the outset contends that though there are many ambiguities in the evidence of prosecution witnesses but he does not intend to press the appeal on merit seeking commutation of sentence to the effect that the murder took place without any motive and the condemned prisoner was suffering from mental derailment or some sort of mental disorder and at the relevant time she was drunk after having two bottles of whisky. In support of these contentions both the learned Advocates referred to many decisions held by our Apex Courts and foreign courts as well. They have also drawn our attention to the report held by a board of three members' committee at Bangabondhu Sheikh Mojib Medical University, for assessment of mental condition of accused Oyshee Rahman, marked as exhibit-15 which is the outcome of Writ Petition No. 9093 of 2013.

53. Per contra, Mr. Zahirul Haque Zahir, learned Deputy Attorney General along with Mr. Md. Atiqul Haque Selim and Mr. Nizamul Haque Nizam, learned Assistant Attorney Generals appearing for the State opposes the appeal to be dismissed and to accept the death reference, submits that at the time of occurrence the condemned prisoner was around 19 years of age and she brutally killed her parents in a pre-planned manner and she does not deserve any kind of sympathy from this Court.

54. We have given our anxious thought over the contentions of the learned Advocates of both the parties, perused the report held for assessment of mental condition of the condemned prisoner and other documents on record wherefrom it transpires that the occurrence took place by the hands of daughter of the deceased and the case has been proved by the evidence of the prosecution witnesses as well as confessional statement of condemned prisoner as discussed earlier.

55. Now the vital question is before us whether the condemned prisoner has any scope to get mercy of this Court by awarding sentence to imprisonment for life from the death sentence. In the criminal justice system the purpose of punishment recognized five specific things namely,

1. **'Deterrence' which prevents crime by frightening an individual offender with punishment and by frightening the public with the punishment of an individual offender.**
2. **'Incapacitation' which prevents future crime by removing the accused from society i.e to put him in a confined place.**
3. **'Rehabilitation' also prevents future crime by altering an offender's behaviour through education, vocational programs, treatment and counsel etc.**
4. **'Retribution' prevents future crime by removing the desire for personal avengement against the offender such as when victims or society discover that the accused has been adequately punished for a crime, they achieve a certain satisfaction that the criminal procedure is working effectively, which fetches faith in law enforcement as well as government.**

**5. ‘Restitution’ prevents future crime by pecuniary punishment to the accused. Restitution is when the court orders the criminal to pay the victim for any harm and restitution can be for physical injuries, loss or property or money, and rarely, emotional distress. Such punishment can also be a fine that covers some of the criminal prosecution and punishment.**

56. The above punishments are generally imposed upon the perpetrators for committing crimes in the dispensation of criminal justice system in order to get the society more civilized and stable.

57. Among all the punishments the death penalty is the highest one which the abolitionists believe is the worst violation of human rights, because the right to life is the most important factor, and capital punishment violates it without necessity and inflicts to the condemned a psychological torture while human rights activists oppose the death penalty calling it ‘cruel, inhuman, and degrading punishment’. Amnesty International also intends to say that it is to be ‘the ultimate, irreversible denial of human rights’.

58. Among countries around the world almost all European and many specific States including Australia in 1973 [although the State of Western Australia retain the capital penalty until 1984], New Zealand and Timor Leste, and Canada in 1976 [except for some military offences, with complete abolition in 1998], France in 1981 have abolished capital punishment. In Latin America, most States have completely abolished the use of capital punishment while some countries, such as Brazil, allow for capital punishment only in exceptional situations, such as treason committed during war. In the United Kingdom, it was abolished for murder, leaving only treason, piracy with violence, arson in royal dockyards and a number of war time military offences for capital punishment, for a five year experiment in 1965 and permanently 1969, the last execution took place in 1964. It was abolished for all peacetime offences in 1998.

59. In the United States, Michigan was the first State to ban the death penalty, on 18.05.1846. The death penalty was declared unconstitutional between 1972 and 1976 based on *Furman-Vs-Georgia*, 408 U.S. 238[1972] and further limitations were placed on the death penalty in *Atkins –Vs- Virginia* stating that it was unconstitutional for people with an intellectual disability and in the case of *Roper –Vs-Simmons* it was held that it is unconstitutional if the accused is under age eighteen at the time of crime committed. In the United States, 18 States and the District of Columbia banned capital punishment.

60. In America, the case of *Lockett –Vs- Ohio* [1978] emphasized the importance of mitigation in capital trials. Sandra Lockett was charged with aggravated murder with specifications for her involvement in planning and facilitating the robbery of a pawnshop that resulted in the murder of the pawnbroker. According to one of the other suspects in the case, Lockett drove the gunman away from the crime scene, concealed the murder weapon, and hid two suspects from police. The jury was instructed that someone who “purposely aids, helps, associates herself with another for the purpose of committing a crime is regarded as if she were the principal offender and is just the guilty as if the person performed every act constituting the offense.” The jury found Lockett guilty. Under Ohio law at the time, the death penalty was mandatory for those found guilty of aggravated murder unless one of three specified mitigating factors was found:

**1. The victim induced or facilitated the offence;**

2. **It is unlikely the offence would have been committed but for the fact that the offender was under duress, coercion, or strong provocation; or**
3. **The offence was primarily the product of the offender's psychosis or mental deficiency.**

61. In Walton –Vs- Arizona [1990] the Judge found the aggravating circumstances that the murder was ‘especially heinous, cruel, or depraved’ and that it was committed for pecuniary gain. As mitigation, Walton presented a psychiatrist’s testimony on Walton’s history of substance abuse and possible childhood sexual abuse. Walton’s youth was also presented as mitigation as he was twenty years of age at the time of sentencing.

62. The role of mitigation in the **Aileen Wuornos case** focused on her traumatic childhood and mental illness. Aileen Wuornos was abandoned by her parents and raised by her maternal grand-parents. Her father committed suicide while incarcerated for child molestation. She was physically and sexually abused throughout her childhood and teenage years. At the age of fifteen, following the death of her grandmother, Wuornos was kicked out of her grandmother’s house and became a ward of the court. Three Psychologists testified that Wuornos suffered from ‘border line personality disorder’, likely brought on by her traumatic upbringing. The Jury’s sentencing recommendation found only one mitigating factor: the defendant suffered from border line personality disorder. The Judge, however, found five mitigating factors; namely

- [1] Wuornos suffered antisocial and borderline personality disorder;**
- [2] she may have been physically abused as a child;**
- [3] her natural father and grandfather committed suicide;**
- [4] her grandmother died as alcoholic; and**
- [5] her mother abandoned her as an infant.**

63. According to the Indian procedure the provision of section 235(2) of Criminal Procedure Code calls upon the court that the convicted accused must be given an opportunity of being heard on the question of sentence. This provides the accused an opportunity to place his antecedents, social and economic background and mitigating and extenuating circumstances before the court. Besides the statutory provisions, the Constitution of India also empowers the President and the Governor of the State to grant pardon to the condemned offenders in appropriate cases. These powers are, however, co-extensive with the legislative powers. The power to cut short a sentence by an act of executive exists in India and elsewhere. It is significant to note that the controversy raised in this regard in Nanavatis case, has been settled by the Supreme Court of India once for all in the case of Sarat Chandra –Vs- Khagendra Nath which affirmed the principle that sentencing power of judiciary and executive are readily distinguishable.

64. In law mitigating and extenuating circumstances in criminal cases are unusual or extreme facts leading up to or attending the perpetration of the offence which, although an offence has been perpetrated without legal justification or excuse, mitigate or reduce its gravity from the point of view of punishment or moral opprobrium. Mitigation, also referred to as mitigating factors or ‘mitigating evidence’ is evidence the defence can present in the sentencing phase of a capital trial to provide reasons why the accused should not receive a death sentence. This evidence, which can include mental problems, remorse, youth, childhood abuse or neglect, a minor role in the homicide, or the absence of a prior criminal record, may reduce the culpability of the accused in the killing or may provide other reasons for preferring a life sentence to death.

65. In the case of our criminal justice system there is no provision in law for the offender to reduce the sentence by mitigating circumstances as of right but in practice the judges have powers to determine the punishment to be awarded for an offence. The sentence, with certain exceptions in capital cases, is within the sole discretion of the judges and the judges are determined by discretion to weigh the mitigating factors presented by the defence against the aggravating factors presented by the prosecution. Practice reminds precedents that the death penalty is intended only 'for the worst of the worst' crimes.

66. In America, as mitigation has been recognized as a critical part of a capital trial, defence attorneys have turned to mitigation specialists to investigate defendant's backgrounds. Mitigation specialists examine dependants' family history, medical history, education and employment background, and any other element of an individual's life that may convince the Jury to return a sentence other than death. After getting information, they assist defence counsel in presenting a coherent case for mitigation. The role of the mitigation specialist is so central to a client's defence that the American Bar Association includes them in their guidelines on the defence in death penalty cases.

67. In the history of Pakistan's judiciary mitigations are often used in the calculation of sentence when the allegation is found proved against the defendant. In the case of Zulfiqar alias Bhutto Vs The State [1995 SCMR 1668] the benefit of tender age was given to the accused but it was further opined that tender age of the accused may not be a firm rule applicable in cases where the offence is so heinous or brutal. In another case of Muhammad Ikram alias Billa –Vs- The State, reported in 1999 SCMR 406 the accused was allowed such benefit on account of his tender age by conversion of his sentence of death to imprisonment for life and the evidence referred to the fact that the accused who was of tender age got annoyed over failure of the deceased to return borrowed money and his use of foul tongue when the money was demanded from him by the accused. Even then, considering the young age of the accused at the time of commission of offence as a mitigating factor resulted in conversion of sentence from death to that of imprisonment for life although the motive of the murder was successfully established by the prosecution, observed in the case of Muhammad Afzal –Vs-The State, 1999 SCMR 2851.

68. In the case in hand, it appears from evidence on record that the prosecution has marked the report prepared for the assessment of mental condition of condemned prisoner as exhibit-15 which basically has come into light by a Writ Petition No. 9093 of 2013. During examination of her mental condition after around two months of the occurrence, the medical board took five interviews of the condemned prisoner on 28.10.2013, 03.11.2013, 07.11.2013, 08.12.2013 and 16.01.2014 and Md. Abu Al Khair Matbbor, Inspector of Police, Detective Branch, who investigated the case as 3<sup>rd</sup> Investigator, on 11.11.2013 and Iftekar Alam, husband of only maternal aunt of condemned prisoner on 18.11.2013 and Moshir Rahman [pw-01] only paternal uncle of condemned prisoner on 18.11.2013 and Khadiza Akhter Sumi maid servant on 03.12.2013 respectively wherefrom it reveals that her father was Police Inspector of Special Branch and mother worked in Destiny since 2001 and her birth history was not eventful according to her close relatives and she studied in different schools. She has history of ovarian cyst and bronchial asthma and taking Allopathic and Homeopathy medicine. Her family history discloses that her paternal grandmother and maternal uncle had psychiatric disorders.

69. When she was in class VI in 2009 problems initially started such as lack of interest in study, lack of interest in maintaining daily life activities, decreasing interest in attending school, breaking family rules, taking drugs with smoking, poor concentration, irritability, stealing money from her father's pocket. Due to above problems and poor academic performance she had to change her school. She had a history of attempted suicide in 2009 by taking sedative overdose [20-30 sedative tables] and was hospitalized at that time and followed by another attempt after 3 or 4 months with insecticide of cockroaches and 3rd attempt was at the end of 2012 and tried to hang by netting rope but the rope tore and she was survived. She even got suicidal thought and ideas in jail. She started smoking cigarette when she was in class IV. Since 2008 she needed at least twenty sticks per day and is still continuing.

70. The above problems were gradually increasing and more marked from class VIII [2011]. She then started to mix with different persons other than her classmates. At that moment her previous problems remarkably increased and were identified by her parents. Unmindful, impulsivity, continuous deceitfulness, destruction of household properties, violation of family rules, irritability, substance misuse, stealing, staying outside home overnight, thus caused clinically significant impairment of her social and academic functioning. It is noted that substance misuse behavior remarkably started when she was a student of class IV or V and the same was increased from class VIII in 2011.

'For the last few years she was less concerned about her family affairs. She had no feeling about her parents concern regarding her present and future. She had a tendency not to learn from the previous fault. Even she had no guilty feeling or remorse about her such activities. She had also a tendency to rationalize her own act, thinking and behavior.'

71. She started taking alcohol from her father's store when she was in class four or five. Taking alcohol gradually became a habit for her from 2012. Habit of taking shisha started in 2011 from different places and taking yaba irregularly started since 2012 and she used to take cannabis occasionally.

72. From the above personal including family history, psychiatric, suicidal and drug history it has emerged that she has been suffering from,

1. **Personal disorder [dissocial personally disorder]**
2. **Conduct disorder [before the age of eighteen years] and**
3. **Mental and behavioral disorders due to psychoactive substance use-**  
**[a] mental and behavioral disorders due to use of tobacco and**  
**[b] harmful use of shisha [volatile substance], alcohol, yaba and cannabis [ganja]**

73. At the time of occurrence she was drunk according to her statement and it was confirmed by taking history from the condemned prisoner although there was no way to confirm it clinically as she was put on medical board for mental assessment after more than two months of the occurrence while suffering from the above illness. Immediately after the occurrence before her surrender to the police she was found anxious, restless, perplexed, helpless and hopeless. Possible mental condition after the incident it is clear from her history and assessment that her personality problems are still persisting. The medical board finally concluded that Oyshee Rahman currently is suffering from

1. Post traumatic stress disorder [PTSD]
2. Personal disorder [dissocial personally disorder].



74. She was prescribed to take medication [mirtazepine 15mg] for her present psychiatric illness and need psychotherapy and further follow-up for her present condition.

75. Although in the neighboring country like India in a case of murder, if proved, the imprisonment for life is the first option of punishment imposed upon the perpetrator and the second option is death penalty which can be imposed upon the perpetrator in a case of an extreme crime committed but it has to assign the reasons why the capital punishment i.e death penalty has been imposed upon the offender. But in our criminal justice system, if an offence of murder is proved beyond reasonable doubt, the capital punishment is the first choice to impose upon the offender and the second option is imprisonment for life imposed if the court finds any mitigating circumstances upon its discretionary power which means that court has to explain the reason why the sentence of death has been commuted to one of imprisonment for life. Our Apex Court very recently opined in a case of Ataur Mridha @ Ataur and another -Vs-The State [unreported] that the capital punishment is the rule while the imprisonment for life is an exception. It was further observed that when the question of commutation is considered the court has to assign the reasons as to why it has occurred and in case of commutation from death penalty to life imprisonment, this court may direct that the offender shall have to suffer rest of his natural life and such type of cases would be beyond the application of remissions.

76. In the case in hand, it is evident that the condemned prisoner killed her parents in a pre-planned manner. Before the occurrence took place she made a plan to kill her parents and she brought a number of sedative tablets in the occurrence house and administered the same blending it in coffee to both the victims one after another. In these circumstances, the pertinent question is before us whether the commutation can be considered to the condemned prisoner while there is no sentencing guideline in law other than in practice. In the case of Nalu –Vs-The State, reported in ALR [AD][2012] the Apex Court considered four mitigating circumstances, two of them are as follows:

**[a] The condemned prisoner has no significant history or prior criminal activity in the police report and**

**[b] The condemned prisoner was very young at the time of commission of the offence.**

77. In the case of State –Vs-Tasiruddin, reported in 13 DLR 203 where the age of the offender even up to 27 years, has been considered as a ground of commutation of the sentence of death. It finds more support from the decision held in the case of the State –Vs-Saifullah Al-Mahmood Tanvir and others, reported in 1 LM [AD] by which the Apex Court has accepted the opinion of the High Court Division to the effect that since the age of the appellants [the convicted- respondents] were not that much and they had just attained the age of majority they [the learned judges] found it justified to commute the sentences of death to imprisonment for life.”

78. In the above discussions, we find that many developed and civilized countries’ higher judiciaries all over the world discourage the death sentence in the cases of murder, even if heinous in nature but our country has not achieved that much of a remarkable position in terms of such betterment. Yet, the people of this country are trying to be more conscious than the past about organizing the civilized society and focusing on primary education as well as higher education for self development. However, increasing rate of population growth means crimes are also increasing in the society day by day according to statistical reports.

79. Apart from this, in a criminal case it is often found that both the parties in order to make their respective case strong, provide untrue statements or evidence in a real incident or occurrence which sometimes makes persons/men involved in the dispensation of justice, confused. Therefore, the dispensers have to face a lot of challenges while adjudicating justice. But there is no scope to take a back step from continuing to dispense justice until the end of the day when the offender is brought to the notice of the court in fear of any of these challenges. To develop and upgrade the highest credibility of the judiciary it needs more consciousness, more education, more patriotism and remarkable civilization among the people of the country to bring about pragmatic thinking in awarding punishment upon the perpetrator who commits the crime. In a country like ours it is yet not up to the remarkable position that the death penalty can be abolished or the same can be withdrawn by amending law of the land. But in order to impose the sentence upon a perpetrator for the crime committed by him/her, if proved, there must be a guideline or rules as to how it can be imposed. Because, the defence does not know as to whether the prosecution is being able to prove its case before delivery of the verdict, then how the defence can approach to the court to avail lesser punishment. If the defence, before pronouncement of judgment, urges the court for lesser punishment which indicates that the defence is admitting the commission of the offence. And as such, the concerned authorities may think about the guidelines on what and how the sentencing system is being applicable in law.

80. In the present case, considering the social disruption learned trial judge in his findings showed some sort of emotion on how the condemned prisoner dared to kill her parents brutally by her own hands, but there is no scope to show such emotion in determination of awarding sentence or during adjudication of justice. The court has to consider legal evidence and materials that under what circumstances the occurrence took place by her cruel actions at the age of around 19[nineteen] years being a female member. It appears further from evidence that the condemned prisoner being a daughter killed her parents apparently in a pre-planned manner which is undoubtedly a painful event for the family members and the people of a civilized society as well. At the same time it is evident by exhibit-15 that the condemned prisoner has been suffering from personal disorder [dissocial personally disorder], conduct disorder [before the age of eighteen years] and mental and behavioral disorders due to psychoactive substance use of tobacco, shisha [volatile substance], alcohol, yaba and cannabis [ganja]. A three member medical board also found her as anxious, restless, perplexed, helpless and hopeless immediately after occurrence before surrendering to the police station. They also found her personality problems still persisting from for possible mental condition after the incident.

81. This Court during hearing of the death reference brought the condemned prisoner physically on 10.04.2017 from the prison to make an assessment for considering the exhibit-15 by an order dated 03.04.2017 following section 375 of the Cr.P.C. During inquiry she did not show any kind of realization that she was facing gallows on hearing death reference and appeals for the crime committed by her. Rather she said she feels unwell when someone places something before her with a bad intention to recall her past conduct and finally she wishes to commit suicide. From the said direct inquiry it is found that she is still not in a position to ponder about the killing of her parents by her own hands on the dreadful night at their residence. In such a situation how far is it justifiable for gallows to be imposed on her?

82. From the family history of the condemned prisoner it is also found that her father was a Police Officer and mother was working in Destiny [a private business organization] which

indicates that her parents were busy with their livelihood and also evident in the case that in her early life sufficient care did not take place by her parents although they could realize it at a later stage when her life had already been ruined by addiction and other things. And that is why, it can be said that parents or guardians are the only teachers of their children at the beginning of children's their early lives. Parents should encourage their children to different books as it can prevent them from slipping into a wrong path. Children can be prevented from heading down the wrong path only by getting them involved in good environment and also good family atmosphere. The amount of time the parents spend with their children or they get involved in domestic chores is not very significant for the betterment of the children. They are to spend enough time for their children with a good environment in the early lives so that children can approach towards the good things for their future lives.

83. This sentence that someone be punished in such a manner is referred to as 'Death Sentence', whereas the act of carrying out the death sentence is known as execution. The execution is not only an exemplary punishment alone that can erase the crime from the society forever. Lesser punishments may significantly prevent or reduce the crimes from the society depending on the good governance and awareness of the people.

84. To consider the lesser punishment from death sentence to life imprisonment mitigating evidence or circumstances must be stronger than that of aggravating evidence produced by the prosecution. In this case we find the following circumstances outweigh the aggravating circumstances,

6. **Condemned prisoner committed double murder without any apparent motive and was suffering from mental derailment or some sort of mental disorder and also suffering from ovarian cyst and bronchial asthma;**
7. **Her paternal grandmother and maternal uncle had a history of psychiatric disorders according to exhibit-15;**
8. **She was around 19[nineteen] year old at the relevant time and the occurrence took place just immediately after her attaining the age of majority;**
9. **She has no such significant history of prior criminal activity [criminal cases] and**
10. **She had willingly surrendered to the police station soon after two days of the occurrence.**

85. Therefore, we do find extraneous grounds to commute the sentence but we do not find any reason to interfere with the conviction recorded against her under section 302 of the Penal Code.

86. In the above facts and circumstances of the case, we are of the view that ends of justice will be met if accused Oyshee Rahman is sentenced to one of imprisonment for life instead of awarding her sentence to death with a fine of Tk. 5,000/-[five thousand].

87. It is also found from the confession of Oyshee that she left the house along with her brother Ohee and maid Sumi the following day of occurrence i.e on 15.08.2013 and went to Badda after having a talk with accused Jony, who has been acquitted, but got no assistance from Jony. Thereafter she made contact with Rony who took her to his maternal aunt's [Kulsum Begum] house at Mugda and having full knowledge that Oyshee has committed the murder still gave her shelter, which has been supported by the evidence of pws-4, 5, 9, seizure list witnesses at Mugda from where the belongings and some other materials were

recovered at the showing of accused Oyshee Rahman. Having considered the confession of accused Oyshee Rahman and evidence of the said witnesses and other circumstances it can be said that accused Mizanur Rahman Rony had knowledge about the offence of murder committed by Oyshee and by giving shelter he tried to conceal accused Oyshee Rahman with the intention of screening her from legal punishment. However, since there is no appeal before us with regard to the said accused Mizanur Rahman Rony, we are refrained ourselves from passing any order in this regard.

88. In the result, the Death Reference No. 99 of 2015 is, hereby, rejected with the said modification in awarding sentence. The Criminal Appeal No.10281 of 2015 and Jail Appeal No. 206 of 2015 are dismissed.

89. Accordingly, the condemned prisoner Oyshee Rahman is sentenced to imprisonment for life with a fine of Tk.5,000/- as stated above and be shifted from the condemned cell to normal cell meant for similar convicts at once.

90. Let a copy of the judgment and order along with lower court's records be transmitted to the Druto Bichar Tribunal No. 03, Dhaka for taking necessary measures.