

16 SCOB [2022] AD 51**APPELLATE DIVISION****PRESENT:****Mr. Justice Muhammad Imman Ali****Mr. Justice Hasan Foez Siddique****Mr. Justice Md. Nuruzzaman****Mr. Justice Obaidul Hassan****CRIMINAL APPEAL NO.6 OF 2013**

(From the judgment and order dated 27.11.2012 passed by the High Court Division in Death Reference No.39 of 2007 with Jail Appeal No.541 of 2007).

Monir Ahmed :**Appellant**

-Versus-

The State :**Respondent**

For the appellant : Mr. Zulhash Uddin Ahmed, Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record.

For the Respondent : Mr. Biswajit Debnath, Deputy Attorney General, instructed by Mr. Md. Shamsul Alam, Advocate-on-Record.

Date of hearing and judgment : The 3rd day of November, 2021.

Editors' Note

This is a case of brutal killing of a 11-year-old boy for ransom by his uncle and uncle's cohorts in which the dead body of victim could not be found due to cutting it into pieces and throwing them in the water body connected with sea. There was no eyewitness to the occurrence. Appellant made a confessional statement. The Appellate Division examining the confessional statement of the appellant found it to be voluntary and true and also found that the circumstantial evidence unerringly pointing to the guilt of the appellant but considering the length of period spent by the appellant in the condemned cell and other circumstances commuted his sentence of death to one of imprisonment for life.

Key Words

Section 302 of the Penal Code; Confessional Statement; Section 164 of the Code of Criminal Procedure

Section 164 of the Code of Criminal Procedure:

It is well settled that the confessional statement can be the sole basis of conviction if it is made voluntarily and it is true. In the instant case, the confessional statement of the appellant is voluntary and true and it was rightly found to be so by both the trial Court and the High Court Division. It is true that there is no eye witness in the instant case, but the inculpatory, true, and voluntary confessional statement of the convict-appellant, and the circumstances are so well connected to indicate that those circumstances render no other hypothesis other than the involvement of the appellant in committing murder of the victim Rashed. ... (Paras 40 & 41)

JUDGMENT

Obaidul Hassan, J.

1. This Criminal Appeal No.06 of 2013 is directed against the judgment and order dated 27.11.2012 passed by a Division Bench of the High Court Division in Death Reference No.39 of 2007 and Jail Appeal No.541 of 2007 accepting the Death Reference while dismissing the appeal and thereby upholding the judgment and order of conviction and sentence dated 31.05.2007 passed by the Court of Additional Sessions Judge, 1st Court, Chittagong in Sessions Case No.497 of 2006 (hereinafter referred to as the trial Court) corresponding to G.R. No.235 of 2005 arising out of Banskhal Police Station Case No.05(10)05 under sections 302/34/201 of the Penal Code convicting the accused-appellant under section 302 of the Penal Code and sentenced him to death by hanging.

2. The prosecution case, in short, is that on 05.10.2005 at 3:00 pm, the deceased Mohammad Rashed, Son of the informant Sharifa Khatun, a student of a Hafezi Madrasha, where he was learning the Holy Quran, aged about 11 years was taken away by his full uncle, the accused Monir Ahmed from his house to Chambol village saying that he was going to see a bride and he wanted Rashed to accompany him. At that time, Rashed's father was staying in Saudi Arabia. The informant Sharifa Khatun on good faith allowed Rashed to go with the accused Monir Ahmed. But on that day at night about 9:00 pm when Monir Ahmed came back alone Sharifa Khatun asked him about her son whereon the accused Monir Ahmed answered that Rashed went to his aunt's house. But subsequently they came to know that Md. Rashed did not go to the house of his aunt (fufu). Thereafter, Sharifa Khatun along with the family members of the deceased searched for him. But all in vain. They received a phone call from a Nokia Mobile set bearing No.0173-604000 with which some one talked with Sharifa Khatun asking her to pay Tk.2,00,000.00 in exchange of her son and also advised her to go to Bandarban Hill Tracts for taking back her son. But on searching, it was found that the mobile call came from Vadalia Harun Bazar under Union-Sorol, Police Station-Banskhal. After that, the informant came to Banskhal Police Station and filed a diary about kidnapping of her son. Banskhal Police accepted the diary as First Information Report (FIR) and filed case No.5 of 2005 dated 09.10.2005. Subsequently, it came to light that the accused Monir Ahmed stated that he with the help of Bodi Alam son of Ahasan Ahmed, Kalim Uddin, son of Oli Ahmed, Salim Uddin, son of Oli Ahmed all of Village-Middle Sorol, Union-Sorol, Upazila-Banskhal on 07.10.2005 took Rashed in an abandoned brick field at present a fish-project of Ashraf Ali, son of Yakub Ali at North Sorol. There they killed Rashed plunging him into the water. After that they separated two hands, two legs and head from the dead body of the deceased and put the cut pieces of the dead body in a sack and dropped it in a canal named Jalkadar having link with the sea.

3. On receipt of the FIR of the case police took up investigation of the case and after investigation *prima-facie* case having been made out against the accused-persons, submitted charge sheet No.05 dated 17.01.2006 of Banskhal Police Station under sections 364/385/302/201/34 of the Penal Code against them.

4. During trial charge under sections 302/201/34 of the Penal Code was framed against the accused-persons. The charge was read over and explained to the accused-persons to which they pleaded not guilty and claimed to be tried. To substantiate the case the prosecution examined as many as 11(eleven) witnesses, but the defence examined none.

5. On the closure of the evidence of the prosecution witnesses, the convict-appellant

Monir Ahmed was examined under section 342 of the Code of Criminal Procedure, 1898 to which he pleaded innocence and he informed the Tribunal that he would not adduce any evidence on his behalf. The other accused-persons being absconding they could not be examined under section 342 of the Code of Criminal Procedure.

6. The defence case as it appears from the trend of cross-examination is that the appellant is innocent and has been falsely implicated in this case and the accused-appellant is not involved with the offence as alleged by the prosecution.

7. After trial, on hearing the learned Advocates for both the sides and on perusal of the evidence and materials on record found the accused person guilty and convicted him under section 302 of the Penal Code.

8. Death sentence proceeding has been submitted to the High Court Division by way of Reference by the trial Court and the reference has been noted as Death Reference No.39 of 2007. Being aggrieved by the judgment and order of the trial Court, the convict Monir Ahmed preferred Jail Appeal No.541 of 2007 before the High Court Division.

9. The High Court Division by its judgment and order dated 27.11.2012 accepted the Death Reference and dismissed the Criminal Appeal affirming the judgment and order dated 31.05.2007 passed by the Additional Sessions Judge, 1st Court, Chattogram.

10. Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence passed by the High Court Division dated 27.11.2012, the convict-appellant preferred Criminal Direct Appeal before this Division.

11. Mr. Zulhash Uddin Ahmed, learned Advocate appearing for the appellant has taken us through the FIR, the charge sheet, testimonies of the witnesses, the judgment and order passed by the Tribunal and the appellate Court (High Court Division), connected materials on record and submit that the High Court Division failed to consider that the judgment and order of conviction is bad in law as well as in facts and, as such, the impugned judgment and order of conviction is liable to be set aside. He further submits that the High Court Division failed to consider that the judgment and order of conviction is based on surmise and conjecture and not on legal evidence and, as such, the impugned judgment and order of conviction is liable to be set aside. He also submits that the High Court Division failed to consider that the judgment and order of conviction has been passed by the trial Court without applying its judicial mind as the case was not proved by the prosecution witnesses beyond reasonable doubt and, as such, the impugned judgment and order of conviction is liable to be set aside. He next submits that during trial the prosecution examined as many as 11 prosecution witnesses, but all the witnesses disowned the prosecution case and none of the witnesses witnessed the occurrence and, as such, the impugned judgment and order of conviction is liable to be set aside. Moreover, he submits that there is no evidence against the appellant except confessional statement, but the same cannot be used against the appellant without corroboration and cannot be basis of conviction and it is not an evidence as per section 3 of the Evidence Act, 1872 and, as such, the impugned judgment and order of conviction is liable to be set aside.

12. Mr. Biswajit Debnath, the learned Deputy Attorney General, appearing for the respondent-the State, made his submissions supporting the judgment and order passed by the High Court Division and prays for dismissal of the appeal.

13. Now, to ascertain whether the prosecution has been able to prove the charge against the appellant Monir Ahmed, let us examine and analyze the depositions of the witnesses adduced by the prosecution.

14. P.W.1, the informant Sharifa Khatoon stated in her deposition that on 05.10.2005 her son Md. Rashed aged about 11 years came from Madrasha at 12:00 o'clock noon. At that time her husband was staying in Saudi Arabia. The accused Monir Ahmed came to her and wanted to take the victim Md. Rashed with him for seeing his bride at east Chambol. She allowed Md. Rashed to go with the accused Monir Ahmed. On that day at night at about 9:00 pm the accused Monir Ahmed came back to his home alone. On her query, the accused Monir Ahmed told that the victim Rashed had gone to his aunt's house. But on the next day, on query, in the house of aunt of Rashed it was found that Rashed did not go there. While search was going on everywhere for Rashed a call from mobile phone came to her demanding Tk.2,00,000.00 in exchange of Rashed and it was advised to her to pay the money in the hill district of Bandarban. After that, she made a G.D. Entry in the Banshkhali Police Station, which was treated as the FIR of the case. This witness proved the FIR of the case as Exhibit-1 and her signature therein as Exhibit-1/1.

15. During cross-examination she stated that their house and that of Monir Ahmed situated side by side. She allowed Rashed to go with Monir Ahmed believing that Rashed would come back. Two days later she lodged the FIR of the case. She put her signature on the seizure list. This witness denied the defence suggestion that the accused Monir Ahmed was not involved in the occurrence or that he did not accompany her son or that she deposed falsely.

16. P.W.2, Amena Begum, stated in her deposition that after coming back from Madrasha on Wednesday one day before last Ramadan accused Monir Ahmed took the victim Rashed away on the pretext of seeing his bride. Four days later the accused Monir Ahmed demanded Tk.2,00,000.00 as ransom for the release of Rashed. The accused Monir Ahmed admitted himself in the Police Station that he killed Rashed cutting into pieces. This witness identified the accused Monir Ahmed on the dock.

17. During cross-examination she stated that she was the full aunt of the victim Rashed. This witness further stated that on her query Rashed told her that he was going with his uncle Monir Ahmed to see his bride. This witness denied the defence suggestion that she deposed falsely.

18. P.W.3, Habibur Rahman, stated in his deposition that he was the Ward Member of Ward No.2, Gundamara Union Parishad No.9, Banshkhali, Chattogram. The Officer-in-Charge of the Police Station along with some fishermen numbering 8/10 and the accused Monir Ahmed were present on the embankment beside his home. At the instruction of the accused Monir Ahmed they were trying to recover the dead body. From Asar' to Esha' prayer the fishermen and some other people tried to recover the dead body of the deceased from the water, but failed. So, they decided to try once again in the next morning. Police came back on the next morning with the accused Monir Ahmed. Again they tried to recover the dead body, but in vain. At that time 500/600 people were present there. When they confirmed that the dead body was not dropped in that water they asked the accused Monir Ahmed to say the exact place where he dropped the dead body of the victim Md. Rashed. At that time accused Monir Ahmed told before people that if he was released then he would tell the truth. At the

assurance of the people the accused Monir Ahmed took them to the brick field of Rashid Mia situated to the north of Sorol Union. Beside that a Fish Project was there. Showing a place to them the accused Monir Ahmed told that after killing Rashed they cut his two hands, two legs and the head and put the cut pieces of the dead body in a plastic sack and dropped it under a *Nashi*(Culvert), which was situated in between Fish-Project and the sea. The neighbouring people told that at the time of tide when the sack of the dead body entered into the fish project, the owner of the Fish-Project pulled out the sack into the sea at the time of ebb. For 8/9 days the surrounding people saw the middle part of the dead body floating in the sea water. This witness identified the accused Monir Ahmed on the dock.

19. During cross-examination he stated that the accused Monir Ahmed disclosed that his two cousins were also involved in the alleged occurrence. He did not know the name of the owner of the project. This witness denied the defence suggestion that the accused Monir Ahmed did not tell anything to police or them.

20. P.W.4, Banshi Ram Jaladas deposed that he was waiting for fish putting his net in the sea. The time was in the previous Ramadan. Prior to one day before last Ramadan at 3 p.m. the Union Parishad Member and the Police called him. The Officer-in-Charge showed him the accused Monir Ahmed who was kept in tied up condition in a Taxi. The accused Monir Ahmed said that with a fishing boat he plunged the dead body of the deceased Rashed into the sea. As per showing of the accused Monir Ahmed they tried to recover the dead body of the deceased from water with the help of net and anchor but did not find the dead body. At night at about 8:00 pm police left the place taking Monir Ahmed with them. Next day in the morning they again searched the dead body of the victim in the sea, but did not find it. This witness identified the accused on the dock.

21. During cross-examination this witness denied the defence suggestion that the accused Monir Ahmed did not tell them about dropping the dead body in the sea.

22. P.W.5, Soor Ahmed stated in his deposition that when he was catching fish in the moon light he saw a human dead body in a floating condition without hands, legs and head entering into the Fish-Project. Seeing that he became panicked and informed the union parishad member. He again returned to the fish project and saw that the dead body was carried away by the ebb tide in the sea. Subsequently, he heard that the dead body was of a boy. He saw his mother. Police recorded his statement.

23. During cross-examination this witness stated that it was moonlit night. He denied the defence suggestion that he did not see the dead body entering into the Fish Projector that he deposed falsely.

24. P.W.6, Oli Ahmed stated in his deposition that the accused Monir Ahmed took the victim Rashed to his house on the first day of Ramadan prior to the last Ramadan and told him that he went to his house to see him. After taking Seheri, on the pretext of offering Morning Prayer he went away taking the victim Rashed with him. Subsequently, he heard from police that the accused Monir Ahmed killed Rashed.

25. During his cross-examination this witness stated that the accused Monir Ahmed was his full nephew.

26. P.W.7, Noor Mohammad Mazumder, Upazilla Magistrate, Banshkhali stated in his

deposition that on 23.11.2005 he was attached to Bashkhali Upazaila as the Upazilla Magistrate. On that date after observing all legal formalities and giving sufficient time for speculation to the accused Monir Ahmed, he recorded his confessional statement under Section 164 of the Code of Criminal Procedure. This witness proved the confessional statement of the accused Monir Ahmed as Exhibit-2 and his signatures therein as Exhibits-2/1, 2/4 and identified the signature of the accused Monir Ahmed therein as Exhibit-3. This witness identified the accused Monir Ahmed on the dock. This witness further deposed that on 27.11.2005 he recorded the statement of Oli Ahmed under section 164 of the Code of Criminal Procedure. This witness proved the statement as Exhibit-4, his signatures therein as Exhibits-4/1, 4/2 and identified the LTI of Oli Ahmed as Exhibit-5.

27. During cross-examination this witness stated that he gave 3(three) hours time for speculation before making confessional statement to the accused Monir Ahmed. There were no police personnel where the accused was kept. This witness denied the defence suggestion that there were marks of injury on the person of the accused or that he was not given sufficient time for speculation.

28. P.W.8, Sultan Ahmed deposed that the house of the accused persons Karimulla and Salimulla were situated at Sorol. The occurrence took place one year back. The defence declined to cross-examine this witness.

29. P.W.9, S.I. Md. Shafiqul Islam one of the investigating officer of the case deposed that on the basis of complaint of the informant the Officer-in-Charge after recording the case on 09.10.2005 under section 364 of the Penal Code and entrusted him with the charge of investigation of the case. During investigation he visited the place of occurrence, drew Sketch Map thereof with Index, seized mobile phone by which the accused demanded ransom from the informant, recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure, tried to recover the victim and to arrest the accused. On 21.10.2005 the accused Monir Ahmed surrendered to him. He tried to recover the dead body of the victim taking the accused with him. As per showing of the accused Monir Ahmed he visited the 2nd place of occurrence an old brick field presently fish-project of Ashraf Ali situated at north Sorol. He got recorded the confessional statement of the accused Monir Ahmed under section 164 of the Code of Criminal Procedure as per desire of the accused Monir Ahmed. On 23.10.2005 the accused Monir Ahmed made confessional statement under section 164 of the Code Criminal Procedure before a Magistrate. In his confessional statement the accused Monir Ahmed stated that he along with the accused-persons Badi Alam, Salim Uddin and another Salim Uddin took the victim Rashed(11) on 07.10.2005 with them at night to the 2nd place of occurrence and killed him dipping into the water. Thereafter, they separated two hands, two legs and head from the dead body of the victim-deceased by inflicting dao blows. Thereafter, they put the cut pieces of the dead body of the victim in a sack and dropped it in a canal Jalkadar by name. As per the statement of the accused they searched for the dead body of the deceased in Jalkadar canal and in the sea, but nowhere the dead body was found. He also tried to arrest the other accused-persons. After investigation *prima-facie* case under sections 364/385/302/201/34 of the Penal Code being made out beyond reasonable doubt against the accused-persons he sent memorandum of evidence to his higher authority. In the event of his transfer elsewhere he handed the docket of the case over to the officer-in-charge. This witness identified the accused Monir Ahmed on the dock. This witness further deposed that the first place of occurrence was the house of Fechu Mia situated at Munkir Char under Banskhali Police Station. This witness proved first Sketch Map as Exhibit-6, his signature therein as Exhibit-6/1, the Index as Exhibit-7, his signature thereon as Exhibit-7/1, the 2nd

place of occurrence as Exhibit-8, his signature thereon as Exhibit-8/1, the Index thereof as Exhibit- 9, his signature thereon as Exhibit 9/1. This witness further proved the seizure list dated 10.10.2005 under which he seized a Nokia mobile set bearing No.0173604000 as Exhibit-10. This witness further deposed that he gave mobile phone to the custody of its owner. This witness proved the deed of custody as Exhibit-11 and his signature thereon as Exhibit-11/1.

30. During his cross-examination this witness stated that S.I. Moshir Rahman submitted the charge sheet. He produced the accused Monir Ahmed before the Court of Magistrate on 23.10.2005 and collected confessional statement at 1:30 pm. Taking the accused Monir Ahmed with him he tried to recover the dead body of the deceased from the deep sea. The informant put her signature in English. This witness denied the defence suggestion that he tortured the accused Monir Ahmed mentally and physically keeping him in his custody or that the accused Monir Ahmed made confessional statement under section 164 of the Code of Criminal Procedure as being tutored by him or that he deposed falsely.

31. P.W.10, Russel Kanti Nath stated in his deposition that the occurrence took place 1^{1/2} year back. After coming back from school he sat in the mobile phone shop of his father Sunil Kanti Roy. At 12:00 noon, a person came to make a mobile call. He gave mobile call to a number as supplied by that person. Thereafter, taking the mobile phone the person went out of the shop. He followed him. That person told over mobile phone that he was talking from Bandarban and that if he was paid Tk.2,00,000.00 she would get back her son. Thereafter, paying him Tk.4.00 that man went away. 7/8 days later police came to their shop and apprehended his father and seized the mobile phone. This witness proved his signature on the seizure list as Exhibit-10/2 and identified the seized mobile phone as material Exhibit-I. This witness further deposed that the bearded man with cap on his head standing on the dock was that person (i.e. the accused).

32. During his cross-examination this witness stated that at the time of occurrence he was the student of in class-IX. At that time his father was in their house. The name of their shop was 'Sunil Store'. Police examined him. This witness denied the defence suggestion that he deposed as tutored by Amin Chairman.

33. P.W.11, S.I. Md. Moshir Rahman stated in his deposition that on 30.12.2005 he was attached to Banskhali Police Station as S.I. On 09.10.2005 the Officer-in-Charge entrusted him with the charge of remainder of the investigation after transfer of his previous Investigating Officer S.I. Shafiqul Islam. During his investigation he perused the docket of the case and found that his previous investigating officer visited the place of occurrence, recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, seized the alams of the case, arrested the accused Monir Ahmed, got recorded his statement under section 164 of the Code of Criminal Procedure and made attempt to arrest the other accused-persons. This witness further deposed that after investigation *prima-facie* case having been made out against the accused-persons Monir Ahmed, Badi Alam, Kalimuddin and Salim Ullah, his previous investigating officer submitted Memorandum of Evidence(ME) under sections 364/385/302/201/34 of the Penal Code against them. As per the memo No.141 (2)2, dated 05.01.2006 of S.P, Chattogram he submitted charge-sheet No.05 dated 17.01.2006 of Banskhali Police Station under sections 364/385/302/201/34 of the Penal Code.

34. During his cross-examination this witness stated that on 30.12.2005 he received the

docket of the case and submitted charge-sheet on 17.01.2006. He denied the defence suggestion that he did not take out investigation of the case or that without taking out investigation the charge sheet was submitted in this case as per instruction of Amin Chairman or that he deposed falsely.

35. These are the witnesses produced by the prosecution. Among the witnesses P.W.1 is the mother of the deceased victim and informant of the case, P.W.2 is full aunt of the victim, P.W.3 is the ward member of ward No.2, Gundamara Union Parishad No.2, Banshkhali, P.Ws.4 and 5 are fishermen of the locality, P.W.6 is the full uncle of the victim, P.Ws. 7, 9 and 11 are the official witnesses, P.W.8 is a charge sheeted witness and P.W.10 is a shopkeeper of the locality.

36. Now let us see how far the prosecution has been able to prove the allegation brought against the convict-appellant. P.W.1, the informant stated in her deposition that on 05.10.2005 her son Md. Rashed aged about 11 years came from Madrasha at 12:00 o'clock noon. The accused Monir Ahmed came to her and wanted to take the victim Md. Rashed with him for seeing his bride at east Chambol. She allowed Md. Rashed to go with the accused Monir Ahmed. On that day at night at about 9:00 pm the accused Monir Ahmed came back to his home alone. On her query, the accused Monir Ahmed told that the victim Rashed had gone to his aunt's house. But on the next day, on query, in the house of aunt of Rashed it was found that Rashed did not go there. While search was going on everywhere for Rashed a call from mobile phone came to her demanding Tk.2,00,000.00 in exchange of Rashed and it was advised to her to pay the money in the hill district of Bandarban. After that, she made a G.D. Entry in the Banshkhali Police Station, which was treated as the FIR of the case. This witness proved the FIR of the case as Exhibit-1 and her signature thereon as Exhibit-1/1. P.W.2 supported P.W.1. P.W.3 is the Member of Ward No.2, Gundamara Union Parishad stated in his evidence that the accused Monir Ahmed plunged a boy into water taking him by a boat that from the time of 'Asar' prayer to 8:00 pm the dead body of the deceased was searched with the help of net at the place as showed by the accused Monir Ahmed, but the dead body was not found; that in the following morning with the accused Monir Ahmed they searched for the dead body, but it was not found; that at their assurance that he would be released, the accused Monir Ahmed took them to the brick field of Rashid Mia situated at Sorol Union that by showing a place, the accused Sorol admitted that at that place first of all he cut the hands of Rashed, then cut the two legs, then cut the throat and having put the cut pieces of the dead body in a sack plunged it into water under a Nasi (culvert) situated between the sea and the fish-project. People near the canal saw the middle part of the dead body to float in the sea for 8/9 days. P.W.4, Banshi Ram Jaladas stated in his evidence that at 3:00 pm at Ramadan before last at the instruction of the accused Monir Ahmed they tried to recover the dead body of the deceased from water with the help of net and anchor but could not; that next day in the morning they searched for the dead body in the sea but failed. P.W.5, Soor Ahmed stated in his evidence that on Thursday of Ramadan before last at night while he was catching fish saw a human dead body without legs, hands and head was floating and entered into the fish-project, which was subsequently carried away by ebb tide; that he saw the mother of the deceased boy. P.W.6, Oli Ahmed stated in his evidence that on the first day of Ramadan the

accused Monir Ahmed took the victim Rashed to his house. P.W.10, Russel Kanti Nath stated in his evidence that about 1(one) year back at 12:00 o'clock noon a person came to their mobile phone shop at Haron Bazar and giving a phone number asked him to give a call to a number which he did; that after gave the call the person went out of their shop and told the person on the other side that he was talking from Bandarban and that if he was paid Tk.2,00,000.00 he would release her son; that 7/8 days later police came and seized the mobile set. He identified the accused Monir Ahmed to be the person to have talked with their mobile set.

37. P.W.9, Md. Shafiqul Islam, one of the Investigating Officer of the case stated in his evidence that during investigation he visited the place of occurrence, drew sketch maps thereof with indexes recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, made attempt to recover the dead body of the victim taking the accused Monir Ahmed with him; that he got recorded the confessional statement of the accused Monir Ahmed under section 164 of the Code of Criminal Procedure in which the accused Monir Ahmed on 07.10.2005 at dead of night by plunging into the water of fish-project i.e. the second place of occurrence he killed the victim, separated his legs, hands and head from the body by inflicting dao blows; that after investigation *prima-facie* case having been made out against the accused persons S.I. Masiur Rahman submitted charge sheet in this case. P.W.11, S.I. Masiur Rahman the charge sheet submitting investigating officer stated in his deposition that after taking over the charge of investigation he perused the docket of the case and found that the previous investigating officer visited the place of occurrence, recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, got recorded the statement of the accused Monir Ahmed under section 164 of the Code of Criminal Procedure, seized alams of the case and submitted the charge sheet of the case. From the foregoing discussion and the observation made earlier, it is crystal clear that the prosecution has been able to prove the allegation against the convict-appellant beyond all reasonable doubts.

38. In the instant case, the convict-appellant Monir Ahmed made confessional statement before the learned Magistrate under section 164 of the Code of Criminal Procedure, 1898.

39. The confessional statement of Monir Ahmed reads as follows:

“পূর্ব পরিকল্পনা মত আমি আমার চাচাত ভাই শাহ আলমের ছেলে রাশেদকে বাড়ির পাশে রাস্তা থেকে আমার বউ দেখতে বলে আমার মামার বাড়ি মধ্যম সরলে নিয়ে যাই। সেখানে পূর্ব পরিকল্পনা মত আমার মামাত ভাই সলিম ও কলিম উদ্দিন ও মামার বাড়ির পাশের বাড়ির বদিউল আলম অপেক্ষায় ছিল। সে দিন ছিল ৫/১০/০৫ ইং। সে দিন দুপুর ২ টার দিকে রাশেদকে নিয়ে যাই। আমাদের ৪ জনের পরিকল্পনা মতে আমার প্রবাসী চাচাত ভাই শাহ আলম থেকে ২,০০,০০০/= (দুইলক্ষ) টাকা চাঁদা পাওয়ার জন্য। বুধবার রাতে ৫/১০/০৫ ইং রাতে রাশেদ সহ আমার বাড়িতে সেহেরী খাই। তারপর বৃহস্পতিবার সকালে বদিউল আলমের ঘরে নিয়ে রাশেদের মুখ হাত পা বেঁধে বদিউল আলমের একটি রুমে আটকে রাখে। এ ঘটনা বদিউল আলমের পরিবারের লোকজন দেখে বাঁধা দিলে তাদেরকে বদিউল আলম কেটে ফেলবে বলাতে তারা চুপ মেরে যায়। তারপর বৃহস্পতিবার দিন আমি বাড়িতে ফিরে আসি। রাশেদের বাড়িতে অবস্থা

জানার জন্য। আমাকে বাড়িতে রাশেদ সম্পর্কে আমার পরিবারের লোকজন ও রাশেদের মা জিজ্ঞাসাকালে আমি অস্বীকার করি। তারপর দিন শুক্রবারে সরল আসামী বদিউল আলম হারুন বাজারে এসে একটি মোবাইল থেকে রাশেদের মাকে বলে ২,০০,০০০/= টাকা দেয়ার জন্য ফোন করে। ফোন করে টাকা পাওয়ার আশা না থাকায় এবং আমাকে রাশেদকে নিয়ে আসার বিষয় সন্দেহ করায় শুক্রবার দিন রাতে রাশেদকে বস্তায় ভর্তি করে আমরা বদিউল আলমের বাড়ি থেকে উত্তর পশ্চিমে পুকুর ইটের ভাটা পানিতে ডুবাইয়া মেরে পরে দা দিয়ে মাথা হাত পা টুকরা টুকরা করে বস্তায় ভরে সুইজ গেটের মাঝে ছুড়ে ফেলে দেয়। তারপর রাত ১/২ টার দিকে বদিউল আলমের বাড়িতে আমরা ৪ জন রাত্রি যাপন করে পরদিন আর বাঁচতে পারব না ভেবে যে যার মত পালিয়ে যাই। আমি শহরে মাঝিরঘাটে সারাদিন থাকি তারপর দিন কুতুবদিয়া যাই। সেখানে বড় ভাইয়ের সংগে ফোনে কথা বলে জানি যে, এলাকার লোক আমাকে পিটায়ে মারবে তাই ২১/১০/০৫ ইং সকাল ১০টায় থানায় এসে ধরা দিই।”

40. From the deposition of P.W.7, Noor Mohammad Mazumder, Upazila Magistrate, Banshkhali and on perusal of confessional statement, it appears that the statement was recorded by the learned Magistrate following all the provisions required by law to be followed at the time of recording the confessional statement. P.W.7 stated that the confessional statement made by Monir Ahmed was done voluntarily and the same was true. The appellant Monir Ahmed made confessional statement incriminating himself. It is well settled that the confessional statement can be the sole basis of conviction if it is made voluntarily and it is true. In the instant case, the confessional statement of the appellant is voluntary and true and it was rightly found to be so by both the trial Court and the High Court Division.

41. It is true that there is no eye witness in the instant case, but the inculpatory, true, and voluntary confessional statement of the convict-appellant, and the circumstances are so well connected to indicate that those circumstances render no other hypothesis other than the involvement of the appellant in committing murder of the victim Rashed.

42. In performing our duties, this court is charged with the task of not only assessing the facts against the law, but also considering the impacts of judgments that are pronounced and any assessment made on the overall justice system.

43. In the light of the discussions, we may conclude that the prosecution has been able to prove the charge against the appellant beyond reasonable doubt and the trial Court has rightly convicted and sentenced the appellant to death and the confirmation thereof by the High Court Division is justified. We find no cogent reason to interfere with the judgment and order passed by the High Court Division.

44. Mr. Zulhash Uddin Ahmed, the learned Advocate appearing for the appellant lastly drew our attention regarding the age of the appellant and submits that the appellant Monir Ahmed is not habitual offender and has been languishing in the condemned cell for more than fifteen years and considering his length of confinement in the condemned cell the sentence of death may be reduced.

45. In this regard, it is pertinent to mention the observation of their Lordships U.U. Lalit and two other honorable Judges of the Supreme Court of India made in the case of *Arvind Singh Vs. The State of Maharastra, AIR 2020 SC 2451, Para-98* that “(i) The extreme penalty of death need not be inflicted except in gravest case of extreme culpability. (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'. (iii) Life imprisonment is the Rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances. (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weight age and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

46. From the materials on record, it appears that the appellant is in the condemned cell for more than 15(fifteen) years suffering the pangs of death. It was held in the case of *Nazrul Islam (Md) vs. State* reported in **66 DLR (AD) 199** that, “*Lastly with regard to the period of time spent by the accused in the condemned cell, there are numerous decisions of this Division which shed light on this aspect. In general terms, it may be stated that the length of period spent by a convict in the condemned cell is not necessarily a ground for commutation of the sentence of death. However, where the period spent in the condemned cell is not due to any fault of the convict and where the period spent there is inordinately long, it may be considered as an extenuating ground sufficient for commutation of sentence of death.*” In view of the decisions cited above as well as the circumstances of this case, we are of the view that justice would be sufficiently met if the sentence of death of the appellants be commuted to one of imprisonment for life.

47. The Criminal Appeal No.6 of 2013 is **dismissed with modification of sentence**. The sentence of death of the appellant, namely, Monir Ahmed of Village-Monkirchar, Police Station-Banskhali, District-Chatto gram is commuted to imprisonment for life and also to pay a fine of Tk.10,000.00(ten thousand), in default, to suffer rigorous imprisonment for 6(six) months more. However, he will get the benefit of section 35A of the Code of Criminal Procedure in calculation of his sentence and other remission as admissible under the Jail Code.

48. The concerned jail authority is directed to move the appellant to the regular jail from the condemned cell forthwith.