

17 SCOB [2023] AD 1**APPELLATE DIVISION****PRESENT:**

Mr. Justice Hasan Foez Siddique
Chief Justice
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan
Mr. Justice Borhanuddin
Mr. Justice M. Enayetur Rahim
Ms. Justice Krishna Debnath

Criminal Appeal No.90 of 2013 with Criminal Appeal No.108 of 2013 with Criminal Petition Nos.257, 260 of 2022 and 322-323 of 2019 and Jail Petition Nos.27-28 of 2014.

(From the judgment and order dated 15.04.2013, 16.04.2013, 17.04.2013, 18.04.2013 and 21.04.2013 passed by the High Court Division in Death Reference No.57 of 2008 with Criminal Appeal Nos.3455 & 4058 of 2008 and Jail Appeal Nos.631-634 of 2008)

Dr. Miah Md. Mohiuddin

Appellant
(In CrI.A.90 of 2013)

Md. Zahangir Alam

Appellant
(In CrI. A. 108 of 2013)
Petitioner
(In Jail Petition No.27 of 2014)

Md. Nazmul

Petitioner
(In CrI. P.No.257 of 2022 & Jail P. No.28 of 14)

Md. Abdus Salam

Petitioner
(In CrI. Petition No.260 of 2022)

The State

Petitioner
(In CrI. P.Nos.322-323 of 2019)

-Versus-

The State

Respondent
(In CrI. Appeal No.90 & 108 of 2013, CrI.P.No.257 & 260 of 2022 & Jail P. No.27 & 28 of 2014)

Md. Nazmul

Respondent
(In CrI. P. 322 of 2019)

Md. Abdus Salam

Respondent
(In CrI. P. 323 of 2019)

For the Appellant: (In Crl.A.90 of 2013)	Mr. Khandakar Mahbub Hossain, Senior Advocate with S.M. Shahjahan, Senior Advocate and Mr. Emran-A-Siddiq, Advocate, instructed by Ms. Shirin Afroz, Advocate-on-Record.
For the Appellant: (In Crl.A.108 of 2013)	Mr.Emran-A-Siddiq, Advocate, instructed by Md. Zainul Abedin, Advocate-on-Record.
For the petitioner: (In Crl.P.257/2022)	Mr.Shamsur Rahman, Advocate, instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
For the petitioner: (In Crl.P.260/2022)	Mr.Emran-A-Siddiq, Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.
For the petitioner: (In Crl.P.322-323/19)	Mr. Biswajit Debnath, Deputy Attorney General (with Ms. Abanti Nurul, Assistant Attorney General) instructed by Ms. Sufia Khatun, Advocate-on-Record.
For the petitioner: (In Jail P. Nos. 27-28/14)	Not represented.
For the respondent: (In Crl.A.90 & 108 of 2013)	Mr. A.M. Amin Uddin, Attorney General, (with Mr. Biswajit Debnath, Deputy Attorney General, Ms. Abanti Nurul and Mr. Saiful Alam, Assistant Attorney General) instructed by Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
For the respondent: (In Crl.P.257 of 2022)	Mr. Biswajit Debnath, Deputy Attorney General, instructed by Ms. Shirin Afroz, Advocate-on-Record.
For the respondent: (In Crl.P.260 of 2022)	Not represented
For the respondent: (In Crl. Petition Nos. 322-323 of 2019)	Not represented
For the respondent: (In Jail P. 27-28 of 2014)	Not represented
Date of hearing :	22.02.2022, 23.02.2022, 01.03.2022, 02.03.2022, 08.03.2022, 9.03.2022, 15.03.2022and 16.03.2022.
Date of judgment :	05.04.2022

Editors' Note

This is a case where a renowned Professor of University of Rajshahi was brutally murdered by one of his colleagues. There were no eye witnesses. Based on the circumstantial evidence police arrested the caretaker of the house where the victim

lived. The arrested accused confessed under section 164 of the Code of Criminal Procedure, 1898. Accordingly the investigation Officer arrested other co-accused and two of them confessed. But the mastermind of the killing, an Associate Professor of the same University declined giving any confessional statement. The Appellate Division found that the strong circumstantial evidence coupled with confessions of the co-accused and motive of killing proved by the prosecution point unmistakably to the guilt of the mastermind of the murder and confirmed the conviction and sentence awarded by the High Court Division. Appellate Division also discussed the effect of alleged prolonged police custody upon the acceptability of confessional statement of one of the convicts and discrepancy between confession and medical evidence.

Key Words

Circumstantial evidence; confessional statements; section 164 of the Code of Criminal Procedure; article 33 (2) of the Constitution; circumstantial evidence; motive; Section 10 and 30 of Evidence Act 1872

Section 164 of the Code of Criminal Procedure

If a confessional statement does not pass the test of voluntariness, it cannot be taken into consideration even if it is true:

The Evidence Act does not define “confession”. The courts adopted the definition of “confession” given in Stephen’s Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. The act of recording a confession is a very solemn act and section 164 of the Code of Criminal Procedure lays down certain precautionary rules to be followed by the Magistrate recording a confession to ensure the voluntariness of the confession. In such a case, the accused being placed in a situation free from the influence of the Police is expected to speak out the truth being remorseful of what he has committed. A confession can be acted upon if that passes two tests in the assessment of the court. The first test is its voluntariness. If a confessional statement fails to pass the first test, the second test is immaterial. If he does not disclose his complicity in an alleged crime voluntarily, court cannot take into consideration the confessional statement so recorded, no matter how truthful an accused is. (Para 41)

It appears to us that the confessional statements pertaining to assault by knife substantially fit the medical evidence. It is only when the medical evidence totally makes the ocular evidence improbable, then the court starts suspecting the veracity of the evidence and not otherwise. That the mere fact that doctor said that injury No.1 was an “incised looking injury”, not “incised injury”, is too trifling aspect and there is no noticeable variance. The opinion of the doctor cannot be said to be the last word on what he deposes or meant for implicit acceptance. He has some experience and training in the nature of the functions discharged by him. After Zahangir inflicted the knife blow in the occipital region of victim Professor Taher, the other accused pressed down a pillow in his face to ensure his death. After confirming the victim’s death, the accused persons took the dead body to the back side of the house on a dark night and the appellant Mohiuddin ushered them the way with the torchlight of his mobile. They then put the dead body inside the manhole. In doing so the accused had to carry the dead body to a considerable distance and during that time the dead body might have fallen from their grip causing crushing of hair bulbs in the already injured occipital scalp and rendering the incised wound look like ‘incised looking’ wound. ... (Para 43)

Confessions are considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth. Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law “(vide Taylor’s Treatise on the Law of Evidence)”. Confession possesses a high probative force because it emanates directly from the person committing the offence, and on that count, it is a valuable piece of evidence. It is a settled principle of law that the conviction can be awarded solely on the basis of confessional statements of the accused if the same is found to be made voluntarily.

... (Para 44)

Prolonged police custody; Article 33 (2) of the Constitution:

It has been vehemently argued by the defence that appellant Zahangir Alam was kept in the police station from 03.02.2006 to 05.02.2006 i.e beyond the permitted period of 24 hours without taking him before a Magistrate and this illegal detention of the appellant suggests that the confessional statement given by him is not voluntary. From the cross-examination of PW-42 Md. Faizur Rahman, the then Officer-in-Charge of Motihar Police Station, it appears that appellant Zahangir Alam was taken to the police station on 03.02.2006 for questioning him about the occurrence. At that time he was not arrested in connection with this case. In fact, when Zahangir was taken to the police station on 03.02.2006 the whereabouts of Professor Taher was not known to anybody and no formal ejahar was lodged. After the discovery of the dead body of Professor Taher Ahmed PW-1 lodged a formal FIR at around 10.10 AM on 03.02.2006. Even at that time, PW-1 did not make Zahangir an accused. It suggests that he was not taken to the police station as an accused. He was just taken there for questioning. The Investigating Officer of a case has the power to require the attendance of a person before him who appears to be acquainted with the circumstances of the case. When appellant Zahangir Alam was taken to the police station the facts of the killing of Professor Taher were still unfolding and nobody knew who did what. Appellant Zahangir Alam, being the caretaker of the house of the victim, was the best person to demystify and clear many questions about the occurrence posing inside the mind of the Investigating Officer. He was thought to be a vital person who could shed light on many unsolved questions and could help the prosecution to understand what actually happened there. But when from the circumstances it appeared unmistakably that Zahangir Alam must be one of the perpetrators of the killing of victim Professor Taher, he was then arrested on 04.02.2006 and was produced before the Magistrate on the next day, i.e., within 24 hours of his arrest as required by Article 33 (2) of the Constitution. So, the police did nothing wrong in arresting appellant Zahangir Alam after being sure about his complicity with the offence and producing him before the Magistrate within 24 hours of his arrest and for that reason, the defence objection does not sustain.

(Para 45 and 46)

From a careful evaluation of the confessional statements, we are of the opinion that their statements are consistent with one another and corroborates the version given by each other. We are therefore, of the view that confessing accused were speaking the truth.

(Para 47)

When a case against an accused rests completely on circumstantial evidence, the prosecution is required to prove the motive:

In a criminal case, motive assumes considerable significance. Where there is a clear proof of motive for the offence, that lends additional support to the finding of the Court

that the accused is guilty. When a case against an accused rests completely on circumstantial evidence, the prosecution is required to prove the motive of the accused for committing the offence. (Para 52)

A complete review of the evidence indicates that there was pre-existing hostility between the victim and appellant Mohiuddin. The motive for the commission of the murder is explicit from the evidence of P.Ws 22, 25, 39 and 43 which is relevant. Proof of motive does lend corroboration to the prosecution case. The same plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor. Motive prompts a person to form an opinion or intention to do certain illegal acts with a view to achieving that intention. Adequacy of motive is of little importance as it is seen that atrocious crimes are committed for very slight motives. One cannot see into the mind of another (State Vs. Santosh Kumar Singh, 2007 Cr LJ 964). However, motive alone is not sufficient to convict the accused in case of circumstantial evidence. Along with motive, there should be some further corroborative evidence. (Para 55)

A voluntary and true confession made by an accused can be taken into consideration against a co-accused by virtue of section 30 of the Evidence Act but as a matter of prudence and practice the Court should not act upon it to sustain a conviction of the co-accused without full and strong corroboration in material particulars both as to the crime and as to his connection with the crime [Ram Prakash V. State of Punjab (1959 SCR 1219)]. “As is evident from a perusal of section 30 extracted above, a confessional statement can be used even against a co-accused. For such admissibility it is imperative, that the person making the confession besides implicating himself, also implicates others who are being jointly tried with him. In that situation alone, such a confessional statement is relevant even against the others implicated. (Para 61)

A Judge does not presides over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape the tentacles of justice. That is what the justice stands for. (Para 65)

The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent. While awarding punishment, the Court is expected to keep in mind the facts and circumstances of the case, the legislative intent expressed in the statute in determining the appropriate punishment and the impact of the punishment awarded. Before awarding punishment 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 weightage and a just balance has to be struck between the aggravating and mitigating circumstances. Considering the depraved and shameful manner in which the offence has been committed, the mitigating factor would not outweigh the aggravating factors. In this case, there was no provocation and the manner in which the crime was committed was brutal. It is the legal obligation of the Court to award a punishment that is just and fair by administering justice tempered with such mercy not only as the criminal may justly deserve but also the right of the victim of the crime to have the assailant appropriately punished is protected. It also needs to meet the society’s reasonable expectation from court for appropriate deterrent punishment conforming to the gravity of offence and consistent with the public abhorrence for the heinous offence committed by the convicts. (Para 67)

JUDGMENT

Hasan Foez Siddique, CJ:

1. Delay in filing the Criminal Petition Nos. 257 and 260 of 2022 is condoned.
2. Criminal Appeal No.90 of 2013 preferred by Dr. Miah Md. Mohiuddin, Criminal Appeal No.108 of 2013 and Jail Petition No.27 of 2014 preferred by Md. Zahangir Alam, Criminal Petition No.257 of 2022 and Jail Petition No.28 of 2014 preferred by Md. Nazmul, Criminal Petition No.260 of 2022 preferred by Md. Abdus Salam, Criminal Petition No.322 of 2019 filed by the State against Md. Nazmul for enhancement of sentence and Criminal Petition No.323 of 2019 filed by the State against Md. Abdus Salam for enhancement of sentence are directed against the judgment and order dated 15.04.2013, 16.04.2013, 17.04.2013, 18.04.2013 and 21.04.2013 passed by a Division Bench of the High Court Division in Death Reference No.57 of 2008, Jail Appeal Nos.631-634 of 2008 and Criminal Appeal Nos.3455 and 4058 of 2008.
3. Earlier Druto Bichar Tribunal, Rajshahi in Druto Bichar Tribunal Case No.38 of 2007 arising out of M.G.R. case No.90 of 2006 corresponding to Motihar Police Station Case No.02 dated 03.02.2006 and Sessions Case No. 280 of 2007, convicted the appellants Dr. Miah Md. Mohiuddin, Md. Zahangir Alam, Md. Nazmul and Md. Abdus Salam for the commission of offence punishable under section 302/34 of the Penal Code and sentenced each of them to death by the judgment and order dated 22.05.2008.
4. The prosecution case, in short, was that, Dr. S.Taher Ahmed was the seniormost Professor of the Department of Geology and Mining, University of Rajshahi. He was a Member of both the Departmental Planning Committee and the Expert Committee of the University. Pursuant to the pre-concerted plan, Dr. Taher was brutally killed at his Quarters (Pa-23/B) by all the accused in furtherance of their common intention on 01.02.2006 after 10.00 P.M. or thereabout on his arrival thereat from Dhaka. After the killing of Dr. Taher, his dead body was dumped into a manhole behind the place of occurrence house. In the morning of 03.02.2006, his dead body was recovered from the manhole. Thereafter, the son of the victim, namely, Mr. Sanjid Alvi Ahmed alias Himel (P.W.1), lodged an ejarah with Motihar Police Station, Rajshahi.
5. The Investigating Officers P.W.47 Md. Omar Faruk, P.W.48 Md. Golam Mahfiz and P.W. 49 Md. Achanul Kabir investigated the case. Accused Zahangir Alam, Abdus Salam and Nazmul made confessional statements before P.W.46 Magistrate Jobeda Khatun recorded under section 164 of the Code of Criminal Procedure. Finding prima facie case, the last Investigating Officer submitted a charge-sheet against all the accused including the acquitted accused Md. Azim Uddin Munshi and Md. Mahbub Alam @ Saleheen for committing offence punishable under section 302/201/34 of the Penal Code.
6. The Tribunal charged all the accused except Azim Uddin Munshi under section 302/34 of the Penal Code and the co-accused Azim Uddin Munshi was charged under section 201 of the Penal Code. They pleaded not guilty thereto and claimed to be tried.
7. The defence version of the case, as it appears from the trend of cross-examination of the prosecution witnesses, was that the accused are innocent and have been falsely implicated in the case and the alleged confessional statements of the accused Zahangir, Salam and

Nazmul are the products of police torture, oppression and maltreatment and the P.W.25 Dr. Md. Sultan-Ul-Islam Tipu and P.W.29 Golam Sabbir Sattar Tapu are responsible for the death of Dr. Taher.

8. After hearing both the parties and upon perusing the materials on record and having regard to the attending facts and circumstances of the case, the Tribunal came to the conclusion that the prosecution brought the charge home against the appellants and petitioners, and accordingly, it convicted and sentenced them. The Tribunal also found the co-accused Saleheen and Azim Uddin Munshi not guilty and accordingly acquitted them.

9. Against the said judgment and order of the Tribunal, the convicts preferred criminal appeals and jail appeals. The Tribunal transmitted the record to the High Court Division for confirmation of the sentence of death which was registered as Death Reference No. 57 of 2008. The High Court Division by the impugned judgment and order, dismissed the Criminal Appeal No.3455 and 4058 of 2008 and Jail Appeal Nos.631-634 of 2008. However, the High Court Division commuted the sentence of death to imprisonment for life awarded to convict Md. Abdus Salam and Md. Nazmul. It confirmed the sentence of death awarded to the appellant Dr. Miah Md. Mohiuddin and Md. Zahangi Alam. Against which, they preferred instant criminal appeals, criminal petitions and jail petitions and the State preferred Criminal Petition Nos.322-323 of 2019 for enhancement of sentence of Md. Nazmul and Md. Abdus Salam from imprisonment for life to death.

10. Mr. Khondakar Mahbub Hossain and Mr. S.M. Shahjahan, learned Senior Counsel appeared on behalf of appellant Dr. Miah Md. Mohiuddin in Criminal Appeal No.90 of 2013. Mr. Emran-A- Siddiq, learned Counsel appeared on behalf of appellant Md. Zahangir Alam in Criminal Appeal No.108 of 2013 and Jail Petition No.27 of 2014 and for Abdus Salam in Criminal Petition No.260 of 2022. Mr. Shamsur Rahman, learned Counsel appeared on behalf of Md. Nazmul in Criminal Petition No. 257 of 2022 and Jail Petition No.28 of 2014.

11. On the other hand, Mr. A.M. Amin Uddin, learned Attorney General along with Mr. Biswajit Debnath, Deputy Attorney General appeared on behalf of the respondent State in all the matters and they also appeared on behalf of the State in Criminal Petition for Leave to Appeal Nos. 322 -323 of 2019.

12. Mr. S.M. Shahjahan, learned Senior Counsel appearing for the appellant Dr. Miah Md. Mohiuddin, submits that the High Court Division and the Tribunal have committed the error of law and fact in convicting the appellant Miah Md. Mohiuddin on the basis of circumstantial evidence and confessional statements of co-accused Md. Zahangir Alam, Md. Nazmul and Abdus Salam though the confessional statements of co-accused are not admissible against this appellant to connect him with the occurrence and that there are no such strong circumstances that connect him with the occurrence. He further submits that motive which is one of the elements of the circumstantial evidence to connect the appellant Miah Md. Mohiuddin with the occurrence has not been proved and that the Courts below committed the error of law in convicting the appellant Miah Md. Mohiuddin relying upon such circumstantial evidence. He further submits that the statements made by the appellant Miah Md. Mohiuddin at the time of his examination under section 342 of the Code of Criminal Procedure is not admissible in evidence. He lastly submits that the sentence of death awarded to the appellant Miah Md. Mohiuddin is too severe and that his sentence may be commuted from death to one of imprisonment for life.

13. Mr. Emran-A- Siddiq, learned Counsel, appearing for the appellant Md. Zahangir Alam and Md. Abdus Salam, submits that their confessional statements were not made voluntarily and those were not true and not recorded following the provisions of sections 164 and 364 of the Code of Criminal Procedure. He further submits that the convict Md. Zahangir Alam and Abdus Salam in their statements under section 342 of the Code of Criminal Procedure categorically stated that their confessional statements were extracted by the Police keeping them in custody for more than 24 hours without producing them before Magistrate as required by law and that those were extracted by torturing them severely. In such a view of the matter, the Courts below committed an error of law in relying upon the confessional statements. He further submits that the postmortem report does not support the confessional statements made by the appellant Md. Zahangir Alam and petitioner Abdus Salam, so they are entitled to get the benefit of doubt. He further submits that the confessional statements were mechanically recorded without following the mandatory provision of law and that the Magistrate failed to make a memorandum to the effect that the confessional statements of the accused were made voluntarily. He further submits that column No. 8 of the prescribed form was not filled up in any of the confessional statements, which casts serious doubt about the voluntary character of them. He, lastly, submits that the Courts below failed to make difference between incised wound and incised looking wound and thereby, erroneously held that the postmortem report has corroborated the confessional statements, and thus, they erroneously relied upon the confessional statements of the confessing accused.

14. Mr. Shamsur Rahman, learned Counsel appearing for the petitioner Md. Nazmul in Criminal Petition No.257 of 2022 and Jail Petition No.28 of 2014, submits that the confessional statement of convict Nazmul was not voluntarily made and the same was not true and the same was not recorded following the provisions of law. He further submits that the confessional statement of Md. Nazmul was recorded after two days of his arrest and the confession was extracted by exercising coercive force upon him. Therefore, the learned Courts below committed error of law in relying upon the confessional statement of petitioner Nazmul.

15. Mr. Biswajit Debnath, learned Deputy Attorney General for the State, submits that the appellant Zahangir Alam and petitioners Md. Nazmul and Abdus Salam gave confessional statements voluntarily and those were recorded following the legal formalities as stipulated in sections 164 and 364 of the Code of Criminal Procedure. He further submits that the appellant Miah Md. Mohiuddin along with the co-convicts hatched a conspiracy for killing the victim Professor Dr. Taher Ahmed. They, in furtherance of their common intention, and in order to implement their ill desire of killing the innocent victim, hatched such a conspiracy and finally killed him. Therefore, the learned Courts below rightly convicted the appellants and petitioners and awarded the sentence of death to appellants Dr. Miah Md. Mohiuddin and Md. Zahangir Alam. He further submits that the circumstantial and oral evidence and the confessional statements of the co-accused, which are admissible against other co-accused under the provision of section 10 of the Evidence Act conclusively proved that the appellants had committed such a brutal offence and that the Courts below did not commit any error in convicting and sentencing them. He further submits that the High Court Division erroneously reduced the sentence of convict Nazmul and Abdus Salam from death to one of imprisonment for life.

16. Contents of the charge as framed against appellants are as follows:

“এতদ্বারা আপনি (২) আসামী (১) ডঃ মিয়া মোঃ মহিউদ্দিন, (২) মোঃ মাহাবুব আলম ওরফে সালেহী ওরফে সালেহীন ওরফে নুহ, (৩) মোঃ জাহাংগীর আলম, (৪) মোঃ আবদুস সালাম ও (৫) মোঃ নাজমুল-কে

নিম্নলিখিত রূপে অভিযুক্ত করিতেছি যেঃ-

আপনারা গত ০১-২-২০০৬ ইং তারিখ ২০.০০ ঘটিকা হইতে ০৩-০২-২০০৬ ইং তারিখ সকাল ৮.০০ ঘটিকার মধ্যে যে কোন সময়ে রাজশাহী মহানগরীর মতিহার থানাধীন রাজশাহী বিশ্ববিদ্যালয়ের প-২৩ বি নং বাসার পূর্ব পরিকল্পিত ও ষড়যন্ত্রমূলক ভাবে একই সাধারণ অভিপ্রায় পরস্পর যোগসাজসে রাজশাহী বিশ্ববিদ্যালয়ের ভূ-তত্ত্ব ও খনি বিদ্যা বিভাগের প্রফেসর ডঃ এস, তাহের আহমেদকে হত্যা করিয়া উক্ত বাসার পিছনে ম্যানহোলে ফেলিয়া রাখেন। এবং ইহার দ্বারা দন্ড বিধির ৩০২/৩৪ ধারার অধীনে শাস্তিযোগ্য অপরাধ করিয়াছেন এবং তাহার (৪) আমার দায়রা আদালতে বিচার্য।

এবং এতদ্বারা আমি নির্দেশ দিতেছি যে, এই অভিযোগে (৫) উক্ত আদালতে আপনাদের বিরুদ্ধে অনুষ্ঠিত হইবে।

গঠিত অভিযোগ পড়ে ও ব্যাখ্যা করে শোনালে আসামীগণ প্রত্যেকে নিজেদের নির্দেশ দাবী করে বিচার প্রার্থনা করেন।”

17. In this case, the prosecution has examined as many as 49 witnesses to prove the charge as framed against the appellants and defence has examined one witness.

18. The testimonies of prosecution witnesses, in a nutshell, are as follows:

Informant P.W.1 Md. Sanjid Alvi Ahmed, son of deceased Dr. Taher, in his testimony stated that on 01.02.2006 his father, after arrival at Rajshahi, made a phone call to his mother at about 7:45 P.M. and informed her that he had reached Rajshahi safely. After that, his mother did not receive any telephone call from his father. She told him that the mobile phone of his father had been switched off and she failed to connect him through the T & T number as well. She contacted Mr. Md. Aminul Islam and Mr. Md. Sultan-UI-Islam, teachers of the university, in order to ascertain the whereabouts of the victim and they told her he did not attend the meeting of the Planning Committee held on 02.02.2006. Thereafter, on the night following 02.02.2006 at about 12:45 A.M. (03.02.2006), he started for Rajshahi by a private car and reached there at about 5:00 A.M. on 03.02.2006 and, thereafter, he along with his friend Yusuf Zamil Zumma went to the house of Professor Dr. Sultan-UI-Islam Tipu. Dr. Golam Sabbir Sattar Tapu also went there. P.W.-1 came to know from them that at about 1:30 o'clock (early hours of 03.02.2006), the Proctor, Provost and some other teachers broke open the lock of the victim's house and entered there; but they did not find any trace of the victim. On 03.02.2006 at 7:00 A.M., he along with Sultan-UI Islam Tipu, Golam Sabbir Sattar Tapu, Aminul Islam and Yousuf Zamil went there again and found the trouser of his father hanging in his bedroom on the first floor. He told others that his father had certainly arrived at his house at Rajshahi from Dhaka and all the teachers present there at that time consoled him; but only Dr. Mohiuddin stood in front of the gate at some distance hiding his eyes and wiping the same with his muffler. They again started searching. At one stage, the dead body of Dr. Taher was found in a manhole and it was lifted therefrom by the members of the local Fire Brigade and he saw an injury on the occipital region of his father and blood was oozing out therefrom. P.W.1 also saw blood at his mouth and nostrils and found marks of fastening towards his left heel. Thereafter, P.W. 1 Md. Sanjid Alvi Ahmed lodged an ejahar (Exhibit-1).

19. P.W. 2 Md. Kamal Mostafa, Professor of the Department of Political Science of Rajshahi University and resident of Quarter No. Pa-23/A contiguous west of the house of Dr. Taher, deposed that accused Zahangir was the caretaker of the house of Dr. Taher. On 01.02.2006, the victim went to his house after Magreb prayer and on the following day (02.02.2006) at 9:00 A. M., he (P.W.2) was reading a newspaper sitting in front of his house and then Tipu went there and asked the caretaker Zahangir whether Dr. Taher had come or not. Then Zahangir replied that Dr. Taher had not come. Thereafter, Zahangir went inside the house probably in fear, but Tipu called out to Zahangir and told him to close the window of

the bedroom of Dr. Taher on the first floor which was left open. At that time, Zahangir was looking downwards and he was tearing off a rose. From his demeanour, it appeared that he had committed some crimes.

20. P.W.3, Md. Ziauddin Ahmed deposes that in the morning of 3rd February, 2006 he came to know that his maternal uncle (Dr. Taher) was missing. He went to the house of Dr. Taher and saw his dead body by the side of a manhole. On 03.02.2006, the police seized a kamiz, a sweater, a shawl, a white panjabi, a blue shirt and a vest from the dead body of Dr. Taher and prepared a seizure-list (exhibit-3(ka)) and he signed on it as a witness. P.W. 4 Md. Rabiul Islam, Assistant Professor of the Department of Pharmacy, Rajshahi University states that on 03.02.2006, in his presence, the police searched the bedroom of Dr. Taher and seized a coat, a pair of trousers with a black belt, a handkerchief, a comb and a ticket of National Travels dated 01.02.2006 and prepared a seizure-list (exhibit-3(kha)) whereupon he put his signature as a witness. Police also prepared another seizure list (exhibit 3 (Ga)) after seizing a plastic mat, a pillow, and a curtain from the ground floor of the house and this witness put his signature on it. P.W. 5 Md. Yousuf Zamil Zumma states in his evidence that in the morning of 03.02.2006, his friend Md. Sanjid Alvi Ahmed Himel (P.W.1) came to their house and told them that his father had been missing and thereafter they went to the house of Dr. Taher, and saw many teachers, employees and officers there and they all searched the house thoroughly and at one stage, the dead body of Dr. Taher was found in a manhole at the backyard. The police seized some apparel found with the deceased Dr. Taher and prepared a seizure-list (exhibit-3(ka)) in his presence and he signed it as a witness. P.W. 6, Md. Nazmul Islam in his evidence states that on 05.02.2006 Police recovered a knife wrapped up in polythene at the showing of the accused Azim Uddin from a heap of bricks at Khojapur Mouza and seized it. They prepared a seizure-list (exhibit-3(Gha)) and this witness put his signature on it as a witness. P.W.7 Md. Monjurul Haque states that on 05.02.2006 police recovered a knife from a heap of bricks near the house of Azim Uddin alias Azim Munshi at Khojapur and seized it. He put his signature in the seizure-list (exhibit-3(Gha)/2). P.W.8 Md. Abdul Malek @ Mintu deposes that on 05.02.2006 police recovered a knife wrapped up in a polythene bag from a heap of bricks and he signed on a seizure-list. P.W. 9 Md. Jamal Ahmed Babu testifies that on the night following 07.02.2006 at about 12:00/12:45 o'clock, the police called him from his house and took him to the house of Abul Kashem at Kadirganj and he saw a bag, a shirt, a pair of trousers, a coat, sweater and books there and the police seized them and prepared a seizure-list (exhibit-3(uma)) and he signed on it as a witness.

21. P.W.10 Piasmin Ara Dina, P.W. 11 Kiasmin Ara Lucky, P.W. 12 Md. Torikuzzaman Ovi, P.W. 16 Md. Tofazzal Hossain, P.W. 17 Md. Abdul Hadi, P.W. 19 Md. Selim Reza, P.W. 23 S. Tarek Ahmed, P.W. 28 Md. Maidul Haque, P.W. 29 Golam Sabbir Sattar, P.W. 31 Md. Khoda Bux and P.W. 35 Md. Nazrul Islam were tendered witnesses.

22. P.W.13, Md. Farjon deposes that at one night about one year earlier, police called him out from his house and took him to the house of accused Zahangir and he saw a mobile phone along with a charger there and the police seized the same and prepared a seizure-list and he put his left thumb impression thereon. P.W.14 Md. Dulal testifies that on 07.02.2006, police called him out from his house and he saw a mobile phone and the police took his signature on a seizure-list (Exhibit-3 (cha)). P.W.15, Md. Zahangir Alam, testifies that on 12.02.2006, he saw some plain-clothe policemen and a handcuffed person and as per his pointing out two ATM cards and a piece of paper were recovered from underneath a stone and the police seized the same and prepared a seizure-list (exhibit-3(chha)) and he signed on it as a witness.

23. P.W.18, Md. Abdus Salam states that he was the Registrar of the Rajshahi University. On 02.02.2006, after 11:00 P.M., Professor Aminul Islam and Sultan- Ul-Islam of the Department of Geology and Mining told him that they had come to know from a telephonic conversation with the wife of Dr. Taher that he had reached Rajshahi in the evening of 01.02.2006; but he was not receiving any phone call. He adds that they went to the house of Dr. Taher and found it under lock and key and sent for the caretaker Zahangir to come with keys. The police personnel also went there. On being asked caretaker Zahangir said that he had been suffering from fever and as such he would not be able to come there. He then sent a microbus along with a guard to bring back Zahangir and after questioning him on his arrival, Zahangir told that Dr. Taher had not come. They opened the house with the keys, went upstairs and in presence of the police personnel, some teachers and guards, the closed door of a room was opened by means of a shovel and they looked for the travel bag of Dr. Taher to ascertain as to whether he had returned from Dhaka or not. On 03.02.2006 at about 6:30/7:00 A.M., he was informed that Dr. Taher's son Himel had already reached Rajshahi. Then he also rushed to the house of Dr. Taher and found many teachers including the Pro-Vice-Chancellor Mr. Mamunul Keramat there and they searched the rooms of both the floors of the house and at one stage, they went to the backyard of the house and found the dead body of Dr. Taher in one of the manholes. After the recovery of the dead body, the police held an inquest thereon and prepared an inquest report and he signed on it. On 05.04.2006, the Investigating Officer seized the bio-data of Dr. Mohiuddin, papers relating to his appointment and the decisions of the Planning Committee about his promotion and the copies of notesheets from his (P.W. 18) office and prepared a seizure-list (exhibit-3(Ja)) and he signed on it. P.W.21, Professor Md. Mushfique Ahmed, a Professor of the Department of Geology and Mining in his testimony states that on 02.02.2006, at about 11:45 P.M. receiving a phone call from the Registrar of the University he went to the house of Dr. Taher, and came to know that caretaker Zahangir had been called for but Zahangir did not turn up. Registrar sent a microbus of the university to bring Zahangir. The police also reached there and after a while, the caretaker Zahangir reached there and on being questioned as to why he had failed to turn up, he replied that he had a fever and the Registrar touched his forehead with his hand and told that Zahangir was really suffering from a fever. Caretaker Zahangir told that the keys of the rooms of the first floor were lying with Dr. Taher and that he would come on 03.02.2006 and at that time, a conversation was going on between Mr. Aminul Islam and the wife of Dr. Taher over a mobile phone. He also talked to her over the mobile phone of Aminul Islam and she requested him to look for her husband and she also told Aminul Islam over the mobile phone to break open the door and then a shovel was fetched and the door of the first floor was broken open by means of the shovel by the area guard and they searched all the rooms there and looked for the travel bag and coat of Dr. Taher; but nothing was found. He came to know that Himel (P.W.1) had already started for Rajshahi from Dhaka and told the local area guard to take Himel to the house of Sultan-Ul-Islam on his arrival and at about 3:00 o'clock at night, they left for their respective houses taking up a decision that they would start searching Dr. Taher in the morning. On 03.02.2006 at about 8:00 A. M., the Chief Medical Officer of the university informed this witness over telephone that the dead body of Dr. Taher had been found in a safety tank in the backyard of his house. At about 8:30 A.M., he rushed to the house of Dr. Taher and saw his dead body in the safety tank in a sitting position with his head drooping forward and there was clotted blood on his occipital region. His dead body was recovered. On 21.03.2006, the Investigating Officer seized the personal file of Dr. Mohiuddin, two C.Ds, and one hazira khata from his office-chamber and prepared a seizure-list (exhibit-3 (jhha)) and he (P.W. 21) signed on it as a witness. They told Zahangir that the wife of Dr. Taher intimated that Dr. Taher had reached Rajshahi on 01.02.2006; but he (Zahangir) told that Dr. Taher had not arrived at Rajshahi and when he (Zahangir) was asked

as to his whereabouts on the night following 01.02.2006, Zahangir told that on 01.02.2006 at the time of Magreb prayer, he switched on the lights in the ground floor of the house and afterward, he went to take his meal and came back at about 9:30 P.M. and stayed there overnight. This witness adds that he was Member of the Planning Committee of the Department of Geology and Mining for the last 15 (fifteen) years and he had been the Chairman of the Department from 1996 to 2000 and the promotion matter of Dr. Mohiuddin as Professor was discussed in six meetings of the Departmental Planning Committee and unanimous decisions were taken thereon in all the six meetings and in the first meeting of the Planning Committee, they noticed that it was the decision of the syndicate that Dr. Mohiuddin would have to publish two papers for his confirmation as Associate Professor on promotion from the post of Assistant Professor; but in his appointment letter, that was not stated and accordingly they wrote a letter to the Registrar of the university with a view to removing this anomaly and the Registrar replied concurring with them and then Dr. Mohiuddin applied for his confirmation as Associate Professor on the basis of his two publications; but one paper was shown twice relating to his confirmation and that was published while he was an Assistant Professor and when Dr. Mohiuddin was apprised of this mistake, he again submitted an application annexing two papers and they (P.W. 21 and others) recommended confirmation of Dr. Mohiuddin as Associate Professor as Members of the Planning Committee. This witness further adds that Dr. Mohiuddin made an application for his promotion as Professor prior to holding the fourth meeting of the Departmental Planning Committee and they came to know that simultaneously Dr. Mohiuddin made another application of a similar nature for his promotion to the office of the Registrar and the Planning Committee held that there was no scope to take any decision in this regard when the similar application was submitted both to the Planning Committee and the office of the Registrar and as per the Rajshahi University Act of 1973, without the decision of the Planning Committee, nobody can be promoted and as such the Vice-Chancellor sent back the application of Dr. Mohiuddin to the Chairman of the Department for taking necessary decision thereon and when they (P.W. 21 and others) sat in the 5th meeting of the Planning Committee, Dr. Taher expressed his indignation at the conduct of Dr. Mohiuddin. He states that for promotion to the post of Professor, a candidate has to put in 12 (twelve) years of service including 5 (five) years of service as Associate Professor and he needs to have two publications and Dr. Mohiuddin, having completed 12 (twelve) years of service on 04.01.2006, applied for Professorship again on 18.01.2006 and they sat at the meeting of the Planning Committee on 02.02.2006 and Dr. Taher was supposed to be present at that meeting; but he was absent thereat and at that meeting, they came to learn that again Dr. Mohiuddin made another application to the University Authority for his promotion and that was processed and sent to the experts for their opinion and they took a decision that there was no scope to consider the application of Dr. Mohiuddin for promotion in view of making similar application for promotion to the University Authority and its processing to that end. In his cross-examination, the P.W. 21 states that in 2005, a Fact-Finding Committee was constituted with regard to the piracy and standard of some papers of Dr. Mohiuddin by the Departmental Academic Committee and the Fact-Finding Committee submitted its report while Dr. Mohiuddin was in jail-custody.

24. P.W.22 is Sultana Ahmed Reshmi wife of deceased Dr. Taher. In her testimony she states that they resided at Rajshahi University Campus up to 2005 and in the interest of the education of their children, she moved to Dhaka and Dr. Mohiuddin was a student of her husband and he visited their house at Rajshahi from time to time and she knew him accordingly. Dr. Mohiuddin moved heaven and earth for his promotion as Professor and her husband (Dr. Taher) told him that he would be promoted as a matter of course and probably

on 13th April, 2005, Dr. Mohiuddin wanted to come to their house while she was there at Rajshahi University Campus for having a talk on his promotion; but her husband forbade him to visit their house till the settlement of his promotion matter. While she was at their house at the University Campus, one day in the afternoon of 2005, her husband went to the university and returned to the house at 9:45 P.M. and when she asked her husband for the delay in returning to the house, he told her that Nur Mohammad of the Department of Geography, Abdul Hye of the Department of Philosophy and one Nazrul of the Department of Commerce had detained him and told him to take steps for the promotion of Dr. Mohiuddin and her husband further told her that he had washed the dirty linen of Dr. Mohiuddin in public and this incident probably took place in the month of August, 2005. She states that her husband came to Dhaka from Rajshahi on 26th January, 2006 for five days and then irregularities pertaining to the promotion of Dr. Mohiuddin were reported in newspapers and at that time, her husband had discussions with the Departmental Chairman Shamsuddin and with Sanjid, Mushfique and Tapu over his mobile phone in respect of promotion matter of Dr. Mohiuddin and on 01.02.2006 at 2:00 P.M., her husband started for Rajshahi from Dhaka and reached there at about 6:00/6:30 P.M. and at about 7:45 P.M., he phoned her and told her that there was no electricity and he contacted the house of Sultan-Ul-Islam Tipu to send the maid-servant to his house on the following day. On 02.02.2006, Dr. Taher did not phone her either in the morning or in the afternoon and as such she became worried and at about 9:00 P.M., she tried to communicate with Dr. Taher over T & T phone; but she could not get through, though she heard its ringing sound and by that reason, she became more worried and made a phone call to the next-door neighbour Hazi Kamal and wanted to know about the whereabouts of her husband from the son of Hazi Kamal, but he replied that he did not see Dr. Taher and the house was under lock and key. She adds that later she contacted Aminul Islam, a teacher in the department, over the telephone and asked her query. Aminul Islam told her that he had not met Dr. Taher, and then she talked to some other teachers in the department over the telephone and requested them to see what was what by breaking open the lock of the door and they told her that nobody was found inside after breaking open the lock and subsequently she sent her son to Rajshahi. She deposes that a meeting as regards the promotion of Dr. Mohiuddin was scheduled to be held on 02.02.2006 and on 01.02.2006 during night-time when Dr. Taher was talking to her over telephone, he told her that the caretaker Zahangir had been staying at the house to prepare his lessons and on 03.02.2006, the dead body of her husband was recovered from a safety tank at the backyard of the house. Before his journey for Rajshahi, she found her husband in a pensive mood and on being questioned, he told her that there were irregularities relating to the promotion of Dr. Mohiuddin and in the meeting, he would say 'no' and her husband opposed the promotion of Dr. Mohiuddin in various meetings held earlier and that is why, Dr. Mohiuddin misbehaved with her husband and her husband told her from time to time that Dr. Mohiuddin was very discourteous and insolent to him. She deposes that about three years back, her husband told her that Dr. Mohiuddin had threatened him with throwing him down from the second floor of the university building. She had a talk with her husband about a job in Petro-Bangla and Dr. Mohiuddin also tried for that job and one of his influential relatives told Dr. Mohiuddin that he would arrange the job for him (Dr. Mohiuddin) in Petro-Bangla provided he was promoted as Professor and then Dr. Mohiuddin became desperate for his promotion as Professor.

25. P.W.24 Constable Md. Jasim Uddin carried the dead body of Dr. Taher to Rajshahi Medical College for autopsy and after an autopsy, he handed over the dead body to the victim's son. P.W.25, Dr. Md. Sultan-Ul-Islam Tipu, Professor of the Department of Geology and Mining at the University of Rajshahi, deposes that on 01.02.2006 at about 10:05 P.M., his wife told him that Dr. Taher had made a telephone call at 7:20 P.M. and requested her to

send the maid-servant to his house after doing her household works at their building on the following day and after some time, he made a telephone call to Dr. Taher and the telephone kept on ringing, but nobody responded thereto and he thought that Dr. Taher had fallen asleep because of the exhaustion of the journey. He states that in his evidence that on 02.02.2006 at 8:45 A.M. on his way to the department, he went in front of the house of Dr. Taher by a rickshaw and saw two windows of the bedroom of Dr. Taher open on the first floor and at that point of time, the caretaker Zahangir was standing in front of the house. He got down from the rickshaw and entered the courtyard of the house of Dr. Taher and asked Zahangir as to whether Dr. Taher had arrived or not; but Zahangir went inside the house quickly and after a while, he called Zahangir and then Zahangir came out and told him that Dr. Taher had not arrived. At that time, Zahangir looked unmindful and somewhat restive. He told Zahangir as to why the two windows of the bedroom of Dr. Taher were open. Then Zahangir went to shut down the windows and he went to the department by the rickshaw. He states that on 02.02.2006, a meeting of the Departmental Planning Committee was held; but Dr. Taher was absent thereat and on 02.02.2006 at about 10:40 P.M., Md. Aminul Islam, an Assistant Professor in the Department of Geology and Mining, went to his house and told him that the wife of Dr. Taher informed him that Dr. Taher had reached Rajshahi on 01.02.2006; but his whereabouts were unknown and she requested him to look for the whereabouts of Dr. Taher at his house and later he along with Aminul Islam went to his house but found the same under lock and key and they saw some guards on the road in front of the house and when they asked the guards as to whether they knew the house of the caretaker Zahangir or not, then two guards rushed to the house of the caretaker Zahangir. He further states that they apprised the Registrar Abdus Salam of the matter and the Registrar told the Police, Proctor and Professor Musfique Ahmed to go in front of the house of Dr. Taher and after a while, two guards who went to the house of Zahangir returned with three keys and the gate of the courtyard of the house was opened with one of the keys and by another key, they opened the entrance door of the house and entered the drawing, dining rooms and room of Zahangir and also went upstairs and at that time, the Proctor and the police reached there and by the third key, they tried to open the room in the first floor; but in vain. The door was broken open with a shovel and they entered the bed room of Dr. Taher. In presence of Registrar Abdus Salam, Proctor Shamsul Islam Sardar, Police Personnel, Professor Mushfique Ahmed and others, caretaker Zahangir was brought to the house, but they did not find the bag, clothes, food and specs of Dr. Taher. At that point of time, Mrs. Taher again made a mobile phone call to Aminul Islam and Registrar Abdus Salam informed Mrs. Taher that the bag, food and wearing- apparels of Dr. Taher were not inside the bed room and then Mrs. Taher intimated that on his arrival at Rajshahi, Dr. Taher told her that there was no electricity and he was lying on bed and she requested the Registrar to look for the whereabouts of Dr. Taher thoroughly. At 7:00 A.M., this witness along with Dr. Golam Sabbir Sattar, Aminul Islam, Himel and Zumma went in front of the house of Dr. Taher and saw many teachers of the university including the Pro-Vice-Chancellor Dr. Mamunul Keramat. The Registrar also went there and after opening the lock, they again entered the bed room of Dr. Taher in the first floor and seeing a pair of black trousers with a black belt hanging on a hanger, Himel told that his father had certainly reached Rajshahi and after searching the house, they searched the courtyard of the house and at one stage, the dead body of Dr. Taher was found in a manhole at the backyard of the house and in presence of the Pro-Vice-Chancellor and the police, the dead body was identified and the police held an inquest on the dead body and thereafter it was sent for post-mortem examination and after holding of janaza prayer in the afternoon, the dead body was taken to Dhaka and it was buried there on 04.02.2006. He further adds that on 03.03.2006 the police also seized a blood-stained pillow which was wrapped up with a piece of cloth, a blood-stained carpet, a blood-stained window-screen and a plastic mat from the room of the

caretaker Zahangir at the place of occurrence house and prepared a seizure list (exhibit 3 (Ga)) and he put his signature on it.

26. P.W.26 Dr. Kamrul Hasan Mazumdar, Professor of the Department of Geology and Mining, states that on 19.03.2006 at about 2:15 o'clock, the Investigating Officer went to the department and in his presence, the sealed office-chamber of Dr. Taher was opened and on search, the Investigating Officer seized some writings of Dr. Taher relating to the length of service and promotion of Dr. Mohiuddin and prepared a seizure-list (exhibit-3 (niyo)) and he signed on it as a witness. P.W.27 Dr. Md. Badrul Islam, Professor of the Department of Geology and Mining, states that he was in Brunei in connection with a conference from 12.01.2006 to 30.01.2006 and he returned to Dhaka on 31.01.2006 and on 01.02.2006 at about 3:00/3:30 P.M., he came to know that the Planning Committee would hold a meeting on 02.02.2006 and accordingly he participated in the meeting held on 02.02.2006 and the Chairman of the Department Dr. Shamsuddin Ahmed, Professor Mushfique Ahmed and Professor Anwarul Islam were also present at that meeting and Professor Anwarul Islam told him to hold inquire over telephone as to why Dr. Taher did not attend the meeting. He tried to contact him over his cell phone; but he did not respond. In the morning of 03.02.2006, he went to the house of Dr. Taher and saw many people there and after about 10 minutes of his arrival there, the dead body of Dr. Taher was found in a safety tank at the backyard of the house and the Fire Brigade personnel lifted the dead body from the safety tank and they attended the namaz-e-janaza of Dr. Taher in the afternoon at Rajshahi University Central Mosque. This witness wrote an ejahar as per the oral statement of Himel and he signed the ejahar as its scribe. P.W.29, Dr. Golam Sabbir Sattar Tap was tendered by the prosecution for cross-examination by the defence. He denies a defence suggestion that he and Dr. Tipu are involved in the killing of Dr. Taher. P.W. 30 is Md. Afarul Islam in his testimony states that he was going to Khojapur Maddhyapara from Rajshahi University Campus and at the call of the police, he halted and they seized the SIM of a mobile phone from a woman (Rani) and thereafter he signed on a piece of paper. P.W.32 Md. Akkas Ali deposes that about two years back, the Investigating Officer seized some alams and at the instance of the police, he signed a piece of paper. P.W.33 Md. Masud Rana states that one day, he came to DB (Detective Branch) Office and his brother was a Sub-Inspector at that office and then some staff of the DB office were writing something on a piece of paper on a table and at their instance, he signed the piece of paper. P.W.34 Md. Minhazul states that he is a cow-trader and the police found some pieces of torn paper underneath a stone on the bank of the river Padma and at their instance, he signed a piece of paper and he also made a statement to the Magistrate. P.W.36 Md. Manik Hossain states that on 12.02.2006, he was on duty as a Sepoy at Shahapur Border Outpost and at a distance of about 200 yards to the west from the outpost, he went to a beat for performing his duty and found two persons moving about and one person disclosed his identity as a member of the DB police and after 10/15 minutes, three white micro-buses went there and 12/15 people being variously armed were on board the micro-buses and out of them, one accused was hand-cuffed and those 12/15 people took the hand-cuffed accused to the bank of the river and they found some papers beneath a stone and picked up the same.

27. P.W.37 Mst. Bulbuli states that on 02.02.2006 at about 9:00 A.M., she went to the house of Dr. Taher in order to prepare his breakfast and pressed the calling-bell of the house and then Zahangir came out and told her that Dr. Taher would come on 03.02.2006 and then she went away. P.W.38 Md. Enamul Haque deposes that on 05.04.2006, the police seized some papers from the office of the Registrar in his presence and prepared a seizure-list and he signed on it.

28. P.W.39 Dr. Syed Shamsuddin Ahmed in his testimony states that on 02.02.2006 at about 11:00 P.M., his colleague Dr. Golam Sabbir Sattar phoned him and told that Dr. Taher had arrived at Rajshahi, but he was not available at his house. He continued keeping contact with Dr. Golam Sabbir Sattar and Dr. Sultan-Ul-Islam over telephone until 2 A.M. that night and wanted to know from them as to whether Dr. Taher had arrived at his house or not and they replied that Dr. Taher was not available thereat. He deposes that in the early morning of 03.02.2006, he went to the house of Dr. Taher and saw many people and police personnel there and Dr. Taher was being looked for and at one stage, the neighbour of Dr. Taher, namely, Professor Kamal Mostafa of the Department of Political Science ran to him and told him that the dead body of Dr. Taher had been found in a manhole and after performance of janaza, the dead body was taken to Dhaka for burial. He further deposes that at the time of the occurrence, he was the Chairman of the Department of Geology and Mining and Dr. Taher was the seniormost Professor of the department and about one year prior to the occurrence, some complications cropped up centering on one promotion of the department and the first meeting of the Planning Committee with regard to the promotion of Dr. Mohiuddin was held on 28.04.2005 and at that meeting, the Planning Committee found some inconsistencies between the decision of the selection board and the appointment letter of Dr. Mohiuddin as Associate Professor on promotion in consequence of which the Planning Committee asked for an explanation from the Registrar in this regard and subsequently Dr. Mohiuddin applied for his confirmation as Associate Professor; but he showed the same paper (publication) twice therefor and so the Planning Committee did not make any recommendation for his confirmation as Associate Professor and later on, Dr. Mohiuddin amended the two papers and accordingly a recommendation was made for his confirmation as Associate Professor. He also deposes that the Planning Committee found that Dr. Mohiuddin made simultaneous applications for promotion to the University Administration and the Planning Committee and as such at that time, the Planning Committee did not recommend the case of Dr. Mohiuddin for promotion; but at the instance of the Vice-Chancellor of the University, the application made to the University Administration was referred to the Planning Committee and the said Committee did not consider the case of Dr. Mohiuddin for lack of required length of service. He further states that again Dr. Mohiuddin applied for promotion as Professor in the month of January, 2006 and the meeting of the Planning Committee was slated for 02.02.2006 and at that meeting of the Planning Committee held on 02.02.2006, it transpired that Dr. Mohiuddin again applied for promotion simultaneously to the Planning Committee and the Vice-Chancellor and since the matter was referred to the referees by the Vice-Chancellor, the Planning Committee washed its hands of the matter. He deposes that the Departmental Academic Committee inquired into the allegation of forgery brought against Dr. Mohiuddin and found the same true and as such the relevant paper was not published in the journal as requested by Dr. Mohiuddin. He further deposes that Dr. Taher and Dr. Mohiuddin had been at odds with each other for a long time and both of them expressed their indignation over the use of a laboratory of the department and many teachers of the university told Dr. Taher that the promotion of Dr. Mohiuddin got stuck because of him as he told him (P.W. 39) and Dr. Taher requested him (P.W. 39) as the Chairman of the Department to take some action against Dr. Mohiuddin. He also deposes that he is a witness to the inquest-report and on 12.04.2006, the police seized some alams including some pictures, slides etc. and prepared a seizure-list (exhibit-3(ta)) and he signed the same as a witness.

29. P.W.40 Md. Motlebur Rahman states that on 02.03.2006, he was on duty as Sub-Inspector at Bhanga Police Station, Faridpur and on that day, he verified the permanent address of Dr. Taher and found it correct. P.W. 41 Md. Monjurul Islam, S.I, Kurigram, states

that he served the attachment warrant against the accused Salehin and submitted a report accordingly. P.W.42 Md. Foyzur Rahman states on 03.02.2006, he was on duty as Officer-in-Charge of Motihar Police Station, Rajshahi and on that day, on the basis of a written ejahar of the informant Sanjid Alvi Ahmed, he registered the case by filing in the prescribed form of the First Information Report.

30. P.W. 43 Dr. Chowdhury Sarwar Zahan testifies that at the meeting of the Departmental Academic Committee held on 11.07.2005, the letters of Dr. Sultan-Ul-Islam and Dr. Mohiuddin addressed to the Editor of Bangladesh Geo-Science Journal were discussed and Dr. Sultan-Ul-Islam claimed that he was a co-author of the research paper sent to the editor of the journal for publication by Dr. Mohiuddin; but Dr. Mohiuddin submitted the research paper to the editor of the journal for publication in his single name claiming the same to be his own original work and in this situation, the Departmental Academic Committee formed a Two-Member Fact-Finding Committee with him (P.W. 43) as its convener at the instance of Dr. Taher and others. P.W. 43 also testifies that after inquiry and hearing Dr. Mohiuddin and all concerned, the Fact Finding Committee submitted its report on 22.04.2006 and the Committee was of the opinion that Dr. Sultan-Ul-Islam Tipu had contributed to the research paper at the preliminary stage and the Departmental Academic Committee, as well as the Departmental Planning Committee found the evidence of plagiarism and piracy in the professed paper of Dr. Mohiuddin. He also testifies that over the use of the Micro-Paleontology Laboratory of the department, bitterness developed between Dr. Taher and Dr. Mohiuddin as a result of which Dr. Mohiuddin wrote to the Departmental Chairman twice in 2001 to initiate a resolution of condemnation against Dr. Taher, but without any result. When Dr. Mohiuddin applied for Professorship, he showed one publication twice; but on a subsequent amendment, Dr. Mohiuddin showed those two publications which were earlier shown at the time of his promotion as Assistant Professor and this amounted to a violation of the relevant provisions of the Rajshahi University Act. Dr. Taher was very much vocal against the irregularities committed by Dr. Mohiuddin and Dr. Taher was a teacher of the Department of Geology and Mining, a Member of the Departmental Planning Committee and a Member of the Expert Committee at the same time and he did not compromise with any irregularities or illegalities and he used to take a stern attitude thereto. At the time of his attempted promotion as Professor through a rebate, Dr. Mohiuddin, by way of showing off additional publications, used the findings of the self-same research under different captions which were opposed by Dr. Taher and Dr. Taher was also very much annoyed at and fed up with the political pressure of different quarters exerted upon him for the promotion of Dr. Mohiuddin and he disclosed the same to them. In his cross-examination, Chowdhury Sarwar Zahan states that the single opinion of deceased Dr. Taher Ahmed in the Departmental Planning Committee might not have decisive force, but as a senior teacher in the Department, he had an influence upon other teachers and they would certainly count his opinion.

31. P.W.44 Dr. Md. Enamul Haque states in his evidence that while he was on duty as a Lecturer in the Department of Forensic Medicine of Rajshahi Medical College on 03.02.2006, he held an autopsy on the deceased Dr. Taher identified by Constable No. 192 Jashim Uddin as a Member of the Medical Board and found the following injuries on the person of the victim:

- “(1) One incised-looking wound on the occipital scalp, size is $2\frac{1}{4}$ ” X $\frac{1}{2}$ ” X bone-depth;
- (2) One haematoma on the occipital region, size is 3” X 3”;

(3) One bruise on the scapular region, vertically placed (right scapula), size is $2\frac{1}{2}$ " X $\frac{1}{2}$ ";

(4) One bruise on the back of the right upper chest, size is 4" X $\frac{1}{2}$ "; and

(5) One bruise on the back of right abdomen above the right iliac chest, size is 2" X $\frac{1}{2}$ ".

On detailed dissection, brain was found injured. Intra-cranial haemorrhage was detected with fracture of occipital bone.”

32. He states in his evidence that in his opinion, the death of Dr. Taher was due to shock and intra-cranial haemorrhage resulting from the above-mentioned injuries which were ante-mortem and homicidal in nature.

33. P.W. 45 Dr. Md. Emdadur Rahman states that the autopsy on the deceased Dr. Taher was performed through a Medical Board and as a Member of the Medical Board, he signed the autopsy-report.

34. P.W. 46 Jobeda Khatun in her testimony states that being a Magistrate of the 1st Class at Rajshahi Metropolitan Magistracy, on 07.02.2006, she recorded the confessional statement of the accused Zahangir and it was read over to Zahangir and he signed it. On 08.02.2006, she recorded the confessional statement of the accused Nazmul and the same was read over to him and he signed it. She next states that on 12.02.2006, she recorded the confessional statement of the accused Md. Abdus Salam and it was read over to him and he signed on it and the confessions of all the accused recorded under Section 164 of the Code of Criminal Procedure were voluntary. In her cross-examination, she denies a defence suggestion that the accused Nazmul was tortured to such an extent that he was unable to sit or stand. On 19.06.2006, she received the retraction petitions of all the confessing accused.

35. P.W. 47 Md. Omar Faruk deposes that on 03.02.2006, on the basis of a written ejahar lodged by the informant Md. Sanjid Alvi Ahmed, the Officer-in-Charge of Motihar Police Station Foyzur Rahman registered the case and endorsed it to him for investigation, and having taken up investigation thereof, he visited the place of occurrence, held an inquest on the dead body of Dr. Taher, made an inquest-report and sent the dead body to the morgue of Rajshahi Medical College Hospital through Constable No. 192 Md. Jashim Uddin. He seized a kamiz, a blood-stained shawl, a navy-blue sweater, one blue shirt and a blood-stained torn panjabi which were attached to the body of the deceased Dr. Taher and prepared a seizure list (exhibit-3(ka)) and signed the same as its maker. He further deposed that on 03.03.2006 he seized a blood-stained carpet, a blood-stained window-screen, a blood-stained pillow and a plastic mat from the room of Zahangir in the ground floor of the place of occurrence and prepared a seizure list (exhibit 3(Ga)). P.W. 48 Golam Mahfiz discloses in his evidence that on 12.02.2006, he was on duty at the Detective Branch of Rajshahi Metropolitan Police, Rajshahi and on that day, in view of the requisition of the Investigating Officer Md. Omar Faruk, he (P.W.48) seized the mobile phone of Dr. Mohiuddin, namely, Siemens S-55, bearing no. 0176408243 as produced by the assistant of Mr. Saiful Islam Shelly, Advocate, namely, Md. Mostakim Billah. P.W.49 Md. Achanul Kabir testifies that he took over the investigation of the case on 14.02.2006, visited the place of occurrence, perused the case docket, sent the relevant alamats to the Chief Chemical Examiner, Mohakhali, Dhaka for chemical examination with the consent of the Court, obtained the opinion of the Chemical

Examiner on the said alams, examined some witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure; and having found a prima facie case, he submitted charge-sheet No. 36 dated 17.03.2007 against the accused under Sections 302/201/34 of the Penal Code.

36. The sole D.W. is Md. Mahbub Morshed, Manager, Brac Bank Limited, Rajshahi. He claims in his evidence that on 30.11.2006, Bangladesh Bank accorded them permission to open a branch of Brac Bank Limited at Rajshahi, and accordingly a branch of Brac Bank was opened on 07.12.2006 and there is no branch of Standard Chartered Bank at Rajshahi.

37. There is no eye witness in this case and the prosecution case is based on circumstantial evidence and confessional statements of three accused persons. It appears from the materials on record that the convict appellant Md. Zahangir Alam and petitioners Md. Nazmul and Md. Abdus Salm made confessional statements before the Metropolitan Magistrate, Rajshahi which were marked as exhibit-12, 13 and 20 respectively. P.W.46 Jobeda Khatun, Metropolitan Magistrate, Rajshahi recorded those confessional statements.

38. The contents of the confessional statement of appellant Md. Zahangir Alam run as follows:

“আমি মির্জাপুর হাইস্কুলে পুরাতন ১০ম শ্রেণীতে পড়ি। মার্চের ৯ তারিখে আমার এস.এস.সিপারীক্ষা। আজ থেকে ৩ মাস আগে থেকে রাজশাহী বিশ্ববিদ্যালয়ের শিক্ষক ডঃ তাহের স্যারের বাসার কেয়ারটেকার হিসাবে আছি। সন্ধ্যা থেকে সকাল ৭/৮ টা পর্যন্ত ডিউটি থাকতো। গত ১৩-০১-২০০৬ তারিখে সন্ধ্যা পৌনে ছয়টার দিকে ক্যাম্পাসের ভেতরের শিশু পার্কের মোড়ে ভূ-তত্ব ও খনি বিভাগের প্রফেসর মোঃ মহিউদ্দিনের সাথে দেখা হয়। তিনি আমাকে অনেক কথা জিজ্ঞাসা করেন— কি করি না করি সে বিষয়ে। তখন তিনি আমাকে বলেন তুমি আমার কথামত কাজ করলে তোমাকে কম্পিউটার কিনে দেবো। ২৬-০১-২০০৬ তারিখে পশ্চিম কোয়ার্টারের পুকুর পাড়ে মহিউদ্দিন স্যারের সাথে আমার দেখা হয়। তাহের স্যার কবে আসবে ঢাকা থেকে—একথা জিজ্ঞাসা করে। আমি বলি স্যার, আজ ঢাকায় গেছেন। আসবেন ৩ তারিখে। ক্যাম্পাসে কাজ থাকলে আগেও আসতে পারেন। তখন মহিউদ্দিন স্যার বলে যে, তাহের স্যার ফিরে আসলে তাকে হত্যা করতে হবে। স্যারকে হত্যা করলে আমাকে কম্পিউটার ও আমার ভাইকে চাকুরী দেয়া হবে বলে মহিউদ্দিন স্যার বলেন।

আমি বলি যে, আপনি লোকজন দিবেন। কাজ হবে। তখন আমাকে চলে যেতে বলে স্যার। আমি চলে যাই। ২৭-০১-২০০৬ তারিখে সন্ধ্যায় মাগরিব নামাজ পড়তে মসজিদে যাই। সেখানে মহিউদ্দিন স্যার শিবিরের সভাপতি সালেহীনের সাথে আমার পরিচয় করে দেন আর বলেন যে, সালেহীন এর সাথে সম্পর্ক রেখো। তাহলে ক্যাম্পাসে চলতে তোমার সমস্যা হবে না। কথা বার্তায় জানলাম সালেহীন মাদারবক্স হলে থাকে। তখন মহিউদ্দিন স্যার বলেন যে, আগামী ৩০-০১-২০০৬ তারিখ তাহের স্যারের বাসায় বসবো সন্ধ্যায়। তার কথামত ৩০-০১-২০০৬ তারিখ ৬:৩০/৬:৪৫ এর দিকে আমার বড় ভাই সালাম, আমার ভাই এর সম্বন্ধী নাজমুল ও আমি তাহের স্যারের বাসায় আসি। ঐ সময় মহিউদ্দিন স্যার ও সালেহীন এসে ঢুকলো। তারপর একসাথে আলোচনা হয়।

আমি বলি তাহের স্যার ৩ তারিখে আসবেন। মহিউদ্দিন স্যার বলেন, তাহের আসলে গুলি করে হত্যা করতে হবে। সালেহীন বলে গুলি করলে শব্দ হতে পারে। আমি বলি তাহলে অন্য কিছু করা হোক। মহিউদ্দিন স্যার বললেন ঘাড়ের পেছনে আঘাত করলে সেন্সলেস হয়ে যায়। স্যারের ঘাড়ের পেছনে আঘাত করতে হবে। তারপর নাকে বালিশ চাপা দিতে হবে। এ পর্যন্ত আলাপ করেই আমরা সকলেই চলে যাই।

০১-০২-২০০৬ তারিখ আমি সন্ধ্যায় বাতি জ্বালাতে আসি বাসায় তখন এরিয়া গার্ড নাজমুলের সাথে দেখা। সে বাসায় কলিং বেল টিপে। আমি বাহির হলে, সাইকেলটা ভেতরে ঢুকিয়ে নাও। আমি বলি, এখনই চলে যাবো, সাইকেল ভেতরে নেব না। তখন নাজমুল চলে যায়। আমিও কিছুক্ষণ পরে চলে যাই। আমি আমার বাসায় খেয়ে দেয়ে আবার রাত ৯:৩০ টার দিকে তাহের স্যারের বাসায় আসি। আসার পথে মুন্সুজান হলের পেছনে রাস্তার উপর সালেহীন ও মহিউদ্দিন স্যার অপেক্ষা করছিল। আমাকে দেখে আমাকে দাঁড়াতে বলে। স্যার বললো যে, তাহের স্যার ঢাকা থেকে এসেছে, মহিউদ্দিন স্যার বলেন- আজকেই স্যারকে খুন করতে হবে। বলে আমার হাতে একটা রিভলবার দেয় এবং বলে যে, তুমি যাও, আমরা আসছি। আমি রিভলবার নিয়ে তাহের স্যারের বাসার দিকে আসতেই সামনে ভাই সালাম আর ভাই এর সম্বন্ধী নাজমুলকে দেখি। আমি ওদেরকে বলি যে, আমি বাসায় আছি। তোমরা আসো। তারপর আমি গেটে কলিংবেল বাজাই। বেল বাজেনা। স্যার স্যার করে ডাকতে থাকলে স্যার দরজা খুলে দেয়। কারেন্ট ছিল না ঐ সময় স্যার নিচে এসে গেট খুলে দেয়। ঐ সময় আই, পি, এস, চলছিল। আমি নীচে ড্রইং রুমে পড়তে বসি। স্যার উপরে চলে যায়। মিনিট ১০ পর মহিউদ্দিন স্যার, সালাম, নাজমুল (সালামের সম্বন্ধী), আর সালেহীন এসে দরজা নক করে। সালাম, সালেহীন, নাজমুল ড্রইং রুমে ঢুকে

সোফায় বসে। ২/১ মিনিট পর আমি দোতলায় উঠে যাই। দেখি স্যার টিভির সামনে দাঁড়িয়ে আছে। আমি বলি যে, স্যার, নীচের টিউব লাইট কেটে গেছে। তখন স্যার সামনে ঘুরেছে। অমনি আমি পেছন থেকে ঘাড়ের উপর রিভলবারের বাট দিয়ে আঘাত করি। ইতোমধ্যে মহিউদ্দিন স্যার সহ ওরা ৪ জন উপরে উঠে এসেছে। স্যার আঘাত পেয়ে মেঝেতে লুটিয়ে পড়ে। মহিউদ্দিন স্যার বলে, তাড়াতাড়ি ধরে নীচে নামাও। আমি ও সালেহীন স্যারের দুই হাতের বোগলের নীচে ধরি। নাজমুল আর সালাম স্যারের কোমড়ের নীচটা ধরে। মহিউদ্দিন স্যার তখন তাহের স্যারের দোতলার বেড রুমে অবস্থান করেন। আমরা ধরাধরি করে নীচে নিয়ে আসি। যে ঘরে আমি থাকতাম, সেই ঘরের কার্পেটের উপর চিৎ করে শোয়াই।

আমি ও সালেহীন ভাই স্যারের নাকের উপর বালিশ চাপা দেই। স্যার তখন হাত পা নাড়াতে থাকে। মহিউদ্দিন স্যার তখন নীচে এসেছিল। স্যার বলে জোর করে চেপে ধর। ডিপার্টমেন্টে বড়াই করে। উচিৎ শিক্ষা হবে। তখন নাজমুল তাহের স্যারের পা এবং সালাম স্যারের হাত চেপে ধরে মেঝের সাথে। সালেহীন বলে যে, “ডিপার্টমেন্টের বড়াই, উচিৎ শিক্ষা দিয়ে দেই।” স্যার ঝাটকা মেরে ডান দিকে উল্টে যায়। তখন আমি আগে থেকে লুকিয়ে রাখা ছোরা দিয়ে স্যারের মাথার পেছনে একটা আঘাত করি। রক্ত বের হতে থাকে আঘাত থেকে। আমরা সবাই স্যারকে চিৎ করে শোয়ায়ে দেই। আবার সালেহীন ও আমি বালিশ দিয়ে নাকের উপর চাপা দেই। একটু পরেই স্যারের দম শেষ হয়ে যায়। তখন মহিউদ্দিন স্যার তাহের স্যারের বুকের উপর কান পাতে এবং হাত টিপে দেখে বলে শেষ।

স্যার তাহের স্যারের লাশকে রান্না ঘরে রাখতে বলে। আমি অস্বীকার করি। বাড়ীর পিছনের হাউজে রাখার কথা বলি। স্যার রাজী হয়। তাহের স্যারের মাথার রক্ত না পড়ার জন্য পড়নের হালকা ঘিয়া রংয়ের চাদরে মাথা ও ঘাড় পেচিয়ে দেই আমিও সালেহীন। রক্ত পড়তেই থাকে। মহিউদ্দিন স্যার ন্যাকড়া আনতে বলে আমি মহিউদ্দিন স্যারকে নিয়ে পাশের ঘরে যাই। স্যার মোবাইলের লাইট জ্বালায়। আমি কার্টুন থেকে ছেড়া পাঞ্জাবী ও কাজের মেয়ের ফ্রক নিয়ে এসে তাহের স্যারের ঘাড়, বুক পেচিয়ে ফেলি ফ্রক দিয়ে।

স্যারের লাশ সালেহীন, সালাম, নাজমুল ধরে হাউজের দিকে নেয়। আমি আগে পাঞ্জাবীটা হাউজের কাছে বিছাই। মহিউদ্দিন স্যার মোবাইলের আলোয় রাস্তা দেখায়। আমি হাউজের মুখ খুলি। হাউজের মধ্যে স্যারের লাশকে ঢুকিয়ে দেই। সালেহীন, নাজমুল, সালাম চলে যায়। আমি ও মহিউদ্দিন স্যার এসে নীচের সোফায় বসি। স্যার আমার মাথায় হাত দিয়ে বলে “কিছু চিন্তা করিস না। যা হবার হয়ে গেছে। মুখ খুলিস না। কম্পিউটার আর চাকরী হয়ে যাবে। জীবনে ও মুখ খুলবি না। মুখ খুললে জাহান্নামে থাকলেও বাঁচতে পারবি না। তোর ফ্যামিলি ও বাঁচবে না।” বলে আমাকে হুমকী দিয়ে রিভলবারটা নিয়ে তাহের স্যারের দোতলায় যায়। তারপর নীচে নেমে এসে বলে তুই থাক আমি আসছি। স্যার পরদিন সকালে এসে তাহের স্যারের ব্যবহারী ট্রাভেলিং ব্যাগ নিয়ে আমাকেসহ সাহেব বাজার আসে। তার কথামত আমি ব্যাগটা আমার এক আত্মীয়ের বাসায় রাখি। আত্মীয় জানে না ওটা किसের ব্যাগ। স্যার আর আমি একসাথে রিক্সায় ফিরে আসি।

মহিউদ্দিন স্যার কম্পিউটার ও চাকুরীর লোভ দেখিয়ে ছিল বলেই আমি স্যারকে হত্যা করেছি। তাহের স্যার আমাকে খুব ভালোবাসতো। আমি গরীব মানুষ। কম্পিউটার শিখতাম। কম্পিউটার কেনার পয়সা আমার বাবার নেই। কম্পিউটারের লোভে আমি স্যারকে খুন করেছি। আমি আমার কৃতকর্মের জন্য অনুতপ্ত ও ক্ষমাপ্রার্থী।”

39. The contents of the confessional statement made by convict petitioner Md. Nazmul run as follows:

“আমি গৌরসাহা রেলগেটে গ্রিলের ওয়েল্ডিং এর কাজ করি। ১৩-০১-২০০৬ তাং কাজ শেষে রাত ৮:০০ টার দিকে বাড়ী ফেরার পথে ভদ্রা আবাসিকের ডান সাইডের রাস্তায় আমার ভগ্নিপতি সালাম এর সাথে সাক্ষাত হয়। সালাম আমাকে বলে যে, “ভাই, একটা কাজ আছে। কাজটা করে দিতে পারলে জাহাংগীর, তোমার ও আমার চাকুরী হবে।” জিজ্ঞেস করি চাকুরীটাকে দিবে। সালাম বলে যে, মহিউদ্দিন স্যার চাকুরী দিবে। কি কাজ করতে হবে জিজ্ঞাসা করলে সালাম বলে একজনকে থ্রেট করতে হবে। রাজী না হলে শেষ করে দিতে হবে। আমি বলি যে, এসব কাজে রিস্ক আছে না। পরে ফেঁসে যেতে পারি। সালাম বলে যে, ফাঁসফাঁসির কিছু নাই। সব আমরা নিজেদের লোক। সময় মত তোমাকে খবর দিব। তারপর আমি চলে যাই। ০১-০২-২০০৬ তারিখ সালাম আমাকে রাত ৯ টার দিকে মোবাইল ফোনে বলে আপনি চলে আসেন। এদিকে সব রেডি আছে। ভার্টিসটির পশ্চিম কোয়ার্টারের উত্তর মাথায় চলে আসেন। তখন আমি কোয়ার্টারের পশ্চিম গেট দিয়ে ঢুকে উক্ত স্থানে যাবার পথে রাস্তায় সালামকে দেখতে পাই। সালাম ও আমি পূর্ব দিকে যেতেই জাহাংগীরের সাথে দেখা। সালাম আমাকে ও জাহাংগীরকে নিয়ে মুন্সুজান হলের পেছনে নিয়ে যায়। সেখানে সালাম আমাকে মহিউদ্দিন স্যার ও শিবির নেতা সালেহীনের সাথে পরিচয় করে দেয় আর বলে যে— এই স্যারই আমাদেরকে চাকুরী দিবে। তখন ও কেউ বলে নাই কাকে খুন করতে হবে। ঐ সময় মহিউদ্দিন স্যার জাহাংগীরকে একটা পিস্তল দেয়। জাহাংগীর পিস্তল নিয়ে আগে চলে গেল। মিনিট ১০/১৫ পরে স্যার ও সালেহীন বলে “চলো আগাই”। তখন ৪ জন যেতে থাকি। সালাম, সালেহীন ও স্যার তিনজনই ঘটনার কোয়ার্টার চিনতো। আমি চিনতাম না। ঐ কোয়ার্টারে এসে সালাম গেটে নক করে। জাহাংগীর গেট খুলে দেয়। আমরা ৪ জন ডুইং রুমে ঢুকে বসি। জাহাংগীর বলে যে, “আমি উপরে উঠার পর পরই আপনারা উঠে আসবেন।” বলে জাহাংগীর উঠে যায়। একটু পরেই আমি, মহিউদ্দিন স্যার, সালেহীন আর সালাম দোতলায় উঠি। উঠেই দেখি তাহের স্যার মেঝেতে পড়ে গেল এবং সেন্স হারিয়ে ফেললো। মহিউদ্দিন স্যার বলে যে, ধরাধরি করে নীচে নামাও। তখন

জাহাঙ্গীর, সালাম, সালেহীন ও আমি ধরাধরি করে স্যারকে নীচে নামিয়ে যে ঘরে জাহাঙ্গীর থাকে সেই ঘরে নিয়ে যাই। জাহাঙ্গীর ঐ স্যারের বাসার কেয়ারটেকার। কার্পেটের উপর স্যারকে শোয়ায়ে ফেলি। জাহাঙ্গীর ও সালেহীন নাকে বালিশ চাপা দেয়। সালাম হাত ধরেছিল। আমি পা ধরেছিলাম। স্যার একটা ঝটকা মেরে উল্টে যায়। তখন জানালার উপর রাখা একটা ছুরি দিয়ে জাহাঙ্গীর স্যারের মাথার পিছনে একটা কোপ মারে। সালেহীন তাহের স্যারের পিঠের উপর চেপে বসে বলে শালা ডিপার্টমেন্টের বড়াই দেখাচ্ছি। মহিউদ্দিন স্যারও বলে “ডিপার্টমেন্টের বড়াই, দেখিয়ে দে।” আবারো সালেহীন স্যারের নাক বালিশের সাথে চেপে ধরতেই জান বের হয়ে যায়। মহিউদ্দিন স্যার, বুকে কান পেতে এবং হাতে টিপে ধরে দেখে জান বের হয়েছে কিনা।

এরপর, কামিজ নিয়ে আসে জাহাঙ্গীর। স্যারের গায়ের চাদর ও ঐ কামিজ দিয়ে স্কতস্থান চেপে ধরে জাহাঙ্গীর। মহিউদ্দিন স্যার লাশকে রান্না ঘরে রাখতে বলে। পরে জাহাঙ্গীরের পরামর্শে হাউজে রাখা হয়। স্যারের লাশ আমি, সালাম, সালেহীন ও জাহাঙ্গীর ধরে হাউজে নিয়ে যাই। মহিউদ্দিন স্যার মোবাইলের আলোয় রাস্তা দেখায়। লাশকে হাউজে রেখে আবার ড্রইং রুমে সবাই আসি। মহিউদ্দিন স্যার বলে যা হবার হয়েছে। কারো কাছে কিছু ফাঁস করবি না। করলে নিষাতি ফাঁসি হবে। একটু পরে আমি আর সালাম চলে আসি। শুনেছি জাহাঙ্গীর দোতলায় উঠে পিস্তল দিয়ে স্যারের ঘাড়ে আঘাত করেছিল। হত্যার আগে যখন ড্রইং রুমে ছিলাম তখন মহিউদ্দিন স্যার বলেছিল— গুলি করলে শব্দ হবে। ঘাড়ের পেছনে আঘাত করে বালিশ চাপা দিতে হবে।

তাহের স্যারকে হত্যা করার দিনই স্যারের নাম জেনেছি। তার আগে আমাকে বলা হয় নাই— এই স্যারকেই হত্যা করতে হবে। শুনেছি তাহের স্যার খুব ভালো লোক ছিল। তাকে খুন করে আমরা নিজেই খুন হয়ে গেছি। সালামের কাছে শুনেছি মহিউদ্দিন স্যার তাহের স্যারের কাছে প্রমোশন চেয়েছিল। তাহের স্যার নাকি আর কিছুদিন অপেক্ষা করতে বলেছিল। প্রমোশনের ফায়দা লুটার জন্যই মহিউদ্দিন স্যার লীড দিয়ে এই খুন করিয়াছে। আমি একটা চাকুরীর লোভে মহিউদ্দিন স্যারের জঘন্য প্রস্তাবে রাজী হয়েছি। আমি জীবনে এ রকম অপরাধ করি নাই। আমি ভুল করেছি। আমার ভুলের জন্য আমি অনুতপ্ত ও ক্ষমা প্রার্থী।”

40. The confessional statement of the convict petitioner Abdus Salam run as follows:

“আমি পদ্মা আবাসিক এলাকার গার্ড হিসাবে চাকরী করি। ঘটনার ২০/২২ দিন আগে সকাল ৮:২০ টায় আমার বাড়ী হতে পদ্মা আবাসিকে যাচ্ছিলাম। বিশ্ববিদ্যালয় ক্যাম্পাসের মধ্য দিয়ে। পথিমধ্যে দেখি বিশ্ববিদ্যালয়ের কোয়ার্টারের এলাকার শিশু পার্কের পার্শ্বের রাস্তায় আমার ছোট ভাই জাহাঙ্গীর ও রাজশাহী বিশ্ববিদ্যালয়ের মহিউদ্দিন স্যার দাঁড়িয়ে কথা বলছে; আমি ওদেরকে দেখে তাদের সামনে সাইকেল থামাই। আমি আগে থেকেই মহিউদ্দিনকে বিশ্ববিদ্যালয়ের একজন স্যার হিসাবে চিনতাম। জাহাঙ্গীর আমাকে তার বড় ভাই হিসাবে স্যারের সাথে পরিচয় করে দেয়। তারপর আমি পদ্মা আবাসিকে চলে যাই। তারপর হতে ২/১ দিন পর পরেই স্যারের সাথে দেখা হতো। আসা যাওয়ার পথে। সালাম কালাম বিনিময় হতো। কয়েকদিন পর আমি পদ্মা আবাসিক এলাকা বাড়ী ফিরছিলাম ক্যাম্পাসের ভেতর দিয়ে বিকাল ৫/৫:১৫ টার দিকে। দেখি মহিউদ্দিন স্যার তার বাসার সামনে নীচে দাঁড়িয়ে আছে। স্যারের সাথে দেখা হলো। সালাম দিলাম। স্যার আমার সাথে তখন ১৫/২০ মিনিট আলাপ করেন। এক পর্যায়ে বলেন, একটা কাজ করে দিলে কিছু টাকা পয়সা ও চাকুরী হতে পারে। কথাটা শুনে আমি বাড়ী চলে যাই। কয়েকদিন পর আবার বিশ্ববিদ্যালয়ের শিশু পার্কের পার্শ্বের রাস্তায় মহিউদ্দিন স্যারের সাথে আমার দেখা হয় সকালে। স্যারকে জিজ্ঞাসা করি “স্যার কাজটা কি? স্যার পরে আসতে বলে। ঐ দিনই সন্ধ্যায় মহিউদ্দিন স্যারের বাসার সামনে আসি। স্যার বাসার সামনে নীচেই ছিল। স্যার বললো “তাহের স্যারকে খুন করতে হবে। জাহাঙ্গীরকে সব বলা আছে। জাহাঙ্গীরের কাছ থেকে শুনে নিয়ো, আর ৩০-০১-২০০৬ তারিখ সন্ধ্যায় তাহের স্যারের বাসায় এসো।” ১ দিন পরেই জাহাঙ্গীরের সাথে কথা বলি বাড়ীতে। জাহাঙ্গীর জানায় যে, সেও ঘটনা জানে। জাহাঙ্গীরকে মহিউদ্দিন স্যার কম্পিউটার আর চাকরী ও ৬০ হাজার টাকা দিতে চেয়েছিল বলে জাহাঙ্গীর আমাকে বললো। এর আগে ১৩-০১-২০০৬ তারিখে এই ঘটনা আমি আমার সম্বন্ধী নাজমুলকে ও বলি। পদ্মা আবাসিকের রাস্তার ডান সাইডে ঐদিন রাত ৮ টার দিকে নাজমুলের সাথে দেখা হলে তাকে ঘটনা জানাই। আমি নাজমুলকে বলি যে, ভাই একটা কাজ আছে। কাজটা করতে পারলে আমাদের চাকুরী হবে। কিছু টাকাও পাওয়া যাবে। নাজমুল ভাই জিজ্ঞাসা করে, কি কাজ করতে হবে। আমি বলি যে, একজনকে থ্রেট করতে হবে। রাজী না হলে শেষ করে দিতে হবে। নাজমুল বলে যে, এসব কাজতো খুব রিস্কের। ফেঁসে টেসে যাবো না তো? আমি বলি যে, কোন রিস্ক নাই। নিজেরাই সব করবো। সময় মত তোমাকে খবর দিব। বলে আমরা যে যার মত চলে যাই। আবার একদিন নাজমুল ভাই এর সাথে পদ্মা আবাসিকে দেখা হলে আমি তাকে ৩০-০১-২০০৬ তারিখে ভার্সিটির ভেতরে আমার সাথে দেখা করতে বলি।

৩০-০১-২০০৬ তাং সন্ধ্যা সাড়ে ৬/ পৌনে ৭ টার দিকে নাজমুল ভাই এর সাথে মুন্সিঙ্গান হলের পেছনে দেখা। নাজমুল ভাইও আমি সোজা তাহের স্যারের বাসায় চলে গেলাম। নীচ তলার ড্রইং রুমে নক করলে জাহাঙ্গীর দরজা খুলে দেয়। ড্রইং রুমে মহিউদ্দিন স্যার, জাহাঙ্গীর ও মাহাবুব আলম সালেহী @ সালেহীন -দেখি। মাহাবুব আলম সালেহী @ সালেহীন রাজশাহী বিশ্ববিদ্যালয় ছাত্র শিবিরের সভাপতি। তাকে আমি আগে থেকেই চিনতাম। বিভিন্ন মিটিং মিছিলে তাকে নেতৃত্ব দিতে, বক্তৃতা দিতে দেখতাম। আমিও আগে ছাত্র শিবির করতাম। ২/৩ বছর হলো বাদ দিয়েছি। মাহাবুব আলম

সালেহীকে আমরা সবাই সালেহীন ভাই বলে ডাকি। আমরা তাহের স্যারের ড্রইং রুমে বসলাম। মহিউদ্দিন স্যার বলেন- তাহের স্যারকে খুন করতে হবে। কিভাবে খুন করা যায়। বলে মহিউদ্দিন স্যারই চিন্তা ভাবনা করে বলে যে, “গুলি করা যায়।” সালেহী ভাই বলে যে, গুলি করলে আওয়াজ হবে। মহিউদ্দিন স্যার বলে যে, ঘাড়ের পেছনে আঘাত করলে মানুষ সেন্সলেস হয়ে যায়। তাই ঘাড়ের পেছনে আঘাত করতে হবে। তারপর নাকে বালিশ চাপা দিতে হবে। এপর্যন্ত আলাপ আলোচনার পর আমরা সকলেই চলে যাই।

০১-০২-২০০৬ তারিখ রাত ৯:০০ টার দিকে আমি আমার সহকর্মী নাজমুলকে মোবাইল ফোনে বলি—সব ঠিক আছে, চলে আসেন ভার্টিটির পশ্চিম কোয়ার্টারের উত্তর মাথায়। মোবাইল ফোনে কথা বলে আমি মুন্সুজান হলের পিছন সাইডের রাস্তায় আসি। রাস্তায় নাজমুলের সাথে সাক্ষাত হলো। নাজমুল আর আমি সামনে আগাতেই জাহাংগীরের সাথে দেখা। আমি নাজমুল আর জাহাংগীরকে সাথে নিয়ে মুন্সুজান হলের পিছনে গেলাম। সেখানে মহিউদ্দিন স্যার ও সালেহীন ভাইকে দেখলাম। তখন মহিউদ্দিন স্যার জাহাংগীর কে একটা পিস্তল দেয়। জাহাংগীর পিস্তল নিয়ে আগে চলে গেল। মিনিট ১০/১৫ পর আমরা ৪ জন আগাতে থাকি। তারপর, তাহের স্যারের কোয়ার্টারে গিয়ে আমি গেটে নক করি। জাহাংগীর গেট খুলে দেয়। আমরা ৪ জন ড্রইং রুমে বসি। প্রথমে জাহাংগীর তাহের স্যারের দোতলার ঘরে উঠে যায়। একটু পরেই মহিউদ্দিন স্যার, মাহাবুব আলম সালেহী @ সালেহীন, নাজমুল ও আমি ৪ জনে উপরে উঠি। আমরা উপরে উঠতে না উঠতেই জাহাংগীর পিস্তলের বাট দিয়ে তাহের স্যারকে আঘাত করে দেয়। অমনি স্যার মেঝেতে পড়ে গেলেন। মহিউদ্দিন স্যার তাড়াতাড়ি নিচে নামাতে বললেন। তখন জাহাংগীর, আমি, সালেহী আর নাজমুল তাহের স্যারকে ধরাধরি করে নীচে নামাই এবং জাহাংগীর যে ঘরে থাকতো ঐ ঘরের মেঝেতে কার্পেটের উপর চিৎ করে শোয়াই। সালেহী ও জাহাংগীর স্যারের নাকে বালিশ চেপে ধরে। আমি স্যারের হাত ধরি আর নাজমুল পা ধরে থাকে। স্যার একটা ঝটকা মেরে কাত হয়ে পড়লে অমনি জাহাংগীর জানালার পাশে রাখা ছোরা নিয়ে স্যারের মাথার পিছনে কোপ মেরে দেয়। এদিকে সালেহীন আর জাহাংগীর বালিশ চেপে ধরেই আছে। কিছুক্ষণের মধ্যে স্যার মারা যায়। মহিউদ্দিন স্যার বলে যে, ডিপার্টমেন্টের বড়াই, দেখিয়ে দে। সালেহী স্যারের পিঠের উপর বসে চাপ দিতে দিতে বলে ডিপার্টমেন্টের বড়াই?

মহিউদ্দিন স্যার তাহের স্যারের বুকে কান পেতে দেখলো। হাত টিপে দেখলো মরেছে কিনা। তারপর স্যার বলে যে, লাশ রান্না ঘরে রাখা হোক। জাহাংগীর বলে ঠিক হবে না। আমি ফেসে যেতে পারি। তার চেয়ে হাউজে রাখা ভালো হবে। মহিউদ্দিন স্যারের নির্দেশে জাহাংগীর একটা ছেড়া পাঞ্জাবী ও একটা পুরাতন কামিজ নিয়ে আসলো। স্যারের গায়ের চাদর, ঐ পাঞ্জাবী আর কামিজ দিয়ে জাহাংগীর ও সালেহী স্যারের মাথা সুন্দর করে বেঁধে ফেললো। শেষে লাশটাকে নাজমুল, সালেহী আর আমি ধরাধরি করে হাউজে নিয়ে যাই। যাবার পথে কারেন্ট না থাকায় মহিউদ্দিন স্যার মোবাইলের আলোয় রাস্তা দেখায়। জাহাংগীর হাউজের ঢাকনা খুলে দেয়। লাশটাকে হাউজে রেখে আমরা ড্রইং রুমে আসলাম। একটু পরে আমি আর সালাম চলে গেলাম।

আমরা গরীব মানুষ। মহিউদ্দিন স্যার আমার ভাইকে, আমাকে চাকরীর লোভ দেখিয়ে ছিল। আমাদের কোন স্যারের সাথে কোন শত্রুতা নাই। চাকরীর ধান্দায় মহিউদ্দিন স্যারের ষড়যন্ত্রে খুন করেছি। আমি এখন ভুল বুঝতে পেরেছি। আর জীবনেও এরকম ভুল হবে না। আমি কৃতকর্মের জন্য অনুতপ্ত।”

41. The Evidence Act does not define “confession”. The courts adopted the definition of “confession” given in Stephen’s Digest of the Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. The act of recording a confession is a very solemn act and section 164 of the Code of Criminal Procedure lays down certain precautionary rules to be followed by the Magistrate recording a confession to ensure the voluntariness of the confession. In such a case, the accused being placed in a situation free from the influence of the Police is expected to speak out the truth being remorseful of what he has committed. A confession can be acted upon if that passes two tests in the assessment of the court. The first test is its voluntariness. If a confessional statement fails to pass the first test, the second test is immaterial. If he does not disclose his complicity in an alleged crime voluntarily, court cannot take into consideration the confessional statement so recorded, no matter how truthful an accused is. From the confessional statements made by the convict Zahangir, Abdus Salam, and Nazmul, it appears that the recording Magistrate (P.W.46) told them that she was not an Officer of Police but a Magistrate and that the appellant and petitioners are not bound to make confessional statements and that if they do so the same may be used as evidence against them and that they have the liberty to say whatever they desire to say. The Magistrate also asked them whether they had decided to make such confessional statements voluntarily or not and why they had decided to make such confessional

statements. Each of them replied that they decided to make confessional statements to disclose the truth. It further appears from the confessional statements and evidence of P.W.46 Magistrate Jobeda Khatun that she recorded those confessional statements following the provisions of sections 164 and 364 of the Code of Criminal Procedure.

42. It appears from the confessional statements of the appellant Zahangir Alam and petitioners Abdus Salam and Nazmul that the recording Magistrate has made an endorsement in each of the confessional statements to the effect that she has made the accused aware of the fact that he is not bound to confess and if he confesses, that can be used against him as evidence. Thereafter, when the accused agreed to confess voluntarily, she recorded his confession. It was recorded within the range of her hearing and she believes that the confession contains the total and true statement of the accused. The confession so recorded was read over to the accused; and admitting the same to be correct, he has signed on it. Though in the paper book it appears that the above-stated identical endorsement was quoted after paragraph No.1 in all the three confessional statements, it is apparent from the words used therein that those were endorsed after recording the respective statement. The Magistrate noted what she told by the accused at the time of recording the confessions and wrote and signed a memorandum in each of the statements being satisfied that those were made voluntarily and contained a true account of the occurrence. The recorded statements show that P.W.46 did not compel them to make confessional statements, rather she assured them that if they decided not to make any confession, even then they would not be sent to the police again. Before recording confessions P.W.46 was satisfied that the accused were not forced to make confessions and they were not threatened or induced to make such confessional statements. It appears that the confessional statements were recorded in the language of the confessing accused. Articles seized by the Investigating Officer from the body of the victim and the room of the appellant Zahangir situated on the ground floor of the house of the victim pointed out that the confessional statements are true. Moreover, the recovery of the dead body from the backyard of the house as stated in the confessional statements clearly shows that the confessional statements are the narration of a true account of the offence, which took place on 01.02.2006 at about 10 PM inside the victim's house. It further appears from the Post-mortem report (exhibit-38) and evidence of P.W.44 Dr. Enamul Huq, who held an autopsy of the dead body, that the victim sustained one incised-looking wound on the occipital scalp, one haematoma on the occipital region, one bruise on the scapular region, one bruise on the back of the right upper chest and one bruise on the back of the right abdomen. Those injuries of the victim corroborated the statement made in the confessional statements. Appellant Zahangir mentioned in his confession that he hit the back of the head of the victim Taher with a revolver. This strike surely caused the haematoma. Injury No.2, as it appears from the postmortem report, that there was a haematoma on the occipital region, size is 3" X 3" " which is consistent with the confession of appellant Zahangir. All the confessing accused including Zahangir himself mentioned in the confessional statements that Zahangir inflicted a knife blow on the back of the victim's head. That blow caused the 'incised-looking wound' described as injury No.1 in the post-mortem report. Learned Counsel for the appellant Zahangir, however, raised a question as to the injury No.1 described in the post-mortem report that it was not an 'incised wound', rather, it was an 'incised looking wound' and the learned Courts below have failed to differentiate between those two types of the wound, which has caused a failure of justice. Wound No.1 was on the occipital scalp, size is $2\frac{1}{4}$ " X $\frac{1}{2}$ " X bone depth, Doctor termed that wound as " incised looking wound" . From Modi's Medical Jurisprudence and Toxicology, it appears that an 'incised looking wound' definitely has some characteristics of an 'incised' wound. To

quote from Modi-

“Incised or Slash Wounds

An incised or slash wound is defined as orderly solution of skin and tissue by a sharp cutting weapon drawn across the skin. It may either be produced by light sharp cutting instruments such as knife, razor, scissors, or heavy sharp cutting weapons such as sword, gadasa (chopper), axe, hatchet, scythe, kookri or any object such as a broken piece of glass or metal which has a sharp, cutting pointed or linear edge and are mostly intentionally inflicted. The cutting edge of a knife may be completely or partly sharp and partly blunt and the other edge may be blunt, serrated, scalloped or hollow, all these variations affect the shape of the wound.”

43. In such a view of the matter, it appears to us that the confessional statements pertaining to assault by knife substantially fit the medical evidence. It is only when the medical evidence totally makes the ocular evidence improbable, then the court starts suspecting the veracity of the evidence and not otherwise. That the mere fact that doctor said that injury No.1 was an “incised looking injury”, not “incised injury”, is too trifling aspect and there is no noticeable variance. The opinion of the doctor cannot be said to be the last word on what he deposes or meant for implicit acceptance. He has some experience and training in the nature of the functions discharged by him. After Zahangir inflicted the knife blow in the occipital region of victim Professor Taher, the other accused pressed down a pillow in his face to ensure his death. After confirming the victim’s death, the accused persons took the dead body to the back side of the house on a dark night and the appellant Mohiuddin ushered them the way with the torchlight of his mobile. They then put the dead body inside the manhole. In doing so the accused had to carry the dead body to a considerable distance and during that time the dead body might have fallen from their grip causing crushing of hair bulbs in the already injured occipital scalp and rendering the incised wound look like ‘incised looking’ wound. Therefore, the confessional statements made by the accused Zahangir, Nazmul and Salam are true. In the case of Wazir Khan and others V. State of Delhi [(2003)8 SCC 461] it was held that a free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the highest sense of guilt.

44. Since the voluntary character of the confessions has been proved and their truthfulness has been corroborated, it is safe to rely on them, we do not find any wrong in the conclusion arrived at by the Courts below that the confessional statements made by the appellant Md.Zahangir Alam and petitioners Md. Nazmul and Md. Abdus Salam were made voluntarily and the contents of those were true. Confessions are considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth. Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law “(vide Taylor’s Treatise on the Law of Evidence)”. Confession possesses a high probative force because it emanates directly from the person committing the offence, and on that count, it is a valuable piece of evidence. It is a settled principle of law that the conviction can be awarded solely on the basis of confessional statements of the accused if the same is found to be made voluntarily. In such view of the matter, the Courts below did not commit any error of law in convicting the appellant Md. Zahangir Alam and petitioners Md. Nazmul and Abdus Salm relying upon their confessional statements.

45. It has been vehemently argued by the defence that appellant Zahangir Alam was kept in the police station from 03.02.2006 to 05.02.2006 i.e beyond the permitted period of 24 hours without taking him before a Magistrate and this illegal detention of the appellant

suggests that the confessional statement given by him is not voluntary.

46. From the cross-examination of PW-42 Md. Faizur Rahman, the then Officer-in-Charge of Motihar Police Station, it appears that appellant Zahangir Alam was taken to the police station on 03.02.2006 for questioning him about the occurrence. At that time he was not arrested in connection with this case. In fact, when Zahangir was taken to the police station on 03.02.2006 the whereabouts of Professor Taher was not known to anybody and no formal ejarah was lodged. After the discovery of the dead body of Professor Taher Ahmed PW-1 lodged a formal FIR at around 10.10 AM on 03.02.2006. Even at that time, PW-1 did not make Zahangir an accused. It suggests that he was not taken to the police station as an accused. He was just taken there for questioning. The Investigating Officer of a case has the power to require the attendance of a person before him who appears to be acquainted with the circumstances of the case. When appellant Zahangir Alam was taken to the police station the facts of the killing of Professor Taher were still unfolding and nobody knew who did what. Appellant Zahangir Alam, being the caretaker of the house of the victim, was the best person to demystify and clear many questions about the occurrence posing inside the mind of the Investigating Officer. He was thought to be a vital person who could shed light on many unsolved questions and could help the prosecution to understand what actually happened there. But when from the circumstances it appeared unmistakably that Zahangir Alam must be one of the perpetrators of the killing of victim Professor Taher, he was then arrested on 04.02.2006 and was produced before the Magistrate on the next day, i.e., within 24 hours of his arrest as required by Article 33 (2) of the Constitution. So, the police did nothing wrong in arresting appellant Zahangir Alam after being sure about his complicity with the offence and producing him before the Magistrate within 24 hours of his arrest and for that reason, the defence objection does not sustain.

47. From a careful evaluation of the confessional statements, we are of the opinion that their statements are consistent with one another and corroborates the version given by each other. We are therefore, of the view that confessing accused were speaking the truth.

48. Now we will see how far the prosecution has been able to prove the charge against the appellant Mohiuddin. In a criminal case, the onus lies on the prosecution to prove affirmatively that the accused was connected with the acts or omissions attributable to the crime committed by him. In the light of the arguments made by the parties, it falls upon us to consider the case against appellant Mohiuddin in terms of four issues. Firstly, whether there existed a motive for the appellant Mohiuddin to murder Dr. Taher; secondly, whether the appellant Mohiuddin conspired with the other accused to commit the offence; and thirdly, whether the confessional statements of accused Zahangir Alam, Abdus Salam and Nazmul are admissible in evidence against appellant Mohiuddin; and lastly whether he was involved in killing the victim. It is relevant here to state that each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied in one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations. It is to be mentioned here that the object of the criminal law process is to find out the truth and not to shield the accused from the consequences of his wrongdoing.

49. In the present case, we will follow the approach described above and see whether there is sufficient evidence against the appellant Mia Md. Mohiuddin to find him guilty of murdering Professor Dr. Taher.

50. PW-47 Md. Omar Faruk, the first investigating officer of the case stated in his

testimony that at the time of interrogation appellant Mia Md. Mohiuddin admitted that he had kept two ATM cards and one visiting card of victim Dr. Taher Ahmed at a place called Sahapur Paschim Para situated on the northern bank of the river Padma. Then, they took Mohiuddin to that place and as per pointing out by him, as well as in presence of many witnesses, Investigating Officer seized two ATM cards and one visiting card of Dr Taher Ahmed and prepared a seizure list exhibit 3(Chha)) and put his signature on it exhibit 3(Chha)/3. Statement relating to concealment of the article is admissible in evidence by virtue of section 27 of the Evidence Act. Accused must be deemed to be in exclusive possession of articles concealed under the earth though the spots in which they were concealed may be accessible to public (Limbaji Vs. State of Maharashtra, AIR, 2002 SC491). The recovery evidence is relevant and can be relied on. The information relates to the facts and discovery on the basis such information is admissible. The possession of such articles with the accused has to be explained by the accused and the burden would be on the accused to explain as to how he came into possession of those articles. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts may be used in evidence against him. Section 27 of the Evidence Act permits such information leading to the discovery of a fact to be admitted in evidence.

51. This fact has been supported by the evidence of PW-25 who in his testimony stated that entering into the bedroom of victim Taher he found many papers at sixes and sevens. The High Court Division came to the finding that the appellant Mohiuddin stormed the bedroom of Professor Taher after killing him to search for any report prepared by the victim against Mohiuddin. While searching the bedroom of the victim Dr. Taher, appellant Mohiuddin could also find the PINs of the two ATM cards of Dr. Taher written on any paper and then could take a decision to steal and conceal those two ATM cards and use them at a convenient time. We endorse the finding of the High Court Division as correct in this regard. Such being the case, this circumstantial evidence unmistakably points to the guilt and complicity of the appellant Mohiuddin in the instant case.

52. In a criminal case, motive assumes considerable significance. Where there is a clear proof of motive for the offence, that lends additional support to the finding of the Court that the accused is guilty. When a case against an accused rests completely on circumstantial evidence, the prosecution is required to prove the motive of the accused for committing the offence. Now, let us consider the evidence against Dr. Mohiuddin to see whether any motive for the murder has been established. As regards the motive of appellant Mohiuddin, the High Court Division elaborately discussed the oral and documentary evidence adduced by the prosecution and came to the conclusion that appellant Mohiuddin knew very well that had Dr. Taher remained present in the scheduled meeting of the Departmental Planning Committee on 02.02.2006, he would have no chance to get promotion to the post of Professor. The Registrar gave the note to the effect that appellant Mohiuddin had completed 12 years, 1 month and 13 days when he applied for the promotion to the post of Professor. On the contrary Professor Taher calculated the length of service of appellant Mohiuddin (material exhibit-XXVII) and that fell short of 9 (nine) days on the scheduled date of the meeting of the Planning Committee on 02.02.2006 to fulfill the requirement of 12 years of service. This calculation of Professor Taher further deteriorated the relationship between him and appellant Mohiuddin. Furthermore, Professor Taher knew about the plagiarism committed by appellant Mohiuddin in publishing an academic research paper; and had he disclosed this fact in front of the Planning Committee, appellant Mohiuddin would not have any chance for promotion and might have faced departmental action leading to termination of his service. This prompted appellant Mohiuddin to murder Professor Taher to pave the way for his promotion.

The High Court Division also found that appellant Mohiuddin had practised fraud upon it. While submitting papers before the Court under section 342 of the Code of Criminal Procedure, which further depicts the guilty mind of the appellant Mohiuddin.

53. It appears from the testimonies of P.W.18 Md. Abdus Salam, the Registrar of Rajshahi University, P.W.21 Dr. Mushfiq Ahmed, Professor of Department of Geology and Mining, P.W.22 Sultana Ahmed Resmi, wife of victim Professor Abu Taher, P.W.25 Dr. Sultan-Ul-Islam, Professor of Department of Geology and Mining of Rajshahi University, P.W.39 Dr. Syed Shamsuddin Ahmed, Professor of Department of Geology and Mining of Rajshahi University and P.W.43 Chowdhury Sarowar Jahan, another Professor of the Department of Geology and Mining of Rajshahi University as well as from the statement of appellant Dr. Mia Md. Mohiuddin, recorded under section 342 of the Code of Criminal Procedure that appellant Mia Md. Mohiuddin had a grievance against victim Professor Taher Ahmed on the issue relating to his promotion from Associate Professor to Professor in the said department. In different meetings, Professor Dr. Taher raised his voice as to the non-fulfillment of requisite qualifications by the appellant Miah Md. Mohiuddin to get such a promotion. P.W. 22 Sultana Ahmed Resmi, wife of victim Dr. Taher, in her testimony, inter alia, stated: "রাজশাহী আসার আগে আমি আমার স্বামীকে চিহ্নিত দেখে জিজ্ঞেস করলে সে বলে যে, মহিউদ্দিনের প্রমোশনের ব্যাপারে অনিয়ম আছে এবং সে মিটিংয়ে না বলবে। পূর্বেও তার প্রমোশনের ব্যাপারে মিটিং হইয়াছে এবং আমার স্বামী বিরোধিতা করেছে। এজন্য আসামী মহিউদ্দিন আমার স্বামীর সাথে খারাপ আচরণ করেছে। আমার স্বামী আমার সাথে বিভিন্ন সময় বলে যে, মহিউদ্দিন তার সাথে বেয়াদবি ও খারাপ আচরণ করেছে। এই একজন শিক্ষক সম্পর্কেই তার সাথে খারাপ আচরণ করার কথা আমি শুনেছি। এই কারণে আমার দৃঢ় বিশ্বাস আমার স্বামী হত্যার মূল পরিকল্পনাকারী মহিউদ্দিন। তিনবছর পূর্বে মহিউদ্দিন আমার স্বামীকে তিন তলা থেকে ছুড়ে ফেলিয়া দিবে মর্মে বলেছিল মর্মে আমার স্বামী জানিয়েছিল। ২০০৫ সালে আমার স্বামী একা থাকায় বিশ্ববিদ্যালয়ের বাসাটি ছাড়িয়া দিয়া ছোট বাসা নেয়ার জন্য খোঁজ করলে একদিন মহিউদ্দিন এসে ডঃ আজহার উদ্দিন বিনোদপুরের একটি বাসার সন্ধান দেন। আমি ও আমার স্বামী বাসাটিতে গিয়ে দেখি যে, তা বিনোদপুরের শেষ প্রান্ত শেষ বাড়ি এবং ধুধু মাঠ। আমি বাড়িটি ভাড়া নিতে স্বামীকে নিষেধ করি। পেট্রো বাংলার একটি চাকুরীর ব্যাপারে আমার স্বামীর সাথে কথা হয়। মহিউদ্দিন ও সে চাকুরীর জন্য চেষ্টা করিলে তাহার একজন প্রভাবশালী আত্মীয় বলে যে, প্রফেসর হিসেবে প্রমোশন নিয়ে এলে সে চাকুরীর ব্যবস্থা করে দিবে। তখন সে পদোন্নতির জন্য মারিয়া হইয়া ওঠে। কেয়ার টেকার জাহাংগীরকে বাসায় রাখার সময় আমার স্বামী আমার সামনে তাহাকে জিজ্ঞেস করলে সে বলেছিল যে, সে লেখা পড়া করে এবং শিবির দল করে ও উক্ত দল থেকে কিছু সুযোগ সুবিধা পায়।"

54. P.W. 25 Dr. Md. Sultanul Islam Tipu in his testimony stated that victim Dr. Abu Taher was a man of strong principle. He was against any injustice and irregularity and always took a strong stand supporting the rules and regulations of the University. For which a distance, developed between Dr. Mohiuddin and the victim after applying for promotion as professor by Dr. Mohiuddin. Distance raised its height and the same was discussed at the University and the teachers were aware thereof. The victim disclosed that some teachers of the University pressurised him with regard to the promotion of Dr. Mohiuddin and an unscheduled meeting was held at the department thereabout and at that meeting, the teachers requested Dr. Mohiuddin to refrain from making derogatory comments on Dr. Abu Taher and requested him not to pressurise him through teachers for his promotion. In a meeting for the department appellant Mohiuddin requested all the teachers to propose a resolution for condemnation against Dr. Abu Taher but at that meeting, all teachers asked Dr. Mohiuddin to beg an apology to the victim. He disclosed the story of forgery of publication by Dr. Mohiuddin. A meeting of the departmental academic committee was held to ascertain and verify the allegations of forgery and at last, the forgery resorted to by appellant Mohiuddin

was proved as per the unanimous decision of the academic committee. The forged publication of the appellant Mohiuddin became manifestly clear to the victim which led to the torment of the appellant's ill feelings or animus against Dr. Abu Taher. P.W. 39 Dr. Sayed Shamsuddin made identical statements saying that the departmental academic committee inquired into the allegation of forgery brought against the appellant and found the same true. He said that the victim and the appellant Mohiuddin had been at odds with each other for a long time and both of them expressed their indignation over the use of a laboratory in the department, and some teachers of the University told Dr. Abu Taher that the promotion of Dr. Mohiuddin got stuck because of him. P.W. 43 Dr. Chowdhury Sarowar Jahan in his testimony stated that the victim was very much vocal against the irregularities committed by appellant Mohiuddin. The victim did not compromise with irregularities or illegalities he used to take a stern attitude thereto.

55. From the aforesaid evidence of the P.Ws. 22, 25, 39 and 43 it is clear that accused Mohiuddin had a personal grudge towards the victim. A complete review of the evidence indicates that there was pre-existing hostility between the victim and appellant Mohiuddin. The motive for the commission of the murder is explicit from the evidence of P.Ws 22, 25, 39 and 43 which is relevant. Proof of motive does lend corroboration to the prosecution case. The same plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor. Motive prompts a person to form an opinion or intention to do certain illegal acts with a view to achieving that intention. Adequacy of motive is of little importance as it is seen that atrocious crimes are committed for very slight motives. One cannot see into the mind of another (State Vs. Santosh Kumar Singh, 2007 Cr LJ 964). However, motive alone is not sufficient to convict the accused in case of circumstantial evidence. Along with motive, there should be some further corroborative evidence. We have already found that some incriminating materials (A.T.M. Cards and visiting cards of the victim) were recovered as per pointing out by the appellant Mohiuddin which clearly established that he was involved with the occurrence.

56. Along with the aforesaid evidence, we feel the necessity to take into consideration of the confessional statements of the co-accused for assurance in support of the conclusion to be arrived at. We have seen the confessional statements of co-accused Zahangir Alam, Abdus Salam and Nazmul. From their confessional statements it appears that appellant Mohiuddin planted the plan with the confessing accused for killing the victim, allured them (confessing accused) and hatched a conspiracy for implementing his ill design. Thereafter, all of them, in furtherance of their common intention, had killed a genius teacher of the country. From the facts, circumstances and the confessional statements, it appears that there was a unity of object and purpose. It further appears from the charge (quoted earlier) that there is a specific charge against the appellants that they hatched a conspiracy to kill the victim and in furtherance of their commission intention, they, in connivance with each other, implemented their ill-design. In *Noor Mohammad Yusuf Momin V. The State of Maharashtra* (AIR 1971 SC 885) it was observed that like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed in most cases, proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. Conspiracy is apparent from the confessional statements of the confessing accused. The

confessions contain statements inculcating the makers as well as accused Mohiuddin. In the case of *Kashmira Singh V. State of M.P.* (AIR 1952 SC 159) Supreme Court of India observed that some conditions are needed to be fulfilled before taking into consideration the confession of one accused against others. Those are : (i) The person who is making a confession and the accused persons are being jointly tried; (ii) All the accused are being tried for the same offence; and (iii) The confession must affect the confessor as well as the other accused persons. Those conditions are present in this case. In the cited case it was further observed that the Court may take up the confession in aid and use it to lend assurance to the other evidence, and thus secure itself to believe that without the aid of the confession, it would not be prepared to accept the other evidence. Common charge of conspiracy was framed against all the accused persons who were tried jointly. The object behind the conspiracy is to achieve the ultimate aim of the conspiracy. Confessional statements indicate that all the accused persons were in consent touch with each other, in arranging weapons, and finally, in the commission of offence.

57. In the case of *Major Bazlul Huda Vs State* reported in LXII DLR (AD) page 1, this Division has observed as under:

“There is no substantial difference between conspiracy as defined in section 120A and acting on a common intention as contemplated in section 34. In the former, the gist of the offence is bare agreement and association to break law even though the illegal act does not follow while the gist of an offence under section 34 is the commission of a criminal act in furtherance of a common intention of all the offenders which means that there should be a unity of criminal behaviour resulting in something for which an individual will be punishable if it is done by himself alone.” It was further observed that “When specific acts done by each of the accused have been established showing their common intention they are admissible against each and every other accused. Though an act or action of one accused cannot be used as evidence against other accused but an exception has been carved out in section 10 of the Evidence Act in case of criminal conspiracy. If there is reasonable ground to believe that two or more persons have conspired together in the light of the language used in 120A of the Penal Code, the evidence of acts done by one of the accused can be used against the other.”

58. It was further observed that, “In pursuance of the criminal conspiracy if the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences. It is not required to prove that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime since, from its very nature, a conspiracy is hatched in secrecy, direct evidence of a criminal conspiracy to commit a crime is not available otherwise the whole purpose may frustrate – in most cases only the circumstantial evidence which is available from which an inference giving rise to the commission of an offence of conspiracy may be legitimately drawn.” Direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. In the case of *State of Tamil Nadu V. Nalini* reported in AIR 1999 SC 2640 it was observed that under section 10 of the Evidence Act statement of a conspirator is admissible against co-conspirator on the premise that this relationship exists. It was held that everything

said, written or done by any of the conspirators in execution of or in reference to their common intention is deemed to have been said, done, or written by each of them.

59. In *Noor Md. Yusuf Momin Vs State of Maharashtra (Supra)*, it was observed by the Supreme Court of India, “Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is a close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers.” It was further observed that, “In fact, because of the difficulties in having direct evidence of criminal conspiracy, once the reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything, done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of Evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.” The existence of conspiracy and its object are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy [*K.R. Purushothaman V. State of Kerala (2005) 12 SCC 631*]. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions [*Firozuddin Basheeruddin V. State of Kerala (2001) 7 SCC 596*].

60. The criminal cases are to be decided on its peculiar facts and circumstances; as such, the rules laid down in the earlier cases cannot be applied in the subsequent cases in the omnibus- statistics manner. The Court should begin with other evidence adduced by the prosecution and after it has formed an opinion with regard to the quality and effect of the evidence, then it is permissible to turn to the confession in order to receive assistance to the conclusion of the guilt if the judicial mind is about to reach on the said evidence. We have found that by adducing the unimpeachable evidence of PWs-18, 21, 22, 25, 39 and 43 the prosecution has proved the motive of the appellant Mohiuddin behind killing Professor Taher Ahmed and that was, for securing his promotion to the post of Professor from Associate Professor. We have also found that some incriminating materials were recovered as per admission of accused Mohiuddin. In accordance with the provisions of section 30 of the Evidence Act, if we take the aid of confessional statements of appellant Zahangir Alam and petitioners Abdus Salam and Nazmul, we find that Associate Professor Mia Md. Mohiuddin is the main perpetrator of killing Professor Taher Ahmed whom he considered to be an obstacle in getting a promotion to the post of Professor in the Department of Geology and Mining and as such, he conspired with other appellants and petitioners to kill Professor Taher and executed the killing in a ruthless manner. Considering all the facts and evidence, the issue at hand can also be examined from another perspective. In the case of *State of Moharashtra Vs. Kamal Ahmed Mohammad Vakil Ansari* reported in AIR 2013 SC 1441, it was observed by the Supreme Court of India that, “A confessional statement is admissible only as against an accused who has made it. There is only one exception to the aforesaid rule,

wherein it is permissible to use a confessional statement, even against person(s) other than the one who had made it. In *State of Tamil Nadu V. Nalini (Supra)* it was observed that normal rule of evidence that prevents the statement of one co-accused from being used against another under section 30 of the Evidence Act does not apply in the trial of conspiracy in view of section 10 of the Act when we say that court has to guard itself against readily accepting the statement of a conspirator against co-conspirator what we mean is that Court looks some corroboration to be on the safe side. It is not a rule of law but a rule of prudence bordering on the law. All said and done ultimately it is the appreciation of evidence on which the Court has to embark. A statement of an accused would be admissible against co-accused only in terms of section 30 of the Evidence Act. The aforesaid exception has been provided for in Section 30 of the Evidence Act, which is being extracted hereunder:-

“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence-

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said - "B and I murdered C". The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C".

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.”

61. A voluntary and true confession made by an accused can be taken into consideration against a co-accused by virtue of section 30 of the Evidence Act but as a matter of prudence and practice the Court should not act upon it to sustain a conviction of the co-accused without full and strong corroboration in material particulars both as to the crime and as to his connection with the crime [*Ram Prakash V. State of Punjab (1959 SCR 1219)*]. “As is evident from a perusal of section 30 extracted above, a confessional statement can be used even against a co-accused. For such admissibility it is imperative, that the person making the confession besides implicating himself, also implicates others who are being jointly tried with him. In that situation alone, such a confessional statement is relevant even against the others implicated (Nalini).

62. Having regard to the evidence available on record, we are of the opinion that this is not a case where the prosecution case was entirely based on the confessional statements of the co-accused for connecting accused Mohiuddin. Rather we find that the prosecution case was based on other evidence to establish the circumstances pointing towards the guilt of the accused Mohiuddin. In the light of evidence (both oral and documentary) on time, place and manner of occurrence provide a coherent links connecting the appellant Mohiuddin with the occurrence.

63. If we take into consideration the testimonies of those witnesses and the confessional statements of co-accused Md. Zahangir Alam, Md. Nazmul and Md. Abdus Salam together, it would be clear that appellant Miah Mohammad Mohiuddin hatched the conspiracy to kill Professor victim Taher Ahmed in order to clear his way to become a Professor in the Department, and in doing so, he allured the other appellant and petitioners to a good prospect of having jobs and meeting other material satisfactions. He conspired with them and made planning in implementing the conspiracy to kill the victim Professor Taher Ahmed and, consequently, together they implemented their plan by killing Professor Taher Ahmed, a legend Professor of the country. A perusal of the above confessions; by the co-conspirators would show that appellant Mohiuddin was playing a key role in furtherance of the conspiracy. He played an active role in generation and management for achieving the object behind the conspiracy and in all subsequent events. It is clear from the materials available on the record that all the accused persons had hatched criminal conspiracy to commit the offence in question and prior of meeting of mind to commit the same. From the confessional statements it is explicit that Dr. Mohiuddin had hatched conspiracy with other confessing accused to kill the victim. In *Ferozuddin Basheeruddin (Supra)*, it was observed that conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where the application of the usual doctrines of complicity would not render that person liable. Thus, one who enter into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission.

64. In view of the evidence as discussed earlier we have no hesitation to hold that Dr. Mohiuddin, a highly educated man and Associate Professor of Rajshahi University, only for the purpose of getting promotion as Professor annihilated Dr. Taher from this world presuming that if Professor Taher lived, the chance of his getting promotion as Professor was zero. We also have no hesitation to hold that appellant Zahangir Alam and petitioners Abdus Salam and Nazmul in order to get monetary benefits, services and computers accepted the proposal from Dr. Mohiuddin to kill Professor Taher Ahmed and accordingly committed the offence of murder of Professor Taher Ahmed.

65. A Judge does not presides over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape the tentacles of justice. That is what the justice stands for. The legal principle with regard to the circumstantial evidence is not a fossilized one. It has to be carefully scrutinized and applied to the peculiar facts of the case [*State of Punjab Vs. Karnail Sing (2003) 1 SCC 271*].

66. Considering the facts, circumstances and evidence, our view is that the courts below did not commit any error of law in convicting and sentencing the appellants and petitioners.

67. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent. While awarding punishment, the Court is expected to keep in mind the facts and circumstances of the case, the legislative intent expressed in the statute in determining the appropriate punishment and the impact of the punishment awarded. Before awarding punishment 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 weightage and a just balance has to be struck between the aggravating and mitigating circumstances. Considering the depraved and shameful manner in which the offence has been committed, the mitigating factor would not outweigh the aggravating factors. In this case, there was no provocation and the manner in which the crime was committed was brutal. It is the legal obligation of the Court to award a punishment that is just and fair by administering justice tempered with such mercy not only as the criminal may justly deserve but also the right of the victim of the crime to have the assailant appropriately punished is protected. It also needs to meet the society's reasonable expectation from court for appropriate deterrent punishment conforming to the gravity of offence and consistent with the public abhorrence for the heinous offence committed by the convicts. It is unfortunate but a hard fact that appellants and petitioners have committed such a heinous and inhumane offence. The murder of a genius professor of the University has shocked the collective conscience of the Bangladeshi people. It has a magnitude of unprecedented enormity.

68. For the above reasons, we are of the view that the Courts below did not commit any error in convicting and sentencing the appellants and petitioners and the decisions of the Courts below are unassailable. In such view of the matter, we do not find any substance in Criminal Appeal No.90 of 2013 preferred by Dr. Miah Mohammad Mohiuddin, Criminal Appeal No.108 of 2013 and Jail Petition No. 27 of 2014 filed by Md. Zahangir Alam, Criminal Petition No.257 of 2022 and Jail Petition No. 28 of 2014 filed by Md. Nazmul, and Criminal Petition No.260 of 2022 filed by Md. Abdus Salam and, as such, those are liable to be dismissed.

69. It appears that the State has filed Criminal Petition No.322 of 2019 against Md. Nazmul and Criminal Petition No.323 of 2019 against Md. Abdus Salam for enhancement of their sentence. In this regard, we approve the finding of the High Court Division that their role in committing the crime was secondary in nature, and in such a case, imposing the sentence of imprisonment for life is appropriate. Therefore, considering the facts and circumstances of the case, we find no substance in the petitions filed by the State for enhancement of the sentence of the petitioners, namely, Md. Abdus Salam and Nazmul.

70. Accordingly, Criminal Appeal No.90 of 2013 and Criminal Appeal No. 108 of 2013 are dismissed and the sentence of death awarded to Dr. Miah Mohammad Mohiuddin and Md. Zahangir Alam by the trial Court and maintained by the High Court Division is hereby affirmed. Jail Petition No.27 of 2014, Criminal Petition for Leave to Appeal No.257 of 2022, Jail Petition No.28 of 2014 and Criminal Petition No. 260 of 2022 are also dismissed.

71. The order of commutation of sentence from death to imprisonment for life awarded to Md. Nazmul and Md. Abdus Salam by the High Court Division is hereby affirmed, and each of them is ordered to pay a fine of Taka 10,000/-, in default, to suffer rigorous imprisonment for a period of 6(six) months more. The Criminal Petition for Leave to Appeal No.322 of 2019 and Criminal Petition for Leave to Appeal No.323 of 2019 are also dismissed.