

1 SCOB [2015] HCD 45

HIGH COURT DIVISION

Death Reference No.36 of 2010

Mr. A.K.M. Zahirul Huq, D.A.G with
Mr. Md. Aminur Rahman Chowdhury and**The State**Mr. Shah Abdul Hatem, A.A.Gs
... For the State

-Versus-

Mrs. Hasna Begum, Advocate
... For the State Defence**Mir Ahmad Hossain (absconding) and another**

...Condemned-Convicts

Heard On: 27.06.15 and 28.06.15.

And

Judgment on: 29.06.2015

Present:**Mr. Justice Soumendra Sarker****And****Mr. Justice A.N.M. Bashir Ullah****The court can depend upon a single witness:**

The court can very much rely on the evidence of a witness who is related to the victim or to other witnesses if the witness is considered by the Court reliable and that evidence of the witness is corroborated by other reliable witnesses. Besides this; in the case laws reported in 38 DLR(AD) 311 and 29 DLR(SC)211, it is a decided matter that the case of prosecution does not depend on the number of witnesses produced but it can depend upon a single witness whose evidence (testimony) is trustworthy, credible and unimpeachable. Therefore, obviously we can easily draw such inference in this matter that the case of the prosecution can stand very much on a single evidence if it is tangible and credible.

...(Para 32)

Judgment**Soumendra Sarker, J:**

1. This reference under section 374 of the Code of Criminal Procedure has been made by the learned Additional Sessions Judge, Kishoreganj for confirmation of the sentence of death passed on the condemned-convicts namely Mir Ahmed (absconding) and Mir Moinul Hussain (absconding) in Sessions Case No.222 of 2003 under section 302 of the Penal Code.

2. The prosecution case, in a nutshell can be stated thus that one Md. Abdur Rouf, son of late Abdul Hakim of village-Madhya Austagram Kalapara, Upazila-Austagram, District-Kishoregonj lodged an ejahar with the Officer-in-Charge of Austagram Police Station under Kishoreganj District stating that, 7/8 days before the date of occurrence there was a hassle on some money transaction between his younger brother Abdus Samed and one of the accused of the case Mir Ahmed. On this issue the other accused persons namely Mir Mosharaf, Mir Ahmed, Mir Moinul Hossain, Mir Ashraf, Mir Babu Hossain, Mir Amjad Hossain, Sajjad Hossain, Kamrul Miah and Mir Nabi Hussain were trying to get an opportunity for taking revenge. Subsequently, on 10.12.2001 at about 7.30 p.m. when the brother of the informant Abdus Samed was coming from local Bardhaman Para Moulavi Bari after taking his ifter, the above mentioned accused with some deadly weapons suddenly attacked him in front of the residence of one Bacchu Khan of Bardhaman Para village. The accused gheraoed the deceased Abdus Samed. The accused Mir Mosharraf gave an order to kill the victim Abdus Samed and accordingly the accused Mir Ashraf and Sajjad Hossain caught hold of the victim's waist and hand. There after the condemned-convict of this Death Reference Mir Ahmed with a knife in his hand dealt with a serious blow on the left side of Abdus Samed's stomach causing bleeding injury. The victim Abdus Samed fell down and after that the other condemned-convict of this reference Mir Moinul Hossain with an intention to kill the victim inflicted with a 'kiris' blow below to the left armpit of the victim Abdus Samed, causing severe blood injury. Then the other accused persons namely Mir Amjad Hossain and Kamrul Hossain started to kick the victim and immersed him into a ditch water which was beside that road. Thereafter, the accused Nabi Hossain told the other accused to examine the deceased. Then, the accused Babu Hossain entering into that ditch drown the victim Abdus Samed into the ditch water. Subsequent to that, the villagers Abul Kashem and Arzoo coming to the

place of occurrence started shouting. The accused persons then retreated. Hearing the hue and cry of Kashem and Arzoo the people of the locality rushed to the place of occurrence and they brought the victim Abdus Samed from the ditch water and then the injured Abdus Samed in presence of local witnesses disclosed the names of the accused persons and about the manner of occurrence. Thereafter, the witnesses managed to bring the victim Abdus Samed to Austagram Hospital; wherein the doctor declared him dead. The informant further stated in his FIR that the witnesses identified the accused persons with the help of torch light and charger light and after receiving the information of the occurrence he went to the hospital and found the dead body of his brother.

3. The Police took up the investigation of the case and visited the place of occurrence, held inquest report on the dead body of the deceased and sent the dead body to the morgue for postmortem examination and prepared sketch map and index of the place of occurrence. The investigating officer Sub-Inspector Abdul Majid during his investigation after examination of the witnesses under section 161 of the Code of Criminal Procedure recorded their statements and on completion of the investigation finding prima-facie case against the accused persons submitted charge sheet on 18.03.2002 under sections 147/148/149/302/114/34 of the Penal Code.

4. Then the case was transmitted to the Court of learned Sessions Judge, Kishoregonj for trial and the learned Sessions Judge sent the same to the court of learned Additional Sessions Judge, Kishoregonj who framed charge against the accused persons under sections 302 and 114/34 of the Penal Code on 18.11.2003. The charge was read over and explained to the presentee accused persons in Bengali at which they pleaded not guilty and claimed to be tried.

5. During trial of the case as many as eight prosecution witnesses were examined and the defence examined none but cross-examined the witnesses produced from the side of the prosecution.

6. After closer of the examination of the witnesses the presentee accused persons were examined under section 342 of the Code of Criminal Procedure and their answers were recorded and they again pleaded not guilty and claimed to be tried. The accused declined to produce any witness in support of their case but from the trend of cross-examination of the prosecution witnesses the defence case as appeared is total denial. The further case of the defence is such that out of previous enmity they have been falsely implicated by the informant and his men in this case and they are not in any way responsible or connected with the murder of the deceased Abdus Samed but have been falsely implicated in this case out of sheer enmity and grudge.

7. After trial of the case, considering the evidence and materials on records as well as the facts and circumstances of the case, the learned Additional Sessions Judge, Kishoregonj, however, found the condemned-convicts guilty and convicted them under section 302 of the Penal Code and sentenced them to death there under.

8. Mrs. Hasna Begum, the learned Advocate appearing as State Defence lawyer submits that the condemned-convicts namely Mir Ahmed (absconding) and Mir Moinul Hussain (absconding) are innocent and there is no legal evidence against them. The learned State defence lawyer further submits that out of 16 witnesses of the charge sheet only 08(eight) witnesses were examined during trial which is not sufficient to prove the case of the prosecution and there is no dependable eye witness of this occurrence and between the parties there exist previous enmity admittedly and out of that previous enmity and grudge the accused persons have been falsely implicated in this case and that there is no corroborative evidence which can directly connect the condemned-victims with the killing of the victim Abdus Samed. The learned State defence lawyer also submits that the knife which was allegedly used in the occurrence was not sent to the finger print expert for his opinion and during examination of the witnesses the witnesses are contradictory with one-another in 'warding' and that there is no date of hassle between the parties and no means of recognition in all though the occurrence which was allegedly took place at night. The learned State defence lawyer lastly submits that the local witnesses of this case are all relations with one-another and as such they cannot be relied on and there is no written dying declaration and accordingly the condemned persons are entitled to an order of acquittal.

9. Mr. A.K.M. Zahirul Huq, the learned Deputy Attorney General with Mr. Md. Aminur Rahman Chowdhury and Mr. Shah Abdul Hatem the learned Assistant Attorney Generals appeared on behalf of the State.

10. Mr. Md. Aminur Rahman Chowdhury the learned Assistant Attorney General controverting the argument of the learned State Defence lawyer submits that the prosecution in this case have successfully discharged their onus in proving the case and in this case there are number of eye-witnesses in presence of whom the occurrence took place & by the flash of torch light and charger light the witnesses could recognize the

accused persons and accordingly they disclosed about the occurrence and participation of the accused therein before the trial court. The learned Assistant Attorney General further submits that the eye-witness of the occurrence, P.W.2 Abul Kashem who was all along present at the time of occurrence specifically proved the case of the prosecution and defence has hopelessly failed to bring any discrepancy or material contradiction after examining the witness by which this witness can be disbelieved. The learned Assistant Attorney General also submits that the evidence of the prosecution witness No.2 Abul Kashem is unimpeachable. Besides this; from the very beginning of the occurrence the condemned-persons are absconding and are fugitive which is a strong circumstantial evidence against them that they are directly involved in the occurrence of killing the victim Abdus Samed. The learned Assistant Attorney General argued that the witness No.3 of this case Md. Nur Miah in his testimony stated about the dying declaration of the deceased Abdus Samed and the other competent responsible witnesses of this case the local Union Parishad Chairman (witness No.5) Md. Mosahed corroborated the witness No.3 on the aforesaid dying declaration of the deceased who immediately after the occurrence disclosed before the witnesses about the fatal blow of the condemned persons in his person at which he succumbed to death. The learned Assistant Attorney General during his argument states, "a man can tell a lie but a man who is about to die cannot tell a lie". In support of the contention the learned Assistant Attorney General referring some decisions of our Apex Court and this Court reported in 9 BLC (AD)122, 54 DLR 359, 8 BLC 132, 55 DLR(AD)131, 3 BLC (AD)72 and 62 DLR(AD)225 submits that on mere relationship of the witnesses with the informant they cannot be disbelieved and the dying declaration which is coming from the victim of this case is a material piece of evidence in proving the guilt of the condemned-convicts. The learned Assistant Attorney General lastly submits that the condemned-convicts namely Mir Ahmed (absconding) and Mir Moinul Hussain (absconding) inasmuch as are fugitive from the very beginning, this circumstantial evidence cannot be ignored and considering all these facts and circumstances and sufficient legal evidence of the case the learned Additional Sessions Judge was quite justified in awarding death sentence to the condemned-convicts as the ingredients of section 302 of the Penal Code has been proved against them beyond all shadow of doubt and as a result of that the judgment and order of conviction & sentence passed by the learned Additional Sessions Judge, Kishoregonj should be upheld.

11. In view of the submissions made from the sides of the learned Advocates of both the sides to arrive at a conclusive decision as to the guilt of the condemned-persons, let us now scan the evidence adduced from the side of the prosecution and cross-examination of the prosecution witnesses including other material evidence.

12. The witness No.1 of this case Md. Abdur Rouf is the informant of this case, the witness No.2 is Md. Abul Kashem who is an eye-witness of the occurrence, the witness No.3 Md. Nur Miah despite was not present at the time of occurrence but he has heard the occurrence from others and also heard the dying declaration of the deceased, the witness No.4 Neel Miah claimed himself an eye-witness of the occurrence, the witness No.5 Md. Mozaheed is a Union Parishad Chairman of the locality who is the witness of dying declaration of the deceased. The witness No.6 Md. Sabbir Ahmed is a hear-say witness, the Witness No.7 Dr. Md. Abdul Majid is the P.M. done doctor and the last witness of this case P.W.8 Sub-Inspector Abdul Majid is the investigation officer who did the investigation and submitted charge sheet.

13. The informant of this case Abdur Rouf as witness No.1 during his deposition stated that the occurrence took place on 10.12.2001 at 7.30 p.m. on a road in front of one Bacchu Khan's residence. The informant further testified that the deceased Abdus Samed was his younger brother and at the time of occurrence Samed was coming from local "Bardhaman para Moulvi Bari Bazar" after having his ifter and when he reached to the place of occurrence the accused persons namely Mir Mosharaf, Mir Moinul Hossain, Mir Ahmed Hossain, Mir Nabi Hossain, Mir Ashraf Hossain, Mir Babu Hossain, Mir Amjad Hossain, Md. Kamrul and Sajjad in a pre-planned way having full preparation with deadly weapons gheraoed his younger brother Abdus Samed. After getting order from accused Mir Mosharrif Hossain to kill the victim Abdus Samed the accused Sajjad and Ashraf caught hold of the deceased Samed and the accused Mir Ahmed Hossain with a knife in hand inflicted a death blow on the left side of the deceased's stomach causing serious blood injury. The injured Abdus Samed fell down and thereafter, the accused Moinul Hossain with a 'kiris' in his hand dealt with a severe blow below the left armpit of Samed causing sever cut bleeding injury and thereafter the accused Amjad & Kamrul kicking the victim Abdus Samed thrown him into a nearby ditch which is situated beside the place of occurrence road. Thereafter, the accused Babu Hossain coming to the ditch water immersed the victim into ditch water. At that moment the witness Kashem and Arzoo started shouting and hearing that sound the people of the locality coming to the place of occurrence picked up the injured body of the victim and the victim Samed who was taking his last breath, told the facts of occurrence before them. Subsequent to that, Samed was taken to local Austagram hospital, wherein the doctor declared him dead. The informant during his deposition identified his

ejahar and signature therein which has been marked as Exhibits-1 and 1/1 respectively. He also identified the presentee accused on dock. He states in his deposition that the condemned-convicts namely Moinul and Ahmed are not present and he identified the lungi and shirt of his deceased brother. He also identified the seized torch light, charger light which were the means of recognition and the knife which was used in the occurrence.

14. The witness No.2 Abul Kashem during his deposition testified that the occurrence took place on 10.12.2001 in the evening at about 7.30 p.m. The deceased Abdus Samed is his elder brother and he accompanied the victim Samed at the time of occurrence. They went to local 'Bardhaman Para Moulvi bari Bazar' prior to the occurrence. His brother & he having ifter from one Bahar's shop while started for residence, at about 7.30 p.m. reaching in a road nearer to the residence of one Bacchu Khan of Bardhamanpara village, the accused persons namely Mir Mosharrif Hossain, Mir Ashraf, Mir Ahmed Hossain, Mir Moinul Hossain, Mir Amjad Hossain, Mir Nabi Hossain, Mir Babu Hossain along with other 3/4 persons being armed with knife, stick, kiris etc. gheraoed the victim Samed and committed the offence of killing the deceased. This eye-witness of the occurrence in his deposition testified about the occurrence in the following way:

“এজাহার ভুক্ত আসামী মীর মোশারফ হোসেন বাবু, মীর আশরাফ, মীর আহম্মদ হোসেন, মীর মইনুল হোসেন, মীর আমজাদ হোসেন, মীর নবী হোসেন, মীর বাবু হোসেনসহ আরও ৩/৪ জন আমাদেরকে ছোরা, লাঠি, কিরিচ নিয়া আমাদেরকে ঘেরাও করিয়া ফেলে এবং আসামী মীর মোশারফ হোসেন বাবুর হুকুমে মীর আশরাফ আমার ভাইয়ের কোমড়ে ২ হাত ঝাপটাইয়া ধরে। মীর আহম্মদ হোসেন তাহার হাতে থাকা ছুরি দিয়া আমার ভাই আঃ ছামাদের পেটের বাম পার্শ্বে ঘাই মারিয়া রক্তাক্ত জখম করিলে আমার ভাই মাটিতে পড়িয়া গেলে আসামী মীর মইনুল হোসেন তাহার হাতে থাকা কিরিচ দিয়া বাম বগলের নিচে ঘাই মারিয়া গুরুতর জখম করে। মীর আমজাদ হোসেন আমার ভাইকে লাঠি মারিয়া রাস্তার পাশে গর্তের পানিতে ফেলিয়া দেয়। মীর নবী হোসেন বলে “দেখ মরছে কি-না?” মীর বাবু হোসেন গর্তের পানিতে আমার ভাই আঃ ছামাদকে চুবাইতে থাকে।

আমি সহ সাক্ষী আরজু মিয়া মোশাহিদ ডাক চিৎকার করিতে থাকিলে অন্যান্য সাক্ষীগণ সহ আরও বহু লোক ঘটনাস্থলে জমায়েত হয়। তখন আমার ভাই আঃ ছামাদকে গর্তের পানি হইতে ধরাধরি করিয়া পানি টানিয়া গর্তের পারে উঠাই। তখন আমার ভাই আঃ ছামাদ উপস্থিত সাক্ষীসহ বহু লোকজনের উপস্থিতিতে আসামীদের মারপিটের কথা প্রকাশ করে তখন আমার ভাইকে অষ্টগ্রাম থানা সদর হাসপাতালে নিয়া গেলে হাসপাতালের ডাক্তার আমার ভাইকে মৃত বলিয়া ঘোষনা করে।”

15. This witness in his deposition specifically states that he recognized the accused persons by the flash of a torch light which was in his hand and a charge light which was in the hand of witness Arzoo Mia. He further stated that the inquest report of the deceased Samed was prepared in his presence and he put his signature therein. He identified the inquest report and his signature therein which has been marked as Exhibit-2 and 2/1 respectively. This witness No.2 also testified that the torch light was produced by him before the local police station after the occurrence and the lights were seized by the police officer. The seizure list was prepared and he put his signature therein. This witness identified the seizure list and his signature therein which are marked as Exhibits-3 and 3/1. He further testified that on the following day i.e. on 11.12.2001 at about 8.30 hours the knife which is about 11/12 inches long was recovered from the ditch of the place of occurrence by the police officer who prepared the seizure list and in that seizure list also he (P.W.2) put his signature. He identified that seizure list and his signature therein which are marked as Exhibits-4 and 4/1.

16. In reply to cross-examination the witness No.2 Abul Kashem categorically testified that in front of his two eyes the occurrence took place and at that time he accompanied his brother Abdus Samed from local “Bardhoman Para Moulvi bari Bazar” after having their ‘ifter’ therefrom. During cross-examination in reply to a question from the side of the defence this witness deposed at a stage of his deposition that the deceased had two fatal injuries in his person and the condemned-convict Mir Ahmed Hossain during the occurrence dealt with a knife blow on the left side of the victim's abdomen, at which the deceased Abdus Samed fell down and then the other condemned-convict namely Mir Moinul Hossain inflicted ‘kiris’ blow below the left armpit causing serious blood injury, and this witness himself observed the aforesaid occurrence and those two accused are not present on dock.

17. The witness No.3 of the prosecution Md. Nur Miah is a hear-say witness of this case. He was not present at the time of occurrence but hearing the hue and cry he went to the place of occurrence after commission of the offence and he along with other witnesses while picked up the body of the deceased from the ditch water the victim Abdus Samed told before him the condemned persons namely Ahmed Hossain dealt with a knife blow in his left abdomen and Moinul Hossain inflicted ‘kiris’ blow below the left armpit of him (deceased).

18. The witness No.4 of the case Neel Miah during his deposition identified the presentee accused-persons on dock. He testified that on 10.12.2001 at about 7/7.30 p.m. when he was returning from Bardhamanpara, he found that; in front of one Bacchu Khan's home-stead the accused Mosharraf, Moinul, Ahmed Hossain, Nabi Hossain, Babu Hossain, Amjad Hossain, Shahin and Kamrul jointly has gheraoed the deceased Samed. The accused Mosharraf ordered to kill the victim and after getting that order accused Shahin caught hold of the victim and Ahmed dealt with a blow of knife on the left side of Samed's stomach at which Samed fell down on the ground and then Moinul inflicted the blow of a 'kiris' beneath the left armpit of Samed causing serious blood injury. This witness further testified that the accused Amjad and Kamrul kicking the victim Samed has thrown him into the water of a nearby ditch which stands beside the P.O. road and the accused Nabi immersed him into the water. Thereafter the witness Kashem, Morshed and Arzoo started shouting at which the accused persons fled away. In reply to cross-examination this witness stated at a stage that at about 7.00 p.m. he started for his residence from their Bazar and prior to him the victim Samed 10/12 minutes before completion of his (P.W.4) *ifter* started for his residence from that Bazar.

19. The witness No.5 Md. Moshahed during his deposition before the court admitted that the informant happens to be his "*behai*" and the torch light which he possessed during the time of occurrence was "Eveready" by name. This witness denied the suggestion of the defence that at the instance of the informant he deposed falsely and implicated the accused persons in his examination in chief. This witness who is a U.P. Chairman corroborated the prosecution case including the contention on dying declaration of the victim Abdus Samed.

20. The witness No.6 Sabbir Ahmed stated in his deposition that on 10.12.2001 at 7.30 p.m. this witness was in his residence and hearing hue and cry from the northern side of his residence he rushed to the place of occurrence and on his way towards the place of occurrence he found that the accused Mosharraf @ Babul, Nabi Hossain, Babu Hossain, Amjad, Moinul Hossain and Ahmed Hossain are retreating. By the flash of his torch light this witness found a blood strained 'kiris' in the hand of accused Moinul Hossain. Thereafter, reaching to the place of occurrence he found that Kashem, Moshahed, Neel Mia and Nur Mia are taking the victim Samed to Austagram Hospital. With them this witness also went to the hospital and at that time Kashem disclosed before him about the occurrence.

21. During cross-examination from the side of the defence, this witness categorically testified that with the victim he went to the hospital and he found the victim Abdus Samed in injured condition and there was profound bleeding from the person of Abdus Samed. This witness in reply to a question from the side of the defence denied the suggestion that out of enmity with regard to boundary dispute with the accused persons he deposed falsely against them.

22. The witness No.7 of the prosecution is Dr. Md. Abdul Majid who did the post mortem of the deceased. During his examination-in-chief, he testified that on 11.12.2001 he along with his colleague Dr. Md. Saleh Uddin (Resident Medical Officer) after holding postmortem of the deceased Abdus Samed a man of 37 years of age found the following injuries in the person of the deceased: "one penetrating injury over the left mid axillary line of chest horizontally placed $\frac{1}{2}$ " below the level of left nipple 1" X $\frac{1}{3}$ " X deep to the chest cavity (2) one penetrating injury over the left side of upper abdomen below the costal margin, horizontally placed 1" X $\frac{1}{3}$ " X deep to abdominal cavity.

23. On dissection- Echymosis and clotted blood present in and around the injuries. left lung injured, left side of chest cavity contain blood and blood clott. Anterior wall of stomach injured, abdominal cavity contain blood and blood clott."

24. As to the cause of death of the injured Abdus Samed the P.M. done doctor, witness No.7 Dr. Md. Abdul Majid testified in the following way, "In our opinion death was due to shock and haemorrhage as a result of above mentioned injury which was ante mortem and homicidal in nature". This witness identified the postmortem report and his signature therein along with the signature given by his colleague doctor Md. Saleh Uddin which has been marked as Exhibit-5, 5/1 and 5/2 respectively.

25. In a reply to cross-examination the P.M. done doctor in his testimony emphatically states that he found only two injuries in the person of the victim and those were fatal injuries in nature causing profound bleeding.

26. The last witness of this case, the witness No.8 is the investigation officer Sub-inspector Abdul Majid. The investigation officer in his testimony stated that on 11.12.2001 he was serving in Austagram police station and the FIR was recorded by the charge officer and thereafter he was entrusted investigation of the case and after taking investigation he prepared the inquest report of the dead body and sent the dead body for postmortem to hospital morgue. He visited the place of occurrence, prepared sketch map and index which are marked as Exhibits-6 and 7 respectively. He identified his signatures therein which has been marked as Exhibits-6(1) and 7(1) respectively. The investigation officer further testified that during his investigation he seized the incriminating weapon of this case which is a knife and thereafter he prepared a seizure list which is marked as Exhibit-3/2. On 14.12.2001 he seized a red colored charger torch light and an ordinary torch light which is used by batteries and a charger light. He also prepared seizure list of these articles. This witness identified his signature in this seizure list dated 14.12.2001 which is Exhibit-4/2. P.W.8 further testified that during his investigation of the case he examined the witnesses under section 161 of the Code of Criminal Procedure and recorded their statements thereunder and tried to apprehend the absconding accused but failed and after his investigation charge under sections 147/148/149/302/114/34 of the Penal Code as was proved he submitted the charge sheet No.13 dated 18.03.2002 thereunder.

27. From the side of the defence the investigation officer was cross-examined and during cross-examination he denied the suggestion put before him that his investigation is perfunctory. In a reply to a question during cross-examination this witness testified that he recorded statements of 13 witnesses and prior to that the inquest report of the dead body was prepared by him and in that inquest report there are as many as nine witnesses. This witness also denied the suggestion of the defence that the witnesses who were examined by him during investigation did not state anything supporting the case of the prosecution.

28. Scrutinizing the case records we find that the learned trial court after examining the witnesses examined the presentee accused persons under section 342 of the Code of Criminal Procedure and during their examination the learned trial judge viz. Additional Sessions Judge, Kishoreganj brought attention of the accused on the relevant incriminating evidence against them which were produced from the side of the prosecution to substantiate their case. The learned Judge rightly on due appreciation of law has drawn attention of the evidence led against the accused persons during their examination under section 342 of the Code of Criminal Procedure and thereafter recorded the reply of the accused.

29. Analyzing the evidence of the witnesses it appears that, here in this case; the prosecution to establish their case examined as many as eight witnesses and out of them there are three eye-witnesses of the occurrence. The witness No.2 Abul Kashem, the witness No.4 Neel Mia and the witness No.5 Md. Mosaheed are the eye-witnesses of the occurrence in presence of whom the occurrence was held on the date, at the place and in the manner as stated from the side of the prosecution.

30. On perusal of the connected papers it further transpires that among these three eye witnesses the witness No.2 Abul Kashem is a very dependable, competent & trustworthy, who from the very beginning of the occurrence accompanied the deceased Abdus Samed and his evidence in respect of the occurrence is very substantive which has corroborated the ejahar in toto lodged by the informant. It is to be mentioned here that the witnesses produced were thoroughly cross-examined from the side of the defence but except some minor discrepancies there is no such fatal contradiction, omission or discrepancy by which it can be held that the witnesses are tutored or otherwise managed. The credible witness of this case (Witness No.2) Abul Kashem who has direct knowledge about the occurrence proved the direct participation of the condemned-convicts Mir Ahmed Hossain and Mir Moinul Hossain in the killing of victim Abdus Samed beyond all shadow of doubt.

31. In this context; it has been argued from the side of the state defence counsel that inasmuch as the eye-witness of the occurrence is relation he cannot be relied on.

32. With respect to the said submission we have every reason to differ with the opinion passed by the learned State defence counsel as on mere relationship the credibility or evidentiary value of a witness cannot be discarded if it is proved that he is trustworthy and the evidence is unimpeachable. The learned Assistant Attorney General on this ground referred a decision of our Apex Court reported in 9 BLC(AD)122 wherein their lordships held that the law is now settled that mere relationship of the witness or relationship with the victim do not make him unreliable or, in other words such evidence cannot be treated as not worthy of consideration. The

court can very much rely on the evidence of a witness who is related to the victim or to other witnesses if the witness is considered by the Court reliable and that evidence of the witness is corroborated by other reliable witnesses. Besides this; in the case laws reported in 38 DLR(AD) 311 and 29 DLR(SC)211, it is a decided matter that the case of prosecution does not depend on the number of witnesses produced but it can depend upon a single witness whose evidence (testimony) is trustworthy, credible and unimpeachable. Therefore, obviously we can easily draw such inference in this matter that the case of the prosecution can stand very much on a single evidence if it is tangible and credible. Here in this case; evidence of the prosecution both oral, documentary and circumstantial as well as dying declaration of the deceased and absconsion of the condemned-convicts from the very beginning of the case can easily be treated unimpeachable and conclusive in nature. Evaluating the evidence adduced from the side of the prosecution we find that these are sufficient as to proving the place of occurrence, time of occurrence and manner of occurrence and are conclusive and corroborative in nature which has been rightly and legally appreciated by the learned trial judge.

33. Be that as it may; we have the reason to inclined such a view that the prosecution in this case has been able to bring home the charge under section 302 of the Penal Code against the condemned-persons namely Mir Ahmed (absconding) and Mir Moinul Hussain (absconding). It is true that all the witnesses cited in the charge sheet were not examined by the prosecution even then we find that section 134 of the Evidence Act does not impose a duty upon the prosecution to examine all the witnesses cited in the charge sheet. Court can convict an accused on the evidence of a single witness if his testimony is believed. Furthermore, besides the oral evidence we have come across that a oral dying declaration is coming from the mouth of the victim at the time of his taking last breath when he was about to die. At that moment the deceased told about his fatal injuries which were done by these condemned two convicted persons under this death reference and with regard to this the witnesses No. 2, 3 and 5 gave direct evidence in their deposition stating that the deceased Abdus Samed before his death disclosed the names of the condemned-convicts who inflicted fatal blows to his person mentioning the names of condemned-convict Ahmed Hossain who dealt with a knife blow to the left portion of Samed's abdomen and after receiving that wound while Abdus Samed fell down the other condemned convict Moinul Hossain inflicted 'kiris' blow beneath the left armpit and the above mentioned two injuries are the cause of death of the victim which were fatal in nature as per P.M. report (Exhibit-5). In this regard; the concerned medical officer who did the autopsy of the deceased testified before the court that the said injuries are the cause of death which is in their opinion anti mortem and homicidal in nature.

34. Having regard to the findings and discussions made above and in the facts, circumstances of the case we are of the view that the prosecution has been able to prove the case beyond all reasonable doubt and as such the impugned judgment and order should be sustained. No doubt; the heinous offence as stated above was committed and fierceness with which it was perpetrated by the condemned-convicts with a pre-planned manner and way is shocking to the conscious of everybody and as such we find nothing in this facts and circumstance of the case specially on the above mentioned legal evidence of the case to interfere with the conviction and sentence of death penalty as imposed upon the condemned-convicts under this Reference by the learned Additional Sessions Judge, Kishoreganj. We have found nothing in the circumstances of the case and in the conduct of the condemned convicted persons to take lenient view in the matter of the sentence despite our best concern to temper justice with mercy.

35. Considering all aspects of the matter we are obliged under the law to sustain the order of conviction and sentence.

36. In the result, the Death Reference No.36 of 2010 is accepted.

37. Let the Death Sentence of the condemned-convicts namely (1) Mir Ahmed Hossain (absconding), son of Mir Nabi Hossain and (2) Mir Moinul Hossain (absconding), son of late Mir Mamud Hossain be executed after their arrest/surrender in accordance with law and the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Kishoreganj.

38. Send down the lower Court's records at once along with the copy of this judgment to the court concerned immediately for information and necessary action.