

7 SCOB [2016] HCD 106

High Court Division

Death Reference No.64 of 2010
with
Jail Appeal No.339 of 2010

Mr. Delowar Hossain Somadder, D.A.G
with
Mr. Nizamul Haque Nizam, A.A.G
... For the State.

The State

... Petitioner

Mr. Md. Fazlur Rahamn, *State Defence*
Lawyer

Versus

... For the Condemned-Prisoner

Aynal Haque

... Condemned-Prisoner

Heard on:14.12.2015.

Judgment on:15.12.2015.

Aynal Haque

... Appellant

(In Jail Appeal No.339 of 2010)

Versus

The State

... Respondent

Present:

Mr.Justice Bhabani Prasad Singha

And

Mr.Justice S.M. Mozibur Rahman

Nari-O-Shishu Nirjatan Daman Ain, 2000

Section 11(ka):

The husband i.e. the accused in this case did not offer any satisfactory explanation as to how his wife met her death. This inaction on the part of the accused points at his guilt in the alleged occurrence. ...**(Para 31)**

Value of circumstantial evidence in a wife killing case:

In a wife killing case, there could be no eye-witness of the occurrence, apart from the inmates of the house who may refuse to tell the truth, the neighbors may not also come forward to depose. The prosecution is, therefore, necessarily to rely on circumstantial evidence. ...**(Para 32)**

Judgment

Bhabani Prasad Singha, J:

1. This Death Reference has been made by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Narsingdi for confirmation of the death sentence imposed upon the condemned –prisoner Aynal Haque in Nari–O-Shishu Nirjatan Daman Tribunal Case No. 302

of 2008 arising out of Raipura, Narsingdi P.S. Case No. 41 dated 29.03.2008 vide his judgment and order of conviction and sentence dated 01.11.2008.

2. The prosecution case, to narrate in brief, is that the daughter of the informant, the victim-deceased Halima Akter (25) was given in marriage with the accused Aynal Haque 8 (eight) months before the date of occurrence. Few days after the marriage, demanding Tk.1,00,000/00 as dowry, the accused Aynal Haque used to burn the private organ and the body of the victim by hot iron rod and by burning cigarette. From 8.00 p.m. of 28.03.2008 to 4.00 a.m. of 29.03.2008 at his south-eastern bhiti house i.e. the place of occurrence, having not found the dowry as demanded by him from the victim, the accused assaulted at the different parts of the body of the victim Halima Akter and wrapping the body of the victim with a quilt, put her body on fire and burnt her to death. At 3.00 a.m. of 29.03.2008 having received the news of the death of his daughter from witness Abul Mia, the informant forthwith went to the house of the accused and saw the burnt dead body of the deceased. The informant also saw the accused in detained condition. Receiving his information, the police from Raipura P.S. came, held inquest on the dead body of the victim deceased, sent the dead body for autopsy and arrested the accused. Thereafter, on 29.03.2008 at 17.15 hours, the informant lodged the FIR of the case with Raipura P.S.

3. On receipt of the First Informant Report (FIR) of the case, police took up investigation of the case and after investigation prima-facie case having been made out against the accused, submitted Charge Sheet No. 137 dated 06.06.2008 of Raipura, Narsingi P.S. under sections 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain,2000(Amended in 2003) against him.

4. At the commencement of trial of the case, charge under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amended in 2003) was framed against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. To substantiate its case the prosecution in all examined as many as 11 witnesses.

6. On the other hand, none was examined on behalf of the defence.

7. On the closure of the evidence of the prosecution, the accused Aynal Haque was examined under section 342 of the Code of Criminal Procedure to which he pleaded his innocence once again informing the tribunal that he would not adduce any evidence on his behalf.

8. The defence case, as it transpires from the cross examination of the prosecution witnesses is the denial and the plea of innocence in the alleged occurrence.

9. After trial, on perusal and on analysis of the evidence and materials on record, the learned trial judge came to the finding that the prosecution had been able beyond all shadow of doubt to bring home the charge as brought against the accused and accordingly, convicted and sentenced the accused by the impugned judgment and order as aforesaid.

10. At the very outset, Mr. Nizamul Haque Nizam, the learned Assistant Attorney General (AAG) appearing on behalf of the State submits that the trial Court was well-founded in law in convicting and sentencing the condemned-accused-prisoner Aynal Haque on the basis of the evidence on record and as such, the order of conviction and sentence

should be maintained. The learned AAG prays for acceptance of the Death Reference. The learned AAG also referred the case laws reported in 21 BLD (AD) at page 27 and 52 DLR at page 179.

11. On the other hand, Mr. Fazlur Rahman, the learned State Defence Lawyer appearing for the condemned-accused-prisoner submits that the alleged occurrence being an extremely pathetic, barbaric and ruthless act, morally and ethically he has nothing to argue in the case; that excepting the facts that there are no eye-witnesses in this case and that the witnesses of the prosecution being related to each other, there is no other defect in the prosecution case; that however, if there be any mitigating and extenuating circumstances, the death sentence as awarded to the condemned-accused-prisoner may be commuted to a lesser sentence.

12. In order to appreciate the respective arguments of the learned Advocates of the parties and to determine whether the trial court was justified in passing the impugned judgment and order of conviction and sentence, we would now turn to and discuss the evidence as adduced by the prosecution in this case.

13. The P.W.1, the informant Abdul Based stated in his deposition that the deceased Halima was his daughter and the accused Aynal Haque was her husband. The occurrence took place from about 8 p.m. of 28.03.2008 to 4.00 a.m. of the next day in the residence of the accused situated at Shaheb Kholā under Raipura police station. Eight months before the date of occurrence he gave in marriage of his daughter with the accused. From after the marriage, the accused started assaulting his daughter demanding dowry. On the date of occurrence his daughter, the victim informed him over mobile phone that the accused was beating up her demanding Tk.1,00,000/- as dowry. At 3.00 a.m. at night the witness Abul Hossain informed him over mobile phone that demanding dowry, the accused assaulted her and by pouring kerosene oil on the body of the victim burnt her to death. Thereafter, he along with the witnesses Latif, Abu Taher, Sadeque, Hariz and Nasir Uddin went to the residential house of the accused to see his daughter was burnt to death. They saw that by apprehending the accused, the inmates of the house of the accused kept him in detained condition. Thereafter, police came from the police station and held inquest on the dead body of the deceased and brought him under arrest. Thereafter, he lodged the FIR of the case. This witness proved the FIR as Exhibit-1, his signature therein as Exhibit-1/1, the Inquest Report as Exhibit-2 and his signature therein as Exhibit-2/2. This witness further stated that after Post Mortem Examination on the dead body of the deceased-victim they brought her dead body to their house and buried it. This witness identified the accused in the dock. In his cross on behalf of the accused by the State Defence Lawyer, this witness stated that knowing that the accused to be a good and wealthy man he gave in marriage of his daughter with him. His daughter had a mobile phone. This witness denied the defence-suggestions that after marriage the accused did not demand dowry from his daughter or that at the time of occurrence the accused was not in his house or that as the bad caught on fire from the kerosene lamp, the deceased died by sustaining burn injury or that for financial benefit he filed the case.

14. The P.W.2 Abu Taher deposed that the deceased was his niece. At the time of the occurrence she was 20/22 years of age. The accused Aynal Haque was her husband. From 28.03.2008 to 4.00 a.m. of 29.03.2008 the occurrence took place in the house of the accused situated at Shaheb Kholā. At 3.00 a.m. at night the informant Based Mia called him and told that by demanding dowry the accused assaulted his daughter and burnt her to death. Thereafter, he along with Based, Nasir, Rafiqul, Sadeque, Fazar Ali went to the house of the accused to see the burnt dead body of the deceased and that the quilt and the mattress were

burning and that fire was put on by pouring kerosene oil. They saw that the inmates of the house of he accused apprehended him and kept him in detained condition. The informant Based Mia went to the police station and brought police. The police held inquest on the dead body of the deceased and seized alamats of the case. This witness proved his signature in the Inquest Report as Exhibit-2/2. This witness also proved the Seizure List as Exhibit-3, his signature therein as Exhibit-3/1 and identified the seized burnt cotton, a part of the burnt quilt, a burnt portion of a blanket and a burnt portion of mattress as Material Exhibits-I,II,III,IV. This witness further deposed that after Post Mortem Examination on the dead body, it was brought to the house of the informant. This witness identified the accused in the dock. In his cross by the State Defence Lawyer on behalf of the condemned-accused-petitioner this witness stated that the house of the accused was at a distance of 4/5 kilometers away from his house. They went to the house of the accused by five rickshaws. After going to the house of the accused they saw that he was kept in detained condition by Joynal in the eastern bhiti house. This witness denied the defence-suggestions that at the time of the occurrence the accused was not at his house or that he was watching his sweet potato field or that which the deceased was arranging the bed, it caught on fire from the kerosene lamp and as a result sustaining burnt injury, the deceased had died or that he deposed falsely.

15. The P.W.3 Md. Rafiqul Islam stated in his deposition that the deceased Halima was the daughter of the informant Based Mia and that the accused Aynal Haque was the husband of the victim. The occurrence took place from about 8 p.m. of 28.03.2008 to 4 a.m. of the following day at the house of the accused situated at Shaheb Kholā under Raipura police station. On the date of occurrence at about 3 a.m. at night the informant Based Mia woke him up from bed and told him that he had to go to the house of the accused as the accused had killed his daughter demanding dowry. Thereafter, he along with Nasir Uddin, Haris, Taher, Sadek and some other people went to the house of the accused by five rickshaws. After going there they saw many people and also saw the deceased deed and that the quilt and the mattress of the bed were burning. They saw the dead body of the deceased in the burning quilt and mattress. Thereafter, Based Mia informed the police station of the occurrence. Thereafter, at 8 a.m. a police officer came to the place of occurrence who held Inquest on the dead body of the deceased, prepared Inquest Report and took his signature therein. This witness proved his signature in the Inquest Report as Exhibit-2/3. This witness further deposed that the inmates of the house of the accused kept the accused in detained condition in a room of the house. From that room police arrested the accused. The police officer seized some articles under a seizure list. This witness proved his signature in the seizure-list as Exhibit-3/2 and identified the alamats in the Court. This witness further deposed that police took away the accused to the police station along with the dead body of the deceased and alamats of the case. The informant Based Mia lodged the FIR of the case. After autopsy, the dead body was brought to the house of the informant and was buried. This witness further deposed that the victim deceased was known to him. This witness identified the accused in the dock. The informant Based Mia disclosed that demanding dowry the accused assaulted the victim and burnt her to death. In his cross by the State Defence Lawyer on behalf of the accused this witness stated that when the informant Based gave information about the occurrence, Nasir, Haris and others were present. Thereafter, they went to the house of the accused by rickshaws and reached there at 4.00 a.m. This witness denied the defence-suggestions that at the time of occurrence the accused was not present in his house or that while the deceased was arranging the bed with a kerosene lamp, the bed was caught fire and as a result, sustaining burn injury, the deceased had died or that the accused did not demand dowry from the deceased or that he did not burn the deceased to death by demanding dowry.

16. The P.W.4 Nasir Uddin stated in his deposition that the informant Based and his daughter deceased Halim were known to him. The accused Aynal Haque was the husband of Halima. The occurrence took place before 1 year and 9 months in the house of the accused situated at Shaheb Khola. At about 3/3.30 a.m. at night, the informant called him and said that he had to go to the house of the accused. On his asking, the informant disclosed that demanding Tk.1,00,000/- as dowry, the accused killed her. Thereafter, they went to the house of the accused to see that the quilt and the mattress of the bed were burning and that Halima was lying there in deed condition. They also saw that the villagers kept the accused in detained condition in a room. Thereafter, Based went to the police station and brought police. Police held Inquest on the dead body of the deceased, prepared Inquest Report, seized alamats and took the accused to the police station. Thereafter, the dead body was brought to the house of the informant and was buried. This witness identified the accused in the dock. In his cross by the State Defence Lawyer this witness stated that by rickshaws they went to the house of the accused. This witness denied the defence-suggestions that the accused was not present in his house at the time of occurrence or that he was watching his sweet potato field or that being burnt by fire of lamp, the victim had died or that he deposed falsely.

17. The P.W.5 Fazal Mia stated in his deposition that the informant was known to him. He used to carry the dead bodies at Raipura Bazar. On 29.03.2008, as per the instruction of the Officer-in-Charge, he brought a dead body of a woman from Shaheb Khola to Narshingdi Sadar Hospital and that after Post Mortem Examination he reached the dead body to the house of the informant Based. Police seized a part of burnt Sari which the deceased was wearing at the time of occurrence, some portion of burnt cloth, petticoat, burnt hair and burnt blouse under a Seizure-List and took his signature therein. This witness proved the Seizure List dated 01.04.2008 as Exhibit-4 and his signature therein as Exhibit4/1 and identified the seized materials as Materials Exhibits-V-VIII. In his cross this witness stated that after autopsy he took the dead body to the house of the informant. The constable Jalil had the alamats with him.

18. The P.W.6 Sadeque Mia stated in his deposition that the informant was Based, his daughter was the deceased Halima and the accused Aynal Haque was her husband. The occurrence took place from 28.03.2008 to the following morning at 4.00 a.m. At about 3/3.30 a.m. at night, the informant Based woke him up from bed and told him that demanding Tk.1,00,000/- as dowry, the accused had killed her. Thereafter, they went to the house of the accused situated at Shaheb Khola. They saw that the victim deceased was lying in burning quilt. Thereafter, Based brought the police from the police station. The police officer held Inquest on the dead body of the deceased and prepared inquest report. Police took the dead body to the police station. After post mortem examination police made over the dead body to the informant and it was buried. In the mean time, the informant lodged the FIR of the case. The witness identified the accused in the dock. In his cross by the State Defence Lawyer this witness stated that they in all 7 persons went to the house of he accused by 5 rickshaws and reached the house of the accused at 4/4.30 a.m. in the morning. They saw the accused in detained condition in the east bhiti room. This witness denied the defence suggestions that at the time of occurrence, the accused was watching sweet potato field or that at the fire of the lamp, the bed being caught on fire, the victim sustained burn injury and died or that he deposed falsely.

19. The P.W.7 Md. Haris Mia stated in his deposition that the informant Based was his nephew. The deceased Halima was his daughter and that the accused Aynal Haque was her husband. The occurrence took place on 29.03.2008 in the house of the accused situated at

Shahel Khola. On the night of occurrence at about 2.00/2.30 a.m. at night, the informant Based woke him up and told him that demanding dowry the accused burnt his daughter to death. Then he along with Based and 4/5 others went to the house of he accused to see the deceased in dead condition in the house of the accused. They saw fume of fire in a quilt. They saw that the people of the village apprehended the accused and kept him in detained condition in the next room. Thereafter, the informant Based informed police of the occurrence. At 8.00 a.m. in the morning police went there, held inquest on the dead body of the deceased, prepared Inquest Report and seized some alamats. This witness proved his signature in the Inquest Report as Exhibit-2/4. This witness identified the accused in the dock. In his cross by the State Defence Lawyer this witness stated that before occurrence, the informant told him that the accused used to demand dowry from his daughter. This witness denied the defence-suggestions that he did not go to the place of occurrence or that he did not see burnt mattress beside the deceased or that he deposed falsely.

20. The P.W.8 Alauddin was tendered for cross-examination. The defence declined to cross-examine him.

21. The P.W.9 Md. Abul Hossain deposed that for killing of the deceased Halima, the informant filed this case. The accused Aynal Haque was the husband of his daughter. The occurrence took place on 29.03.2008 at about 2.30/3.00 at night. His house was situated at a distance of 1000 cubits from the house of the accused. While he was sleeping in his house, the uncle of the accused named Rashed woke him up from bed and informed him that the accused Aynal Haque had killed his wife. Thereafter, he came to the house of the accused and as per instruction of the local Member informed the father of the deceased of the occurrence over mobile phone. The inmates of the house of the accused tied him up and kept him in detained condition. Thereafter, police came to the place of occurrence, held inquest on the dead body of the deceased, prepared the Inquest Report and took his signature therein. This witness proved his signature in the Inquest Report as Exhibit-2/5 and identified the accused in the dock. This witness denied the defence-suggestions that at the time of occurrence the accused was not present in his house or that the accused did not demand dowry from his wife or that he deposed falsely.

22. The P.W.10 doctor Syed Aminul Haque deposed that on 29.03.2008 he was attached to Narsingdi Sadar Hospital. On that date he held post mortem examination on the dead body of the deceased and submitted Post Mortem Examination Report under his signature. During post mortem examination, he found the following injuries on the person of the deceased:

“Blackish discoloration of skin from burn from mid thigh to scalp along with both superior extremities. On dissection extraverted clotted blood beneath the skin which resisted in washing and ante-mortem in nature”

23. In his opinion the death of the deceased was due to shock resulting from dry burn which was ante-mortem and homicidal in nature. This witness denied the defence suggestion that he did not held Post Mortem Examination on the dead body properly.

24. The P.W.11 Md. Saidur Rahman, the investigating officer of the case stated in his deposition that on 29.03.2008, the informant lodged the FIR of the case. The officer-in-charge Alamgir filled up the FIR Form and started the case. The hand writing and signature of the officer-in-charge (O.C.) Alamgir was known to him. This witness proved the FIR Form as Exhibit-5, the signature of O.C. Alamgir therein as Exhibit-5/1, the signature of O.C. Alamgir in the FIR as Exhibit-1/2. This witness further deposed that the case was entrusted to

him for investigation. During investigation, he visited the place of occurrence, drew the Sketch Map thereof with index, recorded the statements of the witnesses under section 161 of the Code of Criminal Procedure, arrested the accused. This witness further deposed that immediately after the occurrence, the people apprehended the accused and made him over to him. After investigation, prima-facie case having been made out against the accused Aynal Haque, he submitted charge sheet no.137 dated 06.06.2008 under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 against him. This witness proved the Sketch Map of the place of occurrence and index thereof as Exhibits-6 and 7 and his signatures therein as Exhibits-6/1 and 7/1 and identified the accused in the dock. This witness denied the defence-suggestion that he did not take out the investigation of the case properly.

25. So, this is the evidence adduced by the prosecution to bring home the charge as brought against the condemned-accused-prisoner. We would now scrutinize the above evidence to find out whether the impugned judgment and order of conviction and sentence is sustainable in law.

26. From the evidence of the prosecution witnesses, it appears that demanding dowry worth Tk.1,00,0000-/00, in between 8.00 p.m. of 28.03.2008 and 4.00 a.m. of 29.03.2008, the accused Aynal Haque assaulted the victim Halima Akter, wrapped her body up with a quilt and pouring kerosene oil on it put the body on fire and as a result, the victim Halima Akter(25) had died sustaining burn injury. The Inquest Report (Exhibit-2) shows that at the time of inquest, the whole hair of the victim was found to be burnt, both the eyes were found to be swelled up, the right and the left cheek found to be burnt, bubbles were coming out from the nose and that both the hands, the chest and the belly were found to be burnt. It is also mentioned in the Inquest Report that soon after their marriage, the accused often used to beat up the victim demanding dowry; that on 28.03.2008 at night, the accused created pressure upon the victim for dowry which the victim refused to pay saying that her father being a poor man how she would pay the money where on the accused along with some others wrapped the body of the victim with a quilt, put the body of the victim on fire and burnt her to death. On perusal of the Post Mortem Examination Report, it appears that during post mortem examination blackish discoloration of skin from mid thigh to scalp and both superior extremities on the person of the victim-deceased were found; that on deep dissection extravassated clotted blood beneath the skin which resisted in washing and ante mortem in nature were found and that the death of the deceased was due to shock resulting from dry burn which was ante mortem and homicidal in nature. So, it is found that both the Inquest Report and the Post Mortem Examination Report with regard to the cause of death of the victim-deceased Halima Akter by sustaining burn injury corroborate each other.

27. It is the claim of the prosecution that for dowry worth Tk.1,00,000/00, the condemned-accused-prisoner Aynal Haque wrapped the body of the victim a quilt, poured kerosene oil on it and by putting fire on the body of the victim burnt her to death.

28. On the other hand, the defence case is that while the victim Halima Akter was arranging the bed with a kerosene lamp, kerosene fell on the bed and as a result, the bed was caught on fire resulting in the death of the victim.

29. On perusal of the evidence on record, as stated above, it appears that all the prosecution witnesses in a row corroborated the prosecution case of demanding dowry by the condemned-accused-prisoner from the victim and burning her to death. But none came

forward to support the defense case as set forth by the defence. So, the defence case as stated above has no leg to stand.

30. Admittedly, the instant case is a wife-killing case and that the victim had died in the house of the condemned-accused-prisoner the place of occurrence.

31. Law has now been settled that in a wife killing case, the husband while they were living in the same house at the time occurrence has the liability to explain as to how his wife was killed. In this regard, the learned AAG referred the case of Abdul Motleb Howlader versus The State reported in 21 BLD (AD) at page 27 in which case our Apex Court held that “in a case involving the murder of a wife while she was living with her husband in the same house, the husband owes an explanation as to how his wife was murdered. Inaction of the husband together with his failure to offer a satisfactory explanation points at the guilt of the husband. It is quite natural that the relations of the accused will not come to support the prosecution case. In such a case, the circumstantial evidence leading to the irresistible conclusion as to the guilt of the accused- husband can well be relied upon to safely form the basis of conviction.” The husband i.e. the accused in this case did not offer any satisfactory explanation as to how his wife met her death. This inaction on the part of the accused points at his guilt in the alleged occurrence.

32. As stated earlier, the learned State Defence Lawyer for the condemned-accused-prisoner submits that excepting the facts that there are no eye-witnesses in this case and that the witnesses of the prosecution witnesses are related to each other, there is no other defect in the prosecution case. In this regard, the learned AAG referred the case of The State versus Md. Shafiqul Islam @ Rafique and another reported in 43 DLR (AD) at page 92 in which case our Apex Court held that “ in a wife killing case, there could be no eye-witness of the occurrence, apart from the inmates of the house who may refuse to tell the truth , the neighbors may not also come forward to depose. The prosecution is, therefore, necessarily to rely on circumstantial evidence.” This Court is in respectful agreement with the said decisions.

33. In this case, the defence claims that at the time of the occurrence the condemned-accused-prisoner was not present at the place of occurrence at the time of occurrence. To support this claim no witness was examined on behalf of the accused, rather, from the evidence of the Pw1, the Pw2, the Pw3, the Pw4, the Pw6, the Pw7, the Pw9 and the Pw11, it is crystal clear that for committing the offence the inmates of the house of the accused and the local people apprehended him and kept him in tied up condition and handed him over to police which suggest that the condemned-accused-prisoner was very much present at the time of occurrence at the place of occurrence house.

34. In view of the discussion made here above, and on perusal of the evidence and materials on record and also on observation of the case laws cited by the learned AAG, this Court is led to find that demanding dowry worth Tk.1,00,0000-/00, in between 8.00 p.m. of 28.03.2008 and 4.00 a.m. of 29.03.2008, the condemned-accused-prisoner Aynal Haque assaulted the victim Halima Akter, wrapped her body up with a quilt and pouring kerosene oil on the body of the victim put it on fire at the place of occurrence i.e. the house of the condemned-accused-prisoner and as a result, the victim Halima Akter had died sustaining burn injury. So, the offence as committed by the condemned-accused-prisoner clearly comes under the purview of the section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (Amended in 2003).

35. As stated earlier, the learned State Defence Lawyer submitted that if there be any extenuating circumstances in this case, the death sentence as awarded to the condemned-accused-prisoner may be commuted to a lesser sentence. But as the offence as committed by the condemned-accused-prisoner falls under section 11(K) of the Nari-O-Shishu Nirjatan Daman Ain,2000 (Amended in 2003) and that in the said section no other alternative punishment other than death penalty is prescribed, there is no scope to award the condemned-accused-prisoner lesser sentence.¹ Further, considering the killing of the victim Halima Akter in a barbaric, gruesome and ruthless manner as stated above by the condemned-accused-prisoner, we find no extenuating or mitigating circumstances to commute the death sentence of the condemned-accused-prisoner.

36. In the light of discussion made here above, we find that the trial Judge was perfectly justified in passing the impugned judgment and order of conviction and sentence. We find nothing to interfere with the impugned judgment and order of conviction and sentence.

37. In the result, the Death Reference No. 64 of 2010 is accepted and the judgment and order of conviction and sentence of the trial court is hereby upheld and affirmed. The condemned-accused-prisoner be hanged by the neck till he is dead.

38. Let the lower court's record along with a copy of this judgment be transmitted down at once.

¹ **Editors' Note:** Section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain,2000 in which no other alternative punishment other than death penalty is prescribed, has been declared *ultra vires* to the Constitution by the Appellate Division. For further reading see 1 SCOB (AD) 1.