

**In the Supreme Court of Bangladesh**

**High Court Division**

**(Criminal Appellate Jurisdiction)**

**Present:**

**Mr. Justice Jahangir Hossain**

**And**

**Mr. Justice Md. Jahangir Hossain**

**Death Reference No. 01 of 2016**

The State

**-Versus-**

1. Md. Foysal Bin Nayem @ Dip and

2. Redoyanul Azad @ Rana

**.....Condemned prisoners**

Mr. Shafiqul Islam, Advocate

**.....for the State defence**

**with**

**Criminal Appeal No. 651 of 2016**

Md. Maksudul Hasan Anik

**-Versus-**

The State

Mr. Abdur Razaque Khan with

Mr. Nurul Huda and

Mr. Nesar Ahmed, Advocates.

**.....for the appellant**

**with**

**Criminal Appeal No. 1011 of 2016**

Nafees Imtiaz

**-Versus-**

The State

Mr. Ahsanullah with

Mr. Mohammad Shaheen Mirdha, Advs.

.....for the appellant

with

**Criminal Appeal No. 1107 of 2016**

Md. Foyzal Bin Nayem @ Dip and others

**-Versus-**

The State

Mr. Ahsanullah with

Mr. Sajal Mahmud Rasel, Advocates

.....for the appellants

with

**Criminal Appeal No. 7872 of 2016**

(arising out of Jail Appeal No. 19 of 2016)

Shikhul Hadis Mufti Mohammad Jashim

Uddin Rahmani

**-Versus-**

The State

Mr. Md. Moniruzzaman with

Mr. Furid Uddin Ahmed Talukder, Adv.

.....for the appellant

with

**Criminal Revision No. 833 of 2016**

Dr. Nazim Uddin

**-Versus-**

Md. Maksudul Hasan Anik and others

.....None appears for the petitioner

with

**Criminal Misc.Case No. 15972/2016**

Sadman Yeasir Mahmud

**-Versus-**

The State

Mr. Mosharaf Hossain Kajol with

Mr. Lutfor Rahman, Advocates

with

**Criminal Misc.Case No. 10481/2017**

Redoyanul Azad @ Rana

**-Versus-**

The State

Mr. Md. Abdun Nur with

Mr. Md. Abdul Jabbar Joel and

Ms. Nusrat Sharif, Advocates

**And****Jail Appeal No. 22 of 2016**

Md. Foyisal Bin Nayem @ Dip

**-Versus-**

The State

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

Mr. Md. Atiqul Haque [Salim], A.A.G

Ms. Bilkis Fatema, A.A.G and

Mr. Nizamul Haque Nizam, A.A.G

**.....for the State****Heard on:**

08.11.2016, 09.11.2016, 13.11.2016, 14.11.2016,  
 15.11.2016, 16.11.2016, 20.11.2016, 21.11.2016,  
 27.11.2016, 28.11.2016, 29.11.2016, 30.11.2016,  
 04.12.2016, 05.12.2016, 06.12.2016, 07.12.2016,  
 11.12.2016, 12.12.2016, 03.01.2017, 04.01.2017,  
 08.01.2017 and 09.01.2017

**Judgment on 02.04.2017****Jahangir Hossain, J**

This Death Reference No. 01 of 2016 is the  
 outcome of judgment and order of conviction and

sentence dated 31.12.2015 referred by the learned Judge of Druto Bichar Tribunal No. 03, Dhaka for confirmation of death sentences to Md. Faysal Bin Nayeem @ Dip and Redowanul Azad @ Rana under section 374 of the Code of Criminal Procedure.

Challenging the said judgment and order of conviction and sentences, Md. Foysal Bin Nayeem @ Dip, Mohammad Ahsan Reza @ Rumman and Nayeem Sikder @ Irad filed joint petition of appeal being numbered as Criminal Appeal No. 1107 of 2016. Muksudul Hasan Anik filed petition of appeal being Criminal Appeal No. 651 of 2016 and Nafis Imtiaz filed petition of appeal being Criminal Appeal No. 1011 of 2016 and Sykhul Hadis Mufti Mohammad Jashim Uddin Rahmani also filed petition of appeal being Criminal Appeal No. 7872 of 2016. Foysal Bin Nayeem @ Dip also filed Jail Appeal No. 22 of 2016 while Sykhul

Hadis Mufti Mohammad Jashim Uddin Rahmani filed Jail Appeal No. 19 of 2016. Convict-Sadman Yasir Mohammad did not prefer any appeal but obtained a Rule by filing Criminal Miscellaneous Case No.15972 of 2016 under section 561-A of the Cr.P.C for quashing his sentence and no petition of appeal was preferred by Reduanul Azad @ Rana as he was absconded since inception of the case. The informant by filing Criminal Revision No. 833 of 2016 under section 439 read with section 435 of the Cr.P.C obtained a Rule for enhancing inadequate sentences.

Death Reference and all criminal appeals along with Criminal Miscellaneous Case and Criminal Revision have been heard together and are disposed of by this common judgment.

The prosecution case is briefly described as under:

On 16.02.2013 at 04:20 am Dr. Nazim Uddin, father of the deceased, being informant lodged an FIR with Pollobi Police Station, Dhaka alleging inter alia that he received a killing news occurred in front of his house at Polash Nagor, Mirpur over cell phone from his relative-Khurram Haider on 15.02.2013 around 09:30 pm. On getting such news he along with his wife rushed to the spot at 11:30 pm from Kapasia, Gazipur and came to know from his younger son Rubel that his elder son-Ahmed Razib Haider Shovo was brutally murdered after being severely injured while he [deceased] was coming back home from outside at about 08:30 pm to 08:45 pm. He further came to learn that two men wearing masks ran away from the eastern side of Polash Nagor towards a nearby place known as Baishtaki. The assailants left behind one dagger and one sharp cutting chapati which were

seized by police and the incident took place by unknown miscreants in a pre-planned design.

Having received an ejahar police started Pollabi Police Station Case No. 40 dated 16.02.2013 against unknown persons under sections 302/34 of the Penal Code. Before lodging the FIR an inquest report of the dead body of the victim was held by police in connection with G.D entry No. 1098 dated 15.02.2013 at 09:45 pm. In course of investigation of the case police apprehended 7[seven] accused persons including condemned prisoner Foysal Bin Nayeem @ Dip who made confessional statements before the judicial magistrate involving themselves in the killing of the victim. DNA test was also conducted to ascertain the identification of the victim and blood stained dagger and chapati seized by police. The investigating officer also collected autopsy report of the deceased and three

witnesses also made statements before the magistrate under section 164 of the Code of Criminal Procedure [briefly Cr.P.C].

The investigating officer, after conclusion of investigation, submitted charge sheet being No. 26 dated 25.01.2014 against 8[eight] accused persons under sections 302/109/34 of the Penal Code.

Additional Metropolitan Sessions Judge, 4<sup>th</sup> Court, Dhaka framed charge on 18.03.2015 against the said accused persons under sections 302/34/109 of the Penal Code. Thereafter, the aforesaid case was transferred to Druto Bichar Tribunal No. 02, Dhaka by a notification dated 30.04.2016.

Gravamen of charge against 08[eight] accused persons was again framed being amended on 21.05.2015 under the same sections, as proposed in the charge sheet which was read over and explained



to them present on dock to which they pleaded not guilty and claimed to be innocent at the trial. The prosecution, in order to prove its case, examined 35[thirty five] witnesses while defence examined none.

On closure of the prosecution witnesses, the accused persons present in dock, were also examined under section 342 of the Cr.P.C wherein the incriminating evidence brought to their notice and consequence thereof was explained to them. This time, the accused persons present in the dock also reiterated their innocence, non complicity and declined to adduce any evidence in their favour through defence witnesses but condemned prisoner Md. Foysal Bin Nayeem @ Dip and convicts–Muksudul Hasan Anik, Md. Nayeem Sikder @ Irad, Nafis Imtiaz and Sykhul Hadis Mufti Mohammad Jashim Uddin Rahmani submitted written

statements while convict Md. Ehasan Reza @ Rumman expressed few words verbally.

Having considered the evidence and facts and circumstances of the case, learned Judge of the Druto Bichar Tribunal found the condemned prisoners guilty of the offence under sections 302/34 of the Penal Code and sentenced them to death with a fine of Tk. 10[ten] thousand each and also found Muksudul Hasan Anik guilty under sections 302/34 of the Penal Code and sentenced him to suffer imprisonment for life with a fine of Tk. 10[ten] thousand, in default, 01[one] year simple imprisonment, Md. Ehsan Reza @ Rumman, Md. Nayeem Sikder @ Irad and Nafis Imtiaz found guilty of the offence under section 304 Part I and 34 of the Penal Code and sentenced them to suffer rigorous imprisonment for a period of 10[ten] years each with a fine of Tk. 05[five] thousand, in

default, 06[six] months simple imprisonment while Sykhul Hadis Mufti Mohammad Jashim Uddin Rahmani under section 304 Part II and 109 of the Penal Code and sentenced him to suffer imprisonment for 05[five] years with a fine of Tk. 02[two] thousand, in default, to suffer simple imprisonment for 02[two] months and Sadman Yasir Mahmud under section 304 Part II and 34 of the Penal Code and sentenced him to suffer imprisonment for 03[three] years with a fine of Tk. 2[two] thousand, in default, to suffer simple imprisonment for two months.

Mr. Mohammad Atiquel Haque [Selim] along with Ms. Bilkis Fatema, learned Assistant Attorney Generals has taken us to the FIR, inquest report, DNA Test, seizure lists, autopsy report, charge sheet, testimony of the witnesses and impugned judgment and other connected documents on record wherefrom it transpires

that the victim was killed by the condemned prisoners and five others on 15.02.2013 between 08:30 and 08:45 pm in a pre-planned manner after having been instigated by accused Sykhul Hadis Mufti Mohammed Jashim Uddin Rahmani.

Mr. Ahsanullah, learned Advocate contends that there is no specific charge framed against the convict Nafis Imtiaz. Although common intention has been shown against him but there is no evidence in this regard. Even so, charge itself is contradictory.

According to the confessional statements, Nafis Imtiaz was not present at the time of purchasing chapati, knives, mobile sim and its set. According to his own confession he had gone back half an hour before the occurrence took place showing that he was not involved with the killing incident. For the sake of argument, if his confession is accepted by court as

true and voluntary that does not bring him within the ambit of murder charge. It is not proved by rendering evidence on the event of trucking call list serving mobile phone and bicycle as allegedly used by Nafis Imtaiz for detecting home of the victim.

Mr. Ahsanullah further assails for other convict-appellants namely Foysal Bin Nayeem @ Dip, Md. Nayeem Sikder @ Irad and Mohammad Ahsan Reza @ Rumman that impartial, trustworthy and credible evidence are not available and 'last seen theory' would be applicable in this case to explain about the victim by his girlfriend Tanzila who was seen with him at 05:30 pm prior to the occurrence and the prosecution failed to prove last seen theory [Bhola -Vs-State, reported in 55 DLR 37]

Confessions of the accused run counter to the prosecution case that the informant said, his son was

neither a blogger nor atheist but pro-liberation activist whereas confessions disclosed that victim was an atheist [41 DLR (AD)157] and when there is no eye witness or any corroboration of the evidence and the deposition of the prosecution witnesses runs counter to the confessional statement, it is not safe to sustain any conviction [State-Vs- Hamidul and others, reported in 61 DLR, 614].

The confession of one co-accused cannot be used for corroborating the confession of another co-accused because both are tainted evidence [State-Vs- Mukhtar Ali, reported in 10 DLR (1958)155].

Police diary cannot be used as evidence of any date, fact or statement referred to it. This can be used only for the purpose of assisting the court in the appreciation of the evidence and to clear up any

doubtful event [The State –Vs– Md. Abdur Rashid, reported in 1987 BLD (AD)73].

Mr. Abdur Razaque Khan learned Senior Counsel, for convict Maksudul Hasan Anik submits that the investigating officer detained the accused Anik in his custody violating the provision of section 61 of the Cr.P.C as the accused Anik was arrested by him on 28.02.2013 and produced him before the court on 02.03.2013. Even then, he was again produced before the judicial magistrate on 10.03.2013 despite 09.03.2013 after 07[seven] days' police remand [The State–Vs–Md. Farid Karim, reported in 8 BLT (AD) 87 and The State –Vs–Mofiz Uddin and others, reported in 15 BLT (AD) 105]. The chain of circumstances has been broken by the evidence of prosecution witnesses in this case and the accused is not supposed to make out his defence case by giving

suggestions or by his statement under section 342 of the Cr.P.C. If it is found unfavorable from the lips of prosecution witnesses during cross-examination it may create benefit of doubt which goes to the favour of the accused persons [Pulin Mahajan -Vs- The State, reported in 8 ADC (AD) 982].

In the present case statements of some witnesses including pw-13 were recorded long after the occurrence, cannot be used as corroborative evidence [Aminullah and others -Vs- Serajul Huq and others, reported in 18 MLR (AD) 135 and State -Vs- Kazi Mahbub Uddin Ahmed, reported in 18 BLC (AD) 210].

A confessional statement made by a co-accused cannot be used against other accused unless there are lending assurance to the other evidence on record because his statement of veracity cannot be tested by



cross-examination to be used as sole basis of conviction in the absence of independent and corroborative evidence as per sections 3 and 30 of the Evidence Act [Babor Ali Mollah and others -Vs- State, reported in 44 DLR (AD) 10, Amir Hossain Howlader -Vs- the State, reported in 1984 BLD (AD) 193 and Lutfun Nahar Begum -Vs- the State, reported in 27 DLR (AD) 29].

Mr. Razaque further submits that a confession of an accused cannot corroborate the confession of another accused when their confessions are so found retracted [The State -Vs- Mukhtar Ali and another, reported in 10 DLR 155]. According to sections 164(3) and 364 of the Cr.P.C pw-29 being recording officer failed to make a memorandum to the confession containing a clause to the effect that 'he alerted the accused who was not bound to make

confession and if he does so it would be used against him and the same was recorded as per version of the maker and which was read over to him and found true and correct version' [Sohel @ Sanaullah -Vs- the State, reported in VII ADC (AD) 261, State- Vs- Nuru Miah, reported in 20 BLC (AD) 241 and State -Vs- Babul Miah, reported in 63 DLR (AD) 10.

Mr. S.M Shafiquel Islam, learned State defence lawyer for Redunul Azad @ Rana submits that accused Rana played no role when the attack was made on the victim and his hiding is very significant in a sense that he might be harassed and humiliated by police in the name of investigation. Citing some decisions namely 1984 BLD (AD) 193, 48 DLR (1996)305 and 58 DLR (2006) 373 learned State defence lawyer argues that there is no evidence adduced by the prosecution witnesses against him except confessional statements of

co-accused which disclosed that he was with them involving in the killing of the victim in a preplanned manner. Confessions of co-accused are not enough to find him guilty.

Apart from these arguments made by State defence lawyer for absconding convict Reduanul Azad @ Rana, Mr. Abdun Nur, learned Advocate by dint of Criminal Miscellaneous Case No. 10481 of 2017 supplements that Rana was all along in Malaysia having no knowledge about the instant case and he was arrested after concluding hearing of the death reference. And then he points out that confession of a co-accused is not evidence as defined in section 3 of the Evidence Act because it is not made on oath in presence of the person affected and its veracity is not tested by cross-examination [Lutfunnahar Begum -Vs- the State, reported in 27 DLR (SC) 29 and Amir

Hossain Howlader –Vs– the State, reported in 1984 BLD (AD) 193]. Mr. Abdun Nur, lastly has drawn our attention to commute the sentence imposed by the trial court, if the Appellate Court finds Reduanul Azad @ Rana guilty in the commission of murder charge in any way.

Mr. Mosharof Hossain [Kajol], learned Advocate contends that according to section 221 of the Cr.P.C charge must be described elaborately to the accused persons but that was not done at the time of amending the charge by the Druto Bichar Tribunal. The deceased was a blogger who defamed Islam and Prophet Hazrat Mohammad [S] as alleged by the prosecution, has not been proved by providing sufficient evidence. The informant, father of the victim, even said his son was not a blogger or atheist and nothing was recovered by police at the showing of accused Sadman

in connection with the alleged murder incident. It is further contended that the alleged confession of Sadman seems to be exculpatory in nature and he had no participation in the killing of the victim and as such the same cannot be used against him as evidence [Bashar and others –Vs–the State, reported in 15 BLT (HC) 2007].

Mr. Md. Moniruzzaman, learned Advocate contends that complicity as to the alleged commission of offence is absent against the convict-appellant Mufti Mohammad Jashim Uddin Rahmani who made a confession under duress. There is no evidence adduced by the prosecution that Rahmani instigated the other convicts by giving speeches at the mosque to kill the victim Razib and he has been victim of circumstances and he knew nothing about the alleged occurrence. The order of conviction by the trial court is perfunctory and

is not based on legal reasoning and proper appreciation of evidence.

In proving the offence of killing, Dr. Md. Nazim Uddin, father of the victim and also informant of the case, being pw-01 stated in his deposition that at the time of occurrence he was at Kapasia in Gazipur district. Getting news from his nearest relative pw-16, he along with his wife came to the scene at 11:30 pm and was told by his younger son that his elder son Ahmed Razib Haider had been killed by unknown persons in front of their boundary wall of the house and the assailants left a dagger and a chapati after the killing incident took place in a pre-planned manner. Having rushed to the Pollabi police station he lodged the FIR, marked as exhibit-1 and his signature as exhibit 1/1. Later, he came to know through electronic media and news papers that his son was killed by the

accused persons being inspired by accused Jashim Uddin Rahmania and all the accused apprehended by police made confessional statements involving themselves in the killing of his son.

From the trend of cross-examination by the defence it reveals that the accused persons did not commit the killing offence rather the victim was killed by unknown persons due to matrimonial conflict between the victim and his-in-laws. It is also found in the evidence of pw-1 that he was not residing in the residence at Dhaka as he was doing work at Kapasia, Gazipur but the fact remains that he has narrated the exact time, place and manner of the occurrence. He used to come to his Dhaka's residence from time to time where his deceased son, younger son and nephew [Kazi Galib pw-02] used to reside together.

At the time of occurrence Galibul Islam alias Kazi Galib [p.w-02] and Newaz Haider Rubel [p.w-03] both were in the house situated at 56/3, Polash Nagor, Mirpur. Pw-02 stated in his evidence that Newaz Haider and victim Razib Haider both are his cousins. They lived together in the said house at Polash Nagor. On 14.02.2013 at 11:00 am they were in the house while 4/5 youths playing cricket near north side of their house. A cricket ball entered inside their house from outside. A tall bearded man aged about 22/23 years knocked to open the door as the ball entered into the premises of the house. Taking his [bearded man] ball back he asked them to close the gate. The witness then made an inquiry to Rubel that usually young boys used to play on the place where the youths were playing cricket having seen the bearded man. Thereafter, they closed the gate. Next



day i.e on 15.02.2013 between 08:32 pm and 08:45 pm he heard clamor from outside when Newaz Haider was watching TV in a nearby room. At that time his cousin Razib was outside of the house.

Instantly both of them rushed to the place and found Razib Haider, critically injured, lying on the street of Polash Nagor nearby northern boundary wall of their house. Locals along with their maternal uncle came to the spot from surrounding areas and police and journalists also came within half an hour. Their maternal uncle Khurram Haider [p.w-16] informed the relatives including parents of the victim who came later. On 2<sup>nd</sup> or 3<sup>rd</sup> March he along with his cousin Newaz could see five accused persons at DB office including that bearded man named Dip who took the cricket ball back from the premises of their house. In their presence the accused persons elaborately admitted the

killing of the victim giving their individual own identities as Dip, Rumman, Anik, Irad and Nafis who mentioned the names of Rana, Sadman and Jashim as being involved with the killing mission.

This witness has been cross-examined by the defence elaborately but his evidence could not be shaken with regard to the identity of the bearded man and time, place and manner of the occurrence in any way. Defence suggestion is that the victim was killed due to having extramarital relationship with one Tangila which inspired some interested quarters to kill the victim. Such kind of suggestions do not sustain the reality of fact as alleged by the defence.

Younger brother of the victim as pw-03 deposed supporting evidence of pw-02 that he along with his brother victim-Razib Haider and cousin Galib used to live together in the same house. The occurrence took

place on 15.02.2013 between around 08:30 and 09:00 pm on the street of Polash Nagor near the northern boundary wall of their house. On 14.02.2013 he along with Razib and Galib were in the house. At about 11:00 pm he saw 4/5 youths playing cricket on the street and a youth took a cricket ball back having entered their house and asked them to close the gate. Next day around 08:45 pm he and Galib on hearing clamor went to the place and saw his elder brother Razib, being critically injured, lying on the street. On their shouting locals including their maternal uncle Khurram Haider reached the spot. Their maternal uncle informed all of their relatives over cell phone and within half an hour police came to the scene and prepared inquest report, seized alamot including a blood stained knife and chapati, Laptop and Nokia set i-phone. Police also seized a wallet of victim along with Tk.

600/-. He signed the seizure list and police took the dead body for autopsy. His father came at 11:30 pm and on hearing the incident became unconscious. Thereafter, his father lodged the FIR with the police station at late night. He along with his cousin Galib rushed to the DB office on 02.03.2013 where they identified accused Dip who took the ball back from their house one day prior to the occurrence. They also identified accused Anik, Rumman, Nafis and Irad along with Dip who killed his elder brother brutally in a pre-planned design. In their presence this five accused admitted their guilt for the killing of the victim at DB office. He signed the seizure list of blood stained chapati, knife, Laptop and an i-phone Nokia set, a black colored modem and a wallet along with Tk. 600/- of the victim, marked as material exhibit-i and his signature as exhibit 2/2.

The defence thoroughly examined this witness claiming that the victim had extramarital relationship with one Tangila for a long time but he denied the defence suggestion replying that his elder brother Razib Haider was not killed due to extramarital relationship with the said Tangila.

PW-04 Md. Zakir Hossain stated in his deposition that on 02.03.2013 from 07:30 to 08:00 pm DB Police entered their office with the help of the guard where he and pw-05 were present at the address. Police recovered a pair of canvas being cut at the pointing of accused Rumman in their presence and prepared seizure list, marked as exhibit-03 where he signed, marked as exhibit-3/2 and a pair of Reebok canvas, marked as material exhibit-II. He further stated that the canvas shoe seemed to be cut by chapati and he recognized the same in court. He

denied the defence suggestion that he signed white paper at the behest of police.

Pw-05 Zahirul Islam echoing the evidence of pw-04 testified that he was working as MLSS in the office of film publishing directorate and lived at 112, Circuit House Office compound. On 02.03.2013 from 08:00 to 09:00 pm DB police came to their address where they lived and recovered a pair of canvas shoes. Accused Rumman along with another was with them. He signed the seizure list, prepared by police in their presence and his signature, marked as exhibit- 3/3 and he recognized the cut canvas shoes in court. On cross-examination he replied that he did not know whether police took the signatures from the accused- persons on the seizure list and denied the defence suggestion that he deposed at the directives of police.

Mohammad Iskander Ali as pw-06 deposed that on 02.03.2013 at 21:35 hours DB police along with two accused came to Sher-e-Bangla Nagor, Agargaoan near western side of Govt. Girls High School and recovered a mud stained chapati and three knives at the showing of the accused from dirty-drainage in their presence. He signed the seizure list prepared by police, marked as exhibit-04 and his signature as exhibit 4/2. Both the accused persons were named as Rumman and Anik. He also signed the seizure list [marked as exhibit-05 and his signature as 5/2] of recovered seven sets of mobile phones of the accused placed by ADC Moshiur at DB office on 13.03.2013 at 12:00 am. He denied the defence suggestions that in his presence nothing was recovered and did not sign the seizure list at DB office.

Pw-07 Mita Das Gupta testified that accused Rumman used to reside in the ground floor of the building at 84/3/A Kakrail where DB police came on 03.03.2013 at about 12:30 pm and seized books, ID card and desktop in his presence and prepared seizure list, marked as exhibit-06 and his signature as exhibit-6/2. On cross-examination he replied that he did not know who brought the books and desktop.

Md. Mouazzem Hossain Chowdhury as pw-08 stated in his deposition that he used to reside on 3<sup>rd</sup> floor of a multi-storied building situated at 82, Block-D, Road No. 05, Bashundhara. Accused Rana lived on 4<sup>th</sup> floor and DB police having reached there seized banglalink packet sim, book, visiting card, a photo and copy of vio-data in his presence and prepared a seizure list, marked as exhibit-07 and his signature as exhibit-7/2. He denied the defence suggestions that



nothing was recovered in his presence and signed the seizure list in fear of police.

Pw-09 Md. Akram Hossain Mithu in his deposition stated that he used to work as a salesman of M E Enterprise at Kalachandpur. On 13.02.2013 he sold four banglalink mobile sets to one bearded man at Tk. 520/-[five hundred and twenty]. Police along with a bearded man came to his shop on 05.03.2013 at about 11:00 pm and asked him whether he knew that bearded man naming as Dip. He replied in positive. Police prepared seizure list, marked as exhibit-08 and his signature as exhibit-8/2. Thereafter, he made a statement before the magistrate on 02.06.2013, marked as exhibit-09 and his signature as exhibit-9/1. He denied the defence suggestions that he did not identify the bearded man and give false evidence as per directives of police.

Pw-10 Md. Mustafa supporting the evidence of pw-09 deposed that he is the owner of 'M. E Enterprise'. From his shop salesman Akram Hossain Mithu sold four banglalink sims at Tk. 520/-on 13.02.2013 at 05:00 pm. Police asked him whether his salesman sold the same to the man brought by police before them on 05.03.2013 at about 11:00 pm. He replied in the positive. Police prepared the seizure list, marked as exhibit-08 where he put signature, marked as exhibit-8/3. He identified tall bearded man in the dock of the court. He denied the defence suggestion that he deposed falsely in fear of the police.

Pw-11 Md. Abdul Manan testified that he is the owner of Junaki Tailors. On 05.03.2013 between 03:00 and 03:15 pm police came to his shop asking him to go with them to the house of 18/C,

Shukrabad, a rented house of Irad, from where police seized a laptop, charger and Islamic books and prepared seizure list, marked as exhibit-10 and his signature as 10/2. He recognized the seizing articles in court. On cross-examination he told that he did not give statement to the police and he gave a signature only.

Pw-12 Md. Robiul Islam deposed that he used to reside on the 5<sup>th</sup> floor of house No.317, Road No. 12, Block-C, Bashundhara and he had gone downstairs after having being asked by DB Police on 05.03.2013 at 23:35 hours. Police along with Nafis entered the room of Nafis and seized books, ID Card, laptop at the showing of Nafis and prepared seizure list, marked as exhibit-11 and his signature as exhibit 11/2. He denied the defence suggestion that he deposed falsely.

Manik Karmokar as pw-13 testified that he used to deal with blacksmith business at Natun Bazar over the past 25-30 years. He sold four knives and two chapatis at a cost of Tk. 2600/- to a youth on 06-07 February, 2013. He came to know later through electronic and print media that the incident had taken place with those weapons and he identified the youth brought by police before him. The name of the youth is Anik who admitted in his presence that he bought those weapons from him. Before the magistrate he made a statement, marked as exhibit-12 and his two signatures as exhibit-12/1 and 12/2. He denied the defence suggestion that he did not mention in the statement that a youth bought four knives and two chapatis from his shop.

Rina Akter, a neighbor of the deceased, being Pw-14 testified that she was returning to her husband's

house from her father's house on 15.02.2013 at about 08:45 pm. On hearing clamor she advanced towards the spot and could see 12/13 persons gathered there and a dead-body lying with blood stained wounds on the earth. On query she came to know that the name of dead body is Razib Haider residing in the house near the wall of the occurrence. Having felt fear on seeing blood she left the spot then and there. She further came to learn the incident from several electronic and print media. She denied the defence suggestion that hiding real clue she rendered evidence.

Pw-15 Abdul Ohab stated in his deposition that he used to work at a motor garage at Metro Housing, Bosila Road, Mohammadpur nearby southern side of Markas Mosque. Around two years ago on 13<sup>th</sup> August at about 04:00-04:30 pm police recovered a lot of books from a house and prepared a seizure list

[exhibit-13] where he signed and his signature marked as exhibit-13/2. On cross-examination he said police told him that some books were seized.

Pw-16 Khurram Haider deposed that he is a retired Bank Officer. Deceased Razib Haider was his nephew. Corroborating evidence of pws 1, 2 and 3 he narrated that he promptly came to the scene after hearing hue and cry and saw the dead body of his nephew with blood stained wounds and also saw one Abdus Sattar, his other nephews namely Newaz Murtoza Haider and Galib weeping beside the dead body. He informed his brother-in-law Dr. Nazim Uddin, father of the victim, over cell phone. Meanwhile police came to the spot and prepared inquest report, marked as exhibit-14 and he gave signature [exhibit-14/2] on it. Locals namely, Motiur Rahman, Abdus Sattar [pw-19], Abdur Rashid [pw-18] and Golam Kabir [pw-17]

also signed the same. Police also seized blood stained chapati and knife, wallet with Tk. 600/-[six hundred], black modem, blood stained laptop and Nokia phone set of the deceased. Father of the victim went to the police station after sometime. This witness replied on cross-examination that no step was taken against guards for the incident and they used to work based on shift duty.

Md. Golam Kibria as pw-17 deposed that deceased was his cousin. The occurrence took place on 15.02.2013 and he received news of the incident at about 09:30 pm over telephone. He came to the spot and saw his cousin Razib being blood stained wounds lying on the ground. Police cordoned off the area and held inquest report where he signed as witness No. 03 in the serial. His uncle and aunt having come to the spot started crying and dead body

was taken after holding inquest report. Around 15–20 days later, he came to know from Newaz Haider [Pw–03] that the killers of Razib Haider had been apprehended. He denied the defence suggestion that he did not tell the police about his arrival at the spot.

Pw–18 Md. Abdur Rashid testified that he is a retired General Manager of Agrani Bank. On hearing hue and cry he came down from the second floor of his building and saw the dead body of Razib Haider with blood stained wounds lying on the spot and he could see Razib's younger brother Newaz and cousin Galib crying beside the dead body. Sometimes later, police having come to the spot prepared inquest report where he along with four others signed and his signature, marked as exhibit–14/4. On cross–examination he replied that wife of Razib Haider came



to his house once or twice but could not see her to stay there.

Pw-19 Md. A. Satter supporting the evidence of pw.16 testified that he was the Secretary of Plot Owners Kallyan Samity. At the time of the occurrence on 15.02.2013 at about 08:45 pm, he came out of the samity office when he heard clamor from the street near the house of 56/3. He along with others saw the dead body of Razib Haider with blood stained wounds lying on the street. Thereafter, police came and held inquest report. Police after seizing wooden chapati, iron knife and laptop, one Nokia phone [black], modem and wallet of the victim prepared seizure list, marked as exhibit-2 and his signature as exhibit-2/3. On cross-examination he replied that there has been a G.D number in the inquest report and he

did not make any statement before any agencies or any other person about the incident.

Pw-20 Md. Alamgir Hossain @ Nuru Miah deposed that he is a security guard of Palash Nagor Plot Owners' Samity. The occurrence took place on 15.02.2013 at 08:45 pm. After evening he was on duty up to 07:00 am next day at Gate No. 02. During his duty he could see two men running away and he then heard that a killing incident took place in front of House No. 56/3 about ½ kilometer is far from his work place. He heard that landlord's son Razib has been killed. On cross-examination he said he did not hear any shouting.

Pw-21 Constable Nur Amin deposed that he along with Constable Asadul Haque went to Dhaka Medical College on 17.02.2013 for collecting alamot after post-mortem examination of deceased Razib. He

took a sealed plastic pot and a tube from the doctor of morgue to DB Inspector Mainul Islam who prepared seizure list where he put his signature, marked as exhibit-15/2. He was one of the members of raiding party under DB Inspector Mainul Islam who took accused Dip, Anik, Irad, Rumman and Nafis to DB office after arrest. On cross-examination he said he did not know whether there was any warrant for arresting the accused person.

Pw-22 Md. Alamin stated in his deposition that between 2012 and 2013 he worked in 'Sale World Symphony' shop at 16 Malibagh Chowdhury Para. In the 1<sup>st</sup> week of March, 2013 DB police came to their shop and seized cash memos of selling four mobile sets at a cost of Tk. 1350/-or 1370/- and prepared a seizure list where he put his signature, marked as exhibit-16/2. He identified the tall bearded man

wearing T-shirt in dock of the court. He denied the defence suggestion that he deposed falsely.

Pw-23 Anwar Hossain supporting the evidence of pw-22 deposed that he is the owner of 'Sale World Symphony' shop. Police after seizing cash memos prepared seizure list where he put his signature, marked as exhibit-16/3. He denied the defence suggestion that he gave untrue evidence in fear of police.

Pw-24 Constable Md. Asadul Haque corroborating the evidence of pw-21 deposed that he along with Constable Nur Amin went to Dhaka Medical College on 17.02.2013 for collecting alamot after autopsy report of dead body of deceased Razib. He took a sealed plastic pot and a tube from the doctor of morgue to DB Inspector Mainul Islam who prepared seizure list where he put his signature, marked as exhibit-15/32.

He was one of the members of raiding party under ADC Moshur Rahman along with Inspector Mainul Islam and A.C Towhidul Islam who took accused Dip, Anik, Irad, Rumman and Nafis to DB office after arrest. On cross-examination he said he did not know who prepared the packet and sealed the same.

Pw-25 Md. Asaduzzaman Nur deposed that being metropolitan magistrate he recorded confessional statement of accused Sykhul Hadis Mufti Md. Jashim Uddin Rahmani giving him sufficient reflection time under section 164 of the Cr.P.C on 02.09.2013 in connection with Pollabi Police Station Case No. 40(2)13. The statement has been marked as exhibit-17 where he put five signatures, marked as exhibits-17/1 to 17/5 and the accused also put five signatures therein. In cross-examination he replied that no G.D entry has been mentioned in the said case.

Accused told him that he was arrested on 27.08.2013 and DB police took him on remand. It was not mentioned for how many days he was on remand. He did not give separate certificate that the confession was made voluntarily. He denied the defence suggestions that the confession was not made according to will of the accused rather at the instigation of police and without following rules and provisions of sections 164 and 364 of the Cr.P.C.

Pw-26 Md. Shahariar Mahmud deposed that he being metropolitan magistrate at Dhaka recorded confessional statement of accused Sadman Yasir Mahmud on 20.08.2013 under section 164 of the Cr.P.C in connection with Pollabi Police Station Case No. 40(2)2013. He followed all provisions of law at the time of recording the same, marked as exhibit-18 and he put his seven signatures on it, marked as

exhibits-18/1 to 18/7 and the accused also put three signatures thereon. In cross-examination he replied that he did other works while giving the accused three hours reflection time and the accused did not tell him about his participation in the killing of the victim. He denied the defence suggestions that he did not follow all provisions of law at the time of recording his confessional statement and the same was not made voluntarily.

Pw-27 Md. Anisur Rahman, Sub-Inspector of Police, deposed that he was on duty at Pollabi Police Station from 08:00 pm of 15.02.2013 to 08:00 pm of 16.02.2013. On 16.02.2013 at 04:20 am he recorded FIR column of an ejahar submitted by one Dr. Nazim Uddin. FIR form has been marked as exhibit-19 and his two signatures, marked as exhibits-19/1 and 19/2. He also put a signature on the ejahar, marked as

exhibit-1/2. In cross-examination he responded that there has been no name in the FIR. Police station is around 2½ km far from the place of occurrence and it takes half an hour to reach there. He denied the defence suggestion that he did not fill up the FIR form properly.

Pw-28 Md. Mahmud Hasan being scientific officer deposed that his colleague Ahmed Ferdous, a scientific officer, sent eleven materials of Pollabi Police Station Case 40(2)2013 to their laboratory for DNA test. Having examined and analyzed he sent the report with his opinion, marked as exhibit-20 and his signature as exhibit-20/1. In cross-examination he replied that at exhibit-D, hair sample and blood stained from crime scene, at exhibit-E same thing has been mentioned, at exhibit H-F blood stain on knife [chapati], at exhibit H hair sample from the victim's left hand, at exhibit J



hair sample collected by doctor from the victim's left hand, have been written. He denied the defence suggestion that his report was not prepared following scientific procedures.

Pw-29 Md. Harun-or-Rashid deposed that he was performing judicial functions as metropolitan magistrate at Dhaka. On 10.03.2013 accused Foysal Bin Nayeem @ Dip, Maksudul Hasan Anik, Ehsan Reza Rumman, Nayeem Sikder @ Irad and Nafis Imtiaz of Pollabi Police Station Case No. 40(2)2013 were produced before him at 10:00 pm for recording their confessional statements. Having followed all provisions of law he asked them whether they had willingness, being tortured or threatened in custody and he also examined them whether they had any injuries on their persons and alerted them that they were not bound to confess and if they confess it would go

against them as evidence. He retained them in his chamber before recording their statements. He gave them sufficient reflection times and they replied in the positive. He first recorded confessional statement of accused Foysal Bin Nayeem @ Dip from 01:00 pm to 02:00 pm, marked as exhibit-21 in which he put five signatures, marked as exhibits-21/1 to 21/5 and accused also put eight signatures thereon. Thereafter, he brought accused Maksudul Hasan Anik through his peon to his chamber and recorded his statement from 02:00 pm to 03:00 pm, marked as exhibit-22 and his five signatures marked as exhibits-22/1 to 22/5 where accused also put seven signatures. He recorded statement of accused Md. Ehsan Reza @ Rumman from 03:00 pm to 04:00 pm, marked as exhibit-23 and his five signatures marked as exhibit-23/1 to 23/5 where accused also put six signatures. He

recorded statement of accused Md. Nayeem Sikder @ Irad from 04:00 pm to 05:00 pm, marked as exhibit-24 and his five signatures, marked exhibits-24/1 to 24/5 and accused also put six signatures thereon. Lastly, he had finished recording statement of accused Nafis Imtiaz at 05:00 pm, marked as exhibits-25 and his five signatures, marked as exhibit-25/1 to 25/5 and the accused also gave six signatures in Bangla and one signature in English. Thereafter, he sent all the accused persons to Dhaka Central Jail with custody warrants. In cross-examination he responded that his peon brought the accused before him. He cannot recall whether the accused were handcuffed. All the five accused persons were brought before him on the same day i.e on 10.03.2013. On 02.03.2013 remand prayer for seven days was allowed. He denied the defence suggestions that the accused persons were on police

remand for eight days and he did not follow the provisions laid down in law at the time of recording their confessional statements.

Pw-30 Constable Md. Monsur Rahman deposed that on getting news of the incident he went to the spot at Polash Nagor along with other police personnel including S.I Motiur Rahman who held inquest report of deceased blogger Razib and he took the dead body of the deceased to Dhaka Medical College with challan for autopsy. Sub-Inspector Motiur Rahman seized the wearing apparels of the deceased and prepared seizure list later on where he signed. In cross-examination he said there is no signature of relatives of the victim in the seizure list for identification.

Pw-31 Dr. Sohel Mahmud testified that he was on duty at forensic department of Dhaka Medical College as Associate Professor. Constable Md. Monsur

Rahman brought the dead body of Razib Haider and he examined the same and found the following injuries,

[1] Multiple chops wound on

(a) 1" about the left ear to upper jaw  
( 6"X1"X1½" ).

(b) Left cheek 1" front of left ear to  
mid chin ( 6"X1"X1" ).

(c) Left cheek 1" front of the left  
ear to below and mid chin ( 6"X1"X1" ).

(d) Along with lower margin of the  
left mandible below the left ear to mid neck  
( 5"X1"X1½" ).

(e) Back of right ear on mastoid  
process ( 1½"X ½" ).

(f) 2[two] chops wound on the  
occipital region 2" apart from each other  
( 3½"X½"Xbone ) and placed transversely

(II) Inside wound on left shoulder (1"X  
 $\frac{1}{2}$ "X $\frac{1}{2}$ " ).

On dissection

(1) Hematoma found on left front to  
 temporal (3"X 2" ), occipital  
 (3"X 2" ), right temporal (2"X  
 1" ) of the skull.

(II) Left carotid artery cut

(III) Occipital bone partially cut

(IV) Angle of left mandible @  
 mid mandible cut fractured

(V) Maxilla (left & upper) jaw  
 cut fractured

(VI) Left Zygomatic bone cut  
 fractured

(VII) Left sided orbital ridge of  
 frontal bone found cut fractured.

In his opinion, the cause of death was shown due to hemorrhage and shock resulting from above mentioned injuries which were ante mortem and homicidal in nature and he signed the postmortem examination report, marked as exhibit-28 and his signature as exhibit-28/1.

In cross-examination he replied that the cause of death might happened due to accidental, homicidal and suicidal which could identify by investigating officer who also sought advice from the doctor. He could not say that the victim died due to lack of proper treatment. Age of injury has not been described as there is no column in the report. In reply he said he found the injuries on the shoulder, neck and around the face of the victim and no injury was found on the lower part of the body. He denied the defence suggestions that according to medical jurisprudence he has no authority

to state 'homicidal in nature' and he rendered the autopsy report without mentioning specific cause of death and he was not capable to ascertain the injury.

Pw-32 Mizanur Rahman testified that he was security supervisor of House No. 205, Block-B and Road No. 6 at Bashundhara. On 03.03.2013 from 10:00 to 10:30 pm DB Police came to the house of accused Anik from where they seized one ID card, laptop, charger, black bag and a book. He along with security guard Lutfor signed the seizure list, prepared by DB police. In cross-examination he replied that he did not have idea about the laptop and did not go through the book seized by police and police showed him the seizing goods.

Pw-33 S.I Sheikh Motiur Rahman deposed that he was on mobile duty as Sub-Inspector of Pollabi Police Station on 15.02.2013. He along with two



constables went to the scene at Polash Nagor where they found dead body of Razib Haider being blood stained wounds lying on the street in front of House No. 56/3. He sent the dead body of the victim to Dhaka Medical College through constable Monsur after preparing inquest report at 22:30 hours, marked as exhibit-14 and his signature as exhibit-14/1. He also seized a wallet along with Tk. 600/-, one modem, one Nokia set and an i-phone. He signed the seizure list, marked as exhibit-2 and his signature as exhibit-2/1 and material exhibit-III series. He identified the alamots in court. He visited the place of occurrence of Pollabi Police Station Case No. 40 dated 16.02.2013 and prepared sketch map with index, marked as exhibit-30 and his signature as exhibit-30/1 and exhibit-31 and his signature as exhibit-31/1. He recorded statements of two witnesses.

On 16.02.2013 he prepared the seizure list of wearing apparels of victim Razib placed by constable Monsur and he signed the seizure list, marked as exhibit-27 and his signature as exhibit-27/1 and the wearing apparels, marked as materials exhibit-IV series which have been identified by him in court. On 18.02.2013 he handed over the case docket at the order of higher authority. In cross-examination he replied that he went to the place of occurrence at 09:45 pm and remained there till 01:00 am. He replied that the victim along with his one girl friend went out of the house and he did not investigate about Tanzila. He denied the defence suggestions that he took measures not to find out the real clue and diverted the same to the accused persons implicating them falsely and helping Tanzila to flee abroad.

Pw-34 Md. Mainul Islam, an Inspector of Police, deposed that he was in the office of DB [west] on 15.02.2013. On getting news of killing incident he along with senior officers went to the place of occurrence at Palash Nagor. Sub-Inspector Motiur Rahman held the inquest report of deceased Razib Haider. On 16.02.2013 the charge of investigation was endorsed on DB. He officially received the case docket on 18.02.2013 at 09:00 am. At the verbal order he seized the alamots for DNA test of Razib Haider after receiving the same at DB office and prepared the seizure list, marked as exhibit-15 and his signature as exhibit-15/1. He visited the place of occurrence and recorded statements of some witnesses and verified the sketch map along with index which he found correct. On 02.03.2013 he arrested accused Anik and Nafis Imtiaz at 00:40 am [i.e on 03.03.2013] from

Bashundhara, Nayeem Sikder @ Irad at 02:50 am from Dhanmondi Shukrabad, Rumman at 03:00 am from Kakrail and Foysal Bin Nayeem @ Dip at 04:30 am from Malibagh Chowdhury Para and he produced the said accused persons before the court after arresting them consecutively and took them on police remand at the order of the court and further produced all of them before the court on 10.03.2013. All of them made confessional statements before the magistrate and he collected hard copies of the confessional statements.

During investigation of the case he recovered a pair of canvas shoes of accused Anik from the bank of a pond in the circuit house area at the showing of accused Rumman on 02.03.2013 at 19:45 hours. The shoes wearing by Anik was cut little with the blow of accused Dip. The seizure list of which prepared by him

has been marked, as exhibit-03 and his signature as exhibit-3/1 and material exhibit-V. At 21:35 hours he recovered [i] one 17" sized chapati made of iron [ii] one 16" knife [iii] two 14" knives in presence of the witnesses from dirty drainage water nearby Sher-e-Bangla Nagar Govt. Girls High School at the showing of accused Rumman and Anik. He prepared the seizure list, marked as exhibit-4 and his signature as exhibit-4/1 and material exhibit-VI series. In both seizure lists [exhibits-3 and 4] the seizing date was wrongly written as 01.03.2013 in spite of 02.03.2013 in the lower part.

On 03.03.2013 at 11:35 hours he recovered [i] one monitor, BENQ 20" [ii] one PC (premium) [iii] one school black bag [iv] one book along with some photo copies of leaflet [v] NSU ID card in presence of the witnesses from the house of Foyisal Bin Nayeem @

Dip at his showing at 446/C Khilgoan Chowdhury Para. The seizure list has been marked as exhibit-32 and his signature as exhibit-32/1 and material exhibit-VII series.

At 12:35 hours at the showing of accused Rumman he recovered [i] NSU ID card of M.A Hasan [ii] one desktop Samsung 20" [iii] a black colored PC [iv] two books written by Sykhul Hadis Mufti from his house situated at 84/3 Kakrail in presence of the witnesses and he prepared the seizure list, marked as exhibit-6 and his signature as exhibit-6/1 and material exhibit-VIII series.

At 20:45 hours in presence of the witnesses he recovered [i] one banglalink empty packet containing number 019-51469571, PIN No. 1234, PIN 2-68 and empty sim card packet [ii] one visiting card good manners in muslim society, in the light of Sura-Al-

Huzrat, participant mentioned [iii] three books naming (a) Shorno Dinar and Royppo Dirham written by Imran Nazar (b) Shasokborgo and its Shasok written by Shiok Abu Ahmed Ashem Al Magdimi (c) Zihad ar Bidhan of Islam written by Dr. Md. Nazibur Rahman (d) A photo of Rana (e) a curriculum CD, Vio data along with a photo of absconding accused Md. Rezanul Azad @ Rana from his house at 82 Block-D, Road No. 05, Bashundhara and he prepared seizure list, marked as exhibit-7 and his signature as exhibit-7/1 and material exhibit-IX.

At 22:30 hours in presence of the witnesses he recovered [i] ID card being No. 093022643, NSU University Student of Maksudul Hasan [ii] one laptop, made in Malaysia [iii] one charger [iv] one black bag [v] one book named Bandhar Gonaboli written by Junon Shikder Mufti Ibrahim A. Rashid at the showing

of accused Anik from his house at 205, Block-B, Road No. 06, Bashundhara. He prepared the seizure list, marked as exhibit-29 and his signature as exhibit-29/1 and material exhibit-X series.

On 05.03.2013 at 15:15 hours in presence of the witnesses he recovered [i] one laptop [ii] one charger [iii] one book named Kitabul Towhid written by Jashim Uddin Rahamani at the showing of accused Md. Nayeem Shikder @ Irad from his rented house at 18, Shukrabad and he prepared seizure list, marked as exhibit-10 and his signature as exhibit-10/1 and material exhibit-XI series.

At 20:35 hours at the showing of accused Dip he recovered one cash memo containing 'Sales World Symphony' at 16 Malibagh Chowdhury Para, serial No. 5751-5888 where at page 5768 Mr. Abdullah has been mentioned and B4 mobile symphony four sets



each cost at  $1370 \times 4 = 5480/-$  from the shop owner Md. Shorif Uddin. He prepared seizure list, marked as exhibit-16 and his signature as exhibit- 16/1 and material exhibit-XII series.

At 23:05 hours he seized [i] SAF Record Card mobile Sim Nos. 0195-1469570, 0195-1469571, 0195-1469572 and 0195-1469573 selling cash memo, each at cost of Tk.  $520 \times 4 = 2080$  placed by salesman Md. Akram Hossain at ME Enterprise, ka 24/1, Kalachandpur. Seizure list has been marked as exhibit- 8 and his signature as exhibit- 8/1 and material exhibit-XIII series. Accused Dip purchased this sim cards from salesman Md. Akram Hossain.

At 23:35 hours at the showing of accused Nafis Imtiaz he recovered [i] a book named Kitabul Akaid, written by Jashim Uddin Rahmani [ii] one black colored HP laptop along with black bag [iii] one ID Card of

Nafis Imtiaz, and NSU student bearing No. 1020009030 from his house at 317, Road No. 12 Block-C, Bashundhara. In presence of the witnesses he prepared seizure list, marked as exhibit-11 and his signature as exhibit- 11/1 and material exhibit-XIV series.

On 13.03.2013 at 12:05 pm he received from DB office [i] one mobile set ZTE Model ZTE S170 made in China MEID [DEC] 270113181101307877 sim city cell recovered from accused Rumman [ii] one mobile set NOKIA IMEI No. 353279105163089415 recovered from Nafis Imtiaz [iii] one Symphony FT 37 IMEI-354233051183894 recovered from accused Foysal Bin Nayeem [iv] one SAMSUNG Mobile set, GT C3262, IMEI No. 354910050346834 belongs to mother of Dip, [v] one Samsung mobile model No. GT S58301 made in China, IMEI No.

353632051247909 recovered from accused Anik, [vi] one Nokia X-2 IMEI No. 352441058638420 made in China, banglalink which recovered from accused Nayeem Shikder @ Irad, [vii] one Symphony mobile set, IMEI No. 356851032961837 attached with Banglalink sim. Taking signatures from the witnesses he prepared seizure list, marked as exhibit-5 and his signature as exhibit-5/1 and material exhibit-XV series.

On 13.08.2013 at 16:35 hours he seized [i] Unmukto Torbari 25 copies [ii] Phikhuz Zakat 31 copies [iii] Kitabul Iman 7 copies [iv] Tazkiatun Nufuz 255 copies [v] Chi ta Aluf Ma Allah 120 copies [vi] Sieam and Eid 33 copies [vii] Islam ar Nama Zihad 1 copy [viii] Towhider Mul Shikkha 70 copies [ix] Kitabud Doa 236 copies [x] Kitabus Sawom 51 copies [xi] At-tiboian 93 copies [xii] Sob-e-Borat 75 copies [xiii] Tamtitatun Nufuz 11 copies [xiv] Moron-er ageh

pore 3 copies [xv] Prosnouttor-Kitabuz Zakat 33 copies [xvi] Byat o mirate mustakim 5 copies [xvii] Kitabul Hujj 32 copies [xviii] Kitabul dawah 57 copies [xix] Din Kaiyem ar sothik path 3 copies [xx] Oder Mritho bolo na 9 pieces, written by accused Jashim Uddin Rahamani. [xxi] One broken computer CPU [xxii] One DELL Monitor [xxiii] One Samsung Monitor and [xxiv] CD, DVD set 120 pieces and prepared seizure list, marked as exhibit-13 and his signature as exhibit-13/1 and material exhibit-XVI series upon taking signatures from the witnesses and he recognized all the material exhibits in court.

On 15.08.2013 he arrested accused Sadman and also took him on police remand for six days and collected hard copy of confessional statement made by Sadman on 20.08.2013. Accused Jashim Uddin Rahmani was also shown arrested by him on

27.08.2013 and took the accused Jashim Uddin Rahmani on police remand and collected hard copy of the statement after his confession dated 02.09.2013 and recorded statements of witnesses under section 161 of Cr.P.C and handed over the case docket on 12.09.2013 at 09:35 pm. All the alamots which he recovered and seized, have been recognized by him in court.

In cross-examination he replied that he examined the informant about victim's girlfriend Tanzila who left Mirpur after having tea and informant could not say when Tanzila started coming towards their house at Palash Nagor and he examined Tanzila at DB office. He recorded statements of witnesses namely, Md. Akram Hossain Mithu, Md. Mustafa, Manik Kormoker on 02.06.2013 and Golam Kibria, Rina Akhter and Abdur Rashid on 10.08.2013 under section 161 of the

Cr.P.C. During his investigation he could not seize Bicycle, cricket bate stamp and musk. He did not arrange for holding TI parade to identify the accused. He recognized 13[thirteen] seizer lists, 7[seven] confessional statements recorded under section 164 of the Cr.P.C, 15[fifteen] statements recorded under section 161 of the Cr.P.C and the alamots of seizure lists in court. He denied the defence suggestions that he being biased by Tanzila falsely implicated the accused persons in the case and did not investigate the case properly.

Pw-35 Nibaron Chandra Bhormon deposed that he was on duty as police inspector at DB [west], Dhaka on 15.02.2013. He examined and analyzed the docket of this case after handing over to him on 13.09.2013. He also visited the place of occurrence and examined informant, inquest report, autopsy report

and recorded statements of some witnesses. Having found prima facie case he submitted charge sheet No. 26 dated 25.01.2014 against eight accused persons before the court and he informed the informant about the investigation result of the case and he also examined mobile call lists.

In course of cross-examination he replied that he did not try to examine Tanzila before 19.10.2013 but he met Tanzila while he was one of the members of the team. One day after the incident he saw Tanzila at DB office staying for one hour and the higher officials took notes of her query. He interrogated Tanzila about her coming out of house of the victim. He denied the defence suggestion that he overlooked the event of Tanzila to extract real clue of the incident. He investigated as to whether parents in law were alive at the time of occurrence. Members of

Intel-Group went to Shahbagh Gonojagoron Moncha on 09.02.2013 and started looking for Thabababa, for which there is no witness. There is no witness that the accused used to go to Markus Mosque for prayer every Friday. He did not record any statements of witnesses of seizure list residing around the mosque. DNA test was not done regarding holding hair in hand by the victim as the same had belonged to the victim, not to female. In the house three persons including Razib resided together which he found during investigation. He denied the defence suggestions that he got no culpability of the accused in the investigation, only on the basis of statements under sections 161 and 164 of the Cr.P.C he submitted charge sheet against them. It is not true that investigator Mainul Islam was dropped from the investigation because of comments and writings against



him published in several news papers. At that time none was transferred. His supervising officers were Deputy Commissioner, Monirul Islam, Mollah Nazrul, Additional Police Commissioner Mosiur Rahman and Assistant Police Commissioner Towhidul Islam who have not been made witnesses in the case. He denied the defence suggestions that to satisfy the media he submitted charge sheet against the accused persons and Razib was practically an arrogant person who had many girl friends including Tanzila would have to be brought into investigation for getting real clue of his murder.

Having gone through the FIR, charge sheet, evidence of the witnesses, confessional statements of confessing accused, impugned judgment of the trial court and other connected documents on record wherefrom it transpires that absconding accused Rana,

who was a student of North South University [NUS], belonged to the ideology of Islamic chhattro shibir and he being instigated by accused Sykhul Hadis Mufti Mohammed Jashim Uddin Rahmani, initially used to inspire the other accused persons at the prayer room of NSU to destroy those who demeaned Islam and Prophet Mohammad [S]. This absconding accused Rana often gave lessons to those on the university campus. Eventually, he invited them to attend Markus Mosque at Bosila for hearing Islamic governance during Khutba [sermon] on Friday by said Pesh Imam Rahmani. In the year 2012 Rana told them that some bloggers made criticisms against Prophet Mohammad [S] posting on facebook and he supplied those criticisms to them collecting from internet. In the month of January he informed them about a blogger titled as 'Thabababa' who wrote against Prophet Mohammad [S]

demeaning him and they recognized blogger Thabababa with his picture and shared the same to each other.

At one stage they made the plot to kill him after being identified because of criticism against Prophet Mohammad [S]. In the month of February, 2013 they came to know from 'facebook status' that Thabababa used to visit Shahbagh Projonmo Chottor. To identify him they established a branch named as 'Intel-Group' and for directly killing him they also made another branch named 'Execution-Group'. Accused Md. Ahsan Reza @ Rumman, Md. Maksudul Hasan Anik, Md. Nayeem Shikder Irad have been made members in the 'Intel-Group' while accused Md. Foyisal Bin Nayeem @ Dip, Maksudul Hasan Anik and Redwanul Azad @ Rana have been made members of 'Execution-Group'. Among them Rana was in the leading role, who had connection through cell phone with one Nafis residing in

America. Nafis also used to motivate Rana from America. Rana also used to motivate others to kill blogger Razib in the name of religious obligation as Razib was working against Islam. Rana assured them not to feel scared as they had judges, magistrates, police, higher officials and electronic and print media persons with them.

Rana gave them assurance that news papers and media would publish news in such a way that no one could understand that the blogger Razib had been killed by them. According to the plan, members of the Intel-Group having gone to Shahbagh recognized blogger Razib on 10.02.2013. Intel-Group member-Md. Ahsan Reza Rumman followed blogger Razib boarded bus riding on his bicycle up to Mirpur-10 inter section but in vain. On 12.02.2013 Razib's home at Pollabi was recognized. In order to rake over the house and

movement of Razib, Intel-Group played cricket at 11:30 am on the street on 14.02.2013. To make the killing mission successful Anik purchased two chapati and four knives. Dip and Rana purchased four unregistered banglalink sims at a cost of Tk. 520/-. They also purchased four symphony mobile sets from 'Sales World Symphony' at Malibagh. In the cash memo they mentioned purchaser's name as one Abdullah. At evening Rana distributed mobile phones to Dip and Rumman. On 15.02.2013 Rumman, Sadman, Irad and Nafis, members of the Intel-Group, were waiting in front of Razib's house and they informed Rana about Rajib's movement throughout the day. In the afternoon Rana and Anik went to the house of Dip at Khilgoan with chapati and knives. Dip, Rana and Anik reached the scene at the evening of getting information from Intel-Group.

It was 08:45 pm when Anik was carrying chapati and knives in bag while Dip had a school bag on shoulder. At about 08:50 pm Intel-Group member Rumman informed Rana that Thabababa was going towards his residence. Then Rana, Dip and Anik made themselves ready to kill Razib. Anik handed over a chapati to Dip from his bag keeping a knife in his hand. On pushing Dip, Rana pointed at Razib. Dip then in order to separate Razib's head dealt a blow with chapati. Getting hit Razib fell near the wall then Dip dealt more blows on him. One blow cut canvas shoes of Anik who, in fear, went to a distant place. Thereafter, Dip again dealt two more blows one by one on the upper body of Razib. Locals from surrounding areas started shouting. On hearing hue and cry at the killing incident from locals, the accused persons fled away leaving the chapati and knife near the incident

place from their hands. Immediately after the occurrence, locals came to the victim and found him dead with blood stained wounds lying on the street. Within half an hour police also came to the spot and held inquest report of dead body of the deceased and sent the same to Dhaka Medical College for autopsy.

The informant, father of the victim, lodged the FIR [exhibit-1] with the Pollabi Police Station at 04:20 am. He [pw-01] is not an eye-witness to the occurrence. He was found present at the scene at 11:30 pm on the dreadful night of the incident. Description of the incident he stated in his ejahar after hearing from pws-02, 03 and 16. Question of his living outside reasonably shown by him, is justified to the effect that his work-place was at Kapasia, Gazipur. This witness heard and saw the place of occurrence regarding his son's killing in front of his house at

Palash Nagor and the same thing he narrated in his evidence in court. Pws. 02, 03, 16 and 17 are close relatives of the victim. At the relevant time these witnesses were staying around the crime site in their respective houses but they could not see the killing incident directly on their own eyes. Although they are not eye witnesses like pw-01 but soon after incident they rushed to the scene and saw the victim with blood stained wounds lying nearby the wall of the house of pw-01.

Admittedly there is no eye witness to the occurrence in this case. Pw-01, the informant of the case, did not mention any name even as a suspect in the ejaher. He stated that he heard the incident from pw-16 over cell phone that a killing incident took place by some assailants in front of his house at Palash nagor on 15.02.2013 from 08:30 to 08:45 pm. At



Palash nagor's house his sons victim, pw-03 Newaz Momtaz Haider and his nephew pw-02 Kazi Gulib used to reside. Thereafter, informant and his wife came to Dhaka from Kapasia, Gazipur and heard the entire murder incident from his son pw-03 and relatives. At night at 03:30 am he rushed to the Pollabi Police Station and lodged the FIR at 04:20 am [16.02.2013]. Pw-02 is one of the inmates of the house and also cousin of the deceased. He along with his cousin pw-03 immediately after incident reached the scene and found the victim dead with blood stained injuries lying on the street nearby the wall of their house. Pws-14 and 18 are neighbors and pws-16-17, relatives of the deceased, also came to the spot and saw the dead body with blood stained injuries lying on the street on 15.02.2013 around 08:45 pm.

From the evidence of aforesaid witnesses [pws.02, 03, 14, 16, 17 and 18] it is found that the occurrence took place on the date and time as alleged by the pw-01 being informant of the case. It is also evident by the said witnesses that soon after incident police seized a knife and chapati, which were used at the time of killing of the victim, from near the place of occurrence and the blood of seizing knife was matched with the blood of victim by DNA test. Police also held inquest report of the deceased at the spot before lodging the FIR by pw-01. And nothing is found in evidence by cross-examination that the alleged occurrence did not take place having killed the victim at the relevant time, place and manner of the occurrence.

Pw-02 stated in examination-in-chief that on 14.02.2013 four or five young men were playing cricket

on the street near north-side of their house and among them, a bearded man aged about 20/23 years picked up a cricket ball from inside of their boundary wall and he was identified by pws-02 and 03 as Dip among other persons namely Rumman, Anik, Irad and Nafis at DB office on 2/3 March, 2013. The identification of accused Dip has been supported by each of these two witnesses [pw-02 and 03] and that has been found correct by their confessions. In cross-examination it is found that these two witnesses made their statements before the police 2/3 days after killing the victim. Pws-33 and 34 also examined these two witnesses over the occurrence which also rendered to pw-35, last investigation officer of the case. Therefore, the embellishment as allegedly placed in the arguments by the defence that belated statements of the witnesses got no substance.

From the evidence of pw-04 it is found that on 02.03.2013 from 07:30 to 08:00 pm, DB police entered their office with the help of guard where he along with pw-05 were present and in front of them police recovered a pair of canvas shoes [material exhibit-V] being cut at the pointing of accused Rumman which belonged to accused Anik. Such evidence given by pw-04 has been corroborated by pw-05 as well.

During investigation of the case police arrested 7[seven] accused-persons from different places. Accused Md. Maksudul Hasan Anik, Md. Foyisal Bin Nayeem @ Dip, Nafis Imtiaz, Md. Nayeem Sikder @ Irad and Md. Ehsan Reza @ Rumman made confessional statements on 10.03.2013 before pw-29, a Metropolitan Magistrate, Dhaka involving themselves each other in the plan, recognition and killing the

victim. Accused Sadman Yeasir Mahmud made confessional statement on 20.08.2013 before pw-26, a Metropolitan Magistrate, Dhaka and accused Saykhul Hadis Mufti Mohammad Jashim Uddin Rahmani also made confessional statement on 02.09.2013 before pw-25, a Metropolitan Magistrate under section 164 of the Cr.P.C.

Accused Md. Maksudul Hasan Anik in his confession stated that he got acquainted with senior student Noki Sekander Ali, Reduanul Azad Rana and Saief Kabir in the last part of 2010 at the prayer room of the university where they used to discuss about religious matters. Accordingly, he became close to Junnon, Rumman, Dip, Nafis, Sadman and Irad. Rana was once involved in the politics of Bangladesh Chhattro Shibir. Noki and Rana both used to speak well on Islamic ideology. Both of them suggested him

to hear khutba of Jashimuddin Rahamani, a pesh Imam of Hatimbagh mosque, at Jhigatola. Some days after, he went to Hatimbagh mosque where Imam discussed about Jihadi matter ignoring general discussion. He got inspired after hearing khutba of Imam.

According to the advice of Rana and Nokib, he had gone through the book titled 'drawn sword against those who insult the Prophet' from which he came to learn that the person who criticizes Prophet Mohammad [S] is to be killed as their religious obligation. In the month of January, 2013 Rana delivered him different written hard copies of blogger's defaming comments on Islam and Prophet Mohammad [S]. Rana gave him an idea about a blogger named Thabababa in the middle of January, 2013. He noticed several defaming comments of Thabababa from facebook. Rana thereafter discussed about it and rendered task to Dip to

recognize Thabababa. At one stage after discussion, they made the plan to kill Thabababa being atheist for defaming Islam and Prophet Mohammad [S]. They all have been motivated by Rana who used to tell them that it is their religious obligation to kill blogger Razib.

Thereafter, they made two groups, one is titled as 'Intel-Group' in order to recognize blogger Razib and another is 'Execution-Group' to kill blogger Razib. He along with members of Intel-Group went to Shahbagh on 10.02.2013 to find out Thabababa where they recognized him. Intel-Group member Rumman followed Razib from Shahbagh to Mirpur-10 riding on bicycle but failed to recognize his house at the first step. Razib's house at Palash nagor in Pollabi was identified on 12.02.2013. Intel-Group thereafter used to collect different information about his movement. He along with Rana and Rumman started playing cricket in

order to find out the whereabouts of Razib from 07:30 am to 11:30 am on 14 February in front of his house and at one stage they were able to make sure of his stay at home.

On 15<sup>th</sup> February he along with Rumman, Sadman, Irad stayed in front of the house of Razib since morning. He and Rana with chapati and knives went to the house of Dip at Khilgoan. Getting information from Intel-Group at about 06:30 pm he along with Rana and Dip reached the scene by bus at about 08:45 pm. He gave a chapati to Dip keeping one in his custody. They prepared themselves getting information from Rumman when Razib was coming towards his house. Dip dealt a blow with chapati on Razib in order to amputate his head when he reached near his house and then and there Razib fell on the ground sustaining two more blows from Dip. His blow



with knife had missed Razib. One blow from Dip hit his canvas shoes and then Dip gave two more chapati blows to Razib. They left the scene on hearing clamor of locals about the killing from a distant place. Next morning Rana and Rumman met him. Rana told them to go to a distant place but he stayed at his house. Police apprehended him on 02.03.2013. He admitted that he did wrong.

From his confessional statement, marked as exhibit-22, it reveals that he took part along with other accused in the plan how to recognize Thabababa [Blogger Razib] and his house as well and tried to play a role in the killing of the victim on 15.02.2013 at about 08:45 pm. He also narrated about his acquaintance with the other accused persons. Pws-04 and 05, who are witnesses of seizure list of canvas shoes which belongs to this confessing accused, were

present at the time of recovery of the same by police. Their evidence shows that they had seen accused Rumman and Anik when police came to their place in the circuit house area for recovery of the canvas shoes thrown by the accused after occurrence.

Accused Foysal Bin Nayeem @ Dip stated in his confession that at first he got acquainted with Anik, Rumman, Nafis in the boys' lounge of North South University in 2011 where they used to discuss about Islamic events after their prayers. In the month of February, 2012 he got acquainted with Rana, Junnon and Irad. Rana once was involved with the politics of Islami Chhattra Shibir. In 2012 Rana informed him that some people are providing defaming comments in the facebook about Prophet Mohammad [S] and asked him to go through it providing some hard copies from the

internet. Thereafter, he had gone through it and found defaming remarks on Prophet Mohammad [S].

In the month of January, 2013 Rana further informed him about one Thabababa who made defaming remarks on Prophet Mohammad [S]. Having inquired the matter he got trace of Thabababa with his picture which he notified to Rana but he failed to collect the name and address of Thabababa from the facebook. In the meantime, they shared different information on Thabababa to each other. At one stage they made the plan to kill Thabababa after identifying him. In the month of February, 2013 he came to know from 'facebook status' that Thabababa would come to Shahbagh Projanma Chottar. Thereafter, they created two groups, one titled as 'Intel-Group' consisting of Mohammad Ehsan Reza Rumman, Md. Maksudul Hasan Anik, Md. Nayeem Sikder Irad and Sadman and

another ‘Execution-Group’ comprising Md. Foysal Bin Nayeem [he himself], Maksudul Hasan Anik and Reduanul Azad @ Rana.

The task of the ‘Intel-Group’ was to find out the trace and location of Thabababa and the ‘Execution-Group’ was to kill him after his accurate identification. Among them Rana was the prime perpetrator who had communications with one Nafis residing in America. Rana used to motivate them by different ways to kill Razib and told them that it was their religious obligation to kill him because Razib was doing work against Islam. In such a way they have been motivated by Rana to kill Razib. According to the plan, he along with members of Intel-Group went to Shahbagh on 10.02.2013 and started looking for him and was finally able to identify him. On 11.02.2013 Md. Ahsan Reza Rumman, member of Intel-Group, followed Razib

boarded bus up to Mirpur-10 intersection riding on his bicycle but he could not locate his house on that day. He was able to locate the house of Razib at Polash Nagar in Pollabi on 12.02.2013.

After locating his house Intel-Group made drives to know about his movement. To collect information about Razib he along with Rana and Rumman having gone to Polash Nagor on 14.02.2013 at 07:30 am started playing cricket on the street in front of Razib's house up to 11:30 am. Being able to find out his accurate location they left the place and he went to the university where he met Rana. In order to make the mission successful Anik was given a task to purchase two chapati and four knives. He along with Rana purchased four unregistered Banglalink sims at a cost of Tk. 520/-[five hundred and twenty] from 'M.E Enterprise' at Kalachandpur in the afternoon. Purchased

number of the mobile sims are as follows, 01951-469570, 01951-469571, 01951-469572 and 01951-469573. They also bought four symphony sets from 'Sales World Symphony' shop at Malibagh. They used name of one Abdullah as purchaser in the cash memo.

In the evening, Rana invited Rumman over cell-phone to come to Malibagh near Abul Hotel. Rana gave mobile number being No. 01951-469570 to him and 01951-469573 to Rumman keeping mobile number No. 01951-469571 in his custody. On 15 February, 2013 he along with members of Intel-Group started waiting in front of Razib's house. Members of Intel-Group reported whole day's movement and location of Razib to Rana. In the afternoon, Anik and Rana with chapati and knives came to his house at Khilgoan. Getting information from Intel-Group at 06:30 pm he along with Rana and Anik reached the scene by bus

at 08:45 pm. Rumman informed Rana through cell-phone at about 08:50 pm that Thabababa was going towards his house, then he along with Rana and Anik with chapati and knife got ready to kill Razib. Anik handed over a chapati to him from his bag keeping one knife in his hand.

Rana pushed him from behind to look at Razib immediately after his presence at the gate of his house. Then and there he dealt a chapati blow on the neck of Razib in order to separate his head from shoulder. Receiving such a blow Razib fell near the wall of the house. Then he gave another blow which was missed but hit canvas shoes of Anik and in fear, Anik made a distance from the place of occurrence. He dealt two more blows to Thabababa with chapati and got clamor of locals from a distant-place that the killing incident was taking place. Thereafter, he along

with Anik and Rana started leaving the scene and after a while the chapati carried by him, fell on the earth. He went to Nafis's mess at Mirpur-10 by rickshaw. Next morning he had talks with Rana and Anik after getting reunited. Rana told them to stay normal and would inform them about the movement of police. Two days after, Rana told him to go away and also go into hiding. He thereafter stayed in the house of maternal-grand-father of Rumman at Bogra and came back at his Khilgoan residence in the capital. On 01.03.2013 DB police arrested him from his house and he felt repentance for his wrong doing.

Having gone through this confession, marked as exhibit-21, it is revealed that this confessing accused was directly involved with the killing of the victim. He was present at the scene having a knife in his hand and he was one of the members of Execution-Group.



The knife left soon after occurrence, recovered by police. Subsequently DNA test found matching with the blood of the victim which bonded the sequence of evidence in proving the allegation against the perpetrators in the instant case. This confessing accused involving him in the commission of offence gave a vivid description of how the mission organized by accused Reduanul Azad Rana, was executed. Even so, this confessing accused took part in the plan how to recognize the person whom they wanted to kill and thereafter, they became successful without any hindrance in their mission.

Accused Nafis Imtiaz in his confession stated that he was a third year student of BBA in North South University. He got acquainted with Anik, Dip, Rumman and Irad, all of them used to say their prayers together and discuss on Islamic events. In the month

of February, 2012 he was acquainted with Rana, Junnon and Nokib through Anik. At one time, Rana was involved with Bangladesh Chhattro Shibir. One day he gave him some hard copies and audio about defaming comments on Prophet Mohammad [S]. Rana also informed him about the similar defaming comments on Prophet Mohammad [S] from the facebook in the month of January, 2013. One day Noki and Rana asked him to hear 'Khutba' of Imam Jashim Uddin Rahmani at Hatembagh mosque. He was inspired by hearing Khutba [sermon] for Jihad. In the middle of January, 2013 Rana intimated him regarding Thabababa, a blogger's writing. Seeing such defaming comments on Prophet Mohammad [S] he became provoked. He had talks with other fellows and decided to kill him after being recognized. To recognize and execute him they established Intel-Group and

Execution-Group respectively. He was a member of Intel-Group and he had no direct knowledge about the killing mission.

To give a perfect lesson to Thabababa they made the plan through Rana who told them not to be worried as they have all the support from various higher authorities. He along with other members of Intel-Group being inspired by Rana went to Shahbagh on 10.02.2013 and recognized Thabababa named Ahmed Razib Haider. Rumman thereafter followed him riding on bicycle on 11.02.2013 but failed to locate his residence first day. On 12.02.2013 Rumman was able to locate Razib's house at Polash Nagor. Then they started to observe Razib's movement. On 14.02.2013 from 07:30 am Rumman, Rana and Dip played cricket in front of Razib's house to be certain of his house. After recognizing his house they left the spot for their

places. Next day i.e 15.02.2013 Rana asked him and Sadman to go to the spot and remain beside the house of Thabababa at Mirpur.

Accordingly, he and Sadman reached there at about 12:30 and at about 03:00 pm. Rumman came to the spot while Sadman left. Irad came at 05:00 pm. He left the scene by his bicycle around half an hour before the occurrence took place. At about 08:50 pm Rumman informed Rana through cell phone that Thabababa was going towards his house. At night Rumman and Dip came and stayed the night in his house. On query Dip told them that Thabababa was inflicted with chapati. Then he asked Dip that it was not included in the plan, only beating him was their plan. In the morning both of them left his house and he came to know through news paper that Thabababa had been killed. He then became scared. He was

arrested by police on 02.03.2013. Rana used to take advice from Nafis, who was staying in America, by cell phone communication. He felt that they being misunderstood by Rana did the wrong thing.

According to his confession, marked as exhibit-25, he was also instigated by condemned prisoner, Rana at different times to be involved in assisting the killing of the victim. In the initial stage of planning to recognize blogger Razib and to kill him, this accused was there and took part in the mission to be successful. So there is no scope to say that he had no knowledge about the killing of the victim. Rather he was, all the time, with other accused until the occurrence was going to take place.

Accused Md. Nayeem Sikder @ Irad in his confession narrated that he got acquainted with Anik, Dip, Rumman and Nafis at the lounge of North South

University. They used to say their prayers and discuss on different 'Islamic Masala' together. In the last part of 2012 he was acquainted with Rana, Junnon and Nokib through Anik. Rana belonged to Islamic Chhattro Shibir. One day Rana gave him some hard copies and audio lectures of some non-believers of Prophet Mohammad [S] and proposed those non-believers to be punished. Rana had connection with one Nafis who is residing in America. In the month of January, 2013 Rana informed him about defaming comments on Prophet Mohammad [S] on the facebook. Thereafter, Rana also delivered some information after downloading. He had also gone through some blogs of defaming comments about Prophet Mohammad [S]. One day Noki and Rana told him about Jihadi 'Khutba' of Jashim Uddin Rahmani of Jhigatola Hatembagh Mosque

and invited him to hear the same at the mosque.

Having heard the same he became inspired.

In the middle of January, 2013 Rana informed him about blogger-Thabababa. They planned together to kill Thabababa after learning defaming comments posted by him on the face book. They came to learn from facebook that Thabababa would come to Shahbagh Projonmna Chottor. To recognize him Intel-Group was established and he along with Rumman, Anik, Sadman has been deployed in the Intel-Group. In the Execution-Group Nayeem @ Dip, Anik, Rana have been deployed to kill Thabababa. Rana used to instigate them and tell them that it was their religious obligation to kill blogger Razib. They were motivated by Rana in such a manner. According to the plan, he along with other members of Intel-Group went to Shahbagh on 10.02.2013 and recognized Thabababa.

Rumman riding on his bicycle followed Razib boarded bus on 11.02.2013. In similar way the house of Razib at Polash Nagor in Pollabi was located.

They put Razib under their observation and played cricket in front of Razib's house to identify him accurately from 07:30 to 11:30 pm on 14.02.2013 and left the place after recognizing him. From there they went to university to met Rana who gave charge to Anik for purchasing chapati and knife in order to execute the killing mission. Dip was given charge to buy four sims and four mobile sets. Being members of Intel-Group, he along with Sadman, Rumman and Nafis started waiting in front of Razib's house from morning on 15.02.2013 and also informed Rana about the whole day's movement of Razib and stayed around the place of occurrence until the incident was taken place. Rumman through mobile phone informed Rana at about



08:50 pm that Thabababa was going towards his house. He waited for some more times near the place of occurrence. At a while he started running when he saw Dip and Anik fleeing away. Thereafter, he came to his house. Police apprehended him from his house on 02.03.2013. He regretted for his wrong doing.

From the said confession, marked as exhibit-24, it reveals that absconding accused Rana instigated this confessing accused along with others to be involved in the plan, preparation, collecting information and taking participation in the killing of the victim. This confessing accused never made disagreement with absconding accused Rana about his participation neither in the recognition nor in the killing of the victim.

Md. Ehasan Reza @ Rumman stated in his confession that he got acquainted with Anik, Dip, Nafis, Irad, Rana, Saif and Sadman through his batch-mate

Noki at the boys' lounge. And they used to say their prayers and discuss about different 'Islamic Masala' together. At one time Rana was involved with Chhatro Shibir. One day Rana told him that someone named Thabababa was writing defaming comments on Prophet Mohammad [S] in the facebook and he also supplied some soft copies and audio to him. Junnon used to give him different jihadi books. Rana had connections through telephone with one Nafis residing in America and also with Saif who was known to him previously. He became excited after learning different defaming comments on Prophet Mohammad [S] from facebook and blogs. One day Rana and Noki asked him to go with them for hearing khutba [sermon] of Imam Sheikh Jashim Uddin Rahamani at Hatembagh mosque. He was impressed having heard the khutba after going there. One day he recognized blogger-Thabababa going

into his blog. At one stage they made the plan to kill blogger Thabababa who defamed Islam and Prophet Mohammad [S].

In January, 2013 from facebook status he came to know that Thabababa would come to projonmo chattror. Accordingly, they established two groups namely Intel-Group and Execution-Group. Maksudul Hasan Anik, Foysal Bin Nayeem and Rana became members of Execution-Group to directly kill Razib. Rana by different ways motivated them to kill blogger Razib as the same was their religious obligation. He along with other members of the Intel-Group visited Shahbagh on 10.02.2013 and finally recognized him. In order to follow Razib, Dip got seated in the bus while he riding on his bicycle followed Razib. They located Razib's house at Polash Nagor. Dip informed about the location of Razib's house to Rana. On 14.02.2013 he along

with Dip and Rana played cricket in front of Razib's house to ascertain the Razib's movement from 07:30 to 11:30 am. According to their plan, Dip and Rana purchased four symphony mobile sets and four sims. He was given a mobile set.

Being members of the Intel-Group he along with Sadman, Irad, Nafis started waiting in front of Razib's house from morning on 15.02.2013. They informed Rana about the movement of Razib observed by them throughout the day. In the afternoon Rana and Anik with Chapati and knife went to the house of Dip at Khilgaon. Dip, Rana and Anik after getting information from Intel-Group at 06:30 pm arrived at the scene at about 08:45 pm by bus. At about 08:45 pm Irad communicated about Thabababa's going towards his house to Rana when he had gone to nearby mosque for meeting his natural call and he said his prayer in

a distant mosque. He met Anik on the way to his house after a while. Then Anik told him that Thabababa had been killed. By this time, Nafis went to his house by bicycle. He went to Nafis's house to get back his bicycle later on. All of them fled away and he went to Bogra and came back Dhaka two days later. He was arrested by police on 02.03.2013 and also regretted for his wrong doing.

From his confessional statement, marked as exhibit-23, it is also found that he was involved in assisting the killing of the victim and he had knowledge about the killing to be executed by all of them, although he was not directly involved in the killing of the victim. During investigation of the case at the showing of this accused along with accused Anik police recovered some articles used at the time of occurrence.

Accused Sadman Yeasir Mahmud in his confession stated that in March, 2012 while he was a first year student of NSU, he used to go to boys' lounge for saying prayer. He saw Noki, Rana and Dip talking about Islamic events. Noki mainly discussed on it where from he became close to Rana. He knew that Rana was in favour of killing the person who commits Blasphemy and he used to talk about this matter. Rana told him that however he has seen, is not more offensive rather many things in Bangladesh are going on by several persons to be killed on finding them. According to shariah law, death penalty is the only punishment for those who commit such crime. Rana directly asked him whether he is ready to do so, he replied that he could not murder anyone but could help, if required. Probably on 10<sup>th</sup> February he along with Anik, Dip, Rumman, Nafis and Irad went to

Shahbagh. Rumman found Thabababa there and followed him riding on his bicycle but had failed to locate the house. As per instruction of Rana, he took Nafis to meet Sakib at Mirpur-10. Rana told him to meet Sakib as they did not know the house of Razib. Then Sakib took them to near the house of Razib and they said their jumma prayers there. After jumma prayer Sakib left the place and having some discussions on tale with Nafis while he was on the way to his house he met Rumman in the area. Having parked the bicycle Rumman made a call from his cell phone to his phone telling that this number could be used for next time-communication, if required. Thereafter, he went to his house. By that number no communication was further made with anybody. In that night from TV he came to know that Razib was killed. Rumman told him that Dip, Anik, Rana, Irad, Nafis

and Rumman himself were involved in the murder but he does not know who exactly did it as none told him.

According to his confession, marked as exhibit-18, he was not directly involved in the killing of the victim. He was neither present at the place of occurrence nor he came forward to kill the victim but he was engaged himself in assisting the other perpetrators to recognize the victim and his house as well. He also obtained knowledge from accused Rana who offered him to punish the blogger Razib by killing. So, it cannot be said that he had no knowledge about the killing of the victim before the occurrence took place. He had played some roles before committing the offence of Murder. He along with others visited Shahbagh where the victim used to attend the demonstrations organized by Gonojagoron Mancha. He



also took some other accused persons to the nearest place of the occurrence. On offering by Rana to kill non-believers, he though showed negative attitude directly but agreed to assist, if required. According to his assistance with other associates in finding the victim embraces his involvement in the subsequent killing of the victim and compares dag with confessions of other accused persons, thus, his liabilities cannot be escaped in any way. His confession, marked as exhibit-18 has been supported by the recording magistrate pw-26.

It reveals from documents on record that five accused persons namely Anik, Dip, Nafis, Irad and Rumman were arrested on 02.03.2013 at different times and places at night and they made confessions before the judicial magistrate on 10.03.2013 while Sadman Yasir Mahmud made confession on 20.08.2013. They have provided exact scenarios of the

incident by their confessions. No major differences are found from each other's confessions. From their confessions it is found that they were introduced with Rana who used to instigate and inspire them against the non believers specially those who write against Islam and Prophet Hazrat Mohammad [S]. Rana was one of them who believed in killing those persons who defame the Islam and Prophet Hazrat Mohammad [S]. Accused Rana targeted the victim to be killed after identifying him. And to make the mission successful they created two groups namely Intel-Group and Execution-Group. Intel-Group was established to identify the victim while the Execution-Group was to liquidate the victim forever.

According to the confessions made by Anik, Dip, Nafis, Irad, Rumman and Sadman it has emerged that they visited Shahbagh, where the Gonojaron Mancha

was established, to identify the victim and subsequently followed him to trace out of his house though first time they failed but succeeded later on. Before killing incident took place some of them raked on 14.02.2013 by playing cricket on the street in front of victim's house and intentionally threw a ball inside their premises and picked up the same from inside just to confirm exact location of the victim that has been corroborated by the evidence of pws-02 and 03 and the mission was succeeded by them on 15.02.2013 at about 09:30 pm having killed the victim at their raked place and the accused Rana masterminded the plot to kill Rajib and trained others by showing so called jihadi books purposely written misleading to the sharia law and he also trained them how to operate the mission successful. Finally, Rajib was hacked to death by

Execution Group in which Rana was one of the members.

Accused Sykhul Hadis Mufti Mohammed Jashim Uddin Rahmani in his confession stated that he worked as Pesh Imam at Hatembagh Mosque, Dhanmondi until 2010. During this time, some students including Ezaz, Mainuddin Shaif, Rezwan Shaif and Junnon Sikder from different private universities used to come to this Mosque for hearing his 'Khutba'. He established Markajul Ulum Al-Islamia Madrasha Mosque and he gave attention to writing Islamic books when he was director and Pesh Imam of that mosque. Different speeches he delivered at the time of 'Khutba' on Islamic events to be followed by his followers. Against inhuman degradation, distress and torture on Muslims in different countries throughout the global and defaming comments on Al-Mighty and Prophet Mohammed [S]

he invited followers by his speeches and Muslim nations to be united to give punishment in accordance with Shariah Law upon those who being atheists, bloggers and murtards defame Islam and Prophet Mohammed [S] and he wrote several books on it. He also wrote a book named 'Unmokta Torbari on Qurwan Sunna'.

From this confession, marked as exhibit-17, it appears that exciting speeches were given by him at the time of 'Khutba' on several occasions to the university students and others to be organized and he also invited all of them including Ezaz, Mainuddin Sharif, Rezuan Sharif and Junnon Sikder who were students of different private universities and friends of present accused persons to punish those who made defaming comments on Islam and Prophet Mohammad [S]. Other confessing accused also mentioned in their

confessions that they came to learn from the said accused Rahamani, who gave speeches to them to be organized for punishing those including bloggers made defaming comments on Prophet Mohammad [S] and Islam. Accused Anik also mentioned names of Junnon and Rezuan as mentioned by this accused Rahmani. So, the killing preparation mainly started from the influence of Imam Mufti Mohammad Jashin Uddin Rahmani who washed the brain of youths likewise the other accused persons of the case.

An Imam of a mosque is being deployed to hold saying the prayer perfectly and his obligation is only to give real knowledge of Islam and Prophet Mohammad [S]. Muslims always think that Imam is a religiously gentleman perfect and his actions and activities are believed to have been gathered in the mind of Muslims. When the prayer is held in mosque under his

leadership, other musullees [devotees] have all confidence in his conduct. More so, he is no doubt a man of civil society and law abiding citizen of the country. He has to obey the law, binding upon him as one of the citizens of the country and cannot deliver any speech which is contrary to the laws of the land and none should take the law in his own hand and nobody should make derogatory comments about any religion. If anyone criticizes or makes defaming comments on Islam or Prophet Mohammad [S], he must be brought into book and punished if proved, as per law of the land but no one has right to say by giving special exciting statements or speeches that those who make comments abruptly on any belief to be punished without putting them on trial. So, this accused person as a leader of a mosque cannot escape his liability he uttered at the mosque during

jumma prayer on several occasions beyond his authority and norms of others. His confession, marked as exhibit-17 has been supported by the recording magistrate pw-25.

It is very unfortunate for the society as a whole that meritorious students like the present convicts of the case have gone into dogs for the reasons unknown. Whereas, it has revealed from the arguments by the defence lawyers and also evidence that guardians of convicts are seemed to be highly educated doing everyday task at their respective work-places, therefore, it may be important to note here that some people express their views stating that it is the only duty of the guardians to look after those students who are not properly conducting their deeds as expected by the society. This sense of care may be partially true in consideration of primary education at the hands of the



guardians at home as they are the only teachers at the beginning of their child growth and that is why, all parents should encourage their children to different books as it can prevent them from slipping into a wrong path. Children can be prevented from heading down the wrong path only by getting them involved in good environment and also family atmosphere. [I]

“Children whose fathers embrace parenthood are less likely to be troubled as they approach their teens,” UK based researchers said. An Oxford University study finds that [II] “fathers who were emotionally committed and felt confident about parenthood in the first few months had better-behaved children 11 years later”.

The amount of time the father spent with the child or got involved in domestic chores was not as significant as these two factors. At the same time everyone including the State has to think about the environment,

pure education and politics, lesser growth of population, awareness of accurate historical background of independence of the country and religious harmony with proper knowledge.

People like us always think about their children to be genius and great within a short span of time to enjoy the lives with aristocracy. Such views we always try to apply in the mind of a child which subsequently makes him reactive in his or her future life. And that be so the people should stop such practice in order to make the society clean to apply the appropriate training to the grown children at their early lives. Some guardians or parents also fail to take care of their children on time because sometimes they engage themselves [parents] in the advancement of their unwarranted lifestyles. So, the highly elites of the society including stakeholders of the power have some

obligations to think over this issue without any further delay as the time has come to oversee the same.

However, arguments of the defence are that the confessions made by the five accused in a single day before a magistrate are not found to be true and voluntary. Such confessions have been obtained from the accused persons under torture and threat of cross-fire. From the evidence of pw-29 it reveals that he as a judicial magistrate endorsed their confessions that those were made voluntarily and after maintaining all formalities he recorded their confessions, marked as exhibits 21-25 on which he put several signatures and the confessing accused also put their signatures as well and contents of the confessional statements were read over and explained to them who signed the same after having found correct. In those confessions it is found that magistrate made remarks stating that confessions of

the accused persons are seemed to be true and voluntary in nature.

Before recording the confessions of those accused persons, he alerted them saying that it might be used against them as evidence if they confess. And further told them that he was not a police officer but a magistrate and the accused persons were not bound to confess and whether the accused were tortured by anybody. Having understood the questions they made the confessions willingly. Exactly same thing and scenario have been found in the case of accused Sadman and Sykhul Hadis Mufti Mohammad Jashim Uddin Rahmani. Pws-25 and 26 being Magistrates recorded confessions of both the accused persons on two separate days as mentioned earlier. Nothing remains from the part of these witnesses to follow

during recording confessions of both the accused persons.

Before or after recording the statements the confessing accused did not make any kind of complaints to them as to whether they were tortured or severely assaulted by the investigating officer or they were given any threat to make confessions. From the said evidence of these witnesses it has revealed that there was in no way found any sign of enmity between the recording officers or investigating officers and the confessing accused. And the defence failed to discard their evidence that any authority or interested quarter came forward to compel them to make such confessions. So, the arguments made by the defence seem to be unworthy in nature. Yes, there may have some minor mistakes in recording the confessional statements of the accused persons but it appears from

order sheets of lower court's records that the recording magistrates described details in their orders how and when the confessing accused were brought before them and made confessions as well. Therefore, such irregularities are not being considered as major mistakes.

On a careful reading of all the confessional statements it finds that there was no complaint of police torture or any kind of threat before the magistrates by any one of them that they were compelled to confess beyond their willingness, if any violence or inducement is not made by the police then the confessions may be regarded as voluntary. Even then, recording magistrates rendered them reasonable time to think that if they confess it may go against them as evidence. Therefore, it can be firmly said that the confessional statements made by them are

absolutely voluntary and true. It finds support from a decision of the case of Islam Uddin –Vs–State, reported in 13 BLC [AD] 81 which is run as follows,

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

The expression ‘confession’ has been defined by Stephen in his ‘Digest of the Law of Evidence’ that ‘a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed the crime’. The presence

of a magistrate is a safe-guard and guarantees the confession as not made by influence. When a confession is taken by a public servant there is a degree of sanctity and solemnity which affords a sufficient guarantee for the presumption that everything was formally, correctly and duly done.

In this case the recording magistrates came forward to give the evidence and there have been found nothing that they failed to give the memorandums as to the confessions made by the accused and they have been thoroughly cross-examined by the defence as to the genuineness of the confessions and memorandums issued by them. It is not necessary that the memorandums as to the confessions are to be issued separately. It is enough, if they are inserted in the prescribed form but there must have signatures of



the recording officer and the confessing accused which are found present in this case.

So, no question of genuineness of the confessions is found present in this case.

“.....The confessional statement of Munir Ext. 50 recorded in accordance with the provision of section 164 of the Code of Criminal Procedure was signed by the confessing accused and the Magistrate and, as such, the Court shall presume under section 80 of the Evidence Act that the document is genuine and that the statement as to the circumstances under which it was taken by the Magistrate are true and the confession was duly taken” [State-Vs- Munir and another, reported in 1 BLC, 345].

Although the confessing accused subsequently retracted their confessions by placing written statements

at the time of examination under section 342 of the Cr.P.C that they were compelled to confess before the magistrates under threat of cross-fire. But that does not reflect their confessions made by them because such history of confessions was unable on the part of any interested quarter to make falsely in such a way. And at what interest lying with the police who without having any reason or enmity brought those meritorious students like the accused persons into book and put them on trial making a false story and compelled them to make confessions, no such clue or document is found in the entire evidence of the case.

More so, if the confessions are found to be true and voluntary, the retraction at a later stage does not affect the voluntariness of the confessions. The retraction of the confession is wholly immaterial once it is found voluntary as well as true. In a case of pre-

planned murder, confession of co-accused can also be used as evidence against other accused in view of the fact that a perpetrator is considered to be an agent of his associates in carrying out the object of the plan and anything said, done or written by him during the continuance of the conspiracy in furtherance of common intention of the perpetrator is a relevant fact against each of his associates, for the purpose of proving the conspiracy as well as for showing that he was a party to it. To sustain a charge under section 34 of the Penal Code, pre-concert is a necessary ingredient. Existence of such pre-concert can be established even by proof of acts performed by individual after the completion of main crime [Ghulam Quadir -Vs- State 12 DLR (SC) 171]. The above confessing accused by their individual acts rendered prompting the mission to be executed as per plan initially organized by

absconding accused Rana who after being inspired by the speeches of Imam Rahmani took the other perpetrators to the alleged mosque to be inspired for killing the person who allegedly defamed Islam and Prophet Hazrat Mohammad [S].

In the case in hand it is found that all the confessions have been corroborated by circumstantial evidence provided by the witnesses. It appears from their confessions that they firstly made plan at the instigation of absconding accused Rana being inspired by the speeches of Imam [accused Sykhul Hadis Mufti Mohammad Jashim Uddin Rahmani] and all of them got prepared dividing into two groups to locate the person whom they intended to kill and finally they liquidated him forever. On a plain reading of their confessions it is clearly found that they made the confessions involving themselves in the commission of

offence. So, there is no doubt that the confessions made by the accused persons are found to be inculpatory in nature. The confessions are so natural and spontaneous that one cannot harbor any doubt about its voluntariness. When a confession is found to be true and voluntary and inculpatory in nature without corroborating evidence a conviction can be imposed upon the maker of the statement. It finds support from the case of Mofti Abdul Hannan Munshi @ Abul Kalam and another-Vs-the State, judgment dated 7<sup>th</sup> December, 2016 reported in 2017(1)LNJ (AD)38 in which the Apex Court opined that “Even if there is no corroborative evidence, if a confession is taken to be true, voluntary in nature, a conviction can be given against the maker of the statement relying upon it subject to the condition mentioned above. In view of the above proposition of law, there is no legal ground

to interfere with the conviction of the appellants and co-accused since the confessions are not only inculpatory but also true and voluntary. Deliberate and voluntary confession of guilt, if clearly proved, are among the most effectual proofs in the law—their value depending on the sound presumption that a rational being will not make admission prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience.”

In the said Mufti Hannan’s case, although recording magistrates of confessional statements of the accused were examined but a hard copy of a confessional statement of accused Mufti Hannan has been submitted and exhibited in the case bringing from another case in which the accused made confession disclosing his involvement by supplying grenades in the crime committed by his cohorts, conviction sustained by the Apex Court against him but in the case in hand, all confessional statements have been duly exhibited and the recording magistrates have also been

thoroughly examined as to the confessions made by the accused persons in respect of their guilt.

When a confession is proved against the confessing accused it can be taken into consideration against co-perpetrator in the same crime as the required formalities have been duly observed by the recording officer. Accused Rana was not arrested by police in this case but from the confessions of six accused persons it reveals that he was involved in planning and killing of the victim and he had direct participation in the attack of the victim at the scene, if planning and killing considered as a whole or separately from each other it has emerged that Rana has been found everywhere as disclosed by six confessional statements that he made the plan collecting information from face book and subsequently took preparation and also led the other accused persons in the commission of offence. He was absconded from the

very beginning till his arrest [when the hearing of the death reference was concluded]. From seizure list dated 03.03.2013, marked as exhibit-07 it appears that some articles were recovered from his house by police when he went into hiding. For the sake of argument, if anyone thinks that due to police harassment he had gone into hiding and that be so why did he not appear in court before or after the trial of the case. Could he say that he was not aware of the crime allegedly committed by him with others? Record also shows that before putting him on trial in absentia all requirements were met as per provision of the law, and regarding this case many more news were published in the electronic and print media at home and abroad. This also supports by the evidence of pw-34 who recorded and seized some articles including Jihadi books from his house on 03.03.2013 at 20:45



hours. Section 30 of the Evidence Act also find support to hold him guilty of the offence as disclosed by the said circumstantial evidence and this fact also clearly proves for his involvement in the entire preparation and execution of the victim.

Although absconding by itself has no fault as it may be due to apprehension of police harassment but hiding with the guilty knowledge will be an offence and it can be used against the absconder. Such assertion may find support from the case of State –Vs– Lulu Miah, reported in 39 DLR [AD][1987] 117 where it was held that,

“As to subsequent conduct of the accused, though they had accompanied the member on the way to Sreemongal, they did not return home but absconded and were arrested from distant places, after fifteen days, in the case of Kabir, and after two

months in the case of Lalu. Absconsion by itself is not an incriminating matter, for, even an innocent person, if implicated in the ejahar for a serious crime, sometimes absconds to avoid harassment during investigation by the police. But in some cases a person with guilty knowledge also absconds. It is the facts and circumstances of the case which decide whether the absconsion is due to any guilty knowledge or to any intention to avoid police harassment. In this case had their conscience been clear, they would have certainly returned home from Sreemongal and having not found the member not yet returned would have join the complainant and others in search for the missing member. ”

Argument of the defence is that there are as many as three investigating officers being supervised by higher officials, investigated the case that accused

Sykhul Hadis Mufti Mohammad Jashim Uddin Rahamani used to give religious speeches at the time of 'Khutba' against bloggers in the mosque but the investigators failed to bring evidence from the locals who used to say prayers at the mosque regularly. Even then, none of the local witnesses came forward to give evidence at the behest of the prosecution in this regard.

More so, no one as prosecution witness has gone through the books written by Mufti to implicate him to the effect that by his exciting views written by him other accused persons have been inspired to kill any blogger in preventing from making any remarks on the Islam and ideology of Hazrat Mohammad [S], a great prophet. The main investigator of this case also did not depose any single line of evidence in his deposition that he had gone through the books, seized by him during investigation of the case. It is also

argued by the defence that the investigators did not place the call list by which they started investigating the case and found the involvement of the accused persons in the commission of offence. Even then, they did not think to hold T.I parade for connecting the accused persons with the crime and what transactions the offenders made by using alleged laptops recovered from their respective houses, have not been disclosed by the investigating officers and they also failed to recover so called cricket ball, cricket bate and bicycle rather they could do one thing that displayed accused persons physically before the electronic media during investigation of the case in the name of press conference which is not at all permissible in law of the land. It may hamper the investigation of an offence by the remarks of the commentators, if made. It is further contended that the investigating officer took the five

accused persons on a seven days police remand by the order of the court on 02.03.2015 but produced them for recording their confessions on 10.03.2015 beyond his jurisdiction. He could not retain them in his custody even after day of 08.03.2015 for a single moment and as such the confessions allegedly made by the said five accused are absolutely questionable.

Since the investigators are found to be senior most officers in the case they ought to have shared their experiences in the case properly. But such expectation has not been occurred in the instant case by sharing their old experiences. These arguments advanced by the learned defence lawyers have prompted us to go into the findings of the trial court's judgment wherein the learned trial judge also expressed almost same views as advanced by the defence. We know that, to develop experiences you need to become

a little bit wiser, bolder and older. This principle has been discovered and used since long but it is not properly applied in an important event unfortunately. It is not enough to submit a police report before the court after investigation. The report submitted by the concerned investigation officer must have sufficient ingredients to prove the case by the prosecution witnesses. We thus, to say that not only the competent person but person who has commitments to the people of the country, should be deployed in such assignment which he shall do utmost cordially by his all affords with highest degree of his own heart. Then the crime like present one shall be reduced from the society and the country as well. Therefore, the Inspector General of Police should look into the matter very sincerely for the interest of the country.

Despite the above facts and circumstances, it has emerged from the evidence of prosecution witnesses, particularly pw-13 Manik Karmoker that he is a businessman by profession having a blacksmith shop at Nuton Bazar and he used to deal with the said business over the first 25-30 years. Selling knives and chapati at a price of Tk. 2600/-[two thousand six hundred] to a youth on 06<sup>th</sup> or 07<sup>th</sup> February, 2013 suggested that the facts disclosed by the accused in their confessions can be considered as corroborative evidence because subsequent knowing from electronic and print media about the weapons sold by him, have been used in the killing of the victim and identification of accused Anik brought by police before him is also an important piece of evidence as Anik bought those weapons from him.

From the evidence of pw-07 it is found that he is a witness of a seizure list, marked as exhibit-06 and in his presence Jihadi books, laptop and other things [material exhibit-VIII series] were recovered by police from the house of accused Rumman on 03.03.2013. Pw-08 is a witness of seizure list, marked as exhibit-07 and in his presence Sim in Banglalink packet, books and other things [material exhibit-IX series] were recovered by police from the house of accused Rana on 03.03.2013. Pw-11 is a witness of seizure list, marked as exhibit-10 and in his presence Islamic books, a laptop along with other things [material exhibit-XI series] were recovered by police from the rented house of accused Irad on 05.03.2013. Pw-12 is a witness of seizure list, marked as exhibit-11 and in his presence book, laptop along with other things [material exhibit-XIV series]



were recovered by police from the house of accused Nafis on 05.03.2013. Pw-15 is a witness of seizure list, marked as exhibit-13 and in his presence a plenty of books and other things [material exhibit-XVI series] were recovered by police from a Markus Madrasha, situated at Mohammadpur, which belonged to accused Sykhul Hadis Mufti Mohammad Jashim Uddin Rahamani on 13.08.2013. Pw-32 is a witness of a seizure list, marked as exhibit-29 and in his presence a book, laptop and other things [material exhibit-X series] were recovered by police from the house of accused Anik on 03.03.2013.

The aforesaid material exhibits possessing by the accused persons indicate their sentiments of guilty mind as they disclosed in their confessions and subsequent killing of the victim. More so, these particular materials along with many other things recovered by police in

the presence of the witnesses have also been corroborated by the evidence of pw-34 who has elaborately narrated in his evidence as to how he apprehended the accused persons and recovered the things used in the mission succeeded by the accused persons. In his deposition he gave a vivid description of recovery of the aforesaid materials which have been purely supported by pws 07, 08, 11, 12, 15 and 32.

Evidence finds that accused Dip purchased Banglalink mobile sets from 'ME Enterprise' at Kalachandpur on 13.02.2013 two days before the occurrence. Pw-09 subsequently identified the accused Dip when police brought him before this witness on 05.03.2013 at about 11:00 pm. The shop owner of 'M.E Enterprise' being pw-10 supported such evidence of pw-09 that police brought the bearded man on

05.03.2013 at about 11:00 am where his salesman identified that bearded man i.e Dip.

Another circumstance is that the books recovered from the house of accused Dip, Rana, Rumman, Anik and Irad, most of them, written by accused Sykhul Hadis Mufti Mohammad Jashimuddin Rahamani proved that the accused persons have been inspired by reading those jihadi books to kill the victim.

Defence further argues that prosecution case has been doubtful after an embellishment because of belated statements provided by some witnesses. It is true that statements of some witnesses recorded by the Investigating Officer after some delay but on query from records it is found that it occurred due to changing of the Investigating Officers. So, belated statements always should not be treated as manufactured.

If the above evidence is considered together with the confessions of the accused persons it can be firmly said that the accused persons are involved with the alleged killing of the victim. These facts and circumstances provided strong support to the confessional statements as well. It is true that there is no ocular evidence in this case as discussed earlier but fact remains by considering all circumstantial evidence and confessional statements of the accused persons that lends support involving the accused persons in the commission of offence. It also emerges from the confessions of the six accused persons that they made confessions involving themselves and also connecting each other. The confession of an accused can according to the provisions of section 30 of the Evidence Act be taken into consideration even against other persons being jointly tried with that person.

Section 30 of the Evidence Act stipulates that, 'when more persons than one are being tried jointly for the same offence, and a confession made by one of such person affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other of such persons as well as against the person who makes such confession.'

There has been no evidence in the case that some vested quarters had any altercation with the accused persons to be implicated them in a false case by pw-01 under influence or duress or the investigating officers having interest over any matter, inclined to submit police report against them.

Pw-33 S.I Sheikh Motiur Rahman by providing evidence proved inquest report, marked as exhibit-14 and pw-31 Dr. Sohel Mahmud proved the autopsy

report, marked as exhibit-28 that the cause of death of the victim was due to hemorrhage and shock resulting from injuries mentioned in exhibit-28 which was anti-mortem and homicidal in nature. Autopsy report shows many wounds on the upper part of body of the deceased which have been corroborated by the confessions of Execution Group members, Anik and Dip that with chapati and knife they indiscriminately dealt blows on the shoulder and other upper part of the victim at the time of occurrence under leadership of accused Rana. Soon after incident a blood stained knife and a chapati marked as material exhibit-III series used in the killing were recovered from near the place of occurrence and prior to the occurrence the accused persons having planned purchased the said knife and chapati, has been established by the evidence of pw-13.

It has discussed earlier that the confessions made by the accused persons have been found correct, voluntary, true and inculpatory in nature and that be so, proved confession can be taken into consideration against co-accused. Our Apex Court opined in the case of Nawsher Ali Sarder and others –Vs– the State, reported in 39 DLR [AD] 194,

“The attending circumstances are heavily against the accused Nausher. He had no enmity with Elias; he hailed from a different village and had no business to have been present near the scene of the crime when he was caught by persons who also did not know him before. He ran through water after being chased, as deposed by pw-03 Ayub Ali. His shirt and lungi were wet when he was caught and these two items were seized by the Investigating Officer, P.W.25; he could not explain why he was there at such an hour on his

behalf a suggestion was put to Toyeb Ali that he was known to Toyeb Ali and opposed Toyeb's attempt to abduct the daughter of one Mazer Sheikh and thereby incurred his enmity. He denied the suggestion. These facts and circumstances provide strong support to the confessional statements. These confessions have been rightly considered as against the co-accused also, under section 30, Evidence Act. We therefore find that the conviction of these three appellants has been based on strong evidence and that the High Court Division rightly confirmed their conviction for murder.”

In the present case it appears that accused Reduanul Azad @ Rana has no confessional statement but it is found by circumstantial evidence as well as confessional statements of co-accused that he was the mastermind of the murder incident and he directly played significant role at the spot by pushing his cohort



to look at the victim when he was going towards his house and he absconded since inception of the case. Police recovered some Jihadi books and other materials from his residence.

For killing the victim premeditation, identification by the accused persons and establishing two groups are very important events in this case. In a case of pre-planned murder, the perpetrators take some necessary steps before killing incident takes place by them. In the present case it is found that some necessary steps were taken by the accused persons for killing the victim before it was done, as revealed in their confessions and subsequent material exhibits and in particular, circumstantial evidence of pws-02, 03 and 13 corroborated their confessions and these three witnesses along with others also identified the accused persons present in the dock of the court.

Although there is no ocular witness as discussed earlier in the case but surrounding witnesses, particularly, pws-01, 02, 03, 14, 16, 17, 18 and 19 by their evidence proved the place, time and manner of the occurrence and their evidence together with the evidence of pws-04, 05, 07-10, 13, 25, 26, 29, 31 and 34, inquest report, autopsy report, exhibits, material exhibits and all other surrounding circumstantial evidence and confessional statements of accused persons have been considered to hold that the prosecution has fully succeeded in proving the case against the accused persons beyond reasonable doubt and they have been found guilty of the offences punishable under sections 302/304 Part-I and II read with sections 34/109 of the Penal Code as found by the trial court.

The informant of the case filed a revision application being No. 833 of 2016 before the High Court Division under section 439 read with section 435 of the Cr.P.C praying for enhancing the inadequate sentences imposed by the trial court on the six convicts in which he obtained a rule by order dated 13.04.2016.

None stands for the rule when the same is taken up for hearing. However, Mr. Zahirul Haque Zahir, learned Deputy Attorney General contends that the murder-incident took place by a group of perpetrators and the joint trial of the perpetrators for the same offences has been held by the trial court and the perpetrators are found guilty of charge of the killing. So, the inadequate sentences given by the trial court should be enhanced for the ends of justice. On the contrary, learned defence lawyers submit that there is

no any scope to enhance the sentences by way of revision at the instance of the party who could have appealed.

We have gone through the revision application and connecting provisions of law wherefrom it is found that section 417A of the Cr.P.C clearly stipulates that,

(1) “The government may, in any case of conviction on a trial held by any court, direct the Public Prosecutor to present an appeal to the High Court Division against the sentence on the ground of its inadequacy.

(2) A Complainant may, in any case of conviction on a trial held by any court present an appeal to the Appellate Court against the sentence on the ground of its adequacy:

Provided that no appeal under this sub-section shall be entertained by the Appellate Court after the expiry of sixty days from the date of conviction.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Appellate Court shall not enhance the sentence except giving to the accused reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.”

On perusal of the connecting documents on record it appears that an appeal under this code lies upon the inadequate sentences given by the trial court. Section 439(5) of the Code stipulates that “where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be

entertained at the instance of the party who could have appealed". In the case in hand, neither the informant party nor the State presented an appeal against such alleged inadequate sentences.

On a plain reading of the said provisions of law it finds that there is no any scope on the part of the State or the complainant of a case to file a revision application for enhancing the inadequate sentence if they failed to file petition of appeal before the appropriate Appellate Court and there is no specific provision of law for the informant who could have scope to prefer an appeal for enhancing the sentence. But as per section 439(1) of the Cr.P.C High Court Division having noticed in its discretion, exercise any of the powers conferred on a court of appeal by sections 423, 426, 427 and 428 or on a court of appeal by section 438, may enhance the sentence. In that view

of the fact, the informant of a case may file a revision application before the aforesaid court for enhancement of the sentences inadequately imposed by the trial court although it is a rare case of enhancement in the history of judiciary. In the case in hand we do not find any clue that the present informant persuaded the State to take initiative for enhancing the inadequate sentences by presenting an appeal nor the State ignored his prayer for the same. More so, the trial court categorically imposed the sentences upon the convicts as per their particular conduct, role and performances in the commission of offence, after finding them guilty of the offence. Therefore, we do not find any substance in the contentions of the learned Deputy Attorney General for enhancing the inadequate sentences passed by the trial court. Hence, the Rule is discharged.

Finally, the claim of the defence is that if the court finds the accused persons guilty of the charges brought by the prosecution against them, the sentences imposed by the trial court may be commuted for the ends of justice.

We have given our anxious thought over the event as claimed by the defence. It has revealed from the evidence that the offence committed by the accused persons was so horrendous, heinous and atrocious that hacked the victim to death on the spot at the relevant time and in the above discussions and facts and circumstances of the case, we hold that both accused Foyzal Bin Nayeem @ Dip and accused Reduanul Azad @ Rana are found guilty under sections 302/34 of the Penal Code and they are sentenced to death with a fine of Tk. 10[ten] thousand each and also found Maksudul Hasan Anik guilty under sections 302/34 of



the Penal Code and sentenced him to suffer rigorous imprisonment for life with a fine of Tk. 10[ten] thousand, in default, to suffer one year simple imprisonment. Md. Eshan Reza @ Rumman, Md. Nayeem Sikder @ Erad and Nafis Intiaz are found guilty of the offence under sections 304 Part I and 34 of the Penal Code and sentenced them to suffer rigorous imprisonment for a period of 10[ten] year each with a fine of Tk. 05[five], in default, to suffer six months simple imprisonment by each of them. Sykhul Hadis Mufti Mohammad Jashim Uddin Rahamani is found guilty under sections 304 Part II and 109 of the Penal Code and sentenced him to suffer imprisonment for 05[five] years with a fine of Tk. 2[two] thousand, in default, to suffer simple imprisonment for 2[two] months and Sadman Yasir Mohammad is found guilty under section 304 Part II and 34 of the Penal Code

and sentenced him to suffer imprisonment for 03[three] years with a fine of Tk. 02[two] thousand, in default, to suffer simple imprisonment for two months more.

Out of these awarded sentences, the quantum of sentences the convict-appellants have already served out and period of custody before impugned judgment shall also be deducted on the application of provision of section 35A of the Cr.P.C.

We do not find any extraneous ground to commute the sentences and also do not find any reason to interfere with convictions recorded under sections 302/304/34/109 of the Penal Code. Sentences thereunder have already considerably reduced by the Trial Court. So, there is no scope to reduce sentences imposed upon the convicts by the Trial Court, any more.

In the result, the Death Reference No. 01 of 2016 is, hereby, accepted. The Criminal Appeal Nos. 1107 of 2016, 651 of 2016, 1011 of 2016, 7872 of 2016, and Jail Appeal No. 22 of 2016 are dismissed. Rules on Criminal Miscellaneous Case Nos.15972 of 2016 and Criminal Revision No. 833 of 2016 are also discharged.

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

**Md. Jahangir Hossain, J**

**I agree**