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. 92 of 2015

The State

-Versus-

1. Md. Sharif and
2. Md. Mintu Khan

.....Condemned prisoners

with

Criminal Appeal No. 9051 of 2015

Md. Sharif

-Versus-

The State

Mr. Golam Mohammad Chowdhury with
Mr. Md. Hemayth Uddin and
Mr. Md. Akhteruzzaman Talukder, Advs.

.....for the appellant

with

Criminal Appeal No. 9170 of 2015

Md. Mintu Khan @ Mintu

-Versus-

The State

Mr. S. M Abdul Mobin with
Mr. Mahabub-Ule-Islam
Mr. Md. Muhibullah Tanvir

Mr. Md. Emran Khan and
Mr. Md. Abdus Salam, Advocates
.....for the appellant

with

Jail Appeal No. 222 of 2015

Md. Sharif

-Versus-

The State

And

Jail Appeal No. 224 of 2015

Md. Mintu Khan

-Versus-

The State
Mr. Zahirul Haque Zahir, D.A.G with
Mr. Md. Atiqul Haque [Selim], A.A.G
Ms. Bilkis Fatema, A.A.G and
Mr. Nizamul Haque Nizam, A.A.G
.....for the State

Mr. Kazi Md. Sajawar Hossain, Advocate
.....[assisted the State informally during CAV of the Death Reference]

Heard on: 10.01.2017, 11.01.2017, 15.01.2017, 16.01.2017, 17.01.2017, 18.01.2017, 22.01.2017, 23.01.2017, 24.01.2017, 29.01.2017 and 29.03.2017.

Judgment on 04.04.2017

Jahangir Hossain, J

This Death Reference No. 92 of 2015 is the outcome of judgment and order of conviction and

sentence dated 08.11.2015 referred by the learned Metropolitan Sessions Judge [in-charge], Khulna for confirmation of death sentence to condemned prisoners, Md. Sharif Sheikh and Md. Mintu Khan @ Mintu under section 374 of the Code of Criminal Procedure [briefly Cr.P.C].

Challenging the said judgment and order of conviction and sentence condemned prisoners, Md. Sharif Sheikh and Md. Mintu Khan @ Mintu both filed two separate petitions of appeals being numbered as Criminal Appeal Nos. 9051 of 2015 and 9170 of 2015 and also filed two separate Jail Appeal Nos. 222 of 2015 and 224 of 2015 respectively. The aforesaid Death Reference and all criminal appeals have been heard together and are disposed of by this common judgment.

The prosecution case is briefly described as under:

On 04.08.2015 Md. Nurul Alam, the father of the deceased, being informant lodged an FIR with Khulna Police Station against the condemned prisoners and accused Beauty Begum, mother of condemned prisoner Md. Sharif Sheikh, alleging inter alia that his son Rakib Hawlader worked in the motorcycle service centre namely 'Sharif Motors' situated at North-East corner of Tutpara graveyard at Khan Jahan Ali Road, Khulna owned by condemned prisoner Sharif who used to give him less wages and often beat him. Due to this reason, Rakib left the job and joined another work place namely 'Nur Alam Motors' where he was doing the same task for about 3/4 months. On 03.08.2015 around 04:30 pm when his son reached near the aforesaid place in order to purchase colour paint,

condemned prisoner Sharif forcibly took him into his motor garage where condemned prisoner Mintu and accused Beauty Begum were also present. On an inquiry Rakib replied that he left the job because condemned prisoner Sharif did not give him adequate salary. Being enraged condemned prisoner Sharif used abusive words with him who raised his voice on it.

Thereafter, condemned prisoner Mintu along with accused Beauty Begum held Rakib and laid him down on the floor taking off his trousers and forcibly inserted a high pressure air pump nozzle into his rectum while condemned prisoner Sharif switched on of the inflator. As a result, his son became severely injured and his belly also got abnormally puffed having clotted blood in the rectum and intestines tore apart and lunges burst as air filled the abdomen. They all shut down the shutter of the garage to confirm his death while his

son was groaning. Having reached the place on hearing hue and cry surrounding locals came to the spot and rescued him from the garage and instantly took him to local 'Good Health Clinic' from where he was referred to Khulna Medical College Hospital as his condition deteriorated. Thereafter, doctor of the KMCH referred him to Dhaka Medical College Hospital for better treatment. At about 09:30 pm on the way to Dhaka from Khulna he died in the ambulance. Having arrived home he [informant] came to know the incident from his wife and locals. The accused persons were confined and beaten by angry mobs on hearing death news of his son and handed them over to the police.

Having received the FIR police recorded Khulna Police Station Case No.04 dated 04.08.2015 against the aforesaid accused persons under sections 302/34 of the Penal Code.

Police thereafter held inquest report of dead body of the deceased and seized some materials relating to the death of the deceased. During investigation of the case both the condemned prisoners and accused Beauty Begum made confessional statements before the magistrate under section 164 of the Cr.P.C. The investigating officer after completion of investigation submitted police report being charge sheet No. 275 dated 25.08.2015 against the three accused persons including the condemned prisoners under sections 302/34 of the Penal Code, 1860. All the accused persons were put on trial by the learned Metropolitan Sessions Judge [In-charge], Khulna in Metropolitan Sessions Case No. 1161 of 2015.

Gravamen of charge against three accused persons was framed on 05.10.2015 under the aforesaid sections, as stated 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 in the trial. The prosecution in order to prove its case, examined in all 38[thirty eight] out of 40[forty] witnesses cited in the charge sheet while defence did not call any witness in their favour, but put their case by way of suggestions to the prosecution witnesses.

On closure of the prosecution evidence, the accused persons present in dock, were also examined under section 342 of the Cr.P.C wherein the incriminating evidence and confessions brought to their notices and consequence thereof were explained to them. The accused persons present in the dock reiterated their innocence, non-complicity and declined to adduce any evidence in their favour through defence witnesses but they orally narrated before the court that

they were compelled to confess by torture and also fearing cross-fire.

Considering the evidence and facts and circumstances of the case, learned Metropolitan Sessions Judge found the condemned prisoners guilty of the offence punishable under sections 302/34 of the Penal Code and sentenced them to death while acquitted accused Beauty Begum from the charge levelled against her. Hence, the aforesaid death reference and criminal appeals have been arisen.

Mr. Md. Atiqul Haque @ Selim along with Mr. Md. Nizamul Haque Nizam and Ms. Bilkis Fatema, learned Assistant Attorney Generals has taken us to the FIR, inquest report, confessional statements, autopsy report, seizure list, seizing articles, 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 on 03.08.2015 between 04:30 pm and 09:30 pm.

Having gone through the evidence of all the prosecution witnesses it is found that pw-01 Nurul Alam, father of the victim, is not an eye witness to the occurrence but he heard the incident that accused Sharif forcibly took the victim inside the shop and switched inflator on while accused Mintu pressed inflator's pipe in the rectum, as a result, victim's belly got puffed and subsequently he died. Such facts he received from his relatives and locals. The story of ejahar [exhibit-01] lodged by him, has been supported by his subsequent evidence, deposed in court.

Pw-02 Constable Badrul Alam is a member of rescue party, who saw the beating upon the three persons including a woman and took them to the

hospital after rescue them from the angry mobs on 03.08.2015 at 11:30 pm.

Pw-03 Zahidul Islam is also a hearsay witness who heard the incident from the mother of the victim that Sharif and Mintu gave blue air inside the rectum of the victim and pw-04 Mizan Howlader is an important witness in this case because he heard from the mouth of the accused Sharif that he pumped air inside the belly of the victim.

Pw-05 Khokon Sheikh and pw-08 Ruksana heard from pw-14 Shahidul, a helper of 'Nur Alam Motors' that accused Sharif and Mintu gave blue air through inflator's pipe in the rectum of the victim but subsequently victim Rakib told pw-05 that Sharif held him and Mintu gave air into the rectum by machine. Pw-10 Rimi, pw-11 Lucky Begum and pw-13 Sujon directly heard from victim Rakib that accused Mintu

pressed pipe while Sharif switched on of the inflator machine during the occurrence.

Pw-06 Constable Maksudul Haque is a formal witness who received the dead body of the victim and took the same to the hospital for autopsy and signed the seizure list of wearing apparels of the victim.

Pw-07 Md. Zahirul Islam is also a member of rescue party who rescued three persons including a woman from the angry mobs on 03.08.2015 at 23:10 pm and came to know that victim died due to sustaining blue air pumped by inflator machine in the anus and due to late night he could not prepare inquest report but the same was held next morning at 08:00 am [exhibit-02].

Pw-09 Khadiza, grandmother of the victim, saw the victim feeling unwell in the hospital on 03.08.2015

and she became unconscious and saw him died after regain.

Pw-12 Selina Rahman heard the incident the following day that Rakib was given blue air and the shop of 'Sharif Motor Garage' was provided on a rental basis by her father.

Pw-14 Shahidul Sheikh heard that blue air was given inside the rectum of the victim and he signed the seizure list of a navy blue trousers and a color paint pot recovered by police from the house of Rakib.

Pw-15 Durgapada Bowliah, O.T in-charge of Gazi Medical College Hospital, Khulna, saw the belly of the victim Rakib abnormally puffed and saliva coming out from his nose and mouth on 03.08.2015 at 05:30 pm and victim told him that his one uncle by pressing inflator's pipe in the rectum pumped blue air in the shop where the victim worked before. They committed

the crime by calling him because he was working in another shop after resigning from the earlier one. Anaesthesia doctor told this witness that it was not possible to treat the victim in their hospital, then, they left with victim.

Pw-16 Md. Nur Alam is a hearsay witness who heard that both the accused Sharif and Mintu gave air into his belly. Having gone to the surgical clinic he found victim Rakib's belly being puffed and on the way to Dhaka he eventually died.

Pw-17 Md. Sorowar Hossain is also a hearsay witness who heard that the victim died due to blue air pumped by inflator machine. In his presence police recovered two inflators and a sandal and prepared a seizure list which he signed as witness. He recognized the alamots in court. Pw-18 Kamrul Mollah echoed the same voice as deposed by pw-17.

Pw-19 Sumon Howlader heard that Sharif and Mintu gave air inside rectum of the victim who felt sick severely and he gave a bag of blood for victim Rakib and he heard at night that Rakib had died.

Pw-20 Nabil Hasan Fahim in his deposition stated that accused Mintu forcibly took the victim Rakib inside the shop and accused Sharif switched on of the machine. Thereafter, victim Rakib started vomiting while he was standing in front of the shop. He had seen Rakib vomiting on his own eyes.

Pw-21 Md. Selim Sheikh stated in his examination-in-chief that accused Sharif and Mintu both have pumped blue air inside the rectum of the victim by pressing inflator machine.

Pw-22 Md. Zahirul Islam said, police seized two inflator machines and a sandal of Rakib in his

presence and signed the seizure list and also identified the sandal in court.

Pw-23 Md. Robiul Islam Howlader testified that Rakib came to his shop and left after buying colour paint and he could see vomiting in front of the shop and he heard from pw-20 that accused Mintu took the victim inside the shop and pressed the inflator's pipe in the rectum of the victim while Sharif switched on of the inflator and he heard at night that Rakib had died.

The evidence of Pw-24 Tahmina Akhter is that she saw the belly of the victim hard and abnormally puffed when Rakib was taken to clinic.

Pw-25 Sheikh Asaduzzaman Jalal is a seizure list witness who signed the seizure list of shirt, trousers and shawl of victim Rakib.

Pw-26 Sheikh Mosharaf Hossain, staff nurse of Khulna Sadar Hospital, saw a boy brought by some

persons in the hospital on 03.08.2015 in the afternoon and he heard that some youths pumped air in the rectum by making fun. Doctor suggested to take him to 250 beds' hospital as his condition seemed to be fatal.

Pw-27 Md. Zafor Kalifa, a staff nurse of Khulna Sadar Hospital, Pw-30 Constable Khusrul Alam and Pw-36 Provash Chandra Golder, an administrative officer of 'Good Health Clinic', Khulna have been tendered by the prosecution and defence declined to cross-examine them.

Pw-28 S.I Md. Alam verified the address of accused Sharif and Beauty and found correct.

Pw-29 Constable Nurul Islam testified that he was on patrol duty under leadership of S.I Zahirul Islam on 03.08.2015 and rescued accused Sharif, Mintu and Beauty Begum from the hands of angry

people from Tutpara Tank Road after getting message at 23:30 hours and heard that the boy named Rakib was killed by gas.

Pw-31 Sukumar Biswas, officer-in-charge, Khulna Police Station is a formal witness who filled up the FIR form, marked as exhibit-12.

Pw-32 S.I Taposh Kumar is also a formal witness who received the autopsy report [exhibit-13] of deceased Rakib from Khulna Medical College Hospital.

Pw-33 Aysha Akhter Mousumi, Metropolitan Magistrate, Khulna recorded confession of accused Beauty Begum on 07.08.2015 under section 164 of the Cr.P.C. The accused signed the confessional statement, marked as exhibit-14 wherein she put her signatures.

Pw-34 Md. Faruk Iqbal, Metropolitan Magistrate, Khulna recorded the confessional statements of accused

Sharif and Mintu when they were produced before him on 11.08.2015 and 12.08.2015 respectively. Before recording their confessions he alerted both of them that he would not send them to the police custody if they do not confess and he also gave them sufficient reflection time. Accused Sharif signed the confessional statement, marked as exhibit-15 and he also put nine signatures thereon. Accused Mintu Khan signed his confessional statement, marked as exhibit-16 wherein this witness put nine signatures.

Pw-35 Dr. Subrata Kumar Mondal, Assistant Registrar of Khulna Medical College Hospital, stated that Rakib [15] was admitted to their hospital on 03.08.2015. He placed the document, marked as exhibit-17.

Pw-37 Dr. Mohammad Wahid Mahmud rendered autopsy report after examining the dead body of the

victim on 04.08.2015. The autopsy report contains the following injuries,

1. Bruise was present on both wrists joint.
2. Bruise was present on both ankles joint.
3. Abrasion was present on dorsum of the right foot.
4. Clotted blood on anus.

Dissection: The abdomen was distended. The anterior abdominal highly congested. Ante-mortem clotted blood was present on the peritoneal cavity. The small intestine and whole large intestine was ruptured and gangrenous. The urinary bladder was ruptured. Both lungs were collapsed.

Opinion: The cause of death was due to haemorrhage as shock as a result of above mentioned injury which was ante-mortem and homicidal in nature.

Pw-38 S.I Kazi Mustaque Ahmed submitted police report [charge sheet No. 275 dated 25.08.2015] as investigator after completing investigation against the three accused persons under sections 302/34 read with section 201 of the Penal Code.

In this case none of the prosecution witnesses saw the occurrence directly except pw-20 whose evidence reveals that accused Mintu grappled the victim inside the shop and pumped air inside his anus by inflator pipe while Sharif switched it on and this witness also saw the victim vomiting which was supported by pw-16 that he found sign of vomiting near his shop. Prior to the death, the victim made dying declarations before pws. 03, 05, 10, 11, 13 and 15 that due to resigning from the job of 'Sharif motors', accused Sharif pumped air inside his rectum

with the help of accused Mintu by inflator on the day of occurrence. This version of evidence has also been corroborated by the extra judicial confession of accused as disclosed by pw-04 in his evidence. In this case dying declaration made by the deceased prior to his death was not recorded by a magistrate or by any other way but it was made orally to the witnesses. Such declaration is admissible even if it were made orally [3 DLR 388, 7 BLC 265 and 8 BLC 132].

A dying declaration is a valuable piece of evidence if it is from suspicion and believed to be true. If a dying declaration is found to be true and genuine, it can be by itself form a satisfactory basis for conviction [12 DLR (WP)Lahore 30 (DB)]. Dying declaration may not be natural if it is recorded by a person with the help of interested persons of the maker. Rather it could be quite natural and true

statement when the victim utters orally and instantly the cause of his injuries to the neutral persons who provide version of the victim before the court on oath having is being tested. The court is to see whether the victim had the physical capability of making such a declaration, whether witnesses who had heard the deceased making such statements heard it correctly. Whether the reproduced names of assailants correctly and whether the maker of the declaration had an opportunity to recognise the assailants [42 DLR 397].

In the present case dying declarations of the victim have been stated by pws 03, 05, 10, 11, 13 and 15 such as Pw-3 in his deposition said,- 'রাকিব বলে, মামা আমাকে শরীফ, মিন্টু এবং বিউটি ধরে পাছায় হাওয়া দিয়ে দিয়েছে।' Pw-5 said in his deposition, 'সে বলে (রাকিব) শরীফ ধরছে আর মিন্টু পাছায় হাওয়া মেশিন ঢুকিয়ে দিয়েছে।' Pw-10 in his examination said, 'মিন্টু, শরীফ এবং বিউটি আমাকে মারছে বলে রাকিব। মিন্টু পাইপ ঢুকিয়েছে,

শরীফ সুইচ দিয়েছে। বিউটি চেপে ধরেছে এটা রাকিব বলে।' Pw-11 stated in his deposition, 'আমি তাকে জিজ্ঞাসা করি এ অবস্থা কেমন করে হলো? রাকিব বলে, শরীফ,মিন্টু এবং বিউটি বেগম এরা রাস্তা দিয়ে ধরে নিয়ে দোকানে নিয়ে শাটার টেনে রেখে শরীফ সুইচ দেয়, মিন্টু পাইপ ঢুকিয়ে দেয় আর বিউটি ফ্লোরের সাথে চেপে ধরে। শরীফ রাকিবের পেটে হাওয়া ঢুকিয়ে দেয়।' Pw-13 stated in his examination-in-chief, 'কি হয়েছে জানতে চাইলে সে বলে, মামা শরীফ মামা আমার পাছায় হাওয়া দিয়েছে। তার সাথে বিউটি, মিন্টু ছিল বলে।' Pw-15 stated in his deposition, 'তোমার কি হয়েছে জিজ্ঞাসা করিলে ছেলেটি বলে, " আমার এক মামা আমার মলদ্বার দিয়ে গাড়ীর চাকায় হাওয়া দেওয়া মেশিনের পাইপ দিয়ে হাওয়া ঢুকিয়ে দিয়েছে। " আমি বললাম তোমার মামা এটা করবে কেন? সে বলতো " মামার দোকানে আগে কাজ করতাম। এখন তার দোকান ছেড়ে অন্য দোকানে গেছি। তাই আমাকে তারা ডেকে নিয়ে ধরে এই কাজ করেছে।" The aforesaid declarations were taken by the trial court as if in the words of the victim. Such statements made by the victim prior to his death [around 2-4 hours before his death], cannot be

said to be untrue and unauthenticated. Even then, no inconsistent versions regarding dying declarations of the victim are found among the witnesses who provided the victim's declarations of his attack. Here we find the dying declarations of the victim provided by the said witnesses are consistent and corroborative to each other.

It has emerged from the entire evidence through examination-in-chief and cross-examination of pws-04, 05, 13, 16, 21, 24, 33 and 38 that the condemned prisoners took the victim to the hospitals for treatment immediately after the occurrence which proves that the allegation brought by the pw-01 against the condemned prisoners is absolutely true and genuine. So, there is no scope from the side of defence to say that the occurrence did not take place at the relevant time by the condemned prisoners and their subsequent denials

and suggestions do not lead to them to be innocent in the alleged commission of offence. Their subsequent conduct as well as prosecution witnesses as discussed earlier proved that they have committed the offence of inserting blue air in the rectum of the victim and the cause of death of the victim, occurred for their heinous violence on his person.

Apart from the evidence of live witnesses, there are 3[three] confessional statements made by condemned prisoners and accused Beauty Begum in this case. It has revealed from the confession of condemned prisoner Sharif that Rakib worked in his workshop for one year and left the job 4/5 months ago as he repeatedly demanded money back, lent by him to Rakib's mother. Rakib stopped doing work in his Garage at the instance of his mother. One day Rakib suddenly told him that he would not come to do

the work. On the day of incident at 04:00 pm Rakib came to the shop of Sumon to purchase colour paint and also came to his shop after buying the same. Mintu asked Rakib whether he was irregular to have food seeing him in the garage. In reply Rakib said, he was punctual to have his foods. Mintu said, in that case why Rakib became ill-health.

Thereafter, Rakib started making fun with Mintu and he also pushed Mintu holding his belly. Before Rakib's coming he was cleaning inflator machine. Then Rakib was offered by Mintu to have something. Rakib replied that he wouldn't take anything. Then Mintu told him to take some blue air. At that time Mintu was sitting on the chair and putting his trousers off and telling him to take some air. He had some angriness with Rakib as he left his shop around 05/06 months ago. Thereafter, he pressed the pipe of inflator inside

his rectum making fun and forgot to remember that the inflator machine switched on. Accordingly, air entered his belly while Mintu embraced holding Rakib. When Rakib's belly was seen puffing up Mintu being enraged told that he did not tell him to give him blue air. In reply he told that he forgot to remind the same.

Then and there they took Rakib to 'Good Health Clinic' wherein no doctor was found and they also took him to Sadar Hospital but no doctor was there. Thereafter, on the way to Khulna Medical College Hospital by EG bike Rakib feeling unwell started vomiting. In no way they took Rakib to 'surgical clinic' and having seen by doctor told them to admit him into it quickly. He filled up the form to admit him who was taken up to ICU by attendants. At that time Sumon made a call to him and he told him that Rakib was admitted to surgical department intimating the incident.

Sometimes after, someone told them that they did not have good doctor in the hospital and thereafter the victim was removed to Khulna Medical College Hospital as suggested by that man. In need he along with Sumon gave two bags of blood after examining blood groups of all. On primary examination in the operation room doctor found the condition of the victim deteriorated and suggested them to take the victim to Dhaka for better treatment.

Secretary of Owners Association felt whether the victim would die on the way to Dhaka and then they brought medicines as per doctor's prescription and gave the victim saline keeping him in the hospital. After sometimes, doctor gave him oxygen as his condition deteriorated and told them that the victim would die at any time. After around 1[one] hour locals started to gather there and took the victim in the ambulance.

Locals started beating them including his mother. They heard through mobile phone that on the way to Dhaka victim died when they reached Boikali by EG Bike and saw the ambulance coming back towards Khulna. Police rescued them from the angry mobs and took them to hospital by police van. He expressed to suffer punishment as he committed offence even capital punishment. But his mother is innocent.

It appears from confession of accused Mintu Khan that he used to work on painting at different places. On the day of occurrence he was sitting in the Sharif's shop being previously known. He called Rakib when he came to purchase colour paint from nearby shop. Having taken Rakib on his lap asked whether he was not taking food regularly. Rakib replied that he could not take food because of work pressure on him and he refused to take anything at the moment. Then

he told him to take some blue air. At the moment Sharif was cleaning air tank and he took off his trousers under fun. He had no knowledge previously that Sharif was enraged with Rakib due to work in the garage. He asked Sharif to give some blue air to Rakib. Then Sharif pressed inflator's pipe in the rectum of Rakib. He could not realise that blue air entered inside the belly of Rakib and saw his belly puffing up after a while and then and there took him to 'Good Health Clinic' where no doctor was found.

Then they took him to Sadar hospital and subsequently removed him to surgical clinic by EG Bike and admitted there-under after being suggested by Sadar hospital. But they failed to give treatment initially as there was no experienced doctor in the clinic. Thereafter, they took the victim to 250' beds hospital by EG Bike and admitted him accordingly. Sharif and

Sumon gave two bags of blood in need. Although the doctor took the victim to the operation theatre but failed to operate him as his pulse was not found available. As per doctor's prescription they brought medicine from the shop and the victim was given saline. Meanwhile, locals including members of Rakib's house came to the hospital and told them that they would take him to Dhaka. Accordingly, Rakib was placed inside ambulance and started towards Dhaka. Locals confined and beat them up taking to the locality by EG Bike. When they reached Boikali could see the ambulance coming back and came to know that Rakib died on the way to Dhaka. Thereafter, they were brought to central road where locals beat them up. About 15/20 minutes later, police came and rescued them and took them to hospital by police van. The

incident took place due to making fun with the victim. He had no intention to kill Rakib.

The confessions made by both the accused are found similar to each other. There is no major difference between them. Both the accused narrated in their confessions that the victim came to a nearby shop for buying colour paint and on seeing him one of them invited him to enter their shop. Both of them, helping each other gave the victim air in the rectum by inflator in the afternoon of the alleged day of occurrence.

Although, confessional statement of accused Beauty Begum, mother of the condemned prisoner Sharif, is found as exculpatory in nature but she admitted that she saw her son Sharif and Mintu rendering air in the rectum of the victim by pressing inflator's pipe and the incident took place within a

minute and she became surprised to see the incident happening by the condemned prisoners. So, the admissions made by the condemned prisoners as regards to the commission of offence, has also been supported by the confessing accused Beauty Begum although she has been acquitted by the trial court. This confessing accused also supported regarding taking of the victim to the hospitals soon after occurrence and helping for treatment by condemned prisoners.

The contention of Mr. Golam Mohammad Chowdhury, learned Advocate is that the confession made by condemned prisoner Sharif before a magistrate is not found to be true and voluntary. Such confession has been obtained from the accused person under torture and threat of cross-fire. From the evidence of pw-34 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-15 and 16 respectively 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 their confessions, 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 scenario has been found in the case of confessing accused Beauty Begum. Pw-33 being Magistrate recorded confession of the said Beauty Begum on 07.08.2015. Nothing remains from the part of this witness to follow during recording of her confession.

Before or after recording the statements the confessing accused did not make any kind of complaints to the magistrates 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 no 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 been some minor irregularities in recording the confessional statements of the accused but such irregularities are not being considered as major mistakes.

It reveals from confessions of condemned prisoners 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 and can form the sole basis of conviction as against the maker of the same. It finds support from the decision in 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."

In the instant case pws-33 and 34 as recording magistrates have been produced before the trial court and examined thoroughly by the defence but nothing is

found shaken with regard to the sanctity of both the confessions.

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 their confessions and both the pws 33 and 34 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 issued separately. It is enough, if they are inserted in the prescribed form but it must have signature of the recording officer which is found present. So, no question of genuineness of the confessions is found present in this case. It finds support from the case of State-Vs-Munir and another, reported in 1 BLC, 345 which is run as follows, "……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."

Although both the condemned prisoners, 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 magistrate under threat of cross-fire. But that does not reflect on 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 interest or enmity brought those accused persons into book and put them on trial making a false story and also compelled them to make confessions, no such clue or document are found in the entire evidence of the prosecution 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.

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 of the accused are 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 Mufti Abdul Hannan Munshi @ Abul Kalam and another–Vs-the State, judgment dated 7th 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, preposition 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."

Further contention of Mr. Golam Mohammad Chowdhury, learned Advocate for the defence is that

the trial judge wrongly gave capital punishment to the condemned prisoners although it was not a pre-planned murder committed by them. We do agree with the contention of the learned Advocate that it was not an intended murder as the condemned prisoners prior to the occurrence did not go for any premeditation nor did they intend to kill the victim taking him forcibly in the 'Motor Garage'. But the way they took the victim to their custody in the name of giving him unbearable things into his belly through his anus by a heavy weapon like inflator is obviously beyond imagination of the human integrity.

None can say that human body and any of its parts are so strong that it can bear all sorts of inflicts made by another human being. Sometimes it is difficult to bear even a beat of an ant in any private organ of the human body but the inflicts made by the accused

persons through a private organ like rectum is absolutely unbearable to a human being especially for the victim, a boy of only 14 year old. Generally, if a man takes food more than his tolerance, he then has to face severe sickness instantly because every limb of a human body is so soft it cannot afford unbearable and intolerable blows. The act committed by the condemned prisoners is so severe that this perhaps never happened over the past hundred years in the crime world of this sub-continent.

In this case the intention of the perpetrators is totally absent. They did not call the victim with a pre-planned manner rather when they saw the victim near the motor garage, one of them took him inside the garage. So, it is a clear case of no evidence as regard to the intention of the perpetrators. But they intended to give him some blue air into his belly

through his private soft organ after taking off his trousers is indicating that they made themselves to commit a heinous crime with a teenage victim.

Mr. S.M Abdul Mobin, learned Advocate contends that although it is a case of no acquittal but it is not a clear case of murder. At best this can be attracted under section 304 of the Penal Code as culpable homicide not amounting to murder because the alleged occurrence took place without any intention and due to making fun with the victim.

Now the question is whether the inflator used in the rectum of the victim to be considered as heavy weapon. Admittedly, the said weapon is used in the wheels of the small and heavy vehicles to strengthen its capability to run on the street. Pressure of such air by the said inflator to the human body is not at all bearable in any way. Such inflator has been made for

only those purposes stated above. So, it is undoubtedly a powerful weapon than that of a heavy fire arms. Question has been raised as to whether the conduct of the perpetrators by the said weapon to cause the death of the victim should be treated as murder or culpable homicide not amounting to murder.

It can be determined by distinction between murder and manslaughter as enumerated in sections 299 and 300 of the Penal Code. Culpable homicide not amounting to murder or manslaughter is genus while murder its specie. All murders are culpable homicide but not vice versa. The punishments are described in sections 302 and 304 of the Penal Code if such offence, committed by the perpetrators is being proved by the prosecution evidence. To fix the punishment, proportionate to the gravity of this generic offence, the code apparently recognizes three degrees

of culpable homicide. The gravest form of culpable homicide has been defined in section 300 of the Penal Code as murder and its punishment is laid down in section 302 of the Penal Code and the second degree may be termed as culpable homicide not amounting to murder and its punishment is prescribed in section 304 Part-I of the Penal Code while punishment of lowest type of culpable homicide has been provided under second part of section 304 of the Penal Code.

A comparative table may be shown in appreciating the points of distinction between the two offences on the following manner.

Section 299 provides that, 'A person commits culpable homicide if the act by which the death is caused is done-

[a] with the intention of causing death; or

[b] with the intention of causing such bodily injury as is likely to cause death; and or

[c] with the knowledge that the act is likely to cause death.

Section-300 stipulates that, 'subject to five exceptions culpable homicide is murder if the act by which the death caused is done,

[1] with the intention of causing death; or

[2] with the intention of causing such bodily injury as the perpetrator knows to be likely to cause the death of the person to whom the harm is caused; or

[3] with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

[4] with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause [b] of section 299 along with clauses [2] and [3] of section 300 has no sign of intention to cause the death of a person in normal health or condition. It is very important to note here that the intention to cause death is not an essential requirement of clause [2] of section 300 of the Penal Code. Only the intention of causing the bodily injury coupled with the perpetrator's knowledge of the likelihood of such injury causing the death of the particular victim is sufficient to bring the killing within the ambit of this clause.

In clause [3] of section 300 of the Penal Code despite the words likely to cause death occurring in the corresponding clause [b] of section 299, the words 'sufficient in the ordinary course of nature' have been used. And therefore, the distinction lies between a bodily injury likely to cause death and bodily injury in the ordinary course of nature. Undoubtedly it is a sophisticated distinction narrated above. The difference between clause [b] of section 299 and clause [3] of section 300 is one of the degrees of probability of death resulting from the intended bodily injury. It is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause [b] of section 299 conveys the sense of probable as distinguished from a mere possibility. The words 'bodily injury is sufficient in the ordinary course of nature to

cause death' mean that the death will be the 'most probable' resulting injury having regard to the ordinary course of nature. For the case to fall within clause [3] of section 300 of the Penal Code it is not necessary that the perpetrator intended to cause the death, as long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. It finds support from the case of Rajwant –Vs- State of Kerala, reported in AIR 1966 SC, 1874 in this regard being an illustration.

In the present case it is evident that the offence committed by both the condemned prisoners by using said weapon which resulted the death of the victim meant that the death of the victim by the action of the condemned prisoners would be the 'most probable' resulting from such injury in the ordinary course of

nature. Although the intention to kill the victim is absent in this case but the act conducted by the condemned prisoners has been amounted to murder when such act has been done with the intention of causing such bodily injury as is likely cause death.

If the act is having fallen within any of the five exceptions as enumerated in section 300 of the Penal Code that,

[I] the perpetrator being deprived of the power of self-control by grave and sudden provocation causes the death of the person who irritated or causes the death of any other person by mistake or accident: or

[II] the perpetrator, in exercise in good faith of the right of private defence of person or property, exceeds the powers given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without

any intention of doing harm than is necessary for the purpose of such defence: or

[III] the offender being a public servant or aiding a public servant acting for the advancement of public justice exceeds the powers given to him by law, and causes death by doing an act which he, in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused: or

[IV] the offence is committed without premeditation in a sudden combat in the heat of passion on a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner: or

[V] when the person whose death is caused, being above the age of eighteen years, suffers death or takes risk of death with his own consent:

Only then the offence will fall within the ambit of culpable homicide not an amounting to murder or manslaughter but we do not find any materials on record that the act of the condemned prisoners has been fallen in any of the above five exceptions. In this regard it also finds support from the case of Govt. of Bangladesh –Vs- Siddique Ahmed, reported in 31 DLR [AD] [1997] 29 where it was held as under,

"It is to be observed that section 304 of the Penal Code which consists of two parts, does not create any offence but provides for the punishment of manslaughter or culpable homicide not amounting to murder. The section makes a distinction in the award of punishment. Under the first part of the section, the

intention to kill is present, and the act would have amounted to murder if the act is done with the intention of causing such bodily injury as is likely to cause death, but the act having fallen within any one of the five exceptions, in Section 300 of the Code, the offence will fall within its ambit. The second part of the Section is attracted to a case where the act is done with the knowledge likely to cause death but without any intention of causing death or to a case where bodily injury is caused as is likely to cause death. The first part applies to a case where there is guilty intention and the second part where there is no such intention, but there is guilty knowledge."

"…..Here the finding of the High Court is one of the guilty intention, and it can only be converted into an offence under Part-I of section 304, if any of the five exceptions of section 300 is attracted, but the

learned Judges of the High Court did not find any. The trial Court has clearly found that the accused was guilty of murder under section 302. The finding of High Court also cannot take the offence out of the ambit of section 302 in order to reduce it to one of manslaughter or culpable homicide amounting to murder under part I of section 304 of the Penal Code. According to High Court Division the respondent in the present case did not fire the shots aiming at deceased with the intention of causing death but he did so with the intention of causing such bodily injury as was likely to cause death. They also found that the death was caused by the gun-shot. From such a finding an offence under Part I of section 304 of the Penal Code could not be made out."

In the above case it is found that the respondent did not fire the shots aiming at the victim with the

intention of causing death but he did so with the intention of causing such bodily injury as was likely to cause death. In the case in hand it appears from evidence that the death of the victim was caused by blue air pumped into his belly through inflator by the condemned prisoners. Such act of the condemned prisoners proves that they did it with the intention of causing such bodily injury and ultimate result came into death of the victim and as such they cannot escape themselves from such liability as stated above under section 302 of the Penal Code.

More so, it appears from dissection of autopsy report, prepared by pw-37 that the abdomen of the victim was distended and the anterior abdominal highly congested. The small intestine and whole large intestine was ruptured and gangrenous and the urinary bladder was ruptured and also both lungs were collapsed. Such

analysis proved that inside the body of the victim was disrupted by the blue air pumped through the inflator by the condemned prisoners.

Injury Nos. 01 and 02 both are on wrists joints and ankles joint and injury No. 03 present on the dorsum of the right foot of the victim meant that the perpetrators applied serious pressure on the victim. Not only this, clotted blood is found present in the rectum, a soft organ of the victim of 14[fourteen] year old.

The aforesaid injuries they caused, were so imminently dangerous that it must, in all probability, have caused the death of the victim. It finds support from the case of Ayub Ali alias Md. Ayub Ali –Vs-The State, reported in 1987 BCR[AD]66 where it was held that, "The learned Judges of the High Court Division gave due consideration to this question and found that though the offender namely, the appellant, had no

intention to cause the death of the victim, he certainly had the intention to inflict bodily injury which, he knew, was most likely to cause death in the normal circumstances. Even if the contention of Mr. Serajul Huq that the appellant had neither any intention to cause the death nor any intention to inflict bodily injury most likely to cause death, still we find that the accused had the knowledge that the injuries he caused were so dangerous that they would, in all probability, cause the death and that in inflicting these injures he acted in a very cruel and unusual manner. This brings his action within clause (4) of section 300 of the Penal Code. The appellant is, therefore found to have been rightly convicted for murder. In the result, the appeal is dismissed."

Where the accused has the guilty intention of causing such injury as is likely to cause death the

offence cannot be converted into one under first part of section 304 of the Penal Code, unless it is brought to any of the five exceptions of section 300 of the Penal Code. In the instant case, both the condemned prisoners had guilty intention and common intention to cause bodily injury as is likely to cause death. And therefore, there is no scope to alter the sentence to one under section 304 from 302 of the Penal Code as advanced by the learned Advocates, for the condemned prisoners. Furthermore, the common intention under section 34 of the Penal Code can be established as an inference from the fact of participation in the commission of the offence [Tera mean –Vs-Crown, reported in 7 DLR 539]. Here, we find in the present case that the criminal act was committed by both the condemned prisoners jointly and the death of the victim was also caused by the result

of their common conduct. So, in furtherance of the common intention of both, to cause bodily injury as is likely to cause has been proved beyond any doubt.

Having considered the above discussions and findings and facts and circumstances of the case, we are constrained to hold that the prosecution has been able to prove the case beyond shadow of doubt under sections 302/34 of the Penal Code.

The contention of learned Advocate Mr. S.M Abdul Mobin for the defence is that the sentence of death is too harsh in this case because both the accused persons tried to save the life of the victim removing him to more than one hospital from the place of occurrence as disclosed by the prosecution witnesses. Now the question is commutation of sentence as pointed out by the defence to be considered or not. In true sense, it is most difficult

task on the part of a judge to decide what would be quantum of sentence in awarding upon an accused for committing the offence when it is proved by evidence beyond shadow of doubt but the judge should have considered the legal evidence and materials for punishment of the perpetrator not as a social activist [63 DLR 460, 18 BLD 81 and 57 DLR 591]. Sometimes, it depends on gravity of the offence and sometimes, it confers upon an aggravating or mitigating factor. Under section 302 of the Penal Code discretion has been conferred upon the court to award two types of sentence either death or imprisonment for life and shall also impose fine.

It is now pertinent to note that pw-3 in his deposition stated that the mother of the victim also told him that Rakib was removed by accused persons to Khulna Medical College Hospital. In cross-examination

pw-5 said, 'আসামীরা রাকিবকে বিভিন্ন হাসপাতালে চিকিৎসার চেষ্টা করে কিন্তু আমাদেরকে জানায় নাই।' In cross-examination-pw-13 said, 'তবে, আসামীদের আড়াইশ বেড হাসপাতালে পাই। ..... আসামীরা রাকিবকে খুলনা মেডিকেলে ভর্তি করে ডাক্তারের পরামর্শে এটি আই/ও কে বলি।' In cross-examination pw-16 replied, 'আসামী মিঠু পাঁজাকোলা করে রাকিবকে গুড হেলথ ক্লিনিকে নিয়ে যায়। সেখানে ভালো চিকিৎসা না হলে সদর হাসপাতাল, তারপর সার্জিক্যালে, সেখান থেকে আড়াইশ বেড হাসপাতালে নেয়।'

In examination-in-chief pw-19 deposed, ' আমি নাবিলের কাছে শুনতে পাই শরীফ, মিন্টু এরা রাকিবের পাছায় হাওয়া দিয়েছে। এজন্য রাকিব অসুস্হ হয়ে পড়লে শরীফ,মিন্টু এরা হাসপাতালে নিয়ে যায়। খবর নিয়ে সার্জিক্যালে যাই শরীফের কাছ থেকে ফোনে জেনে। সার্জিক্যালে রাকিবের ট্রিটমেন্ট চলছে আর শরীফ, মিন্টুকে বাইরে বসা দেখি। আমরা আসামীদের সাথে রাকিবকে নিয়ে আড়াইশ বেডে নিয়ে যাই। .....শরীফরা দুই ব্যাগ রক্ত ম্যানেজ করে। এক ব্যাগ আমি দেই., আরেক ব্যাগ শরীফ দেয়। মিন্টু ঔষধ আনতে যায়।' In cross-examination, 'আসামীরা রাকিবকে বাচানোর চেষ্টা করেছিল।' Pw-20 in his

deposition stated, 'শরীফ, মিন্টু এরা রাকিবকে ধরে মিন্টু পাঁজাকোলা করে নিয়ে হাসপাতালে নিয়ে যায়। আমি দেখেছি।'

Pw-21 in his deposition said, ' আমি দোকানের বাইরে বের হয়ে এসে দেখি মিন্টুকে পাঁজাকোলা করে নিয়ে যেতে দেখি। রাকিব কোলে ছিল। শরীফকে দেখি দোকানের শাটার টেনে দিয়ে মিন্টুর পিছনে পিছনে শরীফকে দৌড় দিয়ে যেতে দেখি।' Pw-23 in cross-examination said, 'আসামীরা স্থানীয় লোকজন সহ রাকিবকে গুড হেলথ ক্লিনিকে নিয়ে যায় এটি বলেছিলাম আই/ও কে।' Pw-24 in cross-examination replied, 'ডকে দাঁড়ানো ২ জন আসামী রোগীকে সংগে এনেছিল। মিন্টুর কোলে রাকিব ছিল।' Pw-25 in cross-examination said,- 'আমরা জনতার রোষানল হইতে উদ্ধার না করলে এরা মারা যেতো। এদের মাথা ফাটা ছিল, গায়ে দাগ ছিল।' Pw-33 in cross-examination replied,- 'শরীফ এবং মিন্টু মিলে গুড উইল হাসপাতালে নিয়ে যায় এটি রেকর্ড হয়েছে।..... এক জায়গায় লেখা আছে, জনগন শরীফকে মারপিট করে।' Pw-34 in cross-examination said,- 'আসামীকে গণ ধোলাই দেওয়া হয়েছিল শুনেছি। .....গণ পিটুনিতে আসামী আহত হয়েছে এটি আসামী আমাকে বলেছিল তাহা আমি রেকর্ড করি।

.....আসামী বলেছে ইয়ার্কি করতে করতে ঘটনাটি ঘটেছে। রাকিবকে চিকিৎসার জন্য ভর্তি করে, ঔষধ কিনে আনে এটি বলেছে। রাকিবকে মারার উদ্দেশ্য ছিল না এটি আসামী বলেছে।' Pw-38 in cross-examination said,.... 'আসামী মিন্টু রাকিবকে কোলে করে হাসপাতালে নেয় এটি আমি তদন্তে পেয়েছি।.....তদন্তে পাই, মিন্টু রাকিবকে কোলে তুলে গুড হেলথ ক্লিনিকে নিয়ে যায়।'

From the evidence of aforesaid witnesses it is found that the accused persons removed the victim from the place of occurrence to the hospitals soon after incident. It is also evident by pws-25, 33 and 34 that the accused persons were beaten by angry mobs after occurrence meaning that the accused persons did not flea away rather they tried to save the life of the victim when they felt that they committed serious crime on the victim by pumping air into his belly by inflator.

In such a situation, it is a very hard job for the court to determine the quantum of sentence whether it will be capital punishment or imprisonment for life upon the accused persons since they played a role for saving the victim's life soon after occurrence as evident by the said prosecution witnesses. At the same time it is very important to note that the victim was completely an innocent teenager who had no fault of such dire consequences at the hands of the accused persons. Since the determination of awarding sentence to the accused persons is at the middle point of views, it may turn to impose capital punishment or imprisonment for life and that is why, the advantage of lesser one shall find the accused persons to acquire in the instant case. More so, both the accused persons have no significant history of prior criminal activities and their PC and PR [previous conviction and previous records] are found nil in the police report. In this regard it finds support from the decision in the case of Nalu –

Vs-The State, reported in 1 ALR(AD)(2012) 222 where one of the mitigating factors was previous records of the accused. It also indicates from the evidence of prosecution witnesses that doctors got confused as to how the treatment was given to the victim when he was taken to the hospitals in Khulna Divisional Head Quarters because it was an exceptional offence committed by the accused persons and the victim died around four hours later on the way to Dhaka. Therefore, we do find an extraneous ground to commute the sentences but we do not find any reason to interfere with conviction recorded under sections 302/34 of the Penal Code.

In the above facts and circumstances of the case, we are of the view that ends of justice will be met if the accused persons are sentenced to one of imprisonment for life instead of awarding them sentences to death with a fine of Tk. 50[fifty] thousand each, in default, to under R.I for 02[two]

years. On recovery of the fine from both the convicts, the same has to be paid to the legal heirs of the deceased.

In the result, the Death Reference No. 92 of 2015 is, hereby, rejected with the said modification in awarding sentences. The Criminal Appeal Nos. 9051 of 2015, 9170 of 2015 and Jail Appeal No. 222 of 2015 and 224 of 2015 are dismissed.

Accordingly, both the condemned prisoners are sentenced to imprisonment for life with a fine of Tk. 50[fifty] thousand as stated above and be shifted from the condemned cell to normal cell meant for similar convicts at once.

Let a copy of the judgment and order along with lower court's records be transmitted to the Metropolitan Sessions Judge, Khulna for taking necessary measures.

Md. Jahangir Hossain, J

I agree

Liton/B.O