

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Bhishmadev Chakraborty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 140 of 2019

The Statepetitioner

-Versus-

S.M. Sirajuddowla and 15 others

.....condemned-prisoners

with

Criminal Appeal No. 12019 of 2019 and

Jail Appeal No. 326 of 2019

Mohammad Shamim

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 12268 of 2019 and

Jail Appeal No. 323 of 2019

Ruhul Amin

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 12293 of 2019 and

Jail Appeal No. 328 of 2019

Afsar Uddin @ Afsar Uddin

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 12296 of 2019 and

Jail Appeal No. 324 of 2019

Maksud Alam @ Moksud Alam Councilor

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 13882 of 2019 and
Jail Appeal No. 336 of 2019 and Jail Appeal No. 327 of 2019
 Hafez Abdul Kader and Abdur Rahim Sharif
convict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 13885 of 2019 and
Jail Appeal No. 335 of 2019
 Umma Sultana @ Popi @ Tuhin @ Shampa @ Champa
convict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 13886 of 2019 and
Jail Appeal No. 321 of 2019
 S.M. Sirajuddowlaconvict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 13887 of 2019 and
Jail Appeal No. 322 of 2019
 Nur Uddinconvict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 13888 of 2019 and
Jail Appeal No. 330 of 2019
 Javed Hossain @ Shakwat Hossain Javed
convict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 14096 of 2019 and
Jail Appeal No. 333 of 2019
 Iftakhar Uddin Ranaconvict-appellant

-Versus-
 The Staterespondent
with
Criminal Appeal No. 14097 of 2019 and

Jail Appeal No. 329 of 2019

Saifur Rahman Muhammad Jubair

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 14473 of 2019 and

Jail Appeal No. 331 of 2019

Imran Hossain @ Mamun

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 14637 of 2019 and

Jail Appeal No. 332 of 2019

Mohiuddin Shakil

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 14697 of 2019 and

Jail Appeal No. 334 of 2019

Kamrun Nahar Moni

.....convict-appellant

-Versus-

The State

.....respondent

with

Criminal Appeal No. 14698 of 2019 and

Jail Appeal No. 325 of 2019

Shahadat Hossain Shamim

.....convict-appellant

-Versus-

The State

.....respondent

Mr. Md. Ruhul Quddus Kajal, Attorney General
with Mr. Syed Ejaz Kabir and Mr. Mohammad
Imam Hossain (Tarek), Deputy Attorney Generals
with Ms. Mahbuba Tasnim Akhi, Mr. Ashraful
Alam, Ms. Rohani Siddiqua, Mr. Al Amin Siddique
and Md. Abdul Motaleb, Assistant Attorney
Generals

.....for the State

Mr. Md. Munsurul Hoque Chowdhury, Senior
Advocate with Mr. Farid Uddin Khan, Mr.
Mohammad Shafikul Islam Ripon, Mr. Md. Ismail

Mia, Mr. Azura Azmiri Hoque and Mr. Md. Zahir Ahammed, Advocates

.....for the convict-appellant

(In Cr. A. No. 12268 of 2019 and J.A. No. 323 of 2019)

Mr. S.M. Shahjahan, Senior Advocate with Mr. Suruzzaman and Mr. Mohammad Mostak Hossain Molla, Mr. Md. Rezaul Karim, Mr. Md. Yeahia Kabir, Mr. Md. Kamal Hossain, Mr. Md. Shafiqul Islam and Mr. Md. Amran Hossain Advocates

.....for the convict-appellants

(In Cr. A. No. 14698 of 2019 with J.A. No. 325 of 2019, In Cr. A. No. 14637 of 2019 with J.A. No. 332 of 2019, In Cr. A. No. 12293 of 2019 with J.A. No. 328 of 2019 and In Cr. A. No. 12296 of 2019 and J.A. No. 324 of 2019)

Dr. Khandaker Mohammad Musfiqul Huda, with Mr. Siddique Azad, Ms. Shammi Akter and Md. Fayzul Haque, Advocates

.....for the convict-appellants

(In Cr. A. No. 13882 of 2019 in part and Cr. A. No. 13885 with J.A. No. 327 and J.A. No. 335 of 2019)

Mr. S.M. Masud Hossain Dolon, Senior Advocate with Ms. Shammi Akter, Advocates

.....for the convict-appellant

(In Cr. A. No. 13886 of 2019 with J.A. No. 321 of 2019)

Mr. Mohammad Shishir Manir, Senior Advocate with Mr. Mohammad Saddam Hossen, Mr. Abdullah Sadiq, Mr. Mohammad Abdul Wadud, Mr. Md. Mizanul Hoque and Mr. Jaiad Bin Amjad, Advocates

.....for the convict-appellants

(In Cr. A. No. 12019 of 2019, Cr.A. No. 14097 of 2019, Cr. A. 14697 of 2019 with J.A. No. 326, J.A. No. 329 and J.A. No. 334 of 2019)

Mr. Muhammad Tajul Islam, Senior Advocate with Mr. Mohammad Dalwar Hossain, Advocate

.....for the convict-appellant

(In Cr. A. No. 13887 of 2019 with J.A. No. 322 of 2019)

Mr. Hasinur Rahman with Ms. Hasina Banu Poly, Advocates

.....for the convict-appellant

(In Cr. A. No. 14473 of 2019 with J.A. No. 331 of 2019)

Mr. Mohammad Abdul Momin with Mr. Al Mamun
and Mr. Mohammad Adnan Yazdani, Advocates

.....for the convict-appellant

(In Cr. A. No. 14096 of 2019 with J.A. No. 333 of 2019)

Mr. Siddique Azad, Advocate

.....for the convict-appellant

(In Cr. A. No. 13888 of 2019 with J.A. No. 330 of 2019)

Mr. Md. Abdul Quddus Badal, Advocate

.....for the convict-appellant

(In Cr. A. No. 13882 of 2019 in part with J.A. No. 336 of 2019)

**Heard on: 28.07.2026, 29.07.2026, 30.07.2026,
02.08.2026, 03.08.2026, 04.08.2026, 06.08.2026,
9.08.2026, 10.08.2026, 11.08.2026, 12.08.2026,
13.08.2026, 16.08.2026, 17.08.2026, 18.08.2026,
19.08.2026 and 20.08.2026.**

Judgment on: 24.08.2026.

K.M. Rasheduzzaman Raja, J:

This reference under Section 374 of the Code of Criminal Procedure, herein after ‘the Code’, is for confirmation of the death sentences awarded upon the condemned prisoners by the learned Judge of the Nari-o-Shishu Nirjatan Daman Tribunal, Feni under section 4(1) and 30 of the Nari o Shishu Nirjatan Daman Ain, 2000, hereinafter ‘the Ain, 2000’, in Nari-o-Shishu Tribunal Case No. 181 of 2019 arising out of Sonagazi Model Police Station Case No. 10 dated 08.04.2019 corresponding to G.R. Case No. 59 of 2019 by the judgment and order of conviction and sentence dated 24.10.2019. Criminal Appeals 12019, 12268, 12293, 12296, 13882, 13885, 13886, 13887,

13888, 14096, 14097, 14473, 14637, 14697 and 14698 of 2019 with Jail Appeals 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335 and 336 of 2019 preferred by the condemned-prisoners are also arisen out of the same conviction and sentence and, therefore, all these matters be disposed of by this judgment.

The prosecution case, in short, is that deceased Nusrat Jahan Rafi was a regular student of Sonagazi Islamia Fazil Madrasha, hereinafter the Madrasha, and she was appearing in the examination of Alim Second Year, 2019. Condemned-prisoner S.M. Sirajuddowla, Principal of the Madrasha, on 27.03.2019 called Nusrat Jahan Rafi into his office by his daftari P.W. 4 Nurul Ameen and outraged her modesty. Her mother P.W. 12 Shirin Akter lodged FIR on such occurrence in Sonagazi Model Police Station (P.S.) which was registered as Sonagazi P.S. Case No. 24 dated 27.03.2019 under section 10 of the Ain, 2000. Accused S.M. Sirajuddowla was sent to jail in connection with that case. After his arrest condemned-prisoners Nooruddin, Shahadat Hossain Shamim, Javed, Jobayer, Councilor Maksud Alam threatened the informant and asked her to withdraw the

case which she refused. P.W. 1 Mahmudul Hasan Noman accompanied his sister Nusrat Jahan Rafi to Madrasha on 06.04.2019 to help her attend the scheduled examination of Arabic 1st paper of Alim Second Year. P.W. 5 Mustfa halted P.W. 1 Mahmudul Hasan Noman at the gate of Madrasha. As such, his sister Nusrat Jahan Rafi started for examination hall alone. A girl wearing burqa along with eyeglasses and hand socks informed Nusrat Jahan Rafi that her friend Nishat was being beaten in the rooftop of cyclone centre of the Madrasha. Getting such information Nusrat Jahan Rafi after putting her paper file on the bench climbed up the roof top of the cyclone centre. Going there at around 9:50 a.m. she did not find Nishat but found four burqa wearing persons. Out of them two persons put pressure upon Nusrat Jahan Rafi for withdrawing the case filed against the principal S.M. Sirajuddowla. As she did not agree they fell her on the ground and tied up her hands and legs. Sprinkling kerosene on her body they set her on fire and fled away quickly. After burning of the knots of her legs and hands Nusrat Jahan Rafi ran to the 1st floor of the building with cry. Hearing her cry P.W. 33 Police Constable Russell and P.W. 5

Guard Mustafa rushed to her and doused the fire by wrapping her with a doormat. After a while condemned prisoner Hafez Abdul Kader informed P.W. 1 Mahmudul Hasan Noman the incident over Mobile Phone. Appearing at the gate of the Madrasha P.W. 1 Mahmudul Hasan Noman found P.W. 33 Constable Russell, P.W. 24 Baby Rani, female attendant of the Madrasha, and teacher Selim and with their help he took the victim to Sonagazi Upazila Health Complex. Upon found her deteriorating condition doctor referred Nusrat to Feni Sadar Hospital. On her way to Feni Sadar Hospital from Sonagazi Health Complex Nusrat Jahan Rafi disclosed to her brother P.W. 1 about the four burqa wearing persons. She was given first aid at Feni Sadar Hospital and referred to Burn Unit, Dhaka Medical College Hospital where she succumbed to her injuries on 10.04.2019. On such occurrence her brother P.W. 1 Mahmudul Hasan Noman lodged FIR on 08.04.2019 with Sonagazi P.S. which was recorded as Sonagazi P.S. Case No. 10 dated 08.04.2019 under section 4(1) and 30 of the Ain, 2000.

P.W. 86 Inspector Kamal Hossain was appointed as the Investigating Officer (I.O). He started investigation but

subsequently handed over the case docket to PBI at 3:30 p.m. on 10.04.2019 for investigation being instructed for the same. P.W. 87 Md. Shah Alam, Inspector, PBI, being appointed I.O. concluded the investigation and submitted charge-sheet against the condemned prisoners under sections 4(1) and 30 of the Ain, 2000.

Learned Magistrate transmitted the record of the case to the Tribunal, Feni for holding trial. Learned Judge of the Tribunal took cognizance of the offences and framed charge against the accused persons under sections 4(1) and 30 of the Ain. The charge was read over to the accused persons to which they pleaded not guilty and demanded the trial.

Prosecution examined 87 witnesses to bring home the charge brought against the accused persons. After recording of evidence the accused persons were examined under section 342 of the Code whereupon they again claimed their innocence and gave statements in favour of their defence. They adduced no counter evidence.

The defence case as it transpires from the trend of cross-examination and the statements of the condemned prisoners

given while being examined under section 342 of the Code is that of innocence. The deceased got frustrated observing the programme of forming a human-chain demanding release of the condemned prisoner Principal S.M. Sirajuddowla. Consequently, she attempted to commit suicide at home. She wanted to commit suicide to teach condemned prisoner S.M. Sirajuddowla a good lesson. The deceased might have committed suicide.

Upon consideration of the evidence adduced by the prosecution along with other materials on record the learned Judge of the Tribunal awarded death sentence upon all the 16 accused persons under sections 4(1) and 30 of the Ain, 2000 and referred the same to this Division for confirmation of sentences.

Mr. Md. Ruhul Quddus Kajal, Learned Attorney General, submits that the condemned prisoners have given confessions and these have been properly corroborated. Learned Attorney General however, submits that justice is to be ensured for all sides. He has relied on the principles laid down in the cases of *Fatema Begum Vs. Aminur Rahman* 25 BLD 342 and *Sukur Ali Vs. State* 74 DLR (AD) 11 in support of his submissions.

Mr. Syed Ejaz Kabir, Learned Deputy Attorney General, submits that the prosecution has adduced sufficient evidence to prove the charge brought against the condemned prisoners. The condemned prisoners also made confessions which have been properly recorded by the learned Magistrates. The confessions are inter-corroborative as well as corroborated by other evidence. Incriminating alamots were recovered at the showing of the confessions makers. The deceased gave dying declaration disclosing the facts of setting her on fire in the earliest possible time which has been recorded in Mobile Phone by her brother P.W. 1 Mahmudul Hasan Numan. Subsequently the attending doctor P.W. 83 Dr. A.K.M. Moniruzzaman at the Burn Unit, Dhaka Medical College Hospital wrote the statements upon hearing from the victim. Relying upon such untainted evidence, the learned Judge of the Tribunal rightly found the condemned prisoners guilty and, therefore, convicted and sentenced by the impugned judgment. As such, the reference should be accepted.

On the other hand, Mr. S.M. Shahjahan, learned Senior Advocate appearing for condemned prisoners Md. Shahadat Hossain Shamim in Criminal Appeal No. 1498 of 2019,

Afsaruddin in Criminal Appeal No. 12293 of 2019, Maksud Councilor in Criminal Appeal No. 12296 of 2019 and Mohiuddin Shakil in Criminal Appeal No. 14637 of 2019 has opposed the reference and supports the connecting appeals submitting that there is no eyewitnesses to the occurrence. The P.Ws. have supported that the deceased had a suicidal tendency. The confessions were extracted from the condemned prisoners in remand subjecting to torture and putting under fear and inducement. They were illegally detained in police custody for more than 24 hours after their arrest. The condemned prisoners subsequently retracted the confessions on cogent grounds. None corroborated the confessions of the condemned prisoners. No accused can be convicted relying on the uncorroborated confessions of co-accused as the confessions are not evidence in the eye of law. The alleged recoveries were also not in accordance with the confessions. The dying declaration did not disclose the names of the condemned prisoners and therefore, that cannot be reliable to use as the basis of conviction. The prosecution hopelessly failed to prove the charge brought against the accused and, therefore, the reference should be rejected. Mr.

S.M. Shahjahan has relied on the principles laid down in the cases of Safar Ali and ors Vs. The State 36 DLR 185, Faruk Mahajan and ors Vs. The State 17 BLD 15, Md. Rezaul Karim Vs. State 23 BLD 255, State Vs. Ali Kibria @ Shahjahan 43 DLR 512, Lutfunnahar Vs. State 27 DLR 29, Nurjahan Begum Vs. The State and others 42 DLR (AD) 130 along with other cases.

Mr. Shishir Monir, learned Senior Advocate appearing for condemned prisoners Quamrunnaha Moni in Criminal Appeal No. 14697 of 2019, Md. Shamim in Criminal Appeal No. 12019 of 2019 and Saifur Rahman Md. Zubayer in Criminal Appeal No. 14097 of 2019 also opposed the reference and supported the connecting appeals submitting that none witnessed the occurrence. In her dying declaration deceased Nusrat Jahan Rafi stated that four burqa wearing girl set her on fire. But the I.O. miserably failed to detect those four girls and implicated the convict prisoners falsely with the case. Quamrunnahar Moni was pregnant for 5 months at the time of occurrence and her mother let her reach the examination hall. She took part in the subsequent three examinations and obtained A+ in all the

subjects. She got admitted in hospital in the previous night and attended the examination in the morning. She was taken in police remand and her confession was extracted putting her under fear and inducement. Md. Shamim was not named in the FIR and none saw him in the premises of the Madrasha at the time of occurrence. Saifur Rahman Md. Zubayer has also been implicated with the case falsely as none saw his entry or exit in or from the place of occurrence. It is almost impossible that at the time of setting the victim on fire she will not outcry and nobody would saw the assailants fleeing away. Mr. Monir, learned counsel for the condemned prisoners, lamented that the Investigating Officer failed to seize the CCTV Camera installed at the place of occurrence. This glaring omission has made the investigation tainted and murky. Mr. Monir has relied in the decisions of the cases of K. Poonuswamy Vs. State of Tamilnadu (2001) 6 SCC 674, Khalil Khan Vs. State of Madhya Pradesh (2003) 11 SCC 19, Kali Ram Vs. State of Himachal Pradesh (1973) 2 SCC 808 along with other cases.

Dr. K.M. Mushfiqul Huda, learned Advocate appearing for the condemned prisoners Umme Sultana Poppy in Criminal

Appeal No. 13885 of 2019 and Abdur Rahim Sharif in Criminal Appeal No. 13882 of 2019 submits that the dying declaration of Nusrat Jahan Rafi is doubtful as her fingers were burned making those unable to put impressions. P.W. 1 Mahmudul Hasan Numan found Dr. Asif Iqbal recording the dying declaration of the deceased at Feni Sadar Hospital but he was not adduced as a witness. None saw condemned prisoner Umme Sultana Poppy calling the deceased with her. She was subjected to torture while extracting her confessions taking in police remand. The condemned prisoners were detained in Police custody illegally before producing them to the recording Magistrates. Learned Magistrate has recorded her confession in violation of Rule 79 of the Criminal Rules and Orders (Cr.R.O). On the other hand, condemned prisoner Abdur Rahim Sharif is not FIR named accused. None saw him in the premises of the Madrasha at the time of occurrence. His confession was also extracted taking him in police remand. Mr. Huda has referred the cases of Government of Bangladesh Vs. BLAST, 69 DLR (AD) 63 and Md. Humayan Kabir Vs. the State 15 SCOB (2021) 76 in support of his submissions.

Mr. Munsurul Hoque Chowdhury, learned Senior Advocate appearing for the condemned prisoner Ruhul Amin in Criminal Appeal No. 12268 of 2019 submits that although FIR was lodged after two days of the occurrence but Ruhul Amin was not named therein. He made no confession. None disclosed any participation of Ruhul Amin in the occurrence. Since he was the Vice-President of the Managing Committee of the Madrasa, he has been falsely implicated with the case at the instance of his adversary.

Mr. Muhammad Tajul Islam, Learned Senior Advocate appearing for the condemned prisoner Nooruddin in Criminal Appeal No. 13887 of 2019 submits that Nooruddin was not present at the place of occurrence. He was produced before the Magistrate after 50 hours of his arrest. His confession was extracted keeping him under illegal detention. His confession is preposterous, absurd and unbelievable and therefore, that cannot form basis of conviction. As a youthful offender Nooruddin should not have been sentenced with capital punishment relying only on his uncorroborated and tainted confession. Mr. Islam has relied on the principles enunciated in the cases of State Vs. Md.

Rsoushan Mondal @ Hashem 59 DLR 72, State Vs. Mofijuddin and others 15 BLT (AD) 104

Mr. S.M. Masud Hossain Dolon, Learned Senior Advocate appearing for the condemned prisoner S.M. Sirajuddowla in Criminal Appeal No. 13886 of 2019 submits that P.W. 87 Shah Alam, I.O., has stated that the deceased attempted to commit suicide at her bathroom on 29.03.2019. Suppressing such tendency of the victim and its consequence the informant illegally implicated the condemned prisoner S.M. Sirajuddowla with the case. He was in jail at the time of committing the offence. He was taken in police remand and his confession was extracted putting him under inhuman torture during remand. He has been illegally convicted relying on his retracted confession and the uncorroborated confessions of the co-accused. Such a harsh conviction cannot be maintained against S.M. Sirajuddowla only on the allegation that he ordered the others to commit the alleged offence. The prosecution hopelessly failed to prove the evidence of PWs 55 to PWs 58, officers of the jail authority, that he made any conspiracy with other convicts including Nooruddin and Shahadat Hossain Shameem to kill the victim in a planned way.

In the premises above he can not be convicted only on this confession which is not corroborated by any other sources. Mr. Dolon has relied on the principle laid down in the case of State and another Vs. Abdul Kader @ Mobile Kader and others 67 DLR (AD) 6

Mr. Siddik Azad, Learned Advocate appearing for the condemned prisoner Shakhawat Hossain Javed in Criminal Appeal No. 13888 of 2019 submits that Shakhawat Hossain Javed was taken in police remand on several occasions, even after making his confession by violating the provisions of law. His confession is not true and voluntary. He took no part in the occurrence. He is the classmate of the deceased and took part in examination even on the date of occurrence and the next days.

Mr. Abdul Quddus Badal, Learned Advocate appearing for the condemned prisoner Hafez Abdul Kader in Criminal Appeal No. 13882 of 2019 submits that Hafez Abdul Kader was illegally detained in police custody and police extracted his confession subjecting him to torture which is neither true nor voluntary. He was a teacher of the Madrasha and he informed the occurrence of Nusrat Jahan Rafi to her brother P.W. 1 Mahmudul Hasan

Numan. He went to Dhaka Medical College Hospital to see the victim as well. He has been illegally sentenced relying on his exculpatory confession.

Mr. Mohammad Abdul Momin, learned Advocate appearing for the condemned prisoner Iftekharuddin Rana in Criminal Appeal No. 14096 of 2019 submits that none of the P.Ws. saw him in the place of occurrence. His confession is not voluntary and true. His confession was extracted putting him under threat and fear and the confession was exculpatory. The confessions of the co-accused are not corroborative to prove his guilt. So, his conviction and sentence suffers from grave illegality. Mr. Momin has relied on the principle laid down in the case of State Vs. Md. Zakir Hossain 23 BLC (AD) 150

Ms. Hasina Banu Poly, Learned Advocate appearing for the condemned prisoner Imran Hossain Mamun in Criminal Appeal No. 14473 of 2019 submits that Imran Hossain Mamun is not named in the FIR. His confession was extracted putting him under fear. He subsequently retracted his confession. He did not take part in the occurrence. Rather he went to Dhaka and gave

blood for the deceased. He has been illegally convicted by the learned Judge of the Tribunal.

We have already mentioned that the prosecution has adduced 87 witnesses in support of the charge brought against the condemned prisoners. However, many of them merely provided repetitive accounts of the same facts. The sum and substance of the evidence of those 87 witnesses of the prosecution is as follows-

P.W.1 Mahmudul Hasan Numan, the informant, has deposed that S.M. Sirajuddowla, Principal of the Madrasha, called his sister Nusrat Jahan Rafi into his office through his peon P.W. 4 Nurul Amin and outraged her modesty. On such occurrence his mother P.W. 12 Shirin Akter lodged an FIR to Sonagazi Model Police Station whereupon Sonagazi P.S. Case No. 24 dated 27.03.2003 under section 10 of the Ain, 2000 was registered and S.M. Sirajuddowla was sent into Jail in connection with that case. Following the arrest of the Principal accused Nooruddin, Shahadat Hossain Shamim, Javed, Zubayer, Maksud Alam Councillor started threatening them by asking to withdraw the case. But they did not agree to withdraw the case. On

06.04.2019 he accompanied his sister Nusrat Jahan Rafi to help her to take her seat in the examination hall of the Madrasha for participation in the 2nd Year Alim examination. But P.W. 5 Guard Mustafa halted him at the Madrasha gate and his sister Nusrat Jahan Rafi went to the examination hall alone. On her way a burqa wearing girl told Nusrat that somebody was beating her friend Nishat in the rooftop of the cyclone centre of the Madrasha. Hearing such occurrence Nusrat went to the rooftop of the cyclone centre after keeping her file on the bench of the examination hall. Going there she found four burqa wearing persons and out of them 2 persons put pressure on her at around 9:50 a.m. to withdraw the case dated 27.03.2019 filed against the Principal. As Nusrat did not agree to withdraw the case those burqa wearing persons grounded her and tied-up her hands and legs. Thereafter setting her on fire after pouring kerosene on her body, all of them fled quickly. After burning the knots of her hands and legs Nusrat got down to the 1st floor and raised alarm for help. P.W. 33 Police Constable Russell, P.W. 5 Guard Mustafa rushed towards her and doused her fire by wrapping a doormat around her. After a while, accused Hafej Abdul Kader

informed him the incident of fire through Mobile phone. Receiving such phone call he appeared at the gate of the Madrasha and took his sister Nusrat Jahan Rafi to Sonagazi Upazial Health Complex with the help of P.W. 33 Police Constabel Russell, female attendant of the Madrasha P.W. 24 Baby Rani and a teacher of the Madrasha named Selim. The doctor of the Health Complex sent the patient to Feni Sadar Hospital where she was given First Aid and referred to Burn Unit, Dhaka Medical College Hospital where she succumped to her 75% to 80% burn injuries on 10.04.2019. He recorded the statements of his sister in Mobile phone on the way to Feni Sadar Hospital From the Sonagazi Health Complex where she disclsoed that taking her to the rooftop of the cyclone centre of the Madrasha four burqa wearing persons asked her to tell that the case dated 27.03.2019 was false. He submitted the voice record to the PBI. Four burqa wearing persons killed his sister by setting her on fire at the instance of the Principal S.M. Sirajuddowla. He lodged F.I.R. on 08.04.2019. He has marked the FIR and his signature thereon as Exts. After filing of the case he came to know that 12 accused Shahadat Hossain Shamim,

Saifure Rahaman Md. Zubayer, Quamrunnahr Moni, Umme Sultana Poppy @ Tuhin @ Shampa @ Champa, Shakhawat Hossain Javed, Noorudding, Abdur Rahim Sharif, Hafej Abdul Kader, Zubayer Hossain, Mohiuddin Shakil, Imran Hossain Mamun, Iftekharuddin Rana and S.M. Sirajuddowla gave confessional statements disclosing the four other names such as, Md. Shamim, Maksud Alam Councillor, Ruhul Amin and Afsaruddin involved with the occurrence.

In cross-examination he has stated that he was not at the place of occurrence. He has no knowledge whether there was any officer of Police Bureau of Investigation (PBI) at the place of occurrence. He saw the confessional statements of the accused in the News Paper. He received information of fire on his sister at around 9:48 a.m. Earlier, he requested the guard to allow him enter the Madrasha as his sister was a little bit upset. He has denied that his sister attempted to commit suicide upon found a human chain in favour of the Principal for his release or he took Nusrat to the examination hall upon found suicidal tendency in her or they wrongly framed Principal S.M. Sirajuddowla with the case because of their failure to appoint his father as a Principal of

the Madrasha or none but Nusrat herself set fire on her out of frustration.

P.W. 2 Nishat Sultana has deposed that she and P.W. 3 Nasrin Sultana Furti went to drink water in front of the office room of Principal S.M. Sirajuddowla on 03.10.2018. When they were returning after drinking water the Principal called Furti to meet him in his office room. When she and Furtin entered his room the Princial told that he had talk only with Furti and asked her to leave. Accordingly, she left the office room of the Principal. After 4/5 minutes Furti came out of the office room of the Principal and told her that the Princial sexually harassed her. On such occurrence, father of Furti lodged a complaint to the Additional District Magiatrate, Feni. The Principal subsequently managed to hush-up the matter. Again, the Principal called Nusrat Jahan Rafi in his office room through his peon P.W.-4 Nurul Amin on 27.03.2019 and outraged her modesty. Her mother lodged an FIR on such occurrence and the principal was arrested in connection of such case. Their examination started on 02.04.2019. She met Nusrat on 04.04.2019 in the Madrasha and Nusrat told her that the male students of the Madrasha snubbed

her for filing case against the Principal and asked her to withdraw the case. On 06.04.2019 she met Furti in front of the examination hall of Nusrat and they were waiting for Nustrat. They found accused Nooruddin standing beside them. Nooruddin threatened P.W. 20 Tanjila Begum Sathi and P.W. 21 Bibi Jaheda @ Tamanna warning them that they would fail their examination if they talked to Nishat and Furti. She then left the place and went to her examination hall on the next floor. She again found Nooruddin there sitting on a bench. He left her hall when the class teacher entered the hall with answer sheets. After a while, they heard a shouting and coming out of the hall they found P.W. 33 Constable Russell bringing down a burning girl wrapping with a doormat and seeing her face she recognised her as Nusrat. After the examination her classmate Quamrunnahr Moni asked her why her friend set fire on her coming in the Madrasha instead of their house? Later she came to know from the Media that following the instruction of Principal Sirajuddowla, Umme Sultana Poppy called Nusrat Jahan Rafi to the rooftop of the cyclone centre of the Madrasha saying to her that she (P.W. 2 Nishat) was being beaten on the rooftop by

somebody. Then accused Shamim, Javed, Zubayer, Quamrunnaha Moni, Umme Sultana Poppy and others set her on fire.

In cross-examination she has stated that she shared this fact to none until her giving statements to Magistrate after 28 days of the occurrence. She cannot say who were on the ground beneath the cyclone centre at the time of setting fire on deceased Nusrat. Two groups were created following the conduct of the Principal towards Nusrat; one was in his favour and another was against him. She joined no programme of forming human chain in favour of the Principal. She does not know the role of the accused in the programme of forming human chain in favour of the Principal. Accused Moni was then pregnant. She did not see accused Mohiuddin Shakil on the date of occurrence.

P.W. 3 Nasrin Sultana Furti has deposed that the Principal calling her into his office room grasped her. She freed herself from his grasp and left his room weeping, and told of the occurrence to P.W. 2 Nishat Sultana. On 27.03.2019 she along with Nusrat and Nishat were in the Madrasa. Nusrat told her that the Principal called her through P.W. 4 Nurul Amin into his

office and she asked them to accompany her. She and Nishat accompanied her upto the room of the Principal. Then Nusrat entered into his room alone. After 6/7 minutes Nusrat came out of the room of the principal weeping and went to her class room on the 3rd floor. They followed her. Nusrat told them that the Principal outraged her modesty. On such occurrence her mother filed a case against the Principal and the Principal was arrested in connection with that case. On 06.04.2019 they attended their Arabic examination in the Madrasha. She arrived at Madrasha at 9:20 a.m. and found Nishat. They were waiting for Nusrat. A little bit later, they found Noorudding in the playground of the Madrasha. Thereafter they went to their respective examination hall at around 9:40 a.m. After receiving their answersheets they were filling up the circles of the answersheet. After a while, they heard hue and cry. All were calling 'fire'. All of them came out of the examination hall and found that P.W. 33 Constable Russell was bringing down Nusrat Jahan Rafi from the 1st floor of the cyclone centre by wrapping her with a doormat. Then Nusrat was taken to Hospital. Returning to examination hall they took part in the examinaiton. Thereafater she came to know that Shahadat

Hossain Shamim, Shakhawat Hossain Javed, Saifur Rahman Md. Zubayer, Umme Sultana Poppy, Quamrunnahar Moni and others set Nusrat on fire at the instace of Principal Sirajuddowla calling her on the rooftop of the cyclone centre as she did not agree to withdraw the case filed against him.

In cross-examination she has stated that as she was in the examination hall. She did not see what happened on the rooftop at the time of occurrence. Most of the students attended the programme of formation of a human chain in favour of the Principal. He did not see who set fire on Nusrat. Nusrat told her nothing about the occurrence. She found Imran Hossain Mamun in the Madrasha campus on 06.04.2019. She saw none fleeing on the date of occurrence. She has denied that Nusrat wanted to commit suicide on 27.03.2019.

P.W. 4 Nurul Amin, peon of the Madrasha, has deposed that Principal Sirajuddowla instructed him to call Nusrat at 10:45 a.m. on 27.03.2019 and accordingly he called Nusrat going to her class room to meet the Principal. She appeared in front of the room of the Principal with Nishat and Furti. Since he was then making tea, he could not pay attention to that direction. He

looked in that direction after pouring tea into the flask and found Nishat and Furti standing outside the door. Responding to the calling bell of the Principal he entered his room and found Nusrat sitting on the doormat holding the chair with her head bowed. She was about to cry. He found Nusrat, Furti and Nishat walking down the staircase. Later she learned that Nusrat had left the Madrasha and gone home. Thereafter mother of Nusrat appeared at the Madrasha with her brother Raihan, Yasin Commissioner, Mamun Commissioner, Abu Sufian and misbehaved with the Principal. Then S.I. Iqbal appeared and took the Principal to Police Station. On 06.04.2019 Nusrat appeared at the Madrasha with her brother at around 9:40 a.m. but her brother was not allowed to enter the Madrasha. After ten minutes, he heard shouting calling 'Fire on the roof'. He found Nusrat standing with fire on the staircase of the 1st floor. P.W. 33 Russell and P.W. 5 Mustafa doused the fire. P.W. 24 Baby Rani poured water on Nusrat with a pitcher. Wrapping with a doormat Nusrat was carried to Hospital. He found a glass containing the remnants of kerosene on the roof on 06.04.2019 and brought it to office. The glass was siezed by Police from the almirah on

08.05.2019 in presence of accused Javed, Shamim, Zubayer. Police seized a burnt burqa, a burnt salwar, a burnt urna, a pair of shoes, a polythene bag with remnant of kerosene, a doormat and 9 burnt matchsticks from the roof on 06.04.2019 in his presence and prepared a seizure-list with his signature.

In cross examination he has stated that he did not see Nusrat ascending to the 2nd floor on 06.04.2019. He also did not see anybody fleeing.

P.W. 5 Md. Mustafa, Guard of the Madrasha, has deposed that he was on duty in the gate of the Madrasha on 27.03.2019. He found a lady alongwith Yasin Commissioner, another man and a boy entering the Madrasha at around 12:00 at noon. He followed them. They entered the room of Principal Sirajuddowla and the lady started abusing the Principal on the allegation that he had outraged the modesty of her daughter. After a while, S.I. Iqbal, Ruhul Amin, Vice President of the Managing Committee of the Madrasha, and Mamun Commissioner also appeared. Ruhul Amin handed over the Principal to Police. Later he came to know that the Principal outraged the Modesty of Nusrat and therefore, her mother filed a case. The principal was sent to

Police Station in connection with that case. A procession was brought out by the people at around 10:00/10:30 a.m. on 28.03.2019 in the main road of Sonagazi bazar against the Principal. A human chain was formed at around 12:00/1:00 p.m. by the students of the Madrasha in favour of the Principal under the leadership of accused Shamim, Zubayer, Noouddin and Jaber after closure of the Madrasha. On 06.04.2019 he was on duty in the gate of Madrasha again. P.W. 24 Baby Rani was also on duty to check the entry of the female students in the gate. Before 20 minutes to 10:00 a.m. one Numan wanted to enter the Madrasha and said that he wanted to help her sick sister to sit in her seat but he was not allowed. He along with P.W. 33 Constable Russell then went to the gate of the Madrasha. 3/5 minutes later he heard a screaming coming from the direction of the cyclone centre. Then he along with P.W. 33 Russell rushed towards that direction and found a burning girl in the staircase having no wearing cloths. He tried to douse the fire by hand and P.W. 33 doused the fire by wrapping the body of the girl by a doormat. Some were found pouring water, some gave her urna, some gave her panjabi etc. P.W. 24 Baby Rani and P.W. 22 Khujista

Khanam also gave her their urna. Then the burning girl was taken to Hospital by his brother P.W. 1 Numan, P.W. 24 Baby Rani, P.W. 33 Russell and the teacher named Selim. Later, he came to know that the girl was Nusrat around whom an altercation took place with the Principal of the Madrasha. He has witnessed some misdeeds of the Principal in the past. Once he entered the room of the Principal during the class hour and found the Principal grasping a girl. Upon found him the Principal freed the girl. He found the same occurrence again. Thereafter the Principal called him in his office and warned him in presence of Lecturer Abul Kashem.

In cross-examination he has stated that he did not disclose the antecedents of the Principal to the Police but told the Media. He found none leaving the Madrasha through the gate. He did not see any one on the upper floor when he found the girl burning in the staircase. He has denied that due to departmental proceeding taken against him by the Principal he deposed falsely against him.

P.W. 6 Md. Lukman alias Liton has deposed that he runs a grocery shop for 20 years. He knows accused Shahadat Hossain

Shamim. Shahadat Hossain Shamim has a shop of flexiload beside his shop. 1/2 days before the occurrence Shahadat Hossain Shamim purchased one litre kerosene from his shop at tk. 70/-. He supplied the kerosene in two black polythene bags joining together.

P.W. 7 Md. Jasimuddin has deposed that he runs a burqa house named 'World Femous Burqa Bazar' on the 1st floor of the Manik Plaza at Sonagazi Zero Point. P.W. 8 Helaluddin Farhad is his staff. He knows Quamrunnahar Moni who along with her friends ordered for suppling 5 burqas on 04.03.2019. The date of delivery of the burqas was 14.03.2019. But they did not recive all the burqas in the same date. They received the burqas 2/3 days before the incident of fire on Nusrat. The supplied burqas had no logo of his shop.

P.W. 8 Helaluddin has deposed supporting the depositions of P.W. 7 and stated that Quamrunnahar Moni purchased two black burqas from their shops 2/3 days before the occurrene of fire on Nusrat.

P.W. 9 Rashedul Hasan Raihan has desposed supporting his brother P.W. 1 Mahmudul Hasan Numan and stated that on

their way to Burn Unit, Dhaka Medical College Hospital from Feni Sadar Hospital he tried to talk to his sister Nusrat on several times. At one stage, she disclosed the occurrence to him stating that a girl called her to the rooftop of the cyclone center and four burqa wearing persons set her on fire. In corss-examination he has stated that his sister Nusrat gave statements to the doctor in his presence as well. He found accused Hafez Abdul Kader at the gate of the Madrasha. He cannot say who were with him at the gate. Accused Imran Hossain Mamun donated blood to his sister in the Burn Unit. He found accused Hafej Abdul Kader beneath the Burn Unit one day. Accused Sirajuddowla is in custody since his arrest on 27.03.2019 and he was still in jail custody on 06.04.2019.

P.W. 10 Zahirul Islam has deposed that he has a shop of medicine in the High School gate area at Sonagazi Bazar. He was in his shop at 10:00 a.m. on 06.04.-2019. Nooruddin, a student of Sonagazi Madrasha, went in front of his shop at that time. He asked Nooruddin about the incident of the Madrasha. He told him that Nusrat had tried to commit suicide by pouring kerosene

on her body. Nooruddin did not look normal at that time. He was shivering.

P.W. 11 Md. Belayet Hossain has deposed that he was performing the duty of an invigilator in examination hall No. 6 on 06.04.2019. He distributed the answersheets to the students at 9:46 a.m. One student appeared after 1-1½ minutes of distribution of the answersheets and on his query she disclosed that her name was Quamrunnahar Moni and she was sick. Thereafter he heard shouting and found a burning girl. Later he came to know that the burnign girl was Nusrat and the late comer Moni set her on fire along with others. In cross-examination he has stated that Moni continued her examination for 3 hours.

P.W. 12 Shirin Akter, mother of the deceased, has corroborated the depositions of her son P.W. 1 Mahmudul Hasan Numan and stated that when her daughter Nusrat disclosed the occurrence of outraging her modesty by the Principal she phoned councillor Yasin and informed him the occurrence. Then she went to the Madrasha with her younger son P.W. 9 Rashedul Hasan Raihan and Councillor Yasin follwed them. Going to the room of the Principal Sirajuddowla she asked him why he placed

his hand on her daughter? Then the Principal rebuked her. She then beat Principal Sirajuddowla with the cane found on his table. She filed a case against the Principal on 27.03.2019 and the Principal was arrested in connection with that case. Her elder son P.W. 1 Mahmudul Hasan Numan took Nusrat to the Madrasha on 06.04.2019 and at around 10:00 a.m. he phoned her informing that Nusrat was set on fire. She met Nusrat at the Sadar Hospital. The attending doctors referred Nusrat to Burn Unit, Dhaka Medical College Hospital. On her query, Nusrat disclosed that she went to the rooftop hearing about the beating of her friend Nishat and then the burqa wearing people pressurized her to say that the case of Sirajuddowla was false. They put pressure on her to withdraw the case filed against Sirajuddowla. As she did not agree they set her on fire. She told that all would be known if Shampa – Tuhin is interrogated. 70% to 80% of the body of Nusrat got burned. She died at around 9:30 p.m. on 10.04.2019. In cross-examination she has stated that Nusrat disclosed no other names except the name of Shampa-Tuhin. Nusrat recognized Tuhin hearing her voice.

P.W. 13 Md. Abul Khayer, a teacher of the Madrasha, has deposed that he was the invigilator of examination hall No. 9 on 06.04.2019. He entered the hall at around 9:40 a.m. and found 23 students out of 26 present in the hall. He started distribution of the answersheets at around 9:45 a.m. and after 2/3 minutes two more students appeared. Then he heard crying outside. Going to the veranda he found that their guard P.W. 5 Mustafa along with a Police Costable carrying a burning girl towards the gate. Thereafter, the last girl of his hall appeared. On query about her late she told that she was in the bathroom. After the end of examination he came to know that the burning girl was Nusrat. 2/3 days later he came to know that the late student was Umme Sultana Poppy alias Tuhin. In cross-examinatin he has stated that Umme Sultana Poppy entered the hall last of all. There was no bathroom in the floor of his hall.

P.W. 14 Sheikh Abdul Halim Mamun has deposed that he was previously an education-promoting member of the Managing Committee of the Madrasha. As he protested the objectionable conduct of the Principal towards the female students, his membership was revoked. Thereafter the occurrence

took place in the Madrasha. On 20-04.2019 he found a car of PBI Police at around 10:10 a.m. They called him from his shop at Sonagazi Bazar. Accused Saifur Rahman Md. Zubayer got down from the car of PBI and at his showing P.W. 44 Md. Ibrahim recovered a burqa from the Bhangi canal in presence of P.W. 42 Mohiuddin and other local people.

P.W. 15 Md. Abu Yousuf has deposed that on 06.04.2019 he was in shifting duty of daftari in the Madrasha in place of his father. He went to bring breakfast for the teachers and after returning to Madrasha he came to know that Nusrat was set on fire. Thereafter Police appeared in the Madrasha and recovered alamot from the rooftop in his presence.

P.W. 16 Maulana Mohammad Hossain, a lecturer of the Madrasha, has deposed that after the end of examination on 27.03.2019 he found that the Principal of the Madrasha was being taken by Police. Later he came to know that the Principal outraged the modesty of Nusrat Jahan Rafi. 2/3 months ago father of Furti also brought same allegation against the Principal. He went to Feni Jail gate on 03.04.2019 to meet the Principal and consult him about the holding of examination. He went to the

Madrasha at around 7:15 a.m. on 06.04.2019 and left the Madrasha at around 9:15 a.m. He came to know at around 11:00 a.m. going to the Madrasha that Nusrat was set on fire taking to the rooftop. Police called him on 04.05.2019 at around 1:25 p.m. and going to the bank of the pond of the Madrasha he found a man with a black burqa in his hand who told him that the burqa was recovered from the pond. He found accused Shahadat Hossain Shamim and P.W. 50 Maulana Abul Kashem present there. Police seized the burqa preparing a seizure-list with his signature.

P.W. 17 Md. Yasin, the local Councillor, has deposed that at around 11:45 a.m. on 27.03.2019 mother of Nusrat phoned him and asked him to attend the Madrasha with her. He went to the Madrasha later along with Abu Sufian. In the room of the Principal mother of Nusrat scolded the Principal on the allegation of outraging the modesty of her daughter. Principal Sirajuddowla also hurled filthy language at her. Then he quelled both sides. Later Police appeared and Ruhul Amin, Vice-President of the Madrasha, sent the Principal to Police Station with S.I. Iqbal. Receiving the information about the occurrence

at the Madrasha on 06.04.2019 he phoned Nooruddin knowing that he was in the gate of the Madrasha. Noorudding told him that Nusrat set fire on her. He went to the Hospital to see Nusrat.

P.W. 18 Mohammad Noor Karim is the Driver of the Sonagazi Upazila Health Complex who carried Nusrat to Feni Sadar Hospital from the Healthcomplex.

P.W. 19 Md. Nurul Afsar Faruki, Principal of Bakter Munshi Fazil Madrasha, has stated that he was in charge of the examination centre of Sonagazi Madrasha for Alim examination of 2019. He was busy with distribution of question papers to examination halls at 9:30 a.m. on 06.04.2019. At around 9:45 a.m. he heard hue and cry and coming out of the office he found a gathering of students and teachers of the Madrasha underneath the cyclone centre. He also found a person being carried out by the people. Later on he came to know that Alim examination candidate Nusrat Jahan Rafi caught fire. He informed the incident instantly to the Upazila Nirbahi Officer. He later on came to know that Nusrat Jahan Rafi was outraged by the condemned prisoner Principal S.M. Sirajuddowla on 27.03.2019 for which her mother lodged a case against him and the Principal

had been in Jail in connection with that case. He also learned that the miscreants took Nusrat to the rooftop of the cyclone centre, tied her hands and legs, and set her on fire. Police led them to the rooftop of the cyclone centre at around 10:25 a.m. From the rooftop, Police seized a black polythene bag containing kerosene residue, parts of a burnt green salwar, a batik *urna*, a black burqa (cloak), a pair of navy blue sandals, and ten burnt matchsticks, alongside a blue rubber doormat from the staircase. Police prepared seizure-list with his signature which had been marked by him as Ext. 13 and the alamot as material Ext. IV.

P.W. 20 Tanjila Begum Shathi corroborating the occurrences of 27.03.2019 and 06.04.2019 has stated that Nusrat Jahan Rafi was her calssmate. She noticed a letter in the facebook posted by Nusrat addressing to her and her sister on 09.04.2019. Nusrat disclosed the incident of outraging her modesty by the Principal in the post and expressed her determination to fight till death against the injustice. In cross-examination she has stated that Nusrat did not mention her intention to commit suicide in the post.

P.W. 21 Bibi Jaheda @ Tamanna, sister of P.W. 20, was tendered. She has also stated that in the later posted in the facebook nothing was mentioned about suicide.

P.W. 22 Khujista Khanom, a teacher of the Madrasha, has deposed corroborating both the incidents of the Madrasha adding that Sirajuddowla joined the Madrasha as the Principal in the year of 2000. Since his joining the female students started raising objections to the behaviour and conduct of the Principal. The allegations of the female students were that the Principal placed his hand on their bodies, made inappropriate proposals etc. She cautioned the Principal time and again but he became angry with her. The principal removed both his office room and the calss room of the femal students to the 1st floor of the cyclone centre defying the objections of the other teachers so that he can call the female students easily. In cross-examination she has stated that she was in duty on the ground floor on the date of occurrence. The occurrence took place on the rooftop of the 2nd floor. So, she did not witness the happening on the rooftop. Accused Mohiuddin Shakil was her student and he was present in the

examination hall at 9:45 a.m. and was in examination for the whole three hours.

P.W. 23 Aklima Akter has stated that she was a student of examination hall No. 9. On 06.04.2019 her classmate Umme Sultana Poppy entered the examination hall hurriedly after distribution of the answersheets. Then hearing shouting they all went to the veranda and found their another classmate Nusrat Jahan Rafi walking down the staircase with fire on her body. Nusrat was sent to hospital. Umme Sultana Poppy was sitting on her seat and stated that she was not with that. The people will suspect her. Nusrat set fire on herself. In cross-examination she has stated that she and poppy sit in the same bench. All heard the sayings of Poppy from the nearing seats.

P.W. 24 Baby Rani Das has corroborated the incident of fire on Nusrat on the date of occurrence.

P.W. 26 Kaiser Mahmud has deposed that he and accused Shakhawat Hossain Javed sit in the same hall. Javed sit behind him. On 06.04.2019 Javed entered the examination hall after 4/5 minutes of his entry. Thereafter they heard the shouting of calling 'fire'.

P.W. 26 Nasrin Sultana was also the student of hall No. 9. She has corroborated P.W. 23 Aklima Akter adding that Poppy sat behind her but she did not move when all of them went to the veranda hearing the shouting. Poppy told that Nusrat herself set fire on her. No other set fire on her.

P.W. 27 Kabir Ahmed was invigilator of examination hall No. 8. He found 23 students out of 24 present. One student was absent. Her file was found on her seat. Later he came to know that the absent student was burnign student Nusrat Jahan Rafi.

P.W. 28 Fahmida Akter Hamduna was a student of the examination hall of Nusrat Jahan Rafi. She has stated that after her appearance in the examination hall Nusrat appeared and left the hall keeping her file on her seat saying that she would return soon, probably Nishat was in danger on the rooftop. Thereafater burnign Nusrat was recovered and sent to hospital.

P.W. 29 Tahmina Akter has stated that she entered hall No. 6 at around 9:30 a.m. on 06.04.2019 but did not see Quamrunnahar Moni in her seat who sit ahead of her. Moni entered the hall 1-1½ minutes after entry of the teacher. After a

while, the incident of fire took place. All of them came out of the hall except Quamrunnahar Moni.

P.W. 30 Bibi Hajera, another student of the hall of Quamrunnahar Moni, has stated that Moni entered the hall after distribution of answersheets.

P.W. 31 Abu Bakar Siddiq corroborated the occurrence of 06.04.2019 and deposed that he gave her panjabi to douse the fire of Nusrat.

P.W. 32 Md. Akbar Hossain has deposed that accused Shahadat Hossain Shamim phoned him at around 10:15 a.m. on 06.04.2019 and asked him whether he heard about the occurrence of Madrasha. As he replied negative Shamim told that Nusrat wanted to commit suicide by setting fire on her.

P.W. 33 Constable Md. Russell Hossain has desposed giving description of the occurrence of fire and rescue of Nusrat on the date of occurrence. Hearing the shouting he along with P.W. 5 rushed to the staircase of the cyclone centre and found Nusrat with fire. He doused the fire by wrapping a doormat around her. Then she was sent to hospital. Police recovered alamot from the rooftop at around 10:25 a.m. in his presence.

P.W. 34 P.S.I. Zahir Raihan has deposed that he was controlling traffic in front of the Madrasha keeping Constables P.W. 33 Russell and Mulya Chakma inside the gate on 06.04.2019. Hearing shouting of a girl from inside the Madrasha at around 9:50 a.m. he stood guard in the gate. P.W. 33 Russell rushed to the 1st floor hearing the crying. P.W. 5 Mustafa and P.W. 24 Baby Rani followed him. After a while, P.W. 33 Russell, P.W. 5 Mustafa and P.W. 24 Baby Rani brought a burning girl underneath the cyclone centre. He called a CNG and sent P.W. 33 Russell and the burnign girl to the Healthcomplex. After the return of Constable Russell from the Healthcomplex he along with peon P.W. 15 Md. Abu Yousuf, teacher P.W. 19 Nurul Afsar Fruki went to the rooftop of the cyclone centre and seized the alamot preparing seizuure-list.

P.W. 35 Md. Azharul Islam Imran, uncle of Nusrat, has deposed supporting the occurrence of 27.03.2019 and 06.04.2019 and further stated that on 09.04.2019 the Media correspondents snapped photographs of the reading table of Nusrat and started reading a notebook of Nusrat. They found a letter written by Nusrat Jahan Rafi addressing her classmates Tamanna and Shathi

wherein Nusrat wrote that she will fight against the Principal till her last breath. He denied that Nusrat wrote on page 8 that she bore the stigma of being a 'bad girl' and therefore had no further desire to live.

P.W. 36 Omar Faruk has deposed in the same line of P.W. 35 and he has corroborated the occurrences of 27.03.2019 and 06.04.2019. He was present at the time of seizure of the notebook of Nusrat.

P.W. 37 A.S.I. Md. Arifur Rahman went to the house of Nusrat with I.O. P.W. 86 Inspector Kamal Hossain. He has stated that a notebook of Nusrat was seized in his presence.

P.W. 38 Rabyea Akater, an aunt of Poppy, P.W. 39 Md. Fazlul Karim, P.W. 40 Jafor Iqbal and P.W. 41 Moazzem Hossain have deposed that Police went to the house of Umme Sultana Poppy with her and seized an urna and a navy blue colour burqa therefrom on 19.04.2019.

P.W. 42 Md. Mohiuddin Chowdhury, P.W. 43 Hafez Mubarak Hossain and P.W. 44 Md. Ibrahim have deposed that at the showing of accused Saifur Rahman Md. Zubayer P.W. 44 Md. Ibrahim recovered the burqa from the water of a canal.

Police seized the recovered burqa in their presence preparing a seizure-list at around 11:10 a.m. on 20.04.2019

P.W. 45 Reza Md. Inamul Haque Chowdhury has stated that he went to see the recovery of burqa on 20.04.2019. The Principal called him to accompany him. He signed the seizure list dated 20.04.2019.

P.W. 46 Md Nooruddin and P.W. 47 Md. Akram Hossain have deposed that PBI called them to the shop of P.W. 6 Md. Lukman alias Liton on 27.04.2019 and seized a drum, a funnel, a one-litre measuring container and a black polythene bag in presence of accused Shahadat Hossain Shamim therefrom.

P.W. 48 Emdad Hossain Pinkol has deposed that the accused Shahadat Hossain Shamim gave him an Oppo mobile phone and asked him to deliver it to to his house if he went home. Since he did not go home, he kept the phone with him until the police seized it on 29.04.2019.

P.W. 49 Md. Shahjahan and P.W. 50 Md. Abul Kashem deposed that on 04.05.2019 PBI officer went to the Madrasha. Other local persons were also present there. P.W. 49 Md. Shajahan recovered a burqa from the southern side of the pond of

the Madrasha at the showing of accused Shahadat Hossain Shamim. Police seized the burqa in their presence.

P.W. 51 Selinor Raza, teacher of the Madrasha, has deposed that he gave the answersheet of the student bearing Roll No. 396 to PBI which was seized at around 11:10 a.m. on 05.05.2019.

P.W. 52 Mosharraf Hossain and P.W. 53 Md. Golam Maula have deposed that P.W. 87 Inspector Shah Alam of PBI seized a glass receiving from P.W. 4 Nurul Amin on 08.05.2019 in their presence.

P.W. 54 Monir Hossain, Deputy Jailor of Feni, has deposed that on 16.05.2019 P.W. 87 Shah Alam seized a visitor's Register of the Jail. In Sl. No. 13 of the Register it has been recorded that Bibi Jahura, Shahadat Hossain Shamim, Nooruddin, Imran and Kader met prisoner Sirajuddowla on 01.04.2019. In Sl. No. 39 it has been recorded that Mohammad Hossain, Javed, Rana and Shahadat met prisoner Sirajuddowla on 03.04.2019. In cross-examination he has stated that filling up form and making entry in the Register any person can meet a prisoner even using the name of other. Maximum 5 persons can

meet a prisoner at a time. The visitors have to speak loudly. There is no scope to speak in lower voice. They had no intelligence report regarding any conspiracy meeting of prisoner Sirajuddowla with the visitors on 01.04.2019 or 03.04.2019.

P.W. 55 Md. Rafiqul Kader, Jail Super, Feni, has deposed that according to record prisoner Sirajuddowla met his wife and son on 29.03.2019. He met his sister and some students and teachers of the Madrasha on 01.04.2019. He met the Principal in charge of the Madrasha along with some students on 03.04.2019. PBI seized the register. In cross-examination he has stated that there is no scope to hold conspiracy meeting in the Jail. He has no knowledge as to conspiracy of the prisoner Sirajuddowla to kill Nusrat. None informed him about such conspiracy.

P.W. 56 Shahnewaz, a Jail keeper, has deposed that on 01.04.2019 Bibi Jahura, Nooruddin, Shahadat Hossain Shamim, Imran and Hafej Abdul Kader met prisoner Sirajuddowla and he issued their visiting slips.

P.W. 57 Md. Ripon, a Jail keeper, has deposed that Maulana Hossain Ahmed, Shahadat, Javed and Rana met prisoner Sirajuddowla on 03.04.2019.

P.W. 58 Chabi Ranjan Tripura, a Jail keeper, has deposed that Bibi Jahura, Shahadat Hossain Shamim, Nooruddin, Imran and Kader met prisoner Sirajuddowla on 01.04.2019. Maulana Mohammad Hossain, Javed, Rana and Shahadat met prisoner Sirajuddowla on 03.04.2019.

P.W. 59 A.K.M. Musa Manik, father of Nusrat, has deposed corroborating the depositions of his son P.W. 1 and wife P.W. 12. He has stated further that he was at his working station, Companygonj on the date of occurrence. He reached home after the occurrence. He has denied that Councillor Mamun or Meyor of the Municipality wanted to appoint him as the Principal of the Madrasha.

P.W. 60 Mohammad Ali, a cousin of Nusrat, has deposed in the same line of P.W. 59. He has stated that he accompanied Nusrat to the Burn Unit along with her other relatives. Nusrat told that she was set on fire after pouring kerosene on her body. She recognized the voice of Tuhin. There is no accused in the FIR Shampa or Tuhin by name.

P.W. 61 Sayed Selim has deposed that he just went to see Nusrat at ICU, Burn Unit, Dhaka Medical College Hospital and

he was there until Nusrat died at around 9:30 p.m. on 10.04.2019. P.W. 62 Dr. Arman bin Abdullah attended Nusrat at Sonagazi Health Complex and washed the body of Nusrat with saline.

P.W. 63 Dr. Abu Taher was the Residential Medical Officer of the Feni Sadar Hospital. He has deposed that at around 11:00 a.m. on 06.04.2019 a burned patient was brought to the Hospital. He along with Dr. Asif Iqbal received the patient. On query the patient disclosed his name to be Nusrat. They found 75% to 80% of her body burned. Giving her First Aid they referred the patient to Burn Unit, Dhaka Medical College Hospital. Dr. Asif Iqbal issued the Medical Certificate.

P.W. 64 Pinku Puddar, a chemical examiner, has deposed that he as a member of the board examined an oily polythene bag, part of a salwar and part of a burqa and found existence of kerosene on those sample. They issued the chemical report. He has marked the chemical report as Ext. P.W. 65 Ruman Akter was also a member of the board and she has marked her signature on the report as Ext.

P.W. 66 Md.Abul Badi has examined the Oppo Mobile set in digital forensic lab and submitted a report.

P.W. 67 Md. Zakir Hossain, a Senior Judicial Magistrate, has deposed that he has recorded confessions of accused Nooruddin, Shahadat Hossain Shamim, S.M. Sirajuddowla, Iftekharuddin Rana, Mohiuddin Shakil and Imran Hossain Mamun on several dates. He has also recorded statements of some witnesses under section 164 of the Code. He has marked the confessions and his signatures thereon as Exts. In cross-examination he has denied that he did not record the confessions of the accused following the provisions of law.

P.W. 68 Md. Ashraful Alam examined the vaginal swab stick of the deceased, P.W. 69 Constable No. 11220 Md. Ramjan Ali carried the dead body of Nusrat to the Morgue of the Dhaka Medical College Hospital for autopsy. P.W. 70 Md. Shamsur Rahman held inquest over the dead body of Nusrat at around 9:45 a.m. on 11.04.2019, P.W. 71 A.S.I. Sajib, P.W. 72 A.S.I. Billal and P.W. 73 Constable Alamgir Hossain are the seizure list witnesses and they have deposed that P.W. 87 Inspector Sha

Alam seized alamot in their presence at 16:45 hours on 08.05.2019.

P.W. 74 Sharafuddin Ahmed, a Senior Judicial Magistrate, has deposed that he recorded the confessions of accused Hafej Md. Abdul Kader, Abdur Rahim Sharif, Umme Sultana Poppy, Quamrunnahar Moni, Md. Shakhawat Hossain Javed and Saifur Rahaman Md. Zubayer on several dates following the provisions of law.

P.W. 75 Md. Nurul Karim has deposed that he has verified the names and addresses of 13 accused. P.W. 76 Moynal Hossain has verified the names and addresses of 8 accused. P.W. 77 S.I. Alamin has deposed that he arrested accused Nooruddin on 12.04.2019 from Bhaluka, Mymensingh and Hafej Abdul Kader on 17.04.2019.

P.W. 78 Inspector Md. Jewel Mia has deposed that he arrested accused Maksud Alam on 11.04.2019 from Fakirapole, Dhaka, Shahadat Hossain Shamim on 13.04.2019 and Abdur Rahim Sharif on 16.04.2019.

P.W. 79 S.I. Haidar Ali has deposed that P.W. 87 Inspector Shah Alam seized the Oppo Mobile set from P.W. 48 Emdad Hossain Pinkol on 29.04.2019 in his presence.

P.W. 80 Inspector Shantush Kumar Chakma has deposed that he arrested accused Ruhul Amin from his house at around 5:00 p.m. on 29.04.2019, Iftexharuddin Rana from T&T area, Rangamati Hill District at around 7:00 p.m. on 20.04.2019 and handed over them to the investigating officer.

P.W. 81 Dr. Sohel Mahmud has deposed that he held autopsy on the dead body of Nusrat and submitted report. In cross-examination he has stated that he has mentioned about burn injury in the report but did not mention the substance which caused such burn injury. He found the antemortem burn injury but did not mention the nature of death.

P.W. 82 Dr. Obaidul Islam has deposed that he recorded the statements of Nusrat at around 4:30 on 06.04.2019 at the Burn Unit. The victim was not in a condition to sign the statements. She put her thumb impression on the statements in presence of him.

P.W. 83 A.K.M. Moniruzzaman and P.W. 84 Archana Pal have deposed that victim Nusrat gave the dying declaration in their presence which was recorded by P.W. 82 Dr. Obaidul Islam.

P.W. 85 Ranjit Sarker has deposed that A.S.P. Md. Samsul Alam is a hand writing expert. He gave his opinion on the documents seized in this case. He knows his hand writing as a colleague. He has identified the signature of A.S.P. Samsul Alam given in his opinion.

P.W. 85 Inspector Md. Kamal Hossain has deposed that receiving the charge of investigation he visited the place of occurrence, prepared sketch-map with index, arrested 9 accused, seized a notebook of Nusrat Jahan Rafi from her house and handed over the charge of investigation to Inspector of PBI Md. Iqbal Ahmed on 27.03.2019.

P.W. 87 Inspector Md. Shah Alam has deposed that he received the charge of investigation on 10.04.2019. He visited the place of occurrence, recorded statements of the witnesses, seized alamot, got the confessions of the accused recorded by the Magistrates, obtained post-mortem report, dying declaration of

the deceased and submitted charge-sheet against the accused upon found primary evidence against them.

Apart from the above evidence of the prosecution witnesses, out of sixteen condemned prisoners twelve have made confessions. Condemned prisoners Mohammad Shamim, Ruhul Amin, Maksud Alam Alias Councillor and Afsaruddin made no confession. Excepting the above mentioned evidence of 87 witnesses of the prosecution and confessions of the twelve condemned prisoners another important piece of evidence in the case is the dying declaration of the deceased Nusrat Jahan Rafi. Learned Judge of the Tribunal awarded death sentence upon all the sixteen accused persons maintaining that they have instigated, assisted and killed the deceased by setting her on fire. Now let us examine the propriety of such a huge conviction and sentence.

The core submissions of the learned Advocates for the condemned prisoners mentioned above are following—

- a) No eyewitness to the occurrence;
- b) Deceased might have committed suicide;

- c) Confessions of the condemned prisoners were not recorded in proper form following the provisions of Rule 79 of the Criminal Rules and Orders (Cr.R.O);
- d) The condemned prisoners were subjected to torture during an overstayed police remand while their confessions were being extracted;
- e) Subsequently, all the confessions were retracted;
- f) None of the confessions were corroborated independently;
- g) No accused can be convicted and sentenced on the basis of confession of co-accused;
- h) Dying declaration of the deceased Nusrat Jahan Rafi is not in proper form. As she did not disclose the names of the condemned prisoners, that cannot be the basis of conviction.

Let us first examine whether there was any possibility that the deceased, Nusrat Jahan Rafi, could have committed suicide by self-immolation. The fate of the defence case also lies on the possibility of committing suicide by the deceased. Referring to the evidence of P.W. 87 Inspector Shah Alam and P.W. 20

Tanjila Begum the learned Advocates for the condemned-prisoners submit that Nusrat Jahan Rafi might have committed suicide. They have formulated their submissions on 4 grounds. Such as—

- a) P.W. 20 Tanjila Begum found face book post of Nusrat Jahan Rafi where she disclosed her intention to commit suicide.
- b) I.O. seized a letter written by Nusrat where she expressed her desire to commit suicide.
- c) In the post-mortem report the death was not described as homicidal in nature.
- d) P.W. 87 Inspector Md. Shah Alam, I.O., came to know that Nusrat Jahan Rafi attempted to commit suicide.

Admittedly, Nusrat Jahan Rafi caught fire in the rooftop of the cyclone centre of the Madrasha. P.W. 19 Md. Nurul Afsar Faruki, Principal of Bakter Munshi Fazil Madrasha, has stated that he was in charge of the examination centre of Sonagazi Madrasha for Alim examination of 2019. We can rely on the evidence of this witness on every aspect as he is a neutral witness in all respect. He found the polythene bag containing remnants of

kerosene on the rooftop of the cyclone centre, the place of occurrence. It has been mentioned in the injury certificate, Ext. 23, that the injury was of flame burn by kerosene. It appears in the chemical report, Ext. 24, that the existence of combustible kerosene was found in all the samples of polythene, salwar and burqa. Was it possible that Nusrat Jahan Rafi entered the Madrasha with kerosene and matchsticks on the date of occurrence?

P.W. 1 Mahmudul Hasan Numan, elder brother of Nusrat, dropped Nusrat in the Madrasha on the date of occurrence. Nusrat Jahan Rafi also stated in her statements that like the other days her brother P.W. 1 dropped her to the Madrasha on the date of occurrence. P.W. 5 Mustafa, guard of the Madrasha, has stated that he along with female attendant of the Madrasha P.W. 24 Baby Rani and two other police constables were controlling the entry of students at the gate of the Madrasha on the date of occurrence. They were letting the students enter Madrasha after checking. Twenty minutes before 10:00 a.m. a man named Numan appeared and wanted to enter the Madrasha to help his sister taking her seat. So, it appears that Nusrat Jahan Rafi went

to Madrasha on the date of occurrence with her brother and she entered the Madrasha facing a checking in the gate. In such a situation it was not possible on part of a student to enter the Madrasha with a sizable amount of kerosene along with other materials and thus set herself on fire.

P.W. 87 Inspector Md. Shah Alam has stated that going to the house of Nusrat for investigation he came to know that Nusrat wanted to commit suicide in the bathroom after Maghreb prayer on 29-03-2019 upon found a human chain demanding the release of the Principal and the other scandalous comment against her. P.W. 20 Tanjila Begum Sathi, a classmate of Nusrat, has stated that in the facebook post Nusrat stated that she would fight till her last breath and ensure his (the Principal) condign punishment so that the entire world can get a lesson. P.W.21 Bibi Jaheda @ Tamanna, sister of P.W. 20, has stated that Nusrat uploaded the post addressing them, the two sisters, but nowhere of the post her desire to commit suicide was expressed. P.W. 35 Md. Azharul Islam Emran has deposed that Journalist of several T.Vs. snapped pictures of the reading table of Nusrat on 09.04.2019 and found a notebook. Pages 7 and 8 of the notebook

contained a letter. Nusrat has written in page No. 7 of her notebook that—

“আমি লড়ব শেষ নিঃশ্বাস পর্যন্ত। আমি প্রথমে যে ভুল করেছি আত্মহত্যা করতে গিয়ে সে ভুলটা দ্বিতীয় বার করব না। মরে যাওয়া তো হেরে যাওয়া আমি মরব না। আমি বাঁচব। আমি তাকে শাস্তি দিব। যে আমায় কষ্ট দিয়েছে। আমি তাকে এমন শাস্তি দিন যে----”

The Investigating Officer seized the notebook in his presence and prepared a seizure-list with his signature. He has denied that it was written in the notebook that hearing the scandalous remarks of the people against her, she (Nusrat) had no desire to live.

For the sake of argument if it is assumed that upon found the arrangement of forming a human chain for releasing the Principal S.M. Sirajuddowla and some bad remarks of the people against her Nusrat might have expressed her desire to commit suicide but it has been come out in the evidence of P.W. 20 Tanjila Begum Sathi, her sister P.W. 21 Bibi Jaheda @ Tamanna and the above mentioned P.W. 35 Md. Azharul Islam Emran that she had abandoned her cowardice desire and made-up her mind to fight till her last breath against the wrong committed against her. Such being the case, we are unable to hold that Nusrat Jahan

Rafi committed self-immolation on the date of occurrence. Therefore, it can be safely held that the burn injuries causing death of the deceased Nusrat Jahan Rafi were nothing but homicidal in nature.

Now, the question arises who set her on fire on the rooftop of the cyclone centre on the date of occurrence? Since there is no eyewitness, we have to go back to the dying declaration of Nusrat Jahan Rafi. Let us examine the nature of the dying declaration of deceased Nusrat Jahan Rafi and its evidential value before going to that discussion.

According to P.W. 1 Mahmudul Hasan Numan, P.W. 9 Rashedul Hasan Raihan, P.W. 12 Shirin Akter deceased Nusrat Jahan Rafi made dying declarations on four occasions. P.W. 1 Mahmudul Hasan Numan, attending brother of the deceased, allegedly recorded the dying declaration of the deceased in his Mobile Phone on the way to Feni Sadar Hospital from Sonagazi Health Complex. According to him the deceased told him that –

“নিশাত কে ছাদে মারতেছে এ কথা শুনে আমি ফাইল আমার কড়ো রেখে সাইক্লোন সেন্টারের তৃতীয় তলায় ছাদে চলে যাই। ও খানে দেখি ৪ জন ব্যক্তি মুখোশ পরা চোখে চশমা ও হাতে মোজা পরা বোরখা পরা। আমাকে বলে তুই বল ২৭-০৩-

২০১৯ তারিখের মামলা সব মিথ্যা। রাফি বলে না এটা সত্য। আমি শেষ নিশ্বাস পর্যন্ত এ অন্যায়ে প্রতিবাদ করবো।”

P.W. 1 Mahmudul Hasan Numan has stated that he handed over the Mobile record to the I.O. with an application. However, in the seizure-list no such Mobile record is found. P.W. 1 Mahmudul Hasan Numan has stated about the dying declaration of the deceased for the 2nd time at Feni Sadar Hospital saying that he found Dr. Asif Iqbal recording the dying declaration of the deceased. But no such dying declaration is found in the record.

P.W. 9 Rashedul Hasan Raihan, another attending brother of the deceased in ambulance, has stated that on their way to Burn Unit, Dhaka when their ambulance reached Kumilla he wanted to know the facts from his sister Nusrat who stated that –

“আমার বান্ধবী নিশাতকে ছাদে মারধর করছে বলে একটি মেয়ে আমাকে ডেকে নিয়ে যায়। ডেকে নিয়ে যাওয়ার পর আমি ছাদে গিয়ে দেখতে পাই নিশাত সেখানে নেই। তখন সেখানে পূর্ব থেকে উপস্থিত বোরখা পড়া ৪ জন লোক অবস্থান করে এবং তারা প্রিন্সিপাল এর বিরুদ্ধে করা মামলা উঠিয়ে নেবার জন্য চাপ প্রদান করে। কিন্তু আমি রাজি হই নাই। আমি বলি প্রিন্সিপাল অন্যায় ভাবে আমার গায়ে হাত দিয়েছে। আমার জীবন দিয়ে হলেও আমি এই অন্যায়ে প্রতিবাদ করব। এ কথাটি বলার পর

বোরখা পরা একজন আমার মুখ চেপে ধরে আমাকে ছাদের ফ্লোরে ফেলে দেয় এবং একজন ওড়না দিয়ে দুই ভাগ করে আমার হাত পা বেঁধে ফেলে এবং আমার পুরো শরীরে কেরোসিন ঢেলে দেয়। পিছন হতে যে আমার মুখ চেপে ধরার কারণে আমার মুখ ছাড়া সমস্ত শরীরে কেরোসিন ঢালা হয়। যে আমার মুখ চেপে ধরেছিল তার গায়ে প্রচ- শক্তি ছিল। সে হতে পারে পুরুষ। এবং বাকীরা আমার হাত পা বুক চেপে ধরে রাখে। এক পর্যায়ে বোরখা পরা আরেকজন দিয়াশলাই দিয়ে আমার গায়ে আগুন ধরিয়ে দেয়। তার পর চলে যায় এবং যাওয়ার পথে একজন কে শম্পা বলে come, come বলে চলে যায়।”

P.W. 12 Shirin Akter, mother of the deceased, has stated that –

“আমি বার্ন ইউনিটে আমার কন্যার কাছে গিয়ে বলি অম্মু তোমার গায়ে কে কে আগুন লাগাইছে নাম বল। তখন আমার কন্যা বলে, “অম্মু চম্পা-তুহিন কে ধরলে সবার নাম পাবে।” ১০-০৪-২০১৯ আমার মেয়ে রাত সাড়ে ৯টায় মারা যায়।”

P.W. 82 Dr. Obaidul Islam recorded the statements of Nusrat Jahan Rafi in writing at the Burn Unit and he has marked the statements as Ext. 45. P.W. 83 Dr. A.K.M. Moniruzzaman and P.W. 84 Archana Paul, Senior Staff Nurse of Burn Unit, witnessed the recording of statements and they have signed the same after recording. P.W. 82 Dr. Obaidul Islam has stated that

the victim was not in physical condition to sign in the statements and therefore, she put her thumb impression on Ext. 45.

Dr. K.M. Mushfiqul Huda, learned Advocate for Abdur Rahim Sharif and Umme Sultana Popy questioned the execution of Ext. 45 by the deceased Nusrat Jahan Rafi submitting that all her fingers were swollen for burn injury. So, she was not in a position even to put her thumb impression. Since the dying declaration can be even oral instead of written, therefore, we find no substance in the objection of Mr. Huda. Yet, we have examined the thumb impression on Ext. 45 and apparently we found no ridge and furrow in the impression like a natural healthy thumb. If there exists no possibility of manipulation or fabrication in making the statements, even the non-executed statements of the deceased can be taken into consideration as a dying declaration. The statements were recorded at 4:30 p.m. on the date of occurrence i.e. within 7 hours of the occurrence, in the Burn Unit of Dhaka Medical College Hospital. So, it has been recorded in the earliest possible time leaving no chance of manipulation. Therefore, mere dispute on its execution by the deceased cannot make the dying declaration unworthy of

reliance. The statements of the deceased recorded by P.W. 82 Dr. Obaidul Islam runs hereunder—

“প্রতিদিন আমার বড় ভাই আমাকে মাদ্রাসায় দিয়ে যায় এবং নিয়ে যায়। আজকে আমাকে মাদ্রাসায় দিয়ে যাওয়ার সময় আমার বড় ভাইকে ভিতরে ঢুকতে দেয়া হয়নি। এরপর চারজন বোরকা ও নেকাব পরিহিত মেয়ে আমাকে ছাদে ডেকে নিয়ে মাদ্রাসার প্রিন্সিপাল স্যারের বিরুদ্ধে আমার দেয়া অভিযোগগুলো মিথ্যা এমন কথা বলতে চাপ দিতে থাকে। কিন্তু আমি বলি, আমার মৃত্যু পর্যন্ত অন্যায়ের প্রতিবাদ করে যাব। এক পর্যায়ে চারজন মিলে আমাকে ওড়না দিয়ে বেঁধে ফেলার চেষ্টা করে এবং গম্বাসে থাকা একজাতীয় তরল আমার দিতে ছুড়ে দেয় আর গম্বাসটি আমার হাতে ধরিয়ে দেয়। ওরা আমার গায়ে আগুন ধরিয়ে দ্রুত চলে যায়। গত ২৭ তারিখে প্রিন্সিপাল স্যার আমার গায়ে হাত দেয় এবং আমি এর প্রতিবাদ করি। আমাকে চিকিৎসা দেন-আমাকে বাঁচান।”

We found almost similarity among the statements cited by P.W. 1 Mahmudul Hasan Numan, P.W. 9 Rashedul Hasan Raihan and Ext. 45 recorded by P.W. 82 Dr. Obaidul Islam. In those statements no names are found to be disclosed by the deceased. However, we have to take only Ext. 45 in consideration as it is found to be recorded immediately by a neutral person. Now let us see, what is the status of such a dying declaration in law? In the case of Nurjahan Begum Vs. State 42 DLR (AD) 130 it has been opined that —

The legislature in its wisdom has put a dying declaration on par with evidence on oath for the simple reason that a man under the apprehension of death is not likely to speak falsehood and involve innocent persons in preference to his assailant. That is why particular sanctity is attached to such a statement and if it is admissible as substantive evidence. But the Court must take care to see that the statement is genuine and was actually made by the dying man, for it is not unlikely that he did not make any statement, but some interested persons fabricated it from motive and tried to use it as evidence.

From the above principle it is clear that a dying declaration carries sanctity when it is not found to be fabricated with an unholy design to falsely implicate an innocent person. In the instant case, the dying declaration of Nusrat Jahan Rafi, Ext. 45, was recorded by her attending doctor within 7 hours of her receiving injuries. At that time she was not in a position to

implicate anyone falsely, nor did she have any opportunity to fabricate the statement. Therefore, the said dying declaration can be relied upon as evidence with sanctity.

Though the dying declaration did not disclose the names of the perpetrators but relying on the same it can be safely held that four persons assisting each other set deceased Nusrat Jahan Rafi on fire. Both Dr. Huda and Mr. Monir, learned Advocates for the defence, have put the dying declaration under criticism on the ground that the deceased mentioned four female persons in her statement but the I.O. failed to detect the identity of those four female participants. We do not find enough strength in those arguments as the deceased found all the four individuals under the cover of burqas. Burqa is used by the female individuals in our society. So, in absence of any identity of burqa wearing persons, not only deceased Nusrat, every man of prudence must consider those burqa wearing persons to be female. All the confession maker twelve condemned prisoners have disclosed the facts that Nusrat Jahan Rafi was set on fire on the rooftop of the cyclone centre on the date of occurrence. Out of them Condemned prisoners Nooruddin, Shahadat Hossain Shamim,

Umme Sultana Poppy, Saifur Rahman Md. Zubayer, Shakhawat Hossain Javed and Qumrunnahar Moni have made inculpatory confessions describing how they participated in the occurrence of setting deceased Nusrat Jahan Rafi on fire on the date of occurrence to implement the design of another condemned prisoner Principal S.M. Sirajuddowla.

We have mentioned above that the learned Judge of the Tribunal convicted and sentenced all the sixteen accused relying on the confessions of the accused persons and dying declaration of the deceased. We find the dying declaration of the deceased, Nusrat Jahan Rafi, to be untainted and carrying the utmost sanctity. However, it is insufficient on its own to implicate all sixteen accused in the occurrence, as it explicitly discloses the physical participation of only four individuals. The criminal liability of the remaining accused must therefore lie on the corroborative evidence of conspiracy, abetment, and facilitation.

It has been come out in the above discussions that deceased Nusrat Jahan Rafi was set on fire at the rooftop of the cyclone centre of the Madrasha at around 9:50 a.m. on 06.04.2019. Prelude to the case leads us to the facts that P.W. 12

Shirin Akther, mother of the deceased, filed a case under section 10 of the Ain, 2000 on the allegations that the condemned prisoner S.M. Sirajuddowla outraged the modesty of her daughter Rafi on 27.03.2019. P.W. 2 Nishat Sultana, P.W. 3 Nasrin Sultana Furti, P.W. 4 Nurul Amin, a peon of the Madrasha, P.W. 5 Md. Mustafa a guard of the Madrasha, P.W. 9 Rashedul Hasan Raihan, P.W. 17 Mohammad Yasin, a local Councillor, P.W. 20 Tanjila Begum Sathi a student of the Madrasha, and P.W. 87 Inspector Shah Alam, I.O., have corroborated the occurrence of 27.03.2019. Police recorded the case under section 10 of the Ain on such occurrence and took the condemned prisoner S.M. Sirajuddowla to custody on the same day and subsequently he was shown arrested in connection with this case.

Condemned prisoner Principal S.M. Sirajuddowla has stated in his confession that-

“----গত ০৩/০৪/২০১৯ তারিখে আবার সাহাদাত হোসেন শামীম, নুর উদ্দিন, হাফেজ আব্দুল কাদের, জাবেদ, এমরান, রানাসহ কয়েকজন আমার সাথে দেখা করে।--
--- এভাবে কিছুড়াগ কথা বলার পর আমি প্রকাশ্যে সাহাদাত হোসেন শামীম ও নুর উদ্দিনের সাথে কথা বলি। অন্যরা একটু দূরে দাঁড়িয়ে ছিল। তাদেরকে জানাই যে,

সর্বশক্তি দিয়ে বিষয়টি দেখতে। নুসরাত জাহান রাফি এর পরিবার ও নুসরাত কে ভালোভাবে চাপ দিতে। যদি এতে কাজ না হয় তাহলে ভালোভাবে পরিকল্পনা করে নুসরাত জাহান রাফিকে হত্যা করার জন্য। বিশেষ কায়দায় তাকে হত্যা করতে যেন তা আত্মহত্যা বলে চালিয়ে দেয়া যায়।-----”

Condemned prisoner Shahadat Hossain Shamim has stated in his confession that-

“-----গত ৩/০৪/২০১৯ --- আমরা জেলখানায় তার সাথে সবাই কথা বলি। হুজুর আমাদের জানায় যে অতি তাড়াতাড়ি ব্যবস্থা নিতে। রাফিকে মামলা তুলে নেয়ার জন্য চাপ দিতে এবং প্রয়োজনে মাকসুদের সাথে আলাপ করে হত্যা করার জন্য বলে।---
-- মাকসুদের নির্দেশনা মোতাবেক আমরা ০৪/০৪/২০১৯ তারিখ সন্ধ্যার পর মাদ্রাসার পশ্চিম হোস্টেলে বৈঠকে বসি। সেখানে অধ্যক্ষা মুক্তিপরিষদ গঠন করি। নুর উদ্দিন আহবায়ক, আমি যুগ্ম আহবায়ক, মহিউদ্দিন শাকিলকে সদস্য সচিব করা হয়। -----
পরবর্তীতে ০৪/০৪/২০১৯ তারিখ ঐদিন নুসরাত জাহান রাফি কে হত্যা করার বিষয়ে আমরা আবার গোপন বৈঠকে রাত ৯:৩০ মিঃ এর দিকে একই স্থানে বসি। সেখানে আমি, নুর উদ্দিন, হাফেজ আব্দুল কাদের, জাবেদ, যুবায়েদ, মহিউদ্দিন শাকিল প্রঃ শাকিল, শামীম (২), ইমরান, ইফতেখার হোসেন রানা প্রঃ রানা, শরীফ উপস্থিত ছিলাম। আমি, নুর উদ্দিন ও আব্দুল কাদের হত্যার পরিকল্পনা উপস্থাপন করি। রাফি প্রায় দেড় মাস আগে আমাকে প্রেমে প্রত্যাখ্যান করে ও অপমান করে। তাই আমার ব্যক্তিগত ঙ্গাভাও ছিল। আমরা আলোচনা করে সিদ্ধান্ত নেই যে, ০৬/০৪/২০১৯ তারিখ আরবি ১ম পরীক্ষা ছিল নুসরাত জাহান রাফিকে হত্যা করে আত্মহত্যা মোতাবেক চালিয়ে দিব,

থানার বিষয়ে মাকসুদ ও রম্ভুল আমীন দেখবে। সিদ্ধান্ত মোতাবেক আমি, যুবায়ের, জাবেদ ও কামরম্নাহার মনি সাইক্লোন সেন্টারের ছাদে থাকবো। মনি আমাদের জন্য বাড়ি থেকে ৩টি বোরকা নিয়ে আসবে। আমি কেরোসিন তেল সংগ্রহ করবো। উম্মে সুলতানা পপি প্রঃ শম্পা রাফিকে কৌশলে ডেকে আনবে- সে রাফিকে জানাবে যে, নিশাতকে সাইক্লোন সেন্টারের ছাদে কেউ মারছে। গেইটে আফসার স্যার, গেইটের বাহিরে নুর উদ্দিন, হাফেজ আব্দুল কাদের, ইমরান হোসেন মামুন প্রঃ ইমরান, ইফতেখার হোসেন রানা প্রঃ রানা, মোঃ শরীফ হোসেন প্রকাশ শরীফ অবস্থান নিবে। সাইক্লোন সেন্টারের নিচে পাহারায় থাকবে মহিউদ্দিন শাকিল ও শামীম (২)। আমি বিষয়টি মাকসুদ কাইঙ্গিলর, আফসার স্যার, সেলিম স্যার, হুজুরের ২ পুত্র মিশু ও আদনান, কামরম্নাহার মনি এবং উম্মে সুলতানা পপি প্রঃ শম্পাকে জানাব। ----- ০৪/০৪/১৯ তারিখের পরিকল্পনা মোতাবেক গত ০৬/০৪/১৯ তারিখ সকাল ৭:০০ - ৭:৩০ ঘটিকার দিকে আমরা মাদ্রাসা প্রাঙ্গণে একত্রিত হই। আমি নুসরাতকে হত্যা করার জন্য বিকেল ৪:০০ - ৫:০০ ঘটিকার দিকে গত ০৫/০৪/১৯ তারিখ ০১ লিটার কেরোসিন তেল সংগ্রহ করি। তা আমার কাছে সংরক্ষণ করি। উক্ত কেরোসিন নিয়ে আমি সকাল বেলা ছাদে চলে যাই। কামরম্নাহার মনি তার বাড়ি থেকে ৩টি বোরকা, হাতমোজা পা মোজাসহ নিয়ে আসে। আমি জাবেদ যুবায়ের সকাল ৯:৩০ ঘটিকার দিকে পরিধান করি। উম্মে সুলতানা পপি নুসরাত রাফিকে ৯:৪৫ ঘটিকায় তার ঘনিষ্ঠ বান্ধবী নিশাতকে কেই ছাদে মারধর করে জানিয়ে কৌশলে নিয়ে আসে। রাফি ও উম্মে সুলতানা পপি ছাদে এলে আমরা ৪ জন সাথে সাথে ছাদে যাই। মনি ও পপি ওকে ধরে ফেলে, আমি তখন তার মুখ চেপে ধরি। রাফির পড়নের ওড়না ছিড়ে যুবায়ের রাফির হাত ও পা বেঁধে ফেলে। আমরা তাকে

শুইয়ে ফেলি, এই সময় আমি নুসরাত জাহান রাফির মুখ চেপে গলা ধরে রাখি। কামরন্নুহার মনি তার বুক ধরে রাখে। উম্মে সুলতানা পপি তার পা ধরে রাখে। এই সময় কামরন্নুহার মনি তার সাথে পপির কৌশল পরিকল্পনা মতে রাফিকে ধাঁ ধাঁ ফেলার জন্য পপিকে শম্পা নামে ডাকে। জাবেদ পপি ব্যাগ থেকে নুসরাত জাহান রাফির পা থেকে বুক পর্যন্ত কেরোসিন ঢেলে দেয়। আমি মুখ চেপে ধরায় আর আওয়াজ বন্ধ রাখার জন্য আর মুখে কেরোসিন দেওয়া হয়নি। তারপর যুবায়ের ম্যাচের কঠি থেকে নুসরাত জাহান রাফির গায়ে আগুন দেয়। ----- আমি ও যুবায়ের প্রশ্রাব খানার পাশ দিয়ে বের হয়ে যাই। জাবেদ মাদ্রাসার হোস্টেলে ঢুকে যায়। কামরন্নুহার মনি ও উম্মে সুলতানা পপি প্রঃ শম্পা তাদের পরীড়ার হলে ঢুকে যায়। ---- আমি পালিয়ে যাই। আমাকে ময়মনসিংহের মুক্তগাছা থেকে পুলিশ ধ্রেণ্ডার করে।”

Condemned prisoner Shahdat Hossain Shamim has disclosed the names of all the sixteen condemned prisoners including himself. He implicated condemned prisoners S.M. Sirajuddowla, Nooruddin, Umme Sultana Poppy, Quamrunnahar Moni, Shakhawat Hossain Javed, Saifur Rahman Mohammad Zobayer, Mohammad Shamim, Ruhul Amin, Maksud Alam Councillor, Hafez Abdul Kader, Abdur Rahim Sharif, Iftekharuddin Rana, Imran Hossain Mamun, Afsaruddin and Mohammad Shakil in the planning, preparation and participation of the occurrence. With the exception of condemned prisoners

Mohammad Shamim, Ruhul Amin, Councillor Maksud Alam, and Afsaruddin, the remaining twelve condemned prisoners made confessions that substantially corroborated each other's complicity.

To identify the four persons as mentioned by the deceased in her dying declaration the aforesaid confession of the condemned prisoner Shahadat Hossain Shamim may be taken into consideration. He has stated that he along with Quamrunnahar Moni, Shakhawat Hossain Javed and Saifur Rahman Md. Zubayer were waiting in the rooftop for appearance of Nusrat Jahan Rafi with Umme Sultana Poppy. But Nusrat Jahan Rafi did not disclose in her statement, Ext. 45, that Umme Sultana Poppy called her to the rooftop. If the figure of Umme Sultana Poppy is counted then it becomes 5 in number. But both Shahadat Hossain Shamim and deceased Nusrata Jahan Rafi have stated that the persons under the cover of burqa were four in number. In this circumstance, we have to ascertain, out of Umme Sultana Poppy and Quamrunnahar Moni who was with Shahadat Hossain Shamim, Saifur Rahman Md. Zubayer and Shakhwat Hossain Javed in the rooftop. Before going to that discussion let

us address the submissions of the learned Advocates for the condemned prisoners regarding acceptability of those confessions in evidence.

To understand the latest position of criminal jurisprudence of our jurisdiction in respect of using of the confessions and confessions along with retractions against its makers or the other co-accused let us examine the principles enunciated by our Apex Court as mentioned below.

In the case of State and another Vs. Abdul Kader @ Mobile Kader and others 67 DLR (AD) 6 their Lordships have held that—

The use of confessional statement which has been retracted against co-accused is very weak type of corroborative fact and a conviction taking it as corroborative evidence is not permissible in law. If the confessional statement is found true and voluntary, it can form the basis for conviction even if retracted so far the maker is concerned but it cannot be used against co-accused.

It appears from the above principle that a retracted confession can be used against its maker if it is found true and voluntary but not against the co-accused. Use of such confession against the co-accused has been further developed in the case of Shukur Ali and another Vs. State 74 DLR (AD) 11 wherein their Lordships have ruled that—

The balance between crime control and due process models of justice is such a consideration that requires reassessment with changing times and upon the fact of each case. The case before us is one of such a heinous crime, where measures of control are made far more necessary, to ensure the justice can be brought to the victim in question. As such, while due process is still of utmost importance; crime control consideration must be made as well.

In light of the facts and circumstances of the present case, we are of the view that the confessional statement of a co-accused can be

used for the purpose of crime control against other accused persons even if there is a little bit of corroboration of the confessional statement by any sort of evidence either direct or circumstantial.

In view of the above propositions of law enunciated by our Apex Court it appears to be apparently settled that a retracted confession can be used against its maker if it is found true and voluntary and the confession can be used against the co-accused if it receives even a little bit corroboration of either direct or circumstantial evidence. We shall examine the status of the confessions of the twelve condemned prisoners in the yard-stick of the above principle a little bit later.

Let us examine the probability of involvement of the condemned prisoners with the occurrence. If we hold case-wise discussions with reference to the confessions of the condemned prisoners and corroborative evidence to detect their respective complicity then the conundrum of four individuals as disclosed by the condemned prisoner Shahadat Hossain Shamim as well as deceased Nusrat Jahan Rafi can also be removed.

Condemned prisoner S.M. Sirajuddowla:

In juxtaposition reading of the confessions of condemned prisoners S.M. Sirajuddowla, Shahadat Hossain Shamim, Saifur Rahman Md. Zubayer, Shakhawat Hossain Javed, Umme Sultana Poppy, Quamrunnahar Moni and Nooruddin it appears that Sirajuddowla instigated Shahadat Hossain Shamim, Nooruddin, Javed and Zubayer to kill Nusrat Jahan Rafi if she did not agree to withdraw the case filed against him by her mother. He has further instructed that the occurrence of killing should be of such a nature which may be suspected to be a case of suicide. Out of the aforesaid four individuals Shahadat Hossain Shamim and Nooruddin got special favour of the Principal S.M. Sirajuddowla. S.M. Sirajuddowla has disclosed in his confession that to manage and control the teachers and students of the Madrasha he developed close relation with some students. Out of them Shahadat Hossain Shamim and Nooruddin were presidents of the two leading student organizations of the local units. Both of them were very close to Principal Sirajuddowla and they helped him in several ways. They regularly received share of the proceeds out of the students examination fees, admission fees etc. Both

Shahadat Hossain Shamim and Nooruddin have admitted their nexus with Sirajuddowla in their respective confessions.

Condemned prisoner S.M. Sirajuddowla has stated in his confession that he met Shahadat Hossain Shamim, Nooruddin, Javed and others on 03.04.2019 and instructed them to put pressure on Nusrat and her family to withdraw the case. If they did not agree to withdraw the case then kill Nusrat in a manner so that it can be treated to be a suicidal case. P.W. 54 Monir Hossain, P.W. 55 Rafiqul Kader, P.W. 57 Md. Ripon and P.W. 58 Chabi Ranjan Tripura, guards of the jail, have corroborated the meeting of Nooruddin, Shamim, Javed and others with Sirajuddowla on 01.04.2019 and 03.04.2019 in the Jail gate. Following the meeting with Sirajuddowla in the Jail gate on 03.04.2019 they arranged a meeting in the Hostel of the Madrasha on 04.04.2019 and formed “অধ্যক্ষ মুক্তি পরিষদ” appointing Nooruddin as the Convenor, Shahadat Hossain Shamim as Joint Convenor and Mohiuddin Shakil as Member-Secretary. On the same day at around 9:30 p.m. they convened another secret meeting and finalized the plan of killing Nusrat

Jahan Rafi, if she failed to agree to withdraw the case filed against the Principal.

We have found that after filing of the case against condemned prisoner S.M. Sirajuddowla by the mother of the deceased on the allegations of outraging the modesty of the deceased, he was taken into custody. After his arrest protest rallies took place for and against S.M. Sirajuddowla. P.W. 5 Mustafa, guard of the Madrasha, has stated that a rally took place at 10:00/10:30 a.m. on 28.03.2019 in the main road of Sonagazi Bazar against the Principal and a programme for holding human chain took place at 12:30/1:00 p.m. on the same day under the leadership of condemned prisoners Shahadat Hossain Shamim, Saifur Rahman Md. Zubayer, Nooruddin and Shakhawat Hossain Javed in favour of releasing the Principal. So, the nexus between the Principal Sirajuddowla and his students especially Shahadat Hossain Shamim and Nooruddin is found to be corroborated. According to the design of S.M. Sirajuddowla both Shahadat Hossain Shamim and Nooruddin started publicising after the occurrence that Nusrat set herself on fire. P.W. 17 Md. Yasin stated that coming to know about the presence of Nooruddin in

the Madrasha gate he phoned him to know the incident of fire. On his query Nooruddin told him that Nusrat set herself on fire. P.W. 10 Zahirul Islam stated that at 10:00 p.m. Nooruddin went to his shop. He asked Nooruddin about the incident of the Madrasha. Nooruddin told him that Nursrat attempted to commit suicide setting her on fire. Consequently, it is evident that Sirajuddowla's instruction to kill Nusrat with the explicit intent of staging the crime as a suicide was executed by his core henchmen, Shahadat Hossain Shamim and Nooruddin.

Condemned prisoner Shahadat Hossain Shamim:

We have found in the case of Sirajuddowla that the condemned prisoner Shahadat Hossain Shamim followed the instruction of Sirajuddowla. He procured kerosene from the shop of P.W. 6 Md. Lukman Hossain Liton. P.W. 6 has stated that he sold 1 litre kerosene to Shahadat Hossain Shamim at tk. 70/-. He supplied the kerosene in the black polithyne bag which was seized by police from the place of occurrence. Shahadat Hossain Shamim has stated in his confession that he along with three others set Nusrat on fire wearing burqas. P.W. 16 Maulana Mohammad Hossain, P.W. 49 Md. Shahjahan and P.W. 50 Md.

Abul Kashem have stated that burqa was recovered from the pond of Madrasha at the showing of Shahadat Hossain Shamim in their presence. Their plan was to publicise the occurrence as a case of suicide and condemned prisoner Shahadat Hossain Shamim is also found to have done such publicity. P.W. 32 Md. Akbar Hossain has stated that Shahadat Hossain Shamim over a mobile phone call inquired him whether he heard the occurrence of the Madrasha. As he expressed his ignorance Shahadat Shamim told him that Nusrat wanted to commit suicide by setting fire on her. So, his confession to the extent of his involvement with the occurrence is found to be corroborated by circumstantial and independent evidence.

Condemned Prisoner Nooruddin:

We have found in the cases of Sirajuddowla and Shahadat Hossain Shamim that following the meeting with Sirajuddowla a meeting was convened in the Hostel of the Madrasha at around 3:00 p.m. on 04.04.2019 and in that meeting “অধ্যাঙ্গা মুক্তি পরিষদ” appointing Nooruddin as the Convenor, Shahadat Hossain Shamim as Joint Convenor and Mohiuddin Shakil as Member-Secretary was formed. In another secrete meeting at around 9:30

p.m. on the same day it was decided that Nusrat will be killed calling her in the rooftop of the cyclone centre by pouring kerosene on her body if she did not agree to withdraw the case filed against Principal S.M. Sirajuddowla. It was decided in the meeting that Nooruddin will keep guarding the main gate of the Madrasha. Nooruddin has stated in his confession that he along with others was keeping guard in front of the gate of the Madrasha at the time of occurrence. Both P.W. 2 Nishat Sultana and P.W. 3 Nasrin Sultana Furti have found Nooruddin vigilant in the Madrasha just before the occurrence. P.W. 10 Zahirul Islam has found Nooruddin in front of his shop who told him that Nusrat attempted to commit suicide by setting her on fire. P.W. 17 Md. Yasin also talked to Nooruddin over mobile phone when Nooruddin was remaining in front of the gate of the Madrasha. So, although Nooruddin was not found to be present at the place of occurrence but he was found to be discharging his duty as per plan. As such, his confession to the extent of his assistance to the occurrence is found to be corroborated.

Mr. Shahjahan and Mr. Tajul Islam, learned Senior Advocates, appearing for the condemned prisoners Shahadat

Hossain Shamim and Nooruddin respectively submits that both the condemned prisoners were produced before the learned Magistrate on 14-04-2019 at 2.50 p.m. Both of them were kept in the same Court room of the learned Magistrate under the custody of the same office peon Md. Shahed Hossain. Moreover, the time of recording their confessions appear to be overlapping which is clear violation of Rule 79(5) of the Cr.R.O. On perusal of the forms of confessions of the condemned prisoners Shahadat Hossain Shamim and Nooruddin, Exts. 28 and 27, it appears that the confessions of Nooruddin was recorded first after giving him 3:30 hours deliberation time and after recording his confessions he was sent to Jail custody at around 9:15 p.m. Then the confessions of Shahadat Hossain Shamim was recorded after giving him almost 6:00 hours deliberation time and after recording his confessions he was sent to Jail custody at around 11:55 p.m. Learned Magistrate did not mention in any of the forms of confessions when he started recording the confessions. P.W. 67 Zakir Hossain, the recording Magistrate, however has stated in cross-examination that he started writing of the confession of Shahadat Hossain Shamim at 8:50 p.m. Apparently

P.W. 67 Zakir Hossain started recording the confessions of Shahadat Hossain Shamim before sending Nooruddin to Jail custody at 9:15 p.m. That does not mean that Nooruddin was present at the chamber of the recording Magistrate till 9:15 p.m. For some reasons handing over the accused to Jail custody after recording his confession may be delayed. Till then the accused can be kept waiting in a convenient place including the Court room where he was kept after his production. P.W. 67 Zakir Hossain has denied that he illegally kept the accused waiting in his chamber. As to keeping two accused in the same Court room, it appears that both the accused were produced by police at the same time for recording their confessions. Both of them were kept in the Court room of the learned Magistrate under the custody of his office peon. But their confessions were recorded one after another. P.W. 67 Zakir Hossain has stated in cross-examination that he recorded their confessions in his chamber (khas kamra) one after another. So, we find no violation of Rule 79(5) of the Cr.R.O.

Mr. Shahjahan then expressed his reservation in accepting the confessions of Nooruddin and Shahadat Hossian Shamim as

they were found to be produced before the Magistrate after 24 hours of their arrest and, therefore, those confession were recorded in violation of the madate of section 61 of the Code.

Section 61 of the Code runs hereunder—

Section 61. No police officer shall detain in custody a person arrested without warrant for a longer period than under all circumstances of the case is reasonable, and such perid shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

It appears in the above section 61 of the Code that “the time necessary for the journey” has been excluded in counting the mandatory 24 hours. Condemend prisoners Nooruddin and Shahadat Hossain Shamim have been arrested from Bhaluka and Muktagacha of Mymensingh District respectively by the local RAB following the instruction of the RAB Headquarter. P.W. 67 Zakir Hossain, the recording Magistrate, has stated that although

he wanted to know to Nooruddin whether he was produced before him within 24 hours of his arrest, he disclosed nothing to him. He however, has stated that Shahadat Hossain Shamim was arrested and produced before him after 38:45 hours of his arrest. But on perusal of the record it appears that the police of Mymensing handed over them to the Police of Feni within the period of 24 hours and the Feni Police also produced the accused before the Magistrate within the stipulated 24 hours after receiving them from Mymensingh Police. So, no police officer detained the accused in their custody for more than 24 hours.

Condemned prisoner Saifur Rahman Md. Zubayer:

Saifur Rahaman Md. Zubayer has stated in his confession that he met Principal Sirajuddowla in the Jail gate on 03.04.2019 along with others. He took part in the meeting at around 3:00 p.m. but did not attend the meeting at 9:00 p.m. on 04.04.2019 in Hostel. He also took part in the occurrence of setting Nusrat Jahan Rafi on fire on the rooftop of the cyclone centre of the Madrasha on the date of occurrence wearing a burqa. Shahadat Hossain Shamim instructed him by sign to lit fire on the body of Nusrat by a matchstick. He opposed his instruction. Shamim then

threatened to do harm to his younger brother, a student of the Madrasha, and stop him from appearing his Fazil examination. Then he lit a matchstick and threw the same at Nusrat out of fear. Matchsticks were recovered from the place of occurrence by police within an hour. He quickly left the Madrasha and threw the burqa in a canal near a Mosjid. Although none saw him leaving the Madrasha but the burqa was recovered from the canal in presence of P.W. 14 Md. Abdul Halim Mamun, P.W. 42 Md. Mohiuddin and P.W. 44 Md. Ibrahim who have deposed that the burqa was recovered from the canal at the showing of Saifur Rahman Md. Zubayer. So, the confession of the condemned prisoner Saifur Rahman Md. Zubayer to the extent of his involvement with the killing of Nusrat is also found to be corroborated by independent evidence.

Condemned prisoner Shakhawat Hossain Javed:

Shakhawat Hossain Javed has stated in his confession that he was a member of the committee of “অধ্যাপক মুক্তি পরিষদ”. Condemned prisoners Shahadat Hossain Shamim, Nooruddin and Zubayer appeared in his hostel at around 8:30 p.m. and informed him that they would frighten Nusrat Jahan Rafi on

Saturday for getting the case filed against the Principal withdrawn. They requested him to accompany them. When he refused to accompany them Shahadat Hossain Shamim threatened him saying that if he failed to accompany them both his life and examination would be at risk. Accused Nooruddin and Shamim took him with them from his room at around 9:30 a.m. on 06.04.2019. Going to a class room at the 2nd floor of the cyclone centre they found condemned prisoner Zubayer sitting wearing a black burqa and hand socks. He and Shamim also wear burqa. Then Nooruddin departed for the ground. After 10/12 minutes they found Poppy going to the rooftop with Nusrat and he along with Shamim and Zubayer followed them. They found Qumrunnahr Moni in the rooftop. Popy and Moni put pressure on Nusrat to withdraw the case filed against the Principal. As she refused Shamim pressed hold of her mouth and ordered him to bring kerosene contained in a Polythene bag from near the bathroom. He brought the kerosene. Shamim ordered him to pour the kerosene on the body of Nusrat. Following the snubbing of Shamim he poured kerosene on the body of Nusrat. Then Zubayer lit a matchstick and threw the same on the body of

Nusrat. Then handing over his burqa to Shamim he quickly got down from the rooftop and entered the examination hall. Quamrunnahr Moni, Umme Sultana Poppy, Shahadat Hossain Shamim and Zubayer have corroborated in their respective confessions that Javed poured kerosene on the body of Nusrat. The black polythene bag was recovered from the place of occurrence by P.W. 34 P.S.I. DHM Zahir Raihan from the rooftop just after the occurrence in presence of P.W. 15 Md. Abu Yousuf and P.W. 19 Nurul Absar Faruki.

P.W. 25 Kaysar Mahmud, a classmate of Javed, has stated that the seat of the condemned prisoner Shakhawat Hossain Javed was behind his seat. Javed entered the hall after 4/5 minutes of his entry. Thereafter they heard a female voice from the direction of cyclone centre. Javed could not provide a plausible explanation for his whereabouts during the specific four to five minutes just before the shouts of 'fire' were raised. Consequently, we cannot treat his confession to the extent of his involvement with the occurrence uncorroborated.

Condemned prisoner Umme Sultana Poppy:

Umme Sultana Poppy has stated that the wife of the condemned prisoner Sirajuddowla is the elder sister of her mother. She took part in the programme of forming human chain demanding release of the Principal Sirajuddowla. She took part in the meeting at 3:00 p.m. on 04.04.2019 along with Nooruddin, Shahadat Hossain Shamim, Zubayer, Javed. Shahadat Hossain Shamim ordered her to take Nusrat to the rooftop of the cyclone centre in the morning on 06.04.2019 at any cost. She met Shahadat Hossain Shamin at the Madrasha gate on 06.04.2019 who asked her to tell Nusrat that some one was beating Nishat in the rooftop of the cyclone centre and took her there with her. Upon found Nusrat entering the Madrasha at 9:30 a.m. she told her the same thing as tutored by Shmim. Nusrat accompanied her to the rooftop leaving her file in her examination hall. After them, Quamrunnihar Moni arrived at the rooftop and thereafter three individuals arrived wearing burqas. Moni requested Nusrat to withdraw the case filed against the Principal which Nusrat refused. Shahadat Hossain Shamim pressed hold the mouth of Nusrat and ordered her to tie-up the hands of Nusrat which she complied out of fear. They grounded Nusrat. Shamim ordered

Jabed to pour kerosene on the body of Nustrat which was complied also. Then someone lit fire on the body of Nusrat. Leaving the rooftop quickly she entered her examination hall.

P.W. 13 Md. Abul Khayer was invigilator of the examination hall of Umme Sultana Poppy. He found 3 students absent at around 9:40 a.m. He started distributing answersheets at around 9:45 a.m. Still then those three students were found absent. After 2/3 minutes two students appeared. Thereafter he heard shouting at the outside. Going to veranda he found a police constable together with their peon P.W. 5 Mustafa carrying a burned female student towards the gate. Thereafter he found the last student entering the hall. On query she told that she was in bathroom. After 2/3 days he came to know that the late student was Umme Sultana Poppy @ Tuhin.

P.W. 23 Aklima Akter was a student of the examination hall of Umme Sultana Poppy. She found Poppy entering the hall hurriedly after distribution of the answer sheets. After a while they went to verandah hearing shouting and found Nusrat Jahan walking down the staircase with fire on her body. P.W. 5 Mustafa and P.W. 24 Baby Rani Das started dousing the fire by

wrapping the doormat around her. Poppy did not come out of the hall. She was remaining sitting in her seat. She told that she was not with that as the people will suspect her. She further said that Rafi set fire to herself.

P.W. 26 Nasrin Sultana, another student of the hall of Poppy, has also deposed that Poppy entered the hall late hurriedly but did not come out of the hall hearing the shouting. She told her that Nusrat set fire to herself. No other set her on fire. Such circumstances support Umme Sultana Poppy's presence in the place and time of the occurrence. However, it is confusing whether Nusrat Jahan Rafi went to the rooftop with Poppy. It appears from the dying declaration of Nusrat, Ext. 45, that she might have received information from a female voice at the gate of the Madrasha about beating her friend Nishat in the rooftop of the cyclone centre. It appears further from the evidence of P.W. 2 Nishat Sultana and P.W. 3 Nasrin Sultana Furti that both of them were waiting for Nusrat in front of her examination hall. They were waiting there till 9:40 a.m. and then entered their respective halls upon found Nusrat absent. They did not say that they found Umme Sultana Poppy waiting for Nusrat as well. P.W. 28

Fahmida Akter Hamduna, a student of the hall of Nustrat, has stated that Nustrat entering the examination hall told her that she was retuning soon as Nishat seemed to be in problem. Then she left the hall hurriedly keeping her file on her seat. Had Umme Sultan Poppy been accompanying with Nusrat to the rooftop then P.W. 28 was supposed to see her. However, that does not rule out the presence of Umme Sultana Poppy in the rooftop of the cyclone centre which has been circumstantially corroborated as mentioned above.

Condemned prisoner Quamrunnahar Moni:

Quamrunnahar Moni has stated in her confession that—

“আমি এ বৎসর সোনাগাজী ইসলামীয়া ফাজিল ডিগ্রী মাদ্রাসা হতে আলিম পরীক্ষা নিচ্ছিলাম। আমি ঐ মাদ্রাসায় ক্লাস ফোর থেকে পড়ি। প্রায় ১ বৎসর আগে আমার বিয়ে হয়েছে। আমি পরীক্ষার কারণে বাবার বাড়ীতে ছিলাম। গত ২৭/০৩/১৯ইং মাদ্রাসার প্রিন্সিপাল হুজুর সিরাজ উদ্দৌলা নুসরাতের গায়ে হাত দিলে মামলা হয়। ঐ দিনই হুজুরকে অর্থাৎ সিরাজ উদ্দৌলা হুজুরকে পুলিশ গ্রেফতার করে। পরের দিন অর্থাৎ ২৮/০৩/১৯ ইং তারিখ আমি সহ অনেকেই প্রবেশ পত্র আনতে গেলে। সিরাজ স্যার প্রত্যেকের কাছ থেকে ৫০০/-টাকা বেশী রাখতে চায়। মানব বন্ধনের খরচের জন্য মনে টাকা চায়। হুজুরের মুক্তির দাবীতে মানববন্ধন হয়। মানববন্ধন হয় ২৮/০৩/১৯ ইং তারিখ এবং ৩০/০৩/১৯ হয়। আমি প্রথম দিনের মানববন্ধনে ছিলাম। ২য় দিনের মানববন্ধনে আমি ছিলাম না। আমাদের আলিম পরীক্ষা শুরু হয় ০১/০৪/১৯ইং তারিখ। ২য় পরীক্ষার দিন অর্থাৎ ০২/০৪/১৯ ইং তারিখ উম্মে সুলতানা পপি। সে আমার ক্লাসমেট। আমাকে ২,০০০/-টাকা দিয়ে বলে ২টি বোরকা কিনতে বলে। পপি তখন

আমাকে বলে শাহাদাত হোসেন শামীম নাকি তাকে ২০০০/-টাকা দিয়ে তা আমাকে দিতে বলেছে এবং তা দিয়ে ২টি বোরকা ও ৪ জোড়া মোজা কিনে ০৬/০৪/১৯ ইং তারিখ সাইক্লোন সেন্টারের ২য় তলার ২টি কক্ষের কোন একটিতে রাখতে বলেছে। বোরকা কেন বা কার জন্য জিজ্ঞাসা করলে সে বলে শামীম বলেছে বোরকা ও মোজা কিনতে এবং তা না করলে আমার পরীক্ষা দিতে সমস্যা হবে। তখন আমি ঐ টাকা নিই। ঐ দিন পপি অনুমান ১.৩০ ঘটিকার দিকে আমাকে টাকাটা দেয়। পরে আমি ঐ দিনই অর্থাৎ ০২/০৪/১৯ ইং তারিখ সোনাগাজী বাজারের মানিক পস্লামজার "ওয়াল্ড ফেমাস বোরকা হাউজ" হতে ১৯৮০/-টাকা দিয়ে ২টি কালো রঙের বোরকা কিনি। ঐ দোকানের মালিক জসিম উদ্দীন। সে আমার শ্বশুর বাড়ির কাছের 'লোক'। সে হিসাবে তার সাথে আমার পরিচয় আসে। বোরকা কেনার পর বড় মসজিদের কাছের ফুটপাথের দোকান হতে ৪ জোড়া কালো রঙের হাত মোজা কিনি। ঐগুলো আমি বাড়িতে নিয়ে আমার রুমমে রাখি। পরে ০৬/০৪/১৯ তারিখ অনুমান ৯:২০ ঘটিকার দিকে মাদ্রাসায় যাই। মাদ্রাসায় ঢুকে পপির কথামত বোরকা ও মোজাগুলো মাদ্রাসার ভিতরে অবস্থিত সাইক্লোন সেন্টারের ২য় তলায় প্রিন্সিপাল হুজুরের রুমমের পাশের রুমমে ঢুকি। বোরকা ও মোজাগুলো একটা শপিং ব্যাগে ছিল। রুমমে ঢুকে আমি শাহাদাত হোসেন শামীম, জাবেদ ও জোবায়েরকে দেখি। শাহাদাত হোসেন শামীম আমার দূর সম্পর্কের মামা। জাবেদ আমার ক্লাসমেট। জোবায়ের আমার সিনিয়র, তবে আমাদের মাদরাসার সাবেক ছাত্র। আমি রুমমে ঢুকে শামীম অর্থাৎ শাহাদাত হোসেন শামীমের কাছে বোরকা ও মোজাগুলো দিই। তারা আমাকে ছাদে যেতে বলে। আমি রুমম থেকে বের হয়ে ছাদে না গিয়ে নিচে যাই। একটু পরে আমি ছাদে যাই। আমি ছাদে গিয়ে শাহাদাত হোসেন শামীম, জাবেদ ও জোবায়েরকে দেখি। তারা বোরকা পড়া ছিল ও হাতে মোজা পড়া ছিল। একটু পরে উম্মে সুলতানা পপি আসে। পপির পেছন পেছন নুসরাত জাহান রাফি আসে। সে এলে নিশাতকে খুঁজতে থাকে। এর মধ্যে শামীম পপিকে একটি কাগজ দিয়ে তাতে সুসরাতের স্বাক্ষর নিতে বলে। হারের বিরম্ভে দায়েরকৃত মামলা তুলে নেয়ার জন্য কাগজে স্বাক্ষর করতে বলে। কিন্তু নুসরাত রাজী হয় নাই। তখন শামীম নুসরাতের ওড়না খুলে নিতে বলে। পপিকে বলে। তখন পপি নুসরাতের ওড়না খুলে তা জোবায়ের এর হাতে দেয়।

জোবায়ের ঐ ওড়নাটা লম্বালম্বি দুই ভাগ করে ফেলে। শামীম পপি কে বলে নুসরাতের হাত বাধতে। পপি তখন নুসরাতের দুই হাত পেছন দিক থেকে বাঁধে। এরপর শামীম নুসরাতের মুখ চেপে ধরে। শামীম তখন নুসরাতকে নিচে ফেলে দেয়। জোবায়ের নুসরাতের পা ধরে রাখে। পপি ওড়নার অর্ধেক পাট দিয়ে নুসরাতের পা বাধে। এ সময় আমি কিছু বুঝে উঠতে পারছিলাম না। শামীম আমাকে নুসরাতের বুক চেপে ধরতে বলে। আমি রাজী না হলে শামীম আমার পেটে লাথি মেরে আমার বাচ্চার ক্ষতি করে দিবে বলে হুমকি দেয়। আমি ৫ মাসের গর্ভবতী। আমি ভয়ে শামীমের কথামতো নুসরাতের বুক চেপে ধরি। শামীম তখন জাবেদকে বলে বাথরুমের কাছে রাখা কেরোসিন নিয়ে আসতে বলে। তখন জাবেদ কেরোসিন এনে নুসরাতের শরীরে ছিটিয়ে দেয়। কেরোসিন পলিথিনে ছিল। এর মধ্যে শামীম জোবায়েরকে ইশারা দিয়ে ম্যাচ দিয়ে আগুন দেয়ার কথা বলে। হাতে ইশারা দেয়। ম্যাচে যেভাবে কাঠি দিয়ে ঘষা দেয় সেরকম ইশারা দেয়। তখন জোবায়ের ম্যাচের কাঠি দিয়ে আগুন ধরিয়ে জলন্ত কাঠি রাফির শরীরে ছুড়ে দেয়। আমি ভয়ে একদিকে সরে যাই ও দৌড়ে নীচে নেমে পরীক্ষার হলে ঢুকে যাই। নামার সময় আমি পপিকে 'চম্পা' বলে ডেকে চলে আসতে বলে। পপিকে 'চম্পা' বলে ডাকার কথা পপিই আমাকে আগে শিখিয়ে দিয়েছিল। ঘটনার দিন আমাদের আরবী ১ম পত্র পরীক্ষা ছিল। আমি ঐ দিন পরীক্ষা শেষ করে বাড়ি যাই। এরপরও আমি তিনটি পরীক্ষা দিই। পুলিশ আমাকে আমার বাবার বাড়ি হতে গ্রেফতার করে। আমি পালাই নাই। এই আমার বক্তব্য।”

P.W. 29 Tahmina Akter has stated that the seat of Quamrunnahr Moni was in front of her and she found Moni absent in her seat. After starting of distribution of the answer sheets Moni entered the hall hurriedly. She replied to the query of the class teacher that she was suffering from stomach pain. However, she did not come out of the hall even hearing shouting

of 'fire'. P.W. 30 Bibi Hazera, another student of the hall of Moni, has stated that at the time of occurrence Moni was pregnant. P.W. 11 Md. Belayet Hossain, Invigilator of the hall of Moni, has stated that Moni entered the hall 1-1½ minutes late. She disclosed that she was sick. She was looking pale and depressed. After around 1½ minutes Nusrat was found flaming in fire. P.W. 87 Inspector Shah Alam has stated in cross-examination that Quamrunnahr Moni got admitted in Hospital in the previous night. Therefore, she was naturally looking sick and depressed. None of the condemned prisoners Shahadat Hossain Shamim, Umme Sultana Poppy, Saifur Rahman Zubayer and Shakhawat Hossain Javed has disclosed exactly when Quamrunnahr Moni met them in the rooftop. It is not unlikely that Moni might have supplied the burqa and hand socks at the instance of her relative Shahadat Hossain Shamim without having any guilty knowledge. Getting such information Moni might have been implicated with the case. She is not related with Principal Sirajuddowla. Umme Sultana Poppy being close relative of Sirajuddowla did not disclose that she pressurised Nusrat to withdraw the case. Then why we should believe that

Moni attended the occurrence of the rooftop to request Nusrat to withdraw the case filed against Sirajuddowla? She was not present in the meeting with Sirajuddowla at the Jail gate or in the Hostel on 04.04.2019 although Poppy was present in the meeting held at 3:00 p.m. on 04.04.2009 in the Hostel. As a pregnant woman Moni is not supposed to be present in such a risky incident. Furthermore, the presence of Umme Sultana Poppy on the rooftop alongside condemned prisoners Shahadat Hossain Shamim, Shakhawat Hossain Jabed, and Saifur Rahman Md. Zubayer finalized the four-member team described by the deceased, Nusrat Jahan Rafi, in her dying declarations. Presence of Moni with them is found to have no place after such finalization of the team. Therefore, we hold that the alleged participation of Quamrunnahar Moni is unfounded and has no corroboration in any way.

Condemned prisoner Mohiuddin Shakil:

Condemned prisoner Shahadat Hossain Shamim has stated in his confession that it was decided that Mohiuddin Shakil and Mohammad Shamim @ Shamim (2) shall stand guard at the foot of the staircase of the cyclone centre. Mohiuddin Shakil has

stated in his confession that he went to Madrasha to appear in his examination at around 9:20 a.m. on 06.04.2019 and making him to understand that they would manage Nusrat Jahan Rafi to withdraw the case filed against the Principal by taking her to the rooftop of the cyclone centre, Nooruddin asked him to stand beneath the cyclone centre. Accordingly, he along with Md. Shamim stood at the foot of the staircase of the cyclone centre. But he has subsequently retracted the confessions on the allegations of committing torture on him taking in police remand before such confession. He did not state in his confession that he took part in any of the meetings of 04.04.2019. P.W. 56 Md. Ripon and P.W. 58 Chhabi Ranjan Tripura did not disclose his name as a visitor of Sirajuddowla. His presence at the foot of the staircase of the cyclone centre has not been supported by any eyewitness. None of P.W. 6 Mustafa, P.W. 24 Baby Rani and P.W. 33 Constable Russell who rushed to the staircase of the cyclone centre deposed supporting the presence of Mohiuddin Shakil. P.W. 22 Khujista Khanam has also found Mohiuddin Shakil present in her class all the time and he was in examination for entire three hours. He is not FIR named as well. So, the

confession of the convict prisoner Mohiuddin Shakil is not found to be corroborated by any independent evidence.

Condemned prisoner Imran Hossain Mamun:

Imran Hossain Mamun has stated in his confession that it was decided in the meeting at 9:00 p.m. on 04.04.2019 that he along with Iftekhar Rana, Hafej Abdul Kader, and Sharif would stood guard outside the gate of the Madrasha under the leadership of Nooruddin. He and Rana refused to do that. But following the threat of Shahadat Hossain Shamim and Nooruddin they stood outside the gate of the Madrasha at around 9:15 a.m. on 06.04.2019. He also retracted his confessions subsequently. None saw the condemned prisoner Imran Hossain Mamun guarding outside the gate of the Madrasha at the time of occurrence. Only P.W. 3 Nasrin Sultana Furti has stated that she found accused Imran Hossain Mamun in the campus of the Madrasha on the date of occurrence. On the other hand, P.W. 87 Inspector Md. Shah Alam has categorically stated that none stated the name of Imran Hossain Mamun during recording of statements under section 161 of the Code. Therefore, the

confession of the condemned prisoner Imran Hossian Mamun is also found to be uncorroborated.

Condemned prisoner Hafez Abud Kader:

Condemned prisoner Hafez Abdul Kader, a teacher of the Madrasha, has stated in his retracted confession that he took class from 7:00 a.m. to 9: 30 a.m. on 06.04.2019. Then he stood guard outside the gate of the Madrasha with Imran Hossain Mamun, Sharif and Rana. But none of the witnesses except P.W. 9 Rashedul Hasan Raihan saw Hafez Abdul Kader there. P.W. 9 Rashedul Hasan Raihan has stated that he saw Hafez Abdul Kader guarding the gate. But he has stated that he went to the Madrasha after 10:00 a.m. i.e. after the occurrence getting information about the occurrence from Md. Ridoy, a classmate of the deceased. On the other hand, P.W. 1 Mahmudul Hasan Numan did not say that he found Hafez Abdul Kader, his friend, guarding the gate when he accompanied his sister deceased Nusrat to reach the Madrasha. Rather he has stated that he requested his friend Hafez Abdul Kader over phone to see whether his sister took her seat. After 3/4 minutes Kader phoned him informing the incident of fire. Even P.W. 5 Mustafa who

was guarding the gate of the Madrasha and P.W. 33 Constable Russell did not support the presence of Hafez Abdul Kader in the gate of the Madrasha at the time of occurrence. So, we find no corroboration of the confession of Hafez Abdul Kader.

Condemned prisoner Abdur Rahim Sharif:

In his retracted confession Abdur Rahim Sharif has stated that he stood guard outside the gate of the Madrasha. But none saw him there at the the time of occrrrence. He is not FIR named accused. His confession is also found to be uncorroborated.

Condemmmned prisoner Iftekharuddin Rana:

The confession of the condemned prisoner Iftekhauddin Rana is also a retracted one. Although in his cnfession he has stated that he kept guard outside the gate of the Madrasha on the date of occurenc after his examination but none of the witnesses has supported his presence at the gate of the Madrasha at the relevant time. So, we find no corroboration of the confession of this accused.

Condemend prisoners Mohammad Shamim, Ruhul Amin, Maksud Alam Councilor and Afsaruddin:

None of them made any confession. P.W. 87 Inspector Shah Alam, I.O., has stated that none stated the name of Afsaruddin in their statements recorded under section 161 of the Code. Although condemned prisoner Shahadat Hossain Shamim has stated in his confession that Afsaruddin would keep guarding the gate of the Madrasha but Afsaruddin was not present at the meeting. None found condemned prisoner Afsaruddin at the gate of the Madrasha. P.W. 5 Mustafa did not mention the name of Afsaruddin as well. Condemned prisoner Md. Ruhul Amin is not named in the FIR. None of the P.Ws. has deposed in favour of any manner of his involvement with the occurrence. P.W. 87 Inspector Shah Alam has stated that none disclosed the name of Md. Ruhul Amin in their statements recorded under section 161 of the Code. Although condemned prisoner Shahadat Hossain Shamim stated that after the occurrence he informed accused Md. Ruhul Amin coming out of the Madrasha but neither P.W. 86 Inspector Kamal Hossain nor P.W. 87 Inspector Shah Alam has found any proof of such communication. Condemned prisoner Maksud Councillor allegedly donated tk. 10,000/- for holding the programme of forming human chain in favour of releasing

the Principal of the Madrasha but that has not been proved. None saw Maksud Councillor at the place of occurrence. P.W. 86 and 87 have stated that they got nothing against the accused Maksud Councillor. Condemned prisoner Md. Shamim is not named in the FIR. Although condemn prisoner Shahadat Hossain Shamim has stated in his confession that Md. Shamim would stand guard at the foot of the staircase of the cyclone centre on the date of occurrence but none saw him there. The prosecution has failed to connect the responsibilities of condemn prisoners Mohammad Shamim, Ruhul Amin, Maksud Alam Councilor and Afsaruddin with the occurrence. So, they should be acquitted of the charge brought against them in the case. Likewise, condemned prisoners Hafez Abdul Kader, Abdur Rahim Sharif, Iftexharuddin Rana, Imran Hossain Mamun, Mohiuddin Shakil and Quamrunnahr Moni should also be acquitted as their retracted confessions were not found to be corroborated by any independent evidence.

We have found in the above discussions that out of the twelve confession makers condemned prisoners S.M. Sirajuddowla, Nooruddin, Shahadat Hossain Shamim, Saifur

Rahman Md. Zubayer, Umme Sultana Poppy and Shakhawat Hossain Javed are found to be involved with the planning, assisting and implementing the design of killing Nusrat Jahan Rafi as their confessions are found to be corroborated by the circumstantial evidence. They disclosed in their retraction petition that they were subjected to torture during police custody in remand before recording their confessions by the Magistrates. But we have found no basis of such allegations. For mere taking in remand for interrogation the confessions of the accused cannot be unworthy of reliance. However, they were found to be taken in remand and further remand even after making confession. Since, they were not taken in further police custody in the same remand period after giving confessions, the subsequent fresh remand cannot make the previous confession unreliable as well. Consequently, applying the legal principles cited above, their confessions are deemed to be voluntary, truthful, and safe to rely upon for conviction. As, such those confessions can form basis of their convictions. The plan of killing Nusrat Jahan Rafi hatched by the condemned prisoner S.M. Sirajuddowla was subject to her refusal of withdrawal of the case filed by her

mother against him on the allegations of outraging her modesty in his room. P.W. 3 Nasrin Sultana Furti, another victim of the lust of Principal Sirajuddowla, P.W. 5 Mustafa, his peon, P.W. 22 Khujista Khanam, one of his colleagues, have given vivid description of the utmost moral and ethical degradation of Principal S.M. Sirajuddowla. His jail custody was ignominious for his image of Principal and therefore, he was desperate to get out of the jail. He raised a bunch of henchmen to help him in his need under the leadership of condemned prisoners Nooruddin, the convenor of “অধ্যাঙ্গা মুক্তি পরিষদ” and Shahadat Hossain Shamim, co-convenor of the same Parishad. Accordingly, he gave the plan and his henchmen Nooruddin, Shahadat Hossain Shamim, Shakhawat Hossain Jabed, Saifur Rahman Md. Zubayer and his relative Umme Sultana Poppy implemented the same. To implement his plan condemned prisoner Sirajuddowla instigated his aforesaid henchmen. Condemned prisoner Shahadat Hossain Shamim arranged a secret meeting at 9:30 p.m. on 04.04.2019 in the hostel of the Madrasha to implement the plan, arranged the materials, and ensured the presence of his accomplice Shakhawat Hossain Jabed and Saifur Rahman Md. Zubayer along with a

close relation of Sirajuddowla, Umme Sultana Poppy. Driven by a desire for revenge after she rejected his romantic proposal, Shahadat Hossain Shamim gagged the victim, Nusrat Jahan Rafi, with his bare hands while instructing the other co-accused to execute the remaining parts of the killing plan. Therefore, none got sound of the happening on the rooftop of the cyclone centre, the place of occurrence. Had there been no incident of 27.03.2019 resulting in the filing of a case under section 10 of the Ain, 2000 against the Principal S.M. Sirajuddowla the tragic killing of Nusrat Jahan Rafi might not have been taken place. We have found that S.M. Sirajuddowla has instigated his henchmen Shahadat Hossain Shamim and Nooruddin, who along with others have committed the offence of killing Nustrat. So, the learned Judge of the Tribunal rightly found him guilty under sections 4(1) and 30 of the Ain. Therefore, condemned prisoner S.M. Sirajuddowla and Shahadat Hossain Shamim deserve the death panalty as the learnd Judge of the Tribunal has awarded upon them. We find no legal infirmity in awarding such sentence upon the condemned prisoners S.M. Sirajuddowla and Shahadat Hossain Shamim.

Condemned prisoner Nooruddin did not directly participate in the killing. But he has assisted the smooth implementation of the plan of killing arranging the presence of the other accomplices and keeping guard at the time of occurrence. Although according to his confession condemned prisoner Shakhawat Hossain Jabed is found to have poured kerosene on the body of the deceased from polythene bag but deceased Nusrat Jahan Rafi has stated in her dying declaration that kerosene were thrown on her from a glass. So, it is not clear in fact who poured kerosene on the body of Nusrat. On the other hand, although it has been come out in the confessions of the condemned prisoners except Umme Sultana Poppy that Saifur Rahman Md. Zubayer lit a matchstick and threw the same on the kerosene smeared body of Nusrat but Umme Sultana Poppy has stated that “এর মধ্যে কে যেন নুসরাতের গায়ে আগুন দেয়।” So, it cannot be unerringly maintained that Saifur Rahman Md. Zubayer lit the kerosene smeared body of Nusrat. But their presence at the time of occurrence and taking part in the occurrence can be presumed unhesitantly; although, however, following the threat of Shahadat Hossain Shamim. Upon consideration of such

circumstances, we hold that justice would be best served if death sentence of Nooruddin, Shakhawat Hossain Javed, Saifur Rahman Md. Zubayer and Umme Sultana Poppy are commuted to sentence for life.

In the result, the reference is accepted in part, so far it relates to condemned prisoners S.M. Sirajuddowla and Shahadat Hossain Shamim and rejected in respect of others. The criminal appeals 13886 and 14698 of 2019 filed by the condemned prisoners S.M. Sirajuddowla and Shahadat Hossain Shamim respectively are dismissed. Criminal Appeals 13887, 13888, 14097, 13885 of 2019 filed by Nooruddin, Shakhawat Hossain Javed, Saifur Rahman Md. Zubayer and Umme Sultana Poppy respectively are hereby dismissal with commutation of their death sentence to imprisonment for life. The Criminal Appeals 12019, 12268, 12296, 12293, 13882, 14096, 14473, 14637 and 14697 of 2019 filed by the condemned prisoners Mohammad Shamim, Ruhul Amin, Maksud Alam Councilor, Afsaruddin, Hafez Abdul Kader, Abdur Rahim Sharif, Iftekharuddin Rana, Imran Hossain Mamun, Mohiuddin Shakil and Quamrunnahr Moni respectively are allowed and they are acquitted of the

charges levelled against them. Let them be immediately set at liberty, if not wanted in connection with any other cases. Jail Appeals are accordingly disposed of.

The Jail authority is directed to shift the condemned-prisoners Nooruddin, Shakhawat Hossain Javed, Saifur Rahman Md. Zubayer and Umme Sultana Poppy from the condemned cell to general cell immediately.

Before parting with the judgment we would like to make a cautionary note here. We did not find the minimum evidence against condemned prisoners Mohammad Shamim, Ruhul Amin, Maksud Alam Councilor and Afsaruddin whereas, they have been awarded with the sentences of death penalty and due to such a mindless sentence they have been languishing in the solitary condemned cell for more than 7 years. Out of death sentences of the sixteen convicts, so far only two are found to be sustainable in this case. Such a miscalculated judgment has caused a devastating effect on the families of those unfortunate persons. Such a mindless and irresponsible sentencing is not expected in a civilized society. The learned Judge of the Tribunal is found to be lacking in judicial sensitivity for which

he should be kept outside the Sessions Jurisdiction until he learns the basics of the penal and sentencing rules. So, the Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs is directed to withdraw the concerned Judge from the Sessions Jurisdiction till the accomplishment of his above mentioned correction. Let a copy of this judgment be sent to the Secretary, Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs for information and necessary action.

Communicate the judgment and order and transmit the lower Court records.

Bhishmadev Chakraborty, J:

I agree.