

Present:
Justice Shahidul Karim
and
Justice Fatema Najib

Death Reference No.04 of 2016

with
 Criminal Appeal No.657 of 2016.
 With
 Jail Appeal No.05 of 2016.
 with
 Jail Appeal No.06 of 2016
 with
 Jail Appeal No.07 of 2016
 The State.

..... Petitioner.

-Versus-

Md. Mostafa and another
 Condemned-Prisoners.

Mr. Bashir Ahmed, D.A.G with
 Mr. Nirmal Kumar Das, A.A.G. with
 Mrs. Syeda Shobnum Mustary, A.A.G with
 Mr. Md. Tariqul Islam (Hira), A.A.G.
 For the State.

Mr. Md. Hafizur Rahman Khan, Advocate
 For the State Defence Lawyer

Heard on 13-03-2022, 03-04-2022, 07-04-2022, 10-04-2022, 24-04-2022, 26-07-2022 and Judgment on 01-09-2022.

Shahidul Karim, J.

The condemned accused were put on trial to answer charges under sections 302/34 of the Penal Code before the learned Sessions Judge, Gazipur. By the impugned judgment and order dated 20-01-2016, the learned Judge of the Court below found condemned

accused Md. Mostafa and Anowara Begum guilty under sections 302/34 of the Penal Code for causing murder of victim Suruj Ali and sentenced them thereunder to death along with a fine of Tk.10,000/- each and also convicted accused Md. Rahmat Ali under the aforesaid sections of law and sentenced him to suffer imprisonment for life along with a fine of Tk. 10,000/- with default clause. By the self-same judgment, the aforesaid 3(three) accused including accused Rahima Begum were also found guilty under section 302/34 of the Penal Code for causing the death of victim Hanufa Begum and convicted and sentenced accused Md. Mostafa and Anwara Begum to death along with fine, while co-accused Md. Rahmat Ali @ Romu and Rahima Begum were sentenced to imprisonment for life along with a fine of Tk.10,000/- each in Sessions Case No. 670 of 2013, arising out of Kapasia P.S. Case No. 6 dated 14-11-2011, corresponding to G.R. No. 226 of 2011. Against the aforesaid judgment and order of conviction and sentence, condemned accused Md. Rahmat Ali, Md. Mostafa and Anwara Begum filed Jail Appeal Nos. 5/2016, 6/2016 and 7/2016 followed by a regular Criminal Appeal being No. 657 of 2016.

Since the death reference and the connected Criminal as well as Jail Appeals arose out of the same judgment and order of

conviction and sentence, they have been heard together and are being disposed of by this single judgment.

The prosecution case originated from an infernal incident in which victim Suruj Ali and his spouse Honufa were brutally done to death by inflicting indiscriminating blows by sharp cutting weapon.

The prosecution case finds its initiation from the FIR lodged by P.W.1 Md. Shahjahan Sheikh, the elder uterine brother of deceased victim Suruj Ali. On 14-11-2011 at 6.20 pm P.W.1 Md. Shahjahan Sheikh being informant lodged the FIR against the condemned accused including 4(four) others alleging, inter alia, that he reared up deceased victim Md. Suruj Ali (42) after the death of his mother. The bondage between the 2(two) brothers was highly deep. There had been a long standing dispute as well as enmity between deceased victim Suruj Ali and the accused over some landed property including other family issues. The accused persons forcibly took possession of the landed property of deceased victim Suruj Ali following which the latter including his father raised protest, whereupon the accused persons threatened him with dire consequences. On the date of occurrence i.e. on 13-11-2011 at around 2.30 pm deceased victim Md. Suruj Ali went to his Mahogany garden located to the eastern side of his homestead and

started weeding out branches of trees while the FIR named accused persons being armed with dao, crowbar, spear etc. trespassed into the Mahogany garden and put hindrance to the work of the deceased victim following which he raised voice as a result an altercation broke out between the parties. At one stage, accused Md. Rahmat Ali alias Ramu struck twice with dao on the right and left shoulder of victim Suruj Ali causing serious bleeding injuries, while accused Md. Mostafa chopped on the left side of the chest of the deceased below the left hand causing bleeding injury following which he fell down to the ground raising alarm, whereupon accused Anowara Begum dealt a spear blow on the back side of victim Suruj Ali causing serious bleeding injury. Having sustained serious bleeding injury, the deceased victim tried to save his soul by going away staggeringly from the accused upto 2(two) yards towards the west and then fell down on the ground unconsciously. Upon seeing the incident, local inhabitant Khadiza and Sumi Akhter (P.W.3), the daughter of deceased Suruj Ali informed the matter to Honufa Begum, wife of Suruj Ali, whereupon she rushed to the spot in a bid to save her husband while accused Md. Rahmat Ali, Anowara Begum, Rahima Begum and Mostafa struck her indiscriminately with dao on different parts of her body in order to kill her causing serious bleeding injury as a result Honufa fell to the ground. Having

witnessed the incident while the father of deceased victim Suruj Ali and others appeared at the spot, the accused persons fled therefrom. Having sustained serious bleeding injury, deceased victim Suruj Ali had died on the spot. Being informed about the incident, the informant came to the spot and found the dead body of Suruj Ali which was besmeared with blood. Thereafter, the informant with the assistance of others took Hanufa Begum, the wife of Suruj Ali to Kapasia Upazilla Health Complex in a critical condition wherefrom she was referred to Dhaka Medical College Hospital for better treatment wherein she ultimately succumbed to her injuries. Later, the informant came to learn about the incident from Sumi Akhter (P.W.3), Khadiza and Jharna (P.W.4). On information, police appeared at the spot and held inquest of the dead body of deceased victim Suruj Ali and sent it to the morgue of Gazipur Sadar Hospital for post-mortem examination. Following the incident, P.W.1 Md. Shahjahan Sheikh being informant filed the Ejahar with the relevant Police Station which gave rise to Kapasia P. S. Case No. 06 dated 14-11-2011.

After lodgment of the case, police of the relevant Police Station took up investigation of the same during which condemned accused Md. Mostafa and Anowara Begum made confessional

statement implicating themselves including others with the incident of killing of both the victims. However, having found prima-facie incriminating materials, the Investigating Officer (P.W.21) submitted police report against the accused under sections 447/302//34 of the Penal Code.

At the commencement of trial, charge was framed against the 4(four) accused under sections 302/34 of the Penal Code and the charge so framed was read over and explained to them while the accused present on dock pleaded not guilty and claimed to be tried as per law.

In a bid to prove the charge, the prosecution had examined 21 witnesses out of 33 witnesses cited in the charge sheet who were aptly cross-examined by the defence.

After closure of the prosecution witnesses, the accused were called upon to enter into their defence while they repeated their innocence and also declined to adduce any evidence in their defence.

The defence case, that could be gathered from the trend of cross-examination of the prosecution witnesses, is of complete innocence and false implication. The further case of the defence is

that there was a long standing dispute between deceased Suruj Ali and the accused over some landed property and on the date of occurrence accused Suruj Ali suddenly launched attack upon the accused who in self-defence made a counter attack following which a melee occurred as a result victim Suruj Ali and Hanufa died having sustained injuries.

Thereupon, the learned Sessions Judge, upon taking hearing from both sides and on an appraisal of the evidences and materials on record, came to the conclusion that the prosecution had been able to bring the charge to the door of the condemned accused to a nicety and accordingly convicted and sentenced them by the impugned judgment and order in the manner as noted at the incept.

Feeling aggrieved thereby, the condemned-accused have preferred the instant Jail as well as Criminal Appeal. As we have already noticed, that the learned Judge of the court below has also transmitted the entire proceedings of the case for confirmation of the death sentence awarded to accused Md. Mostafa and Anowara.

Mr. Bashir Ahmed, the learned Deputy Attorney General along with Ms. Syeda Shobnum Mustary, the learned Assistant Attorney General appearing on behalf of the State and in support of the death reference having taken us through the FIR, charge-sheet,

charge, post-mortem examination reports of the 2(two) deceased victims, evidences of witnesses, confessional statement of the 2(two) condemned accused, impugned judgment and order of conviction and sentence and other connected materials available in the paper book and then submits with vehemence that the prosecution has successfully been able to prove the charge levelled against the accused by adducing some impeccable , indubitable, cogent and trustworthy evidences. He next submits that P.W.3 is the only eye witness of the occurrence who gave a detailed account of the incident since the same took place before her very eyes and her evidence remained unshaken in cross-examination as such there is no harm in relaying upon her evidence. Mr. Ahmed further submits that the condemned accused were the aggressors who came to the place of occurrence with deadly weapons and launched an attack upon deceased victim Suruj Ali and while his wife, Honufa who came to rescue her husband the accused persons also assaulted her indiscriminately following which Suruj Ali died on the spot and his wife Honufa succumbed to her injuries while she was being treated at Dhaka Medical College Hospital. Moreover, deceased victim Honufa while being treated made dying declaration naming the accused to be the perpetrators of the killing incident of her husband including herself which fact has successfully been proved by the

prosecution through the evidences of P.W. Nos. 7, 10 and 14, Mr. Ahmed further added. He next submits that accused Mostafa and Anowara admitted their guilt by making judicial confessions through they have tried to shrug off the criminal liability by giving out that in a bid to save their souls they counter attacked the victims as a result they sustained injury which does not inspire confidence at all being incongruous to the facts and circumstances of the case. There is no documentary evidence in support of the claim of the accused that they also got injured at the time of occurrence at the hand of the victims as disclosed by them in their confessional statements and no counter case has also been filed by the accused in support of their aforesaid claim, Mr. Ahmed also added. Furthermore, after committing the offence the accused went into hiding to a distant place wherefrom they were subsequently apprehended by the Investigating Officer which also indicates their guilty mind. Mr. Ahmed finally submits that the learned Judge of the trial court on meticulous analysis of the evidences and materials on record rightly and correctly adjudged the culpability of the accused in the killing incident of the 2(two) unfortunate victims by the impugned judgment and order which, being well founded both in law and facts, does not call for any interference by this Court. In support of his submission, Mr. Ahmed has put reliance on the

decisions reported in 20 BLC (AD) 341, 43 DLR (AD) 95, 43 DLR(AD) 234, 39 DLR (AD) 117, 14 BLC(AD)105, AIR (1969) SC 422 and AIR (1956) 415.

Having repelled the aforesaid submissions, Mr. Hafizur Rahman Khan, the learned State Defence Advocate has assailed the impugned judgment and order critically submitting that the prosecution has not successfully been able to prove the charge mounted against the accused to the core by adducing some impeccable and convincing evidence. He has tried to impeach the veracity of the impugned judgment and order of conviction and sentence on the following scores;

- (1) that the FIR was filed after a delay of more than 15 hours as such the possibility of false implication cannot be ruled out;
- (2) that the FIR named witness Khadiza was not made witness in the police report and she was also not examined during trial which has made the prosecution story doubtful and shaky;
- (3) that the charge sheet named witness Abdul Quddus, the father of victim Suruj Ali has also not been examined in

the case which has rendered the prosecution case shaky as well;

- (4) that the confessions of accused Mostafa and Anowara are not voluntary and true since they were kept under police custody for 5 (five) days preceding their confessions; and
- (5) that P.W.7, P.W.10 and P.W.14 are interested witnesses being relatives of the victims and as such their evidences inspire no confidence.

Heard the learned Advocates of both sides, perused the impugned judgment and order of conviction and sentence including the evidences on record and also considered the surrounding facts and circumstances of the case minutely.

With a view to arriving at a correct decision in the death reference and the connected Criminal as well as Jail Appeals, we are now called upon to sift and scrutinize the relevant evidences together with the attending and surrounding facts and circumstances of the case by juxtaposing the defence version of the story.

P.W.1 Md. Shahjahan Sheikh is the informant as well as the elder uterine brother of the deceased victim Suruj Miah. In his testimony this witness claims that the occurrence took place in the afternoon of 13-11-2011 at around 2.30 pm and the place of

occurrence is located towards the eastern side of the residence of deceased victim Suruj Miah. On the date of occurrence at around 3.00 pm, upon being informed over mobile phone made by Sumi (P.W.3), the daughter of deceased victim Suruj Miah he (P.W.1) came to spot running and saw the dead body of his brother Suruj with marks of injuries on his right shoulder and back side caused by sharp cutting weapon as well as by crowbar. He (P.W.1) also found marks of injuries on the left abdomen, left shoulder and right dorsum of his sister-in-law Hanufa. Later, Hanufa was taken to Kapashia Sadar Hospital wherefrom she was referred to Dhaka Medical College Hospital wherein she died. He (P.W.1) came to learn that accused Rahmat Ali alias Ramu struck Dao (দাঁ) blows on the right and left shoulder of deceased victim Suruj Miah and accused Anowara gave a crowbar blow on his back. Moreover, Rahima and Mostofa, son and daughter of accused Rahmat Ali also caused injury to deceased victim Suruj Miah following which he died at the spot. Furthermore, accused Mostofa caused injury to deceased victim Hanufa on her abdomen as well as on both dorsum. The other accused persons also caused injury to deceased victim Hanufa. He (P.W.1) then brought the matter to the notice of the local police whereupon police appeared at the spot and took away the dead body. Later, he went to the police station and lodged the FIR

(Exhibit No.1). Police seized the wearing apparels of deceased victim Suruj and Hanufa vide seizure list (Exhibit Nos.2 & 3). The inquest of the dead body of Suruj (Exhibit No.4) was held in his presence. P.W.1 identified accused Rahmat Ali, Anowara and Mostofa in the dock and also proved the seized alamats as Material Exhibit Nos.I & II series.

In reply to cross-examination P.W.1 states that he and deceased victim Suruj are the sons of identical mother but their fathers are different. His homestead located is 700/800 yards away from that of victim Suruj Miah. The place of occurrence is situated 850 yards off from his residence which is also 50 yards away towards the western side of the homestead of deceased victim Suruj Miah. The homestead and garden of deceased victim Suruj are located nearby the place of occurrence. The residence of the accused is located adjacent to the boundary of deceased victim Suruj Miah. Upon reaching the spot, he (P.W.1) did not see the accused there. He lodged the FIR as per account given by the eye witnesses. He came to learn about the incident from the father and daughter of deceased victim Suruj Miah, namely, Kuddus and Sumi (P.W.3). Apart from that Jhorna Begum (P.W.4), Faizuddin and others also gave account of the incident. At first, accused Suruj was injured and

while his wife Hanufa came to the spot on hearing alarm of her husband she was also beaten up. Police appeared at the spot at around 4.00 pm. After 10/15 minutes of his (P.W.1) arrival at the spot, victim Hanufa was taken to Kapashia Hospital both by van and ambulance. P.W.1 denied the defence suggestions that the accused did not cause injury to deceased victim Suruj and Hanufa or that he deposed falsely.

In his testimony P.W.2 Abdur Rouf Rubel states that both the informant and accused are known to him. The occurrence took place on 13-11-2011. On the date of occurrence at around 2.00 pm, after his arrival at home, upon hearing alarm he went to the spot running and found that deceased victim Suruj Ali was lying down in bleeding condition. He also found Hanufa in injured condition beside her husband Suruj Ali. Many people came to the spot. He (P.W.2) found several marks of injuries on the person of deceased victim Suruj and Hanufa. Hanufa was sent to hospital for treatment and deceased victim Suruj died at the spot. Later, Hanufa died while he was being taken to Dhaka Medical College Hospital from Kapashia Sadar Hospital.

In reply to cross-examination P.W.2 says that the homestead of the accused is located within 100 yards from that of deceased

victim Suruj Miah. After going to the spot, he found Suruj Miah dead and also found Hanufa in injured condition. He did not see the accused at the spot and also did not witness the occurrence. There was disputed between the accused and victim Suruj over some landed property. The accused persons flee from the spot as such he could not see whether they had sustained any injury or not. He could not say whether victim Suruj Miah and Hanufa sustained injury at the hand of the accused or not since he did not see them (accused) at the spot. But he heard that the accused fled away from the spot after committing the occurrence. P.W.2 denied the defence suggestion that he deposed falsely against the accused as he had dispute with the accused centering round a goat.

P.W.3 Mst. Sumi Akhter is the daughter of both deceased victim Suruj Miah and Hanufa. In her testimony this witness gives out that there was a long standing dispute between them (P.W.3) and the accused. There is a Mahogany orchard beside their house and her father used to frequent there. In the afternoon of 13-11-2013 at around 2.00 pm, her father went to the said orchard while he had altercation with the accused. At the relevant time she (P.W.3) along with her mother were tending the trees on the other side of the garden. While her father was nursing the garden, accused Rahmat

Ali dealt Dao blows on his right and left shoulder while accused Mostofa struck him with a Dao at his armpit following his her father raised alarm and came near to her mother. Being scared, she (P.W.3) went to the nearby homestead while her mother had gone to her father whereupon he fell down. At the relevant time, accused Anowara dealt a crowbar blow on the back of her father. While her mother tried to rescue her father, accused Rahmant, Mostofa, Anowara and Rahima struck her with Dao, crowbar and other weapon on her shoulder, abdomen and dorsum. She (P.W.3) tried to save her parents by raising alarm but failed. Her father raised alarm uttering ‘পানি, পানি’, but she was unable to give him water as a result he died at the spot. The local people came to the spot while the accused flee therefrom. Her mother was taken to Kapashia Hospital wherefrom she was referred to Dhaka Medical College Hospital wherein she succumbed to her injuries. Later, she brought the matter to the notice of her uncle (informant). This witness identified accused Rahmant, Mostofa and Anowara in the dock.

In reply to cross-examination done by accused Rahmat, Mostofa and Anowara P.W.3 says that their homestead and that of the accused are located by the side of the same road and in between the both there are 5/7 houses. Their (P.W.3) Mahogany orchard is at

a distance of 4/5 houses from their homestead. They went to the garden after Jahur prayer. At the time of occurrence, she was present at the occurrence garden. At first, her father went to the garden and then her mother and following them she also went there. She did not try to rescue her father and mother, rather being frightened she went to a far away and raised alarm. Upon seeing the occurrence she became speechless. Subsequently, she raised hue and cry. Having heard screaming of her father and mother, the neighbouring people came to the spot. The neighbouring people like Rouf, Tajuddin, Shafiqul, Jhorna (P.W.4), Lialy (P.W.8), Khadeza and others came to the spot. Sensing the imminent death of her father, the accused flee the spot. She did not go to her residence immediately after the occurrence and further that she asked to inform the matter to her uncle (informant).

In reply to cross-examination done on behalf of absconding accused Rahima P.W.3 says that in the afternoon of the date of occurrence a pre-arranged meeting was scheduled to be held between her father and the accused. P.W.3 denied the defence suggestion that accused Rahima did not strike her father and mother or that she deposed falsely.

In her deposition P.W.4 Jhorna Begum divulges that the informant, accused and deceased Suruj and Hanufa are known to her. The occurrence came to pass 4(four) years ago after Jahur prayer and the place of occurrence is located a little far away from her homestead. After coming to the spot, she found victim Suruj dead and Hanufa was being taken to hospital. P.W.4 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.4 states that the homestead of deceased Suruj is located 7/8 houses away from the spot. She did not witness the incident.

In his evidence P.W.5 Md. Ramiz Uddin discloses that the informant, accused and deceased victim Suruj and Hanufa are known to him. About 4(four) years ago at around 2.30 pm, the occurrence took place 7 to 8 houses away from the homestead of victim Suruj Miah. He came out of the mosque after offering Jahur prayer and returned back home. Deceased Suruj Miah also went to the mosque for offering salat. After finishing lunch, he (P.W.5) came to learn that the accused persons killed victim Suruj Miah, whereupon he went to the spot and found deceased Suruj Miah's father, daughter Sumi and others present there. Sumi was weeping.

He found victim Suruj dead and Hanufa in standing position. Hanufa was then taken to hospital.

In reply to cross-examination P.W.5 says that the place of occurrence is located at a distance of 6/7 houses from that of his homestead. He came to learn from people saying that accused Rahmat and others killed victim Suruj. He could not say as to which accused dealt which blow to the victim. He (P.W.5) had no conversation with victim Hanufa at the spot. He found the dead body of deceased victim Suruj lying down a far away from the homestead of accused Rahmat.

P.W.6 Dr. Liyakot Ali Khan is a member of the medical board which, on 14-11-2011 at around 01.55 pm, carried out post-mortem examination of the cadaver of deceased victim Suruj Miah at the identification of Constable No.464 Joyahed. The other members of the medical board were Dr. Moniruzzaman and Dr. Hafiz Uddin. After post-mortem examination, they found following injuries on the person of the deceased victim:

- (1) One incised injury over right shoulder 6"x4"x cutting skin, Muscles, vessels, nerves and bone;
- (2) One incised injury over right arm 4"x2"x bone depth;
- (3) One incised injury over right axilla 5"x2"x bone depth;

(4) One incised injury of over left shoulder 4"x2"x cutting skin, muscles bone; and

(5) One incised injury over back of chest 5"x4"x bone depth.

According to their opinion, death was due to hemorrhage and shock resulting from above mentioned injuries which was ante-mortem and homicidal in nature. P.W.6 proves the post-mortem examination report including their signatures appearing thereon as Exhibit Nos.5 and 5 series respectively.

In reply to cross-examination done by the accused P.W.6 says that they carried out post-mortem examination within 24-48 hours of the death of deceased victim Suruj Ali as per identification of the Constable. P.W.6 denied the defence suggestions that there was no injury on the person of the deceased victim or that he deposed falsely.

In her evidence P.W.7 Razia says that both the informant and accused are known to her. The occurrence took place on 13-11-2011 at around 2.30 pm. She and deceased Suruj Ali are residents of the same homestead. Having heard that Suruj Miah was killed she went to the spot running. After reaching the spot, she found Suruj Miah dead with several marks of injuries on his person. All the 4(four) accused struck Suruj Ali with Dao. She (P.W.7) also found various marks of injuries on the person of Hanufa whose right hand was

almost separated from body. Accused Rahmat Ali, Mostofa, Rahima and Anowara caused injuries to the victim, and thereafter, they fled the spot running. Victim Suruj Ali and Hanufa were then taken to the hospital. Hanufa was in her sense who told her (P.W.7) that accused Rahmat Ali, Mostofa, Anowara and Rahima caused injuries to them. At first, Hanufa was taken to Kapashia hospital wherefrom she was shifted to Dhaka Medical College Hospital. Victim Suruj Ali died at the spot, while Hanufa succumbed to her injuries at the hospital. She (P.W.7) accompanied Hanufa on her way to the hospital. At her dying moment, deceased Hanufa disclosed the matter to her (P.W.7). P.W.7 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.7 states that deceased Suruj Ali is her brother-in-laws son (ভাণ্ডারের ছেলে). The place of occurrence is located inside the residence. She found Suruj Ali lying down under a Jujubib Boro tree (বরই গাছ). She did not witness the occurrence, rather she came to the spot after about 2/3 minutes of the occurrence. She found Hanufa's daughter at the spot but did not find the accused present there. She found Hanufa in sitting position with marks of injuries on her person. She took Hanufa to the hospital firstly by the van of one Mannan and then by a CNG, but the hospital authority did not keep her there. Subsequently, Hanufa

was taken to Dhaka Medical College Hospital wherein she succumbed to her injuries on the following day of her admission. P.W.7 denied the defence suggestion that she deposed falsely.

In her evidence P.W.8 Laily says that the occurrence took place on 13-11-2011 after Jahur prayer. Victim Suruj and his wife Hanufa were killed. Victim Suruj died on his own land, while Hanufa died on the following day. She heard that the accused persons killed victim Suruj and Hanufa. P.W.8 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.8 states that deceased Suruj and Hanufa are her relatives. On the date of occurrence she was at her paternal house which is situated on a different village. Her paternal house is about $\frac{1}{2}$ mile away from the spot. After coming to the spot, she found many people present there, but the accused person fled away. She found the dead body of victim Suruj which was lying on the road near the landed property. Everyone was talking that the accused persons killed deceased Suruj and his wife. P.W.8 denied the defence suggestion that she deposed falsely.

In her testimony P.W.9 Mst. Ferdousi avers that the occurrence came into being on 13-11-2011 at around 2.30 pm. Deceased Suruj was killed and Hanufa died subsequently at the

hospital. He heard that the accused persons caused injury to victim Suruj and Hanufa following which they died. P.W.9 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.9 states that victim Suruj and Hanufa are not her relatives. After a long interval of the incident, she went to the spot. P.W.9 denied the defence suggestion that she deposed falsely.

In her testimony P.W.10 Ruma Akhter divulges that both the informant and accused are known to her. The occurrence passed off on 13-11-2011 at noon. She found victim Suruj dead and his daughter Sumi was weeping upon holding the blood-smeared body of her father. At that time Sumi disclosed that accused Rahmat, Mostofa, Anowara and Rahima killed her parents. Thereafter, Hanufa was sent to hospital by car and she (P.W.10) also accompanied her. Later, Hanufa succumbed to her injuries. Hanufa disclosed to her (10) while she was being taken to the hospital who that the above 4(four) accused persons killed her and her husband with Dao, crowbar, etc. P.W.10 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.10 says that deceased victim Suruj is her brother-in-law (চাচাত দেবর). She witnessed the

incident while she was going along the place of occurrence. After her arrival at the spot, many people thronged there. P.W.10 denied the defence suggestions that she did not see Sumi at the spot or that deceased Hanuf disclosed nothing to her or that she deposed falsely since the deceased were her relatives.

P.W.11 Sharaf Uddin Ahmed is the concerned Magistrate who got down the confession of accused Md. Mostofa and Anowara Begum. In his evidence this witness asserts that on 27-11-2011 while being posted in Gazipur as Judicial Magistrate, he penned down the confessional statement of accused Md. Mostofa and Anowara Begum after complying with all legal formalities. This witness further states that the confessions of the accused are voluntary and true. P.W.11 proves the confessional statement of accused Md. Mostofa and Anowara Begum including his signatures appearing thereon as Exhibit Nos.6 & 6 series and 7 & 7 series respectively.

In reply to cross-examination P.W.11 states that S.I. Sanowar Jahan produced both accused Mostofa and Anowara before him at around 2.00 pm, whereupon he examined them. No police personnel was present at the time of recording the confessional statements of the accused which were jotted down after affording 3(three) hours time to the accused for reflection. P.W.11 denied the defence

suggestions that the confessions of the accused are not voluntary, rather those were extracted by torture or that there was injury mark on the person of the accused or that he did not record the confession after observing all legal formalities.

In his deposition P.W.12 Md. Osman Sarker asserts that both the informant and accused are known to him and he also knew deceased Suruj who died at the spot while his wife Hanufa succumbed to her injuries at the hospital. The occurrence took place on 13-11-2011 at around 2.30 pm. He (P.W.12) found the dead body of deceased victim Suruj at the spot and injured Hanuf was taken to the hospital. Being asked, deceased Suruj's daughter Sumi disclosed that accused Rahmat, Mostofa, Anowara and Rahima caused injuries to her parents. The accused persons flee the spot. This witness proves his signature appearing on the inquest-report of deceased Suruj as Exhibit No.4/2. P.W.12 identified accused Rahmat alias Ramu, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.12 states that he did not witness the incident. His residence is about 1(one) kilometer off towards north of the place of occurrence. He arrived at the spot at around 2.45 pm while he found the dead body of Suruj near the Mahogany orchard as well as the residence of accused Rahmat. Many people thronged at the spot. He did not see the accused flee

from the spot. P.W.12 denied the defence suggestion that he deposed falsely as deceased Suruj was closely related to him.

In his testimony P.W.13 Md. Kawsar Kibria divulges that the informant and accused are known to him. The occurrence came into being on 13-11-2013 (most probably 13-11-2011). He saw the dead body of deceased Suruj and thereafter put his signature (Exhibit No.4/3) to the relevant inquest report. This witness identified accused Rahmat, Anowara and Mostofa in the dock.

In reply to cross-examination P.W.13 states that he found deceased Suruj on the front side road of the house of accused Rahmat. P.W.13 denied the defence suggestion that he deposed falsely.

In his evidence P.W.14 Md. Abdul Halim states that both the informant and accused are known to him. The occurrence took place on 13-11-2011 at around 2.30 pm at the garden of deceased Suruj near the house of accused Rahmat alias Ramu. Victim Hanufa is his mother-in-law (ফুফু স্বাশুড়ী). His father-in-law informed him over phone about the incident, whereupon he went to Dhaka Medical College Hospital on 14-11-2011 at around 12'O clock from Shafipur, Kaliyakoir. At that time, victim Hanufa caught hold of his hand and said 'বাবা আমি তো বাঁচবো না আমার ছেলে মেয়েকে তোমরা দেখ।' victim Hanufa also asked for drinking water following which he

gave her grapes as well as water. Victim Hanufa also disclosed to him that accused Rahmat, Mostofa, Anowara and Rahima caused injuries to her and her husband.

P.W.14 further states that the right hand of victim Hanufa was almost separated, right dorsum sustained grievous injury and a crowbar had pierced the middle part of her body. In his presence victim Hanufa succumbed to her injuries at around 1.30 pm. The inquest of the cadaver of victim Hanufa was held in his presence. P.W.14 proves the inquest report and his signature appearing thereon as Exhibit Nos.8 and 8/1 respectively. This witness also identified accused Rahmat alias Ramu, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.14 says that he received telephone call in the afternoon of 13-11-2011 at around 3.30 pm while victim Hanufa was at Kapashia Hospital. On the following morning, he (P.W.14) made phone call to his father-in-law and came to learn that victim Hanufa was transferred to Dhaka Medical College Hospital, whereupon he went to the said hospital and found victim Hanufa on the 1st floor. The right hand of Hanufa was wrapped with tape. Being accosted, the relevant doctor informed that the hand of Hanufa was barely attached to the skin. There was bandage at the dorsum of victim Hanufa. P.W.14 denied the defence

suggestions that victim Hanufa disclosed nothing to him or that he deposed falsely being related to the victim.

In his testimony P.W.15 Ramij Uddin divulges that he is acquainted with both the informant and accused. The occurrence came to pass on 13-11-2011, Sunday, at around 2.30 pm. While he was going home after offering Salat, he came to learn that victim Suruj was killed, whereupon he went to the house of victim Suruj and found his injured dead body lying down beside the road. At the relevant time many people assembled at the spot. Suruj's father and daughter were weeping. He found Suruj's wife who was also severely injured. Later, Suruj's wife was taken to Kapashia Hospital wherefrom she was referred to Dhaka Medical Hospital wherein she succumbed to her injuries. P.W.15 identified accused Rahmat, Anowara and Mostofa in the dock.

In reply to cross-examination P.W.15 states that there was dispute between victim Suruj Miah and accused Rahmat over some landed property. He did not witness any incident as because he went to the spot at around 2.30 pm. At the relevant time he did not find any accused at the spot.

In his testimony P.W.16 Md. Taijuddin avers that he is acquainted with both the informant and accused. The occurrence took place 4(four) years ago in the afternoon at around 2.20 pm

while he found the dead body of victim Suruj Miah lying down near his house. Accused Rahmat, Mostofa, Anowara and Rahima caused injuries to victim Suruj and his wife Hanufa. This witness identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.16 says that he went to the spot after a long interval of the incident and further that he did not see the occurrence. He came to learn from people that the accused persons killed victim Suruj and Hanufa. P.W.16 denied the defence suggestion that he deposed falsely.

In her evidence P.W.17 Razia Begum discloses that both the informant and accused are known to her. The occurrence came to pass on 13-11-2011, Sunday, at around 2.30 pm. Deceased Suruj Ali is her neighbour. Having heard the death news of Suruj, she went to the spot and saw his dead body there and also found injured Hanufa in standing position. Subsequently, they (P.W.17) took Hanufa to Kapashia Hospital wherefrom she was shifted to Dhaka Medical College Hospital. On the way being accosted by her, victim Hanufa disclosed that accused Rahmat, Mostofa, Anowara and Rahima caused injuries to her and her husband Suruj. On the following day Hanufa died in Dhaka.

In reply to cross-examination P.W.17 states that there are 5 to 6 residences in between her house and that of the spot. She could

not recollect as to hearing whose alarm she went to the spot. P.W.17 denied the defence suggestion that he deposed falsely.

In her deposition P.W.18 Minara Begum states that the occurrence passed off on 13-11-2011, Sunday, at around 2.30 pm and the place of occurrence is a Mahogany orchard of victim Suruj Miah. Having heard that victim Suruj Miah had been killed she went to the P.O. spot and found the dead body of victim Suruj Miah and also saw his injured wife Hanufa. Hanufa was thereafter taken to Kapashia Hospital wherefrom she was sent to Dhaka Medical College Hospital wherein she succumbed to his injuries. P.W.18 identified accused Rahmat, Mostofa and Anowara in the dock.

In reply to cross-examination P.W.18 says that witness Ruma (P.W.10) and Razia (P.W.17) took the victim to the hospital. She found the dead body of victim Suruj lying down under a Mahogany tree. P.W.18 denied the defence suggestions that she did not go to the spot or that she deposed falsely.

In his evidence P.W.19 Md. Siraj Uddin, a U.P. Chairman, states that both the informant and accused are known to him. The occurrence came into being on 13-11-2011 at around 2.30 pm and the place of occurrence is a Mahogany orchard located towards the eastern side of the residence of victim Suruj. At the time of occurrence, he was in Dhaka and having heard the incident over

telephone he went to the spot while informant Shahjahan disclosed that the accused persons caused injuries to victim Suruj and Hanufa following which victim Suruj died on the spot and later Hanufa died in Dhaka.

In reply to cross-examination P.W.19 states that he did not see any occurrence, rather he heard about the same. P.W.19 denied the defence suggestion that he deposed falsely.

In his testimony P.W.20 Nurul Islam discloses that both the informant and accused are known to him. 3/4 years ago one day at around 2.30 pm, he found the dead body of victim Suruj Ali lying down in his garden. He also heard that Suruj's wife Hanufa was taken to hospital.

In reply to cross-examination P.W.20 says that his homestead is 2(two) kilometer away from the spot. The incident created much alarm in the concerned locality. P.W.20 denied the defence suggestion that he deposed falsely.

P.W.21 S.I. Sanowar Jahan is the Investigating Officer of the case. In his deposition this witness unfurls that upon receiving the charge of the investigation of the case, he visited the place of occurrence and prepared sketch map (Exhibit No.9) along with separate index (Exhibit No.10), recorded the statement of witnesses, held inquest of the dead body of victim Suruj Miah and seized some

wearing apparels of the victims vide seizure list. However, having found prima-facie incriminating materials, he submitted police report No.48 dated 05-03-2012 against the accused under sections 302/34/447 of the Penal Code. This witness further states that the 2(two) accused persons made confessional statement under section 164 of the Code.

In reply to cross-examination P.W.21 states that having received information about the occurrence, he went to the spot on the strength of a G.D. The duty officer sent him to the spot whereupon he went there in the afternoon. After going to the spot, he did not arrest any accused. While at the spot he drew up the inquest report of deceased victim Suruj Miah. The place of occurrence is a Mahogany garden which is located near the house of deceased Suruj Miah. He found the dead body of Suruj Miah beside the Mahogany orchard. He seized blood smeared chador, lungi, petticoat and maxi as produced by the constable.

P.W.21 further states that on the basis of a tip off he arrested all the 4(four) accused persons in the night following 22-11-2011 from Companigonj P.S. under Sylhet District, and thereafter, he produced them before the court on 24-11-2011. P.W.21 denied the defence suggestions that the seized articles did not belong to Suruj and Hanufa or that the accused made confession due to intimidation.

These are all about the evidences that had been adduced by the prosecution in a bid to bring the charge to the door of the accused.

We have heard the submissions advanced by the learned Deputy Attorney General Mr. Bashir Ahmed and the learned State Defence Advocate Mr. Hafizur Rahman Khan and also took into consideration the evidences and materials on record.

At the beginning of discourse, we can take a look at the manner of occurrence in order to see for ourselves as to what injury or injuries were found on the person of deceased victim Suruj and Hanufa at the initial stage of the case and what the apparent cause of their death.

It is on record that S.I. Sanwar Jahan (P.W.2) held inquest (Exhibit No.4) of the cadaver of deceased victim Suruj Ali, while one Md. Shafiqul Islam, ASI of Shahbag P.S, DMP, Dhaka prepared the inquest report (Exhibit No.8) of the corpse of deceased victim Hanufa.

The relevant portion of Exhibit No.4 is quoted below in verbatim:

“আমি এস.আই. সানোয়ার জাহান কাপাসিয়া থানা, গাজীপুর সঙ্গীয়
কং/৪৬৪ জোয়া-হর, কং/৫৪৬ মীর হান্নান সহ ইং ১৩/১১/১১ তারিখ বিকাল ১৭.১০
ঘটিকার সময় অত্র থানাধীন সন্মানিয়া নয়াপাড়া সাকিনে মৃত সুরজ আলীর বসত

বাড়ীর পূর্ব পা-শ্ব জ্বানীয় কেরামত আলীর বসত বাড়ীর সংলগ্ন দক্ষিণ-ন ছোট কাঁচা
দুপায়ে চলার রাস্তার উপর উপস্থিত হইয়া মৃত সুরুজ আলীর লাশ পশ্চিম উত্তর শিউরী
চাদর দিয়া অ-ধক তথা পা থে-ক বুক পর্যন্ত ঢাকা অবস্থায় পাইয়া পা-শ্ব বর্ণিত
সাক্ষী-দর মোকা-বলায় মৃ-তর ভাই শাহজাহান শে-খর সহ-যাগীতায় সুরতহাল রি-পোর্ট
প্রস্তুত করি-ত আরম্ভ করিলাম।।”

(Emphasis added).

From the aforesaid narration, it is apparent that several deadly injury marks were found on the person of deceased victim Suruj Ali and his dead body was found lying down on a road in the nearby place of his (victim) residence.

Regarding cause of death it was found on preliminary investigation that:

“মৃ-তর ডান হা-তর বাহু-ত ধারা-লা অ-স্ত্রের কাটা রক্তাক্ত জখম। ৬ ইঞ্চি
লম্বা এবং ৫ ইঞ্চি গভীর হইবে, বাম হাতের কাধ সংলগ্ন বাহু পিছনের অংশে করালে
অস্ত্রের কাটা রক্তাক্ত ক্ষত জখম, অনুমান ৪ ইঞ্চি লম্বা এবং ৩ ইঞ্চি গভীর হইবে।
গায়ের চাদর সড়াইয়া মৃ-তের পড়নে রক্তাক্ত চেক লুঙ্গি পাওয়া গেল, মৃ-তের ভাইয়ের
সাহা-য্য লাশ উলট-পালট করিয়া দেখা যায়, মৃ-তর ডান হা-তর পাজ-রর অংশ
ধারালো অস্ত্রের কাটা রক্তাক্ত জখম লম্বা অনুমান ৬ ইঞ্চি গভীর অনুমান ৫ ইঞ্চি যাহা
বগল বেদ করিয়া যায়। মৃ-তর পি-ঠর মাঝ খা-ন মেরুদণ্ড বরাবর ধারা-লা অ-স্ত্রের
কাটা রক্তাক্ত জখম লম্বা অনুমান ৬ ইঞ্চি গভীর অনুমান ১ ইঞ্চি হইবে। উল্লেখিত
জখম ছাড়া আর কোন জখ-মর চিহ্ন পরিলক্ষিত হয় নাই। মৃ-তর উভয় পা লম্বা-লম্বি

মাটির সাথে লাগানো। মৃতের পুরুষাঙ্গ রক্ত মাখা ও বায়ু পথে রক্ত মাখা অবস্থায় পাওয়া গেল। মৃতের উভয় পা ও হাত সহ শরীরের বিভিন্ন স্থানে রক্ত মাখা অবস্থায় পাওয়া যায়।”

“প্রাথমিক তদন্তকা-ল মৃ-তর বাড়ীর লোকজন সহ উপস্থিত লোকজন-ক প্রকাশ্যে ও গোপনে জিজ্ঞাসাবাদ করিয়া জানা যায় যে, ইং ১৩/১১/১১ তারিখ বেলা অনুমান ২.৩০ ঘটিকার সময় মৃত সুরুজ আলীর তাহা-দর বসত বাড়ীর পূর্ব পা-র্শ্ব তাহা-দর জমি-ত থাকা মেহগনি বাগা-ন আসিয়া গা-ছর ডাল পালা পরিচর্যা করার সময়ে তা-দর প্রতি-বশী মোঃ রহমত আলী @ রুমু, রুমুর স্ত্রী আ-নায়ারা বেগম, মেয়ে রাহিমা, ছেলে মোস্তফা সহ স্থানীয় আইন উদ্দিন, দুলাল, জরিণা বেগম ও বিল্লাল হোসেন সহ আরো অজ্ঞতনামা ৫/৬ জন দা, শাবল, বল্লম ইত্যাদি হাতে নিয়া বাগানে জোর পূর্বক প্র-বশ করিয়া সুরুজ আলী কা-জ বাধা দি-ল সুরুজ আলীর সা-থ তাহা-দর কথা কাটাকাটি হয়। কথা কাটাকাটির এক পর্যা-য় ধারা-লা দা দিয়া উ-ল্লখিত লোকজন সুরুজ আলীর উভয় হা-তর বাহু-ত, বাম বাহুর বগ-লর নী-চ ও পিঠের মাঝখানে মেরদন্ডে কোপ মারিয়া গুরুতর কাটা রক্তাক্ত জখম করিলে সুরুজ আলী দায়ের কোপে গুরুতর রক্তাক্ত জখম অবস্থায় ঘটনাস্থ-লই মারা যায়।”

(Emphasis put).

Thus, it appears that on preliminary investigation, it was found that the accused persons being armed with Dao, crowbar, ballom etc. came to the place of occurrence and put hindrance to the work of victim Suruj Ali, whereupon an altercation broke out and at one stage the accused persons inflicted several dao blows on the

person of deceased victim Suruj Ali following which he died at the spot.

On the other hand, the inquest report of the dead body of another deceased victim Hanufa Begum has been marked as Exhibit No.8. The relevant portion of which is stated below in vernacular:

“আমি এস.আই. মোহাম্মদ শফিকুল ইসলাম সঙ্গীয় কং/১১২২০ মোঃ রমজান আলী সহ অদ্য ইং ১৫/১১/১১ তারিখ বেলা ১১.১৫ মিনি-ট DMCH ম-র্গ হাজির হইয়া সাক্ষীদের সনাক্তমতে ও তাহাদের মোকাবেলায় মৃত হনুফার লাশ উত্তর শিউরী অবস্থায় সরকারী চাদর দ্বারা ঢাকা অবস্থায় পাইয়া লা-শর সুরতহাল প্রতি-বদন প্রস্তুত করি-ত আরম্ভ করিলাম।

মৃ-তর বয়স অনুমান ২৮ বৎসর হই-ব। মুখমন্ডল গোলাকার। গা-য়র রং শ্যামলা। মাথার চুল কা-লা লম্বা অনুমান ১৮ ইঞ্চি হইবে। চোখ ও মুখ বন্ধ। ডান হা-তর সম্পূর্ণ ব্যা-ভজ। বাম হা-তর কনুই-য়র উপ-র হালকা ছিলা জখম আ-ছ। বাম বগলের নীচে ১৩(তের) টি সেলাইযুক্ত জখম সহ ছিলা জখম আছে। পেটের বাম পার্শ্বে হালকা ছিলা জখম আছে। পিঠের উপর ছিদ্রযুক্ত জখম আছে। উভয় পা স্বাভাবিক। যৌনাঙ্গে বীর্য আছে। মলদ্বার স্বাভাবিক। পরনে সবুজ পেটিকোট ও প্রি-ন্টর সুতির পুরাতন ম্যাক্রি আ-ছ।”

(Emphasis supplied).

From a plain reading of the aforesaid narration, it palpably transpires that several marks of injuries were also found on different

parts of the body of victim Hanufa including a perforated wound on her backside.

Regarding cause of death it was stated in Exhibit No.8 that,

“প্রাথমিকভাবে সাক্ষীদের জিজ্ঞাসাবাদে জানা যায় গত ইং ১৩/১১/১১ তারিখ দুপুর অনুমান ০২.০০ ঘটিকায় নিজ বসতঃ বাড়ীর পূর্ব পার্শ্বে জমি সংক্রান্ত বি-রা-ধ প্রতিপক্ষের দ্বারা আঘাত প্রাপ্ত হইয়া মারাত্মক জখম প্রাপ্ত হই-ল ঢাকা মেডি-কল ক-লজ হাসপাতা-স গত ইং ১৪/১১/১১ তারিখ ভোর ০৩.০০ ঘটিকায় ভর্তি হন এবং গত ১৪/১১/১১ তারিখ বিকাল ০৩.৩০ ঘটিকায় মারা যায়।”

(Underlining is ours)

We have already observed that P.W.6 Dr. Liyakot Ali Khan was a member of the medical board which conducted post-mortem examination of the cadaver of deceased victim Suruj Ali as well as submitted post-mortem report (Exhibit No.5) accordingly.

On the other hand, Dr. Prodip Biswas, Special Officer-in-Charge, Health Directorate, Mohakhali, Dhaka held autopsy of the corpse of deceased victim Hanufa which was marked as Exhibit No.11. On going through the aforesaid exhibited documents (Exhibit Nos.5 & 11) it reveals that on both the occasions various marks of injuries were found on the person of both the victims of the case which according to the concerned doctors were ante-mortem and homicidal in nature. Both the concerned doctors opined

that the deceased victim Suruj Ali and Hanufa were killed due to infliction of various injuries on their person which comes in agreement with that of the inquest report in material particulars. In such a backdrop, we are left with no other option but to hold that deceased victim Suruj Ali and his wife Hanufa were brutally killed by inflicting several blows by Dao, crowbar, etc. and the prosecution has successfully been able to prove the cause of death of the deceased victims. It is to be noted that the defence also did not dispute the cause of death of victim Suruj Ali and Hanufa Begum as was furnished by the relevant doctors.

Now, the most striking question that requires to be determined is, who is or are the actual perpetrator or perpetrators of the gruesome murder of deceased victim Suruj Ali and Hanufa Begum.

Upon skimming through the evidences and materials on record, it appears that P.W.3 Mst. Sumi Akhter is the only star witness of the grisly incident which passed off before her very eyes regarding which she gave a detailed account in her evidence which remains unassailed in her cross-examination. To conceive the matter in its true perspective, it would be profitable to quote the relevant evidence of P.W.3 in vernacular, though it would encumber the body of the judgment a little bit.

In her testimony P.W.3 asserts that,

“আমাদের বাড়ির পার্শ্বে আমাদের মেহগনি বাগান আছে। আমার বাবা প্রতিদিন এ বাগান দেখতে যেত, গত ইং ১৩-১১-২০১১ ইং তারিখ প্রায় দুপুর ২টার দিকে বাবা এ বাগান দেখতে যায়, সেখানে আসামীদের সাথে বাবার সামান্য কথা কাটাকাটি হয়। এ সময় বাগানের অপর এক পার্শ্বে আমি ও মা বাগান পরিচর্যা করতে ছিলাম। এ সময় বাবা যখন বাগান পরিচর্যা করছিল তখন প্রধান আসামী রহমত দা দিয়ে বাবার ডান ও বাম কাঁধে কোপ দেয়। তারপর মোস্তফা দা দিয়ে বাবার বগলের নিচে কোপ দেয়। বাবা তখন চিৎকার দিয়ে মায়ের কাছে আসে। আমি ভয়ে পাশের বাড়ির দিকে সরে যাই। মা বাবার কাছে যায়। বাবা তখন পড়ে যায়। আসামী আনোয়ারা তখন শাবল দিয়ে বাবার পিছনে পিঠে আঘাত করে। মা তখন আমাকে ধরতে যায় তখন আসামী রহমত, মোস্তফা, আনোয়ারা ও রাহিমা মাকে দা, শাবল ও অন্যান্য জিনিস দ্বারা অনেক আঘাত করে। মার হাতের কজায়, কাঁধে, পেটে কোপ দেয়। আমি চিৎকার দিয়ে বাবা মাকে বাঁচানোর জন্য চেষ্টা করি বাবা পানি পানি করে চিৎকার দিলে আমি বাবাকে পানিও দিতে পারি নাই বাবা এখানেই মারা যায়। লোকজন আসে আসামীরা পালায়ে যায়। মাকে কাপাসিয়া হাসপাতালে নেয়া হয়। পরে মা ঢাকা মেডিকেল কলেজ হাসপাতালে মারা যায়।”

(Emphasis added).

In her cross-examination P.W.3 reiterates that,

“ঘটনার সময়ে আমি ঘটনাস্থলের বাগানে ছিলাম প্রথমে বাবা তারপরে মা তার পরে আমি পিছনে পিছনে যাই। ঘটনার সময় আমরা ছাড়া অন্য কেহ ছিল না।

আমি বাবা মাকে ফিরাতে যাই নাই তখন আমি ভয়ে একটু দূরে সরে যাই এবং চিৎকার দেই। ঘটনা দেখে আমি প্রায় বাকরুদ্ধ হই। পরে আমি চিৎকার দেই।”

(Emphasis supplied).

Thus, from the aforesaid discussions, it becomes crystal clear that P.W.3 Mst. Sumi Akhter was a eye witness of the occurrence who categorically stated in her evidence that accused Rahmat, Mostofa, Anowara dealt dao, crowbar blows on victim Suruj Ali, while accused Rahmat, Mostofa, Anowara and Rahima caused injury to victim Hanufa while she came forward to rescue her husband and consequently victim Suruj Ali died at the spot while the other victim Hanufa died at the hospital later. The aforesaid evidence furnished by P.W.3 has remained uncontroverted as the defence did not put any question to her touching the aforesaid events. Even, the accused did not dispute the presence of P.W.3 at the place of occurrence at the material time.

The aforesaid evidence of P.W.3 was also seconded by other prosecution witnesses so far the factum of injuries caused to deceased victim Suruj and his wife Hanufa by the accused persons as well as the factum of witnessing the dead body of victim Suruj Ali with grievous injuries on his person and injured Hanufa Begum are concerned. In this connection, we may profitably refer to the

relevant evidences of the concerned prosecution witnesses in verbatim.

In his evidence P.W.1 Md. Sahjahan Sheikh gives out that, “ঘটনা শুনি বেলা তিনটার দিকে মৃত সুরঞ্জ মিয়ার কন্যা সুমির নিকট মোবাইল ফোনে শুনে আমি ঘটনাস্থলে দৌড় দিয়ে আসি এবং তখন ভাই সুরঞ্জকে মৃত অবস্থায় দেখি। তার ডান কাঁধে ধারালো অস্ত্রের কোপ ও আঘাত দেখি। পিঠে শাবলের আঘাত দেখি। মৃত হনুফার পেটে বাম কাঁধে ও ডান হাতের কজায় আঘাত দেখি। হনুফাকে কাপাসিয়া সদর হাসপাতালে পাঠানো হয় সেখান থেকে তাকে ঢাকা মেডিকেল কলেজ হাসপাতালে পাঠানো হয়। সেখানে সে চিকিৎসারত অবস্থায় মারা যায়। আমি ঘটনা শুনি যে আসামী রহমত আলী রমু দা দিয়ে সুরঞ্জের ডান কাঁধে এবং বাম কাঁধে আঘাত করে। আসামী আনোয়ারা শাবল দিয়ে সুরঞ্জের পিঠে আঘাত করে। তাদের সাথে আসামী রমুর মেয়ে রাহিমা ও ছেলে মোস্তফাও তাকে আঘাত করে ফলে সুরঞ্জ ঘটনাস্থলেই মারা যায়। হনুফাকে ডান হাতে বাম হাতে কজাতে এবং পেটে ধারালো দা দিয়ে আঘাত করে আসামী মোস্তফা পরে হনুফা মারা যায়। পুলিশকে আমি সংবাদ দেই। হনুফাকে অন্য আসামীরাও আঘাত করে। পুলিশ আসে এবং সুরঞ্জের লাশ নিয়ে যায়।”

In reply to cross-examination P.W.1 reiterates that he came to learn about the incident from the daughter of the deceased victim, Sumi (P.W.3).

In his testimony P.W.2 Abdur Rauf Rubel avers that, “১৩-১১-২০১১ ইং তারিখের ঘটনা। দুপুর দুইটার দিকে ঐ দিনে বাড়িতে আসলে একটা চিৎকার শুনি

দৌড় দিয়ে ঘটনাস্থলে গিয়ে দেখি মৃত সুরুজ আলী রক্তাক্ত অবস্থায় এ জায়গায় পড়ে আছে। তার স্ত্রী হনুফা বেগমও আহত অবস্থায় পড়ে থাকতে দেখি। ঘটনাস্থলে অনেক লোক আসে। সুরুজ ও হনুফার দেহে অনেক আঘাত দেখি। হনুফাকে চিকিৎসার জন্য হাসপাতালে পাঠানো হয়। সুরুজ ঘটনাস্থলে মারা যায়। পরে কাপাসিয়া হাসপাতাল হতে ঢাকা মেডিকেল হাসপাতালে নেবার পর হনুফা মারা যায়।”

In reply to cross-examination P.W.2 further states that upon going to the spot he found victim Suruj dead and injured Hanufa in standing position.

In his deposition P.W.4 Jhorna discloses that, “ঘটনা জোহরের নামাজের পরে ৪ বৎসর আগে আমার বাড়ির একটু দূরে। আমি ঘটনাস্থলে এসে সুরুজকে মৃত অবস্থায় দেখি। হনুফাকে হাসপাতালে নিয়ে যাওয়া হয়।”

In his evidence P.W.5 Md. Ramiz Uddin states that, “প্রায় ৪(চার) বৎসর আগে দুপুর প্রায় ২.৩০ মিনিটের দিকে মৃত সুরুজ মিয়ার বাড়ির ৭/৮ টি বাড়ি পূর্বে ঘটনা। আমি জোহরের নামাজ পড়ে মসজিদ থেকে বের হই। মৃত সুরুজ মসজিদে নামাজ পড়তে যায়। আমি বাড়ি এসে খাওয়া দাওয়া সেরে শুনি যে আসামীরা সুরুজকে মেরে ফেলেছে। আমি দৌড় দিয়ে ঘটনাস্থলে গিয়ে সুরুজ এর পিতা, মেয়ে সুমিসহ আরো অনেক লোক। সুমি কান্নাকাটি করছে। সুরুজকে মৃত অবস্থায় এবং হনুফাকে দাড়ানো অবস্থায় দেখি। হনুফাকে হাসপাতালে নেয়া হয়।”

In reply to cross-examination P.W.5 says that he came to learn from people conversation that victim Suruj was killed by Rahmat and others.

In his testimony P.W.7 Razia claims that, “১৩-১১-২০১১ ইং তারিখ ঘটনা, বেলা ২.৩০ টার সময়। মৃত সুরুজ মিয়ার বাড়ি ও আমার বাড়ি এক বাড়ি। সুরুজ মিয়াকে মারিয়া ফালাইছে শুনিয়া দৌড়াইয়া যাই। গিয়ে দেখি সুরুজ আলীর শরীরে জখম আছে। তার শরীরে অনেক কোপ। সুরুজ আলী মারা যায়। আসামী ৪ জনই সুরুজ আলীকে দা দিয়ে কোপাইয়া মেরেছে। হনুফার ডান হাত প্রায় আলাদা, বাম পাশে ছোরার পার দেখায়। বড় জখম। পিঠে ও বিভিন্ন জায়গায় মাইরের আঘাত দেখি। রহমত আলী, মোস্তফা, রাহিমা ও আনোয়ারা মারছে। মাইরা তারা দৌড়ে যাইতেছিল। সুরুজ আলী ও হনুফাকে হাসপাতালে নেয়। হনুফার জ্ঞান ছিল। হনুফা আমাকে বলেছে আসামী ৪ জন আমাকে মেরেছে। আসামী রহমত আলী, মোস্তফা, আনোয়ারা, রাহিমা মেরেছে। প্রথম কাপাসিয়া হাসপাতালে নিয়ে যায়। ঐ হাসপাতালে রাখে নাই। আমরা ঢাকা মেডিকেল হাসপাতালে নিয়ে যাই। সুরুজ আলী ঘটনাস্থলে মারা যায়। হনুফা হাসপাতালে মারা যায়। হনুফাকে হাসপাতালে নেওয়ার সময় আমি সাথে ছিলাম। হনুফা মৃত্যুকালে এই ঘটনা আমাকে বলেছে।”

In his deposition P.W.8 Laily discloses that, “১৩-১১-২০১১ ইং তারিখ দুপুরে জোহরের নামাজের পরে ঘটনা। সুরুজ ও তার স্ত্রী হনুফা মারা যায়। সুরুজ ঘটনাস্থলে সুরুজের জমিতে মারা যায়, হনুফা পরের দিন মারা যায়। আমি শুনেছি আসামীরা সুরুজ ও হনুফাকে মেরেছে।”

In reply to cross-examination P.W.8 divulges that she came to learn from people talk that the accused persons killed Suruj and his wife.

In her testimony P.W.9 Mst. Ferdousi divulges that, “১৩-১১-২০১১ ইং তারিখ দুপুর আড়াইটার দিকে ঘটনা। সুরুজকে মেরে ফেলে এবং হনুফা পরে মারা যায় হাসপাতালে। আমি শুনেছি আসামীদের আঘাতে সুরুজ ও হনুফা মারা যায়।”

In her evidence P.W.10 Mst. Ruma Akhter states that, “১৩-১১-২০১১ ইং তারিখ দুপুরে ঘটনা। ঘটনাস্থলে সুরুজকে রক্তাক্ত অবস্থায় মৃত দেখি এবং মেয়ে সুমি বাপকে ধরে কান্নাকাটি করছিল। তখন আহত অবস্থায় হনুফাকে দেখি। সুমি বলে রহমত, মোস্তফা, আনোয়ারা ও রাহিমা তার বাবা ও মাকে মেরেছে। হনুফাকে গাড়ি তুলে হাসপাতালে পাঠাই এবং হাসপাতালে যাই। হনুফা পরে মারা যায়। হনুফা নিজে আমাকে বলে আসামী চারজন তাকে ও তার স্বামী সুরুজকে মারে। হাসপাতালে নেবার পথে বলে দা, শাবল ইত্যাদি দিয়ে মারে।”

In his evidence P.W.12 Md. Osman Sarker unfurls that, “১৩-১১-২০১১ ইং তারিখে বিকাল ২.৩০ মিনিটের দিকে ঘটনা। সুরুজ ঘটনাস্থলে মারা যায় পরে হাসপাতালে তার স্ত্রী হনুফা মারা যায়। ঘটনাস্থলে সুরুজের মৃত দেহ দেখি। আহত হনুফাকে হাসপাতালে নেয়া হয়। ঘটনাস্থলে সুরুজের মেয়ে সুমিকে জিজ্ঞাসা করলে সে বলে রহমত, মোস্তফা, আনোয়ারা ও রাহিমা তার বাবা ও মাকে মেরেছে। আসামীরা ঘটনাস্থল হতে পালায়ে যায়।”

In his evidence P.W.14 Md. Abdul Halim states that, “১৩-১১-২০১১ ইং তারিখ দুপুর ২.৩০ মিনিটের দিকে ঘটনা রসুর বাড়ির পার্শ্বে সুরুজের বাগানে। হনুফা আমার ফুফু শাশুড়ী। ঘটনা বিষয়ে আমার শশুর ফয়েজ উদ্দিন শেখ ফোন দেয়। আমি কালিয়াকৈরের সফিপুর হতে ঢাকা মেডিকেল হাসপাতালে যাই ১৪-১১-২০১১ ইং তারিখ দুপুর ১২.০০ টার দিকে যাই। তখন ফুফু শাশুড়ি হনুফা আমার হাত ধরে বলে “বাবা আমি তে বাঁচবো না আমার ছেলে মেয়েকে তোমরা দেখ।” সে আমার নিকট পানি চায় এবং আমি আংগুর ফল খাওয়াই ও পানি দেই। তিনি তখন বলেন রহমত, মোস্তফা, আনোয়ারা ও রাহিমা তাকে ও তার স্বামীকে মারে। তার ডান হাত প্রায় বিচ্ছিন্ন অবস্থায় ছিল। ডান কজিতে মারাত্মক আঘাত ছিল। শরীরের মাঝখানে শাবল ঢুকানো হয় শরীরের এক পাশ হতে ঢুকে অপর পাশে বের হয়ে যায়। আনুমানিক দুপুর দেড়টার দিকে আমার সামনে সে মারা যায়।”

In his evidence P.W.15 Ramiz Uddin says that, “১৩-১১-২০১১ ইং তারিখ রবিবার বেলা আড়াইটার দিকে ঘটনা। মসজিদ থেকে নামাজ পড়ে বাড়ীতে যাওয়াকালে মৃত সুরুজকে মসজিদের দিকে যেতে দেখি। বাড়ীতে গিয়ে খাবার শেষে শুনি সুরুজকে মেরে ফেলেছে সে শব্দ ও কথা শুনে সুরুজ মিয়ার বাড়ীর পূর্ব পার্শ্বে যাই সেখানে গিয়ে দেখি সুরুজ রাস্তার ধারে মৃত অবস্থায় আঘাত প্রাপ্ত দেখি। তখন অনেক লোক ছিল। সুরুজের বাবা ও মেয়ে কান্নাকাটি করছিল। সুরুজের স্ত্রীকে মারাত্মক আহত অবস্থায় দেখি তাকে (হনুফাকে) কাপাসিয়া হাসপাতালে নেয়া হয়। সেখান থেকে ঢাকা নিলে সে সেখানে মারা যায়।”

P.W.17 Razia Begum gives out in her evidence that, “১৩-১১-২০১১ ইং তারিখ দুপুর আড়াইটার দিকে রবিবারে ঘটনা। মৃত সুরুজের বাড়ীর পার্শ্বে আমার

বাড়ী। সুরুজকে মেরে ফেলেছে তা শুনে ঘটনাস্থলে যাই। সেখানে গিয়ে দেখি সুরুজ মরে গেছে। হনুফা আহত অবস্থায় দাড়ায়ে আছে। আমরা হনুফাকে নিয়ে কাপাসিয়া হাসপাতালে যাই। পরে ঢাকা মেডিকেল কলেজ হাসপাতালে নিয়ে যাই। পথে হনুফাকে আমি জিজ্ঞাসা করলে সে বলে আসামী রহমত, মোস্তফা, আনোয়ারা ও রাহিমা তাকে (হনুফাকে) ও তার স্বামী সুরুজকে মারে। হনুফা পরের দিনে ঢাকায় মারা যায়।”

(Underlining is ours).

Thus, it appears that having supported the prosecution version of the case the other private witnesses also made statements in unison so far seeing the injured dead body of deceased victim Suruj as well as that of injured victim Hanufa who was taken to hospital wherein she succumbed to her injuries. The aforesaid prosecution witnesses were cross-examined by the defence but nothing could be elicited from their mouth which could belittle their testimonies. Rather, we find a ring of truth in the evidences of the aforesaid prosecution witnesses.

Furthermore, from the evidences of P.W.7, P.W.10 and P.W.14 it transpires explicitly that while being taken to the hospital as well as during her stay at Dhaka Medical College Hospital deceased victim Hanufa Begum made dying declaration naming accused Rahmat, Mostofa, Anowara and Rahima as her assailants as well as of her husband.

We also found from the evidence of P.W.1 and P.W.12 that they went to the P.O. spot immediately after the occurrence while they came to learn from Sumi (P.W.3) that accused Rahmat, Mostofa, Anowara and Rahima assaulted her father and mother.

Regard being had to the aforesaid discussions and the observations made thereunder, we are of the considered view that on 13-11-2011 at around 2.30 pm deceased victim Suruj Ali and his wife Hanufa Begum sustained grievous bleeding injuries at the hand of the accused following which victim Suruj Ali died at the spot and his wife Hanufa Begum succumbed to her injuries while she was being treated at Dhaka Medical College Hospital.

Having waded through the materials on record, it is found that there are some other materials to rope in the 4(four) accused in the killing incident of victim Suruj Ali and Hanufa Begum regarding which we will take stock of now.

Materials on record go to show that the accused persons went into hiding immediately after the occurrence and the Investigating Officer, (P.W.21) on the basis of a tip off, apprehended them in the night following 22-11-2011 from a distant place of Companygonj Police Station under Sylhet District and thereafter, the accused persons were produced before the court on 24-11-2011, whereupon

accused Mostofa and Anowara Begum gave confessional statement implicating themselves as well as the other 2(two) accused in the killing incident of deceased victim Suruj Ali and Hanufa Begum.

It is by now well settled that an accused can be found guilty and convicted solely banking on his confession if, on scrutiny, it is found to be true, voluntary and inculpatory in nature. To find out whether the aforesaid confessions of the above 2(two) accused have satisfied all the aforesaid criterion or not, we may have a peep at the relevant confessions with a searching eye.

The confession of accused Mostofa has been marked as Exhibit No.6 which runs as under:

“আমার বাবার সা-থ সুরুজ আলীর বি-রাধ ছিল। সুরুজ আলী আমার বাবার জমি প্রতারণা ক-র নি-য় গি-য়ছিল। তখন আমার বাবা নাবালক ছিল। সুরুজ আলী আমা-দর ও সুরুজ আলীর সীমানার ম-ধ্য চাড়াগাছ লাগা-ল ক-য়কটি চাড়াগাছ ম-র যায়। এ নি-য় ঘটনার দিন দুপুর ১২.০০ ঘটিকার দি-ক আমা-দর গালমন্দ কর-ল আমার ছোট বোন রাহিমা প্রতিবাদ ক-র। তখন সুরুজ মিয়া ঘ-র ঢু-ক আমার ছোট-বান রাহিমা কে মারধর ক-র চ-ল যায়। প-র আমার মা এ-স বাবা ও রাহিমা কে নি-য় চেয়ারম্যান-র কা-ছ বিচার দি-ত যায়। চেয়ারম্যান-ক না পে-য় ফি-র আ-স। প-র দুপুর ২.০০ ঘটিকার দি-ক আমার মা-য়ের কথায় (কি নি-য় যেন কথা হয় জানিনা) রে-গ গি-য় নামাজ রে-খ বাড়ী-ত গি-য় দা, ছুরি ও শাবল নি-য় সুরুজ মিয়া ও তার বউ (নাম জানি না) আ-স। তখন সুরুজ মিয়া ছুরি দি-য় আমার মা-এর মাথা,

ডান ও বাম হা-ত কোপ -দয়। প-র আবার সুরুজ মিয়া আমার বাবার মাথায় ২টি আড়াআড়ি কোপ দেয়। তখন আমি বাবা-মা-কে বাঁচা-নার জন্য এগি-য় গে-ল সুরুজ মিয়া আমার বাম কাঁ-ধ দা দি-য় কোপ মা-র। এক পর্যা-য় তার হাত থে-ক দাঁ কে-ড় নি-য় আমি তা-ক ৩টি কোপ দিই। এক পর্যা-য় সুরু-জর বউ আমার মা-ক শাবল দি-য় পাড় মার-ত গে-ল আমার মা শাবল কে-ড় নি-য় সুরু-জর বউ-ক পাড় দেয়। প-র আমি আমার মা ও বাবা-কে ম-নাহরদী হাসপাতা-ল নি-য় যায়। সুরুজ ও তার বউ এর কি হয় বলতে পারব না। এই আমার বক্তব্য।”

On the other hand, the confession of accused Anowara Begum has been marked as Exhibit No.7. The relevant text of Exhibit No.7 is quoted below in verbatim:

“আমার স্বামী রহমত আলী এবং অত্র মামলার ভিকটিম মৃত সুরুজ পরস্পর চাচা-তা জ্যাঠা-তা ভাই। সুরুজ আলীর আমা-দর সম্পদ অন্যায়ভা-ব ভোগ দখল ক-র আসায় জমি নি-য় আমা-দর সা-থ সুরুজ আলীর প্রায় সময় ঝগড়া হ-ত। সুরুজ আলী ও আমা-দর বাড়ীর সীমানার ম-ধ্য সুরুজ আলীর লাগা-না চারাগাছ ম-র যাওয়ায় ঘটনার দিন অর্থাৎ ১৩/১১/১১ ইং সকাল ১১.০০ ঘটিকার সুরুজ আমার মে-য় রাহিমা-ক ঝগড়ার এক পর্যা-য় মারধর ক-র। তখন আমি বাড়ী ছিলাম না। প-র আমি বাড়ী-ত এ-স -ম-য়-ক নি-য় চেয়ারম্যা-নর বাড়ী-ত বিচার দি-ত যাই। চেয়ারম্যান-ক না পে-য় বাড়ী-ত চ-ল আসি। প-র দুপুর ২.০০ ঘটিকার দি-ক সুরুজ ও সুরু-জর স্ত্রী হনুফা শাবল, ছুরি ও দা নি-য় আমা-দর বাড়ী-ত এ-স গালিগালাজ শুরু ক-র। এক পর্যা-য় সুরুজ গরু জবাই করার ছুরি দি-য় আমা-ক ও আমার স্বামী-ক কোপা-ত শুরু ক-র। আমার মাথায়, বাম হা-তের কজীর উপ-র ও ডান হা-তের কনুই

এর উপরে কাটা রক্তাক্ত জখম হয়। আমার স্বামীর মাথায় “x” চিহ্ন আকা-র দুটি কোপ লা-গ। আমা-দর-ক কোপা-ত দে-খ আমার ছে-ল মোস্তফা এগিয়ে আসলে সুরুজ আলী আমার ছেলে মোস্তফার বাম কাঁধের উপর কোপ দিয়ে কাটা রক্তাক্ত জখম ক-র। এ সময় আমার ছে-ল মোস্তফা সুরু-জর হাত হ-ত বড় দা টে-ন নি-য় সুরুজ-ক ৩টি কোপ মা-র। তখন হনুফা শাবল দি-য় আমা-ক পাড় মার-ত আস-ল আমি শাবল ধ-র তার কাছ নি-য় তা-ক পাড় দিই। প-র লোকজন এ-স আমা-ক ও আমার স্বামী-ক ম-নাহরদী হাসপাতা-ল নি-য় যায়। সুরুজও তার স্ত্রী-ক কোথায় নি-য় যায় তা বলতে পারব না। এই আমার বক্তব্য।”

(Emphasis put).

From a plain reading of the aforesaid confessions together, it appears manifestly that in their confessional statements both the accused gave a blow by blow account of the incident implicating themselves as well as the other 2(two) accused with the same. According to the confessions of the accused, deceased victims Suruj Miah and his wife Hanufa came to the spot with dao, knife and crowbar and launched an attack upon the accused, whereupon in order to save their souls the accused persons forcibly snatched away crowbar and dao from the hands of the deceased victims and thereafter they dealt several blows with the same to the victims as a result both of them sustained grievous injuries and ultimately succumbed to such injuries. Thus, it reveals that both the confessing

accused admitted in their confessions that both the victims were eventually killed by them as well as by their cohorts. Furthermore, in their confessional statements accused Mostofa and Anowara Begum have tried to give out that the 2(two) deceased victims are the aggressors who being armed with deadly weapons, at first, launched an attack upon the accused, while they (accused) snatched away the weapons from the hands of the victims and inflicted blows with the same upon the victims in order to save their souls and during the process they also sustained injuries following which they were taken to Monohordi Hospital for treatment. But the aforesaid claim of the accused does not come in agreement with the evidence of the only eye witness of the case i.e. P.W.3 Sumi Akhter who asserts in her testimony that the accused persons are the aggressors who being armed with deadly weapons came to the spot and swooped on the victims and inflicted blows to them following which victim Suruj Miah died at the spot while his wife Hanufa succumbed to her injuries on the following day of the occurrence while she was being treated at Dhaka Medical College Hospital. We have already observed that the aforesaid testimony of P.W.3 remained unassailed and unshakened in her cross-examination. Moreover, in support of their plea of getting injured at the time of occurrence, both the accused did not adduce any injury certificate

before the trial court. Even, no counter case was also filed on behalf of the aforesaid 2(two) accused, rather they went into hiding immediately after the occurrence and after 23 days into the incident the Investigating Officer nabbed them from a distant place of Companigonj Police Station under Sylhet District. Therefore, the plea as has been taken by the accused in their confessions is nothing but a dirty ploy in order to skirt round their criminal liability in the killing incident of the 2(two) forlorn victims.

Having gone through the aforesaid 2(two) confessions, it further appears that those were-self incriminating and it also tars the co-accused with the same brush as himself/herself. Furthermore, it transpires that the factum of event as disclosed in the confessional statements of the 2(two) accused also comes in agreement with the prosecution story in material particulars. In such view of the matter, the confessional statements of accused Mostofa and Anowara Begum can be regarded as true as well as inculpatory in nature.

Now, we can consider the voluntary nature of the confession of accused Mostofa and Anowara.

From the evidence of P.W. Nos.11 and 21 we found that accused Mostofa and Anowara including the other 2(two) co-accused were apprehended in the night following 22-11-2011 from a distant place of Companigonj P.S. under Sylhet District, and

thereafter, they were produced before the relevant Magistrate on 24-11-2011, whereupon on 27-11-2011 the confessions of accused Mostofa and Anowara Begum were recorded by P.W.11 in compliance with all necessary formalities as required by law. From the evidence of P.W.21, it further appears that it took time to bring the accused from Sylhet to Gazipur District.

From a combined reading of the evidence of P.W.11 together with the confessions of both the accused, it further reveals that after production of the accused before the Magistrate they were given 3(three) hours time for reflection during which they were kept under the custody of court peon named Anowar Rahman. Thereafter, the Magistrate concerned asked the relevant questions to both the accused as set out in column 5 and 6 of the confession recording form. More precisely amongst others both the accused were asked that if they made confession it would be used against them in the court as evidence. Since the accused still expressed their willingness to admit their guilt, the concerned Magistrate jotted it down and thereafter those were read over and explained to the accused who admitted the contents thereof to be true and correct account of the incident by putting their signatures thereto. P.W.11 proves the confessions of accused Mostofa and Anowara including their signatures appearing thereon as Exhibit Nos.6 & 6 series and 7 & 7

series respectively. In his evidence P.W.11 avers that the confessions of both the accused are true and voluntary in nature and further that he examined the body of both the accused. Under column 9 of both the confessions recording form the Magistrate gave certificate in the following language:

“আমি উক্ত অভিযুক্তের শরীরে কোন আঘাতের চিহ্ন পাই নি।”

Materials on record further go to show that after penning down the confession of accused Mostofa and Anowara, they were sent to Gazipur Jail Hazat. Even after coming out from the clutches of police the aforesaid 2(two) accused did not resile from their confessions by filing any retraction application. It further appears that during their examination under section 342 of the Code accused Mostofa and Anowara did not make any complain touching the voluntary character of their confession, though their attention was drawn to their respective confessions. In such a backdrop, we have no other option but to hold that the confessions of accused Mostofa and Anowara were voluntary in nature.

Having devoted our anxious thought to the arguments advanced by both the parties and having gone through the entire evidences and materials on record, we are of the dispassionate view that the prosecution has succeeded in establishing the guilt of the

accused to the core with regard to the offence with which they have been charged.

It has been argued on behalf of the defence that the FIR was filed after a delay of 15 hours 40 minutes and as such the chance of embellishment and false implication cannot be ruled out. But, in consideration of the facts and circumstances of the instant case, we cannot align with the view expressed by the learned defence Advocate inasmuch as it is found from the record that P.W.1 Md. Shahjahan Sheikh is the informant of the case who having learnt about the occurrence over phone from the daughter of deceased victim Suruj Miah named Sumi came to the spot and found the dead body of victim Suruj Miah as well as his injured wife Hanufa. Eventually, Hanufa was first taken to Kapasia Sadar Hospital wherefrom she was shifted to Dhaka Medical College Hospital wherein she succumbed to her injuries on the following day. In the meantime, P.W.1 brought the matter to the notice of the relevant Police Station, wherefrom police appeared at the spot and held inquest of the cadaver of deceased victim Suruj Miah on 13-11-2011 at 17.10 pm and sent the dead body to Gazipur Hospital for post-mortem examination. Ultimately, P.W.1 went to the Police Station which is 12 km away from the spot and lodged the FIR on

14-04-2011. It has been stated in the FIR (Exhibit No.1) that since the relatives of the deceased victims were overwhelmed with grief, P.W.1 after consulting the local people filed the ejahar and as such delay was caused which was totally unintentional. In view of the facts and surrounding circumstances of the case, the explanation offered in the FIR regarding delay in filing the FIR appears to be just and acceptable. Therefore, the argument advanced by the learned defence Advocate on this count appears to be wide of the mark.

Contention has also been raised on behalf of the condemned-accused that some important witnesses like Khadeza and Abdul Kuddus, the father of victim Suruj Miah were not examined as witnesses and, as such, the accused are entitled to get benefit under section 114(g) of the Evidence Act. This argument of the defence is also untenable in law inasmuch as section 134 of the Evidence Act postulates that no particular number of witnesses shall in any case be required for the prove of any fact. If believed, conviction may be based on the evidence of a single witness provided that it is full, complete and self-contained. Furthermore, it is up to the prosecution who determines as to how many witnesses it will examine to prove its case. In the instant case at our hand, it is found that sufficient number of natural, probable and competent witnesses have been

examined by the prosecution who proved the case and the same was also seconded by post-mortem and inquest report as well. In such a posture of things; the argument put forward by the learned Defence Advocate on this count bites the dust.

It has further been pressed into service by the defence that the confessions of accused Mostofa and Anowara were not voluntary and true as they were kept under police custody for 5(five) days preceding recording their confessions. But we cannot agree with the aforesaid view of the defence in view of the evidence of the relevant Magistrate as well as the Investigating Officer of the case who furnished evidence as P.W.11 and P.W.21 respectively. It is found from evidence of P.W.21 that he arrested the confessing accused including the other 2(two) accused in the night following 22-11-2011 from Companygonj P.S. under Sylhet District and thereafter produced them before the concerned Magistrate on 24-11-2011 as it took considerable time to bring the accused from Sylhet to Gazipur. It further appears that for the purpose of investigation the Investigating Officer took the accused on remand for 03(three) days, and since the accused, on quizzing, admitted their guilt they were produced before the concerned Magistrate on 27-11-2011 at 2.00 pm for getting their confessional statements recorded. In view of the

above, the argument advanced by the learned defence Advocate on this score falls to the ground.

It has next been argued on behalf of the defence that P.Ws.7, 10 and 14 are relatives of the victims and they are also interested witnesses as such their evidences inspired no confidence. It is true that P.Ws.7, 10 and 14 are relatives of deceased victim Suruj Miah and Hanufa Begum. But that alone will not create any dent in their evidences since the defence by making cross-examination hopelessly failed to bring out any contradictions or inconsistencies touching the material part of the prosecution story. Moreover, we find a ring of truth in the evidence furnished by the aforesaid 3(three) witnesses which also was seconded by other evidences and materials on record. Therefore, the evidences of P.W. Nos.7, 10 and 14 cannot be thrown overboard simply for the ground that they are connected to the deceased victims. In such a backdrop, the argument advanced by the learned defence Advocate on this count cannot be countenanced.

Now, we can turn our eyes to the quantum of sentence awarded to the condemned-accused.

It has come to light from the evidences and materials on record that on the date and time of occurrence accused Mostofa and his mother Anowara Begum gave fatal blows to deceased victim

Suruj Miah and his wife Hanufa Begum with dao and crowbar as a result the former died instantly on the spot and the latter succumbed to her injuries on the following day while she was being treated at Dhaka Medical College Hospital. In this case both the ill-starred husband and wife were done to death in a brutal manner by accused Mostofa and Anowara Begum. The offence is diabolic, heinous and revolting in nature. We have carefully considered the aggravating and mitigating circumstances of the case and we do not find any cogent ground to interfere with the sentence awarded to accused Mostofa and Anowara Begum. In our view, death penalty will be the only appropriate punishment for the ruthless accused which will be equally commensurate with the magnitude of the crime committed by them.

From the impugned judgment, it appears that the learned Sessions Judge also found co-accused Rahmat and Rahima guilty for causing death of victim Suruj Miah and Rahima Begum respectively, and thereafter, considering their old as well as young age awarded them punishment of imprisonment for life including a fine of Tk.10,000/- each with a default clause. We do not find any plausible ground to interfere with the aforesaid verdict of the learned trial court so far the conviction and sentence of accused Rahmat and Rahima is concerned. It is to be noted that accused

Rahima went into hiding after being enlarged on bail and still she remained as such and no criminal appeal was filed on her behalf challenging the veracity of her conviction and sentence.

In the result, the Death Reference is accepted.

The sentence of death awarded to the accused Mostafa and Anowara Begum is hereby confirmed.

The conviction and sentence of accused Rahmat under section 302/109 of the Penal Code is also maintained.

The impugned judgment and order of conviction and sentence is upheld.

Criminal Appeal No. 657 of 2016 and Jail Appeal Nos. 5 of 2016, 6 of 2016 and 7 of 2016 are dismissed being devoid of any substance.

Send down the L.C. Records along with a copy of the judgment to the court concerned forthwith.

Fatema Najib, J.

I agree.