

Present:
Mr. Justice K.M. Kamrul Kader
And
Mr. Justice Md. Jabid Hossain

Criminal Appeal No.2852 of 2021.

Md. Asadul Haque Mamun

..... Convict-Appellant

-Versus-

The State

....Respondent

Mr. S.M. Shahjahan, Senior Advocate
with

Mr. Mohammad Ali and

Mr. Amzad Hossain Reyad and

Mr. Mahbubur Rahman, Advocates

....For the Appellant

Mr. Prokash Ranjan Biswas, D.A.G with

Mst. Tahera Khatun, and

Mr. Md. Siddik Ali and

Mr. Omar Faruk, A.A.Gs

....For the State

Heard On: 06.11.2025 & 13.11.2025

And

Judgment On : 11.12.2025.

K.M. Kamrul Kader, J:

This appeal is directed against the judgment and order of conviction and sentence dated 01.02.2021 passed by the learned Additional Metropolitan Sessions Judge, 2nd Adalat, Dhaka in Metropolitan Session Case No.6095 of 2012, arising out of Shah Ali Police Station Case No. 11(01)2006,

corresponding to G.R. No.11 of 2006 convicted the convict-appellant under section 302 of the Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Taka 10,000/-(Ten thousand) only, in default to suffer simple imprisonment for 02(two) months more.

Facts relevant for disposal of this appeal are that, one Md. Jamirul Abedin Sumon as an Informant lodged a First information Report on 24.01.2006 at 10.35 hours with the Shah Ali Police Station alleging *interalia* that the informant is a Hafez of Holy Quran. The father of the informant died in the year of 2001. The victim namely Ferdous Ara Lipi is the sister of the informant. The victim and the appellant Md. Asadul Haque Mamun got married on 16.11.2004. After marriage, the victim and the appellant used to live at the place of occurrence. The appellant worked at a dyeing and printing industry situated at Tejgaon, Dhaka. On 23.01.2006, at about 09.15 p.m. the appellant made phone call to the informant through the mobile number 0188750594

to 0188315823 stating that "Sumon, my everything have been ended." The informant asked what had happened. In reply, the appellant stated that someone after cutting your sister's (Ferdous Ara Lipi) throat, locked the door from outside of their house and he asked the Informant to come to his house instantly. Being informed, the informant went to the house of the appellant by a taxicab and found a large crowd at the gate of his sister's matrimonial home. At that time, he saw the appellant, police officer and other persons were present there. He saw the dead body of his sister was lying on the floor of the bed room. As he asked the appellant (brother-in-law) about the incident, in reply, he told him that he went to his workplace at 08.30 am in the morning, caring his lunch box like every other day and at that time, she was in sound health. He came back home at 09.00 p.m. and found that the front door of the home was locked from the outside, he then went to the 1st floor, the owner's home to find out whether she went there or not? At that time, Masud Ali son of the home

owner informed him that she did not go there. Thereafter, his brother-in-law went to the back side of his flat through a narrow road and found the back door was open; he went inside the flat and saw the victim's (Ferdous Ara Lipi) dead body with her throat cut and covered in blood. As the Informant's brother-in-law started hue and cry, local people came forward and saw the dead body. The Informant suspects that his brother-in-law in connivance with unknown accused killed his sister. Thereafter, the informant went to the police station and lodged the instant case and the same was registered as Shah Ali Police Station Case No.11 dated 24.01.2006 under sections 302/34 of the Penal Code.

There are 6 (six) Investigating Officers, investigated the case. Sub-Inspector Mr. Noor-E-Alam Siddiqui as 1st Investigating Officer investigated the case. During investigation, visited the place of occurrence, prepared a sketch map with separate index, thereof seized alamots by preparing seizure list, prepared the inquest report in presence of the

witnesses and sent the dead body to the morgue for holding post mortem examination. Sub-Inspector Md. Mizanur Rahman, Sub-Inspector Md. Aman Ullah, Sub-Inspector Md. Rashadul Islam and Sub-Inspector Md. Abdul Hakim as Investigating Officers have received the case docket from their previous Investigating Officers for investigation. They also visited to the place of occurrence, recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure and arrested the accused persons. During the investigation, 2 (two) Investigating Officers seized alamots by preparing four separate seizure list on four separate dates i.e. on 23.01.2006, 24.01.2006, 08.11.2010 and 09.11.2010 respectively. After conclusion of the investigation, Sub-Inspector Md. Abdul Hakim finding no *prima facie* case against the 3 (three) accused persons, he submitted the Final Report (true) being No.33 dated 06.07.2008 under sections 302/34 of the penal Code. Challenging the said Final Report, the Informant filed the Naraji Petition and

after hearing the parties, the learned Judge of the Court below directed the CID for further investigation of the case. Subsequently, the investigation of the case was entrusted to Inspector Mr. Md. Nuruzzaman, Police Inspector (Uttara Unit) CID, Bangladesh Police, Dhaka and on receipt of the case docket, investigated the case. During investigation, he again visited the place of occurrence, recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. After conclusion of the investigation, finding no *prima facie* case against the accused persons, he submitted the Final Report (true) being No.12 dated 08.06.2010 under sections 302/34 of the Penal Code. Challenging the aforesaid Final Report (true) being No.12 dated 08.06.2010 the informant filed another *Naraji* petition before the Court below and after hearing the parties, the learned Judge of the Court below directed the CID for further investigation of the same. Thereafter, the investigation was entrusted upon A.S.P. Mr. Md. Iqbal Azad, CID, Bangladesh Police, Dhaka to

investigate the case. During investigation, he also visited to the place of occurrence, recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. After conclusion of the investigation, finding *prima facie* case against the accused Md. Asadul Haque Mamun, he submitted the Charge Sheet being No. 12 dated 26.01.2012, under Section 302 of the Penal Code and not sent up other 2 (two) accused persons namely 1. Md. Masud Ali and 2. Md. Hasme Zahedul alias Babu, as he did not find any *prima facie* case against them.

Thereafter, the case record was transmitted in the court of learned Metropolitan Sessions Judge, Dhaka for trial, who took cognizance of the offence, wherein it was registered and numbered as Metropolitan Session Case No. 6095 of 2012. Thereafter, the case was further transferred to the Court of learned Additional Metropolitan Sessions Judge, 2nd Adalat, Dhaka for trial. At the commencement of the trial, the learned Additional Metropolitan Sessions Judge framed charge under

Section 302 of the Penal Code against the accused Md. Asadul Haque Mamun, it was read over to him, to which he pleaded not guilty and claimed to be tried.

During trial Prosecution examined as many as 09 (nine) witnesses to prove their case and the defence cross examined them. After conclusion of taking evidence, the accused Md. Asadul Haque Mamun was examined under Section 342 of the Code of Criminal Procedure, to which he pleaded not guilty and agreed to adduce defence witnesses and the accused examined two defense witnesses to prove his case.

The defense case as it appears from the trend of cross-examination is that the accused is innocent and he has been falsely implicated in this case out of previous enmity and on the basis of mere suspicion. He is neither responsible nor connected with the murder of his wife deceased Ferdous Ara Lipi. The victim Lipi and accused Md. Asadul Haque Mamun are husband and wife. He never demanded dowry to

the parents of his wife i.e. victim (Ferdous Ara Lipi) and no claim has been raised against the accused relating to demand of dowry earlier. Their conjugal life was peaceful. Further case is that on the alleged date and time of occurrence, the accused husband was not present at their matrimonial house, he was on duty at his work place and the attendant register book of the office was produced as evidence before the court below and hence, the order of conviction and sentence is liable to be set aside.

After conclusion of the trial, the learned Additional Metropolitan Sessions Judge, 2nd Adalat, Dhaka convicted and sentenced the appellant as aforesaid.

Being aggrieved by and dissatisfied with the aforesaid impugned judgment and order of conviction and sentence, the convict-appellant preferred this instant Criminal Appeal before this Court.

Mr. S.M. Shahjahan, Senior Advocate with Mr. Mohammad Ali, the learned Advocates for the appellant having taken us through the First

Information Report, inquest report, Post Mortem Report, Charge Sheet, deposition of the prosecution and defense witnesses and other material on record made submissions against the conviction and sentence of the convict-appellant Md. Asadul Haque Mamun. Learned Senior Advocate at the very outset submits that in passing the impugned judgment and order the learned Additional Metropolitan Sessions Judge seriously failed to consider that the prosecution totally failed to prove their case by adducing reliable oral, documentary and circumstantial evidence. The convict-appellant is innocent but the learned Additional Metropolitan Sessions Judge without applying his judicial mind and without considering the materials on record passed the impugned judgment and order of conviction and sentence. He also submits that the convict-appellant did not commit any offence which was proved by the 2 (two) Final Report (true) submitted by the investigating officers, which conducted by two separates investigation agencies,

relating to the offence as alleged in this case against the convict-appellant and as such, the conviction and sentence dated 01.02.2021 passed by the learned Additional Metropolitan Sessions Judge is liable to be set aside. Learned Advocate for the appellant next submits that belated statements of prosecution witness Nos. 1, 2 and 5 made under section 161 of the Cr.P.C makes the prosecution case shaky and doubtful. He also submits that the impugned judgment and order is erroneous in law and the learned Additional Metropolitan Sessions Judge hopelessly failed to consider the deposition of the witnesses and there is not a single credible witness on which the appellant can be convicted and sentenced as aforesaid. There is not a single neutral and independent witness was examined by the prosecution in this case. The prosecution failed to adduce any single independent witness from the neighbourhood and all the private prosecution witnesses are near relation, partisan and interested witness and they contradicted with each other on

material point and as such, the conviction and sentence is liable to be set aside. Learned Senior Advocate next submits that the learned Additional Metropolitan Sessions Judge failed to consider the defence case, which more probable that the appellant was falsely implicated in the instant case. On the alleged date and time of occurrence, the convict-appellant husband was not present at their matrimonial house, he was on duty at his workplace and the attendant register book of the office was produced as evidence before the court below. None of the prosecution deposed that the convict-appellant was present at the date and time of alleged occurrence in their matrimonial house, which makes the prosecution case shaky and doubtful. The testimonies of the aforesaid witnesses are concocted, manipulated and unworthy of credit. The prosecution has failed to prove its case beyond reasonable doubt and as such, the appellant is entitled to get the benefit of doubt, according to the provision of section 114 (G) of the Evidence Act. The appellant is

innocent and he was not at all liable for the charge levelled against him and as such, he prays for allowing the appeal and discharging the appellant from the charge levelled against him.

To substantiate his submission the learned Advocate for the appellant placed reliance on the decisions in the cases of *Momin alias Md. Mominul Huq -Vs.- The State*, reported in 16 BLD(1996)246, *Abu Taher Chowdhury and others -Vs.- The State*, reported in 11 BLD(AD)(1991)2, *Abdur Rouf and others -Vs.- Jalaluddin and another*, reported in 51 DLR(AD)(1999)22 and *Md. Mokter Hossain Khan -Vs.- The State*, reported in 28 BLD(AD)(2008)52.

Mr. Prokash Ranjan Biswas, learned Deputy Attorney General with Ms. Tahera Khatun, Mr. Md. Siddik Ali and Mr. Omar Faruk, learned Assistant Attorney Generals appearing for the State having taken us through the materials on record make his submission supporting the conviction and sentence and opposing the appeal. He submits that all facts have been proved by the cogent, credible and reliable

evidence of the prosecution witnesses as well as circumstantial evidence. He also submits that the learned Additional Metropolitan Sessions Judge rightly found the appellant guilty under section 302 of the Penal Code. So the judgment and order of conviction and sentence do not call for any interference from this court. He further submits that the prosecution proved their case beyond reasonable doubt. There is no contradiction in their statements on any material point and there is no illegality or irregularity in the said judgment and order of conviction and sentence, the prosecution witnesses corroborated with each other on material points and the judgment and order of conviction and sentence should be upheld by this Court. Learned Deputy Attorney General further submits that all the P.Ws. proved their case by adducing reliable oral and documentary evidence. The investigating officers investigated the case properly and fairly. He further submits that this is a wife killing case and there is no eye witness to this incident. The cardinal principle

of the criminal jurisprudence is that the prosecution has to prove their case beyond reasonable doubt. However, in a wife killing case, where wife died at her matrimonial home and husband was present in that house. Under such circumstances, some liabilities were imposed upon the husband by the decisions of our Apex Court that the husband is under an obligation to explain the circumstances under which his wife was done to death, when both of them were residing in the same house at the relevant time. He further submits that the appellant husband failed to discharge his duty as to how the victim, his wife met her death. He further submits that the prosecution proved their case by adducing oral and documentary as well as circumstantial evidence that on the alleged date and time of occurrence, the appellant-husband was present at his home when his wife met her death. Then certain liabilities were imposed on the husband to explain how his wife met her death. The medical evidence suggest that the victim wife death was caused, due to haemorrhage and shock as a

result of cut throat injury, which was ante mortem and homicidal in nature. As such, the trial court after considering the evidence on record convicted the appellant. The learned Deputy Attorney General further submits that it is clear case of wife killing. At the time of alleged incident the appellant has requisite intend to kill the victim wife. As the medical evidence revealed that there are 3 (three) injuries on the dead body of the deceased and death was due to haemorrhage and shock as a result of cut throat injury, which was ante-mortem and homicidal in nature. There is no illegality or irregularity in the judgment and order of conviction and sentence passed by the Court below and as such, he prays for dismissing the appeal.

To substantiate his submission the learned Deputy Attorney General for the State placed reliance on the decisions in the cases of Sudhir Kumar Das alias Khudi –Vs.- *The State*, reported in 60 DLR (2008)261, *Gourango Kumar Shaha –Vs.- The State*, reported in 2 BLC(AD)(1997)126 and *Mamun Ar*

Rashid (Md)–Vs.- State, reported in 74 DLR(AD)(2022)36.

To ascertain the legality and propriety of the impugned judgment and order, let us now consider the evidence of the prosecution and defense witnesses one after another.

P.W.1 Md. Jamirul Abedin Sumon is the informant and brother of the victim Ferdous Ara Lipi, deposed that at the time of incident, he was living at House No. 541, North Shahjahanpur, under Motijheel Police Station. He deposed that his sister, Ferdous Ara Lipi and the appellant Md. Asadul Haque Mamun got married on 16.11.2004. In March 2005, the appellant brought his sister to the place of occurrence, situated at 1/H, 4/4, Gudaraghat, under Shah Ali Police Station, Mirpur-1. They lived on the ground floor of a two-storied house. This witness deposed that on 23/01/2006, at about 9:00 p.m. his brother-in-law, Asadul Haque Mamun, called him on his mobile phone and said that someone had killed his sister and locked the main gate from outside. He

immediately hired a taxi and rushed to the place of occurrence and saw many people outside the house including journalists, RAB and Police personnel were present there. He also deposed that the RAB members took him through a narrow road at the back and entered the house through the rear veranda, wherein he saw his sister's dead body was lying on the floor beside the bed in her bedroom; a sickle (*hasua*) was placed on a pillow. His sister was wearing a gold chain around her neck and bangles on her hands. None of the household belongings appeared to have been damaged. He saw his sister's dead body with her throat cut and covered in blood. The wardrobe was locked. He saw a bloodstained rag used for handling cooking pots in the kitchen. This witness also deposed that after marriage of his sister, her husband namely Asadul Haque Mamun used to put pressure and tortured her every month for money and as this witness and his other family members failed to provide money to her sister as such the accused Asadul Haque Mamun, in

connivance with other accused namely Sumir Ali Masud, the landlord's son and his cousin Hasan Jahidul Babu killed his sister. He identified the First Information Report (FIR), which marked as Exhibit-1 and his signature on it marked as Exhibit-1/1.

He also deposed that he came to know that his brother-in-law, Asadul Haque Mamun, and his two associates had intended to bring women into the house for amusement and pleasure, as his sister prevented them to do so, they killed her. He next deposed that the investigating officers seized his sister's bloodstained clothes, gold chain, bangles, kitchen utensils, one sickle, one new lock from the gate and the bloodstained rag from the kitchen and prepared the seizure lists. He identified the seizure list, which marked as Exhibit-2 and his signature on it marked as Exhibit-2/1. He identified the seizure lists were prepared on 08/11/2010 and 09/11/2010, He identified his signature on it marked as Exhibits- 2/2 and 2/3. He identified the accused Asadul Haque Mamun on dock.

During cross examination this witness admitted that the FIR was written by his uncle and he signed it. He is the muezzin of a mosque. His brother-in-law used to work at Sonargaon dyeing and Painting Industries. This witness does not know the office hours of his brother-in-law. He denied the suggestion that he went to his brother-in-law's house on 23/01/2006 and called his brother-in-law and said the house was locked and asked him whereabouts his sister was? In reply, his brother-in-law said that he should search around the area or on the upper floor because she might be chatting somewhere. He denied the suggestion that he left the house without knowing anything. He denied the suggestion that he stated in his testimony that after marriage, everyone put pressure on her sister although, he did not mention it in the FIR. He also denied the suggestion that because his only brother was employed, as such, they could not pay dowry, due to this reason, Asadul Haque Mamun and his associates killed his sister, even though this was not mentioned in the

FIR. This witness denied the suggestion that he wrongly stated Mamun, his cousin Hasan, and Babu killed his sister. He denied the suggestion, he falsely stated that Mamun and his two associates wanted to bring other women into the house for their enjoyment. He admitted that he signed the seizure list prepared at the scene on 23/01/2006. He did not sign the seizure list dated 09/11/2010. He does not know where the seizure list dated 08/11/2010 was prepared. It was at the CID office. He denied the suggestion that the accused does not know who killed his wife, he himself seeks justice for the murder of his wife and he knew nothing about the incident. He denied the suggestion that he filed the FIR on false allegation against the accused and he deposed falsely in this case. He denied the suggestion that the accused is innocent.

P.W.-2 Mst. Lucky, sister of the victim Ferdous Ara Lipi, deposed that her sister, Ferdous Ara Lipi and the appellant Md. Asadul Haque Mamun got married on 16.11.2004. In March 2005, the

appellant brought his sister in Dhaka and they have very good conjugal life during the early period of their marriage. This witness deposed that gradually, accused Mamun put pressure on her sister to bring money and other things from her family for business purposes. She deposed that one day the victim called her and she cried a lot, as she asked what had happened; in reply, she said that the wife of her husband's cousin came to their house and she was staying there for several days and her husband the appellant spend money on shopping for her. The victim suspects that her husband had some sort of relationship with that woman (the cousin's wife). During Eid, her younger sister and brother also went to Dhaka, but the accused did not treat them well. The appellant put pressure on her sister the victim to bring money for business purposes and about one week after this incident, the victim Lipi died. She received the news at around 9:15 p.m. that Lipi had been killed. She deposed that food was still on the stove; everything remained as it was and the stove

was still burning. She suspected that Asadul Haque Mamun killed her sister. He behaved very badly with her. He also threatened witnesses when they came to testify.

During cross-examination this witness admitted that her sister got married on 16/11/2004. In March 2005, her husband brought her to Dhaka. She denied the suggestion that she deposed falsely about the appellant put pressure on her sister to bring money for business purposes and about one week after this incident, the victim Lipi died. She denied the suggestion that she deposed falsely about Asadul Haque Mamun murdered her sister, he intimidated the prosecution witnesses or demand of dowry. She denied the suggestion that she deposed falsely in this case at the instruction of the lawyer.

P.W.-3 Md. Abu Sayed deposed that the deceased, Ferdous Ara Lipi, was his niece. She got married to Asadul Haque Mamun in November, 2004. After their marriage, she stayed at her parental home for some time. In March 2005, she and her

husband rented a house at 1/H, 4/4 Gudaraghat, Shah Ali Police Station, Mirpur, Dhaka. After moving to Dhaka, his niece occasionally spoke to him over telephone and told him that she was living in a very unhappy situation. He deposed that on 23 January, 2006, at about 9:30 p.m., his nephew Jamirul Abedin Sumon telephoned him and said, "A disaster has happened at the house and his sister has already been killed". This witness immediately went to the place of occurrence and saw his niece lying on the floor with her throat cut. There was a vegetable-cutting knife/sickle (boti, hasua, or dao) on the pillow and blood was visible on the pillow and bed sheet. He saw Asadul Haque Mamun was sitting in the adjacent room. He suspected that Asadul Haque Mamun killed his niece due to financial matter. The Investigating Officer seized a copy of the marriage deed and a photograph taken after the marriage and prepared a seizure list on 08/11/2010, he identified his signature on it which marked as Exhibit-3/2

During cross-examination this witness admitted that he cannot recall whether he gave statement to the investigating officer in this case. On the day of the incident, the police did not question him about the occurrence. He denied the suggestion that the accused was innocent and he knew nothing about the incident. He denied the suggestion that he deposed falsely in this case.

PW-4: Md. Saiful Islam Talukdar in his testimony testifies that the occurrence took place on 23/01/2006, he used to play badminton on the road in front of the House No. 1/H, 4/4, Gudara Ghat, Shah Ali Thana area. He deposed that at about 7:30 p.m. the accused Asadul Haque Mamun came there and called them. At that time, the persons who were there told him to bring a hammer to break the lock, then accused Mamun told them there is no need to break the lock, they can look into the flat from the back side. Thereafter, accused Mamun along with the landlady and others entered the room through the back side. This witness deposed that they saw

the dead body of the victim, beside the dead body there was a carpet, a blood-stained towel; the dead body was under the bed; there was a pillow above the neck of dead body, a bed sheet and a dao was there. There was a chain on the neck and two bangles on the hands of the victim. Thereafter, the police came to place of occurrence and they seized these items, prepared a seizure list. He identified the seizure list and his signature on it these are marked as Exhibit Nos.-4 and 4/1 respectively. The police officer also inspected the dead body and prepared the inquest report in his presence. He identified the inquest report and his signature on it these are marked as Exhibit Nos.-5 and 5/1 respectively. This witness also deposed that they heard sound of quarrel and altercation from that house, while they were playing badminton. They used to go to their house while playing and the victim was very cheerful and happy person. He identified the accused Asadul Haque Mamun on dock.

During cross-examination this witness deposed that at the time of incident his address was at House No. 1/B/1/29. B Block and the place of occurrence is at House No. 1/H, 4/4. The distance between B Block and H Block was approximately 200/300 meters. There was no playground around the House No. 1/H, 4/4 and they used to play on the road. He admitted that accused Mamun used to go to the office in the morning and return in the afternoon. He denied the suggestion that he did not hear any sounds of shouting and altercation from that house, while they were playing badminton. He denied the suggestion that he deposed falsely in this case.

P.W.-5: Abdul Aziz in his testimony testifies that he is the owner of the Shimul Digital Studio and on 23/01/2006, at about 9:00 p.m. Police personnel from Shah Ali Police Station took him from his Studio to the place of occurrence to take photographs. This witness deposed that he saw a dead body of a young woman was lying in a slaughtered condition on a bed in a room, partly

below and partly above (torn). This witness took photographs of the victim. He also took photographs of cooked vegetable on the stove, clotted blood on the floor and a 'dao' which was lying there. He took in total 15 photographs from the place of occurrence and these are mark as Material Exhibit- I Series.

The defense declined to cross-examined him

P.W.-6 Md. Sumon in his testimony testifies that on 09/11/2010 these photographs were taken by CID officer Iqbal Ahmad from Shimul Digital Studio for the purposes of investigation. He also took the negatives of these photographs and prepared a seizure list. He identified his signature on the seizure list which marked as Exhibit-2/2. The photographs are marked as Material Exhibit-1. The negatives of those photographs are marked as Material Exhibit-2.

The defense declined to cross-examined him

P.W.-7: Dr. Kamrul Hasan Sardar, in his testimony testified that he held autopsy on the dead body of the deceased Mosammat Ferdous Ara Lipi on 24.01.2006, a 22-year-old Muslim female, brought

and identified by Constable No. 1563 Md. Abu Taher and found the following external injuries:-

(1) One cut throat injury on right side of neck (4"x 1½" x muscle).

(2) Incised wound on right side of face (2"x½" x muscle ".)

(3) Incised wound on right mastoid process (2½" x ½" x scalp).

On dissection, trachea, right carotid vessels were found injured. The high vaginal swab was examined and the report was "No spermatozoa were found. He opined that "death was due to haemorrhage and shock as a result of above mentioned cut throat injury, which was ante mortem and Homicidal in nature."

He identified the post-mortem report, which marked as Exhibit-6 and his signature on it marked as Exhibit-6/1. During cross-examination, he denied the suggestion that he did not found any injuries on the body of the deceased.

P.W. 8: Inspector Nur-E-Alam Siddique is the 1st Investigating Officer, who deposed that on 23/01/2006, he was serving as a Sub-Inspector (S.I.)

at Shah Ali Police Station. He is currently serving as a Police Inspector in Natore. On 23/01/2006, while he was on mobile duty, on getting information, he along with the Officer-in-Charge and other police officers went to the place of occurrence. They entered the house and the dead body of Ferdous Ara Lipi was identified by the persons present there. He prepared the inquest report in the presence of witnesses. This witness saw that the dead body of the deceased Ferdous Ara Lipi was lying on the cement floor beside a bed in the guest room. Her age appeared to be approximately 22 years. She was slim build, medium height and had medium-length black hair. A doormat was found beneath her head, and an old blood-stained towel was found beneath her neck. Her face was tilted toward the right side and was facing north. Her mouth and eyes were partially open. A chain was found around her neck, and two bangles were found on her hands. A long, deep incised wound was observed on the right side of her neck below the throat area, which had been covered by a scarf which

she was wearing. She was wearing a white and navy-blue printed scarf and kameez. Underneath her dress, she was wearing a white chemise. She was also wearing an old black-and-blue pajama. A blood-stained red-and-white printed pillow and a wooden-handled sickle were found nearby. No visible bloodstains or other marks were found on the sickle. Additional injuries were also observed on the right side of her face and near the right ear. He identified the signature in the inquest report, which marked as Exhibit 5/2. After completion of the inquest report, he sent the dead body to the Department of Forensic Medicine, Dhaka Medical College for post-mortem examination. He identified the signature in the forwarding report, which marked as Exhibit 7/1. Thereafter, Mohammad Jamerul Abedin Sumon filed the case as Informant. Prior to the filing of the case, he arranged a photographer to take pictures of the deceased and the scene of occurrence; these are marked as material exhibits. This witness also seized various articles including an old carpet doormat, an

old blood-stained towel, Two blood-stained red-and-white printed pillows, a blood-stained red-and-white bed sheet, a silver-colored cooking pot containing cooked food, a wooden-handled sickle and a grey-colored padlock and one plain chain and two bangles from the place of occurrence and prepared a seizure list at about 23:15 hours on 23/01/2006. He identified his signature in the seizure list, which marked as Exhibit 4/2. He identified these articles before the Court and these are marked as Material Exhibit Nos. III, IV, V, VI, VII, VIII, IX, X, XI, XII, Series XIII, XIV and XV. He also identified the lock, bangles and chain before the Court and these are marked as Material Exhibit Nos. XVI, XVII and XVIII. On 24/01/2006, he also seized the clothing and other articles removed from the body of the deceased and prepared a seizure list. He Identify the seizure list which marked as Exhibit 8 and his signature on it marked as Exhibit 8/1. He deposed that the Officer-in-Charge of the police station entrusted him with the investigation of the case. During

investigation, he visited the place of occurrence, prepared sketch map with an index. He arrested three accused persons and produced them before the Court with a prayer for police remand and after obtaining remand of the accused he interrogated them. Subsequently, he was transferred to another police station and handed over the case docket to the officer-in-charge of the police station.

During cross-examination this witness admitted that he did not send the seized articles/exhibits to a fingerprint expert for examination. He did not record any statements of the witnesses under Section 161 of the Code of Criminal Procedure. He conducted the investigation up to 24/01/2006. He did not put any identifying marks on the exhibited articles. He prepared the inquest report at the place of occurrence. During the preparation of the inquest report, the victim's body was examined by a female person, who examined the private parts and according to her examination, no injury was found on the genital area.

P.W. 9: A.S.P. Md. Iqbal Azad is the 7th Investigating Officer, who deposed that he has been serving at the C.I.D Headquarters since 2010. He deposed that as per order of the authority, he formally took over the case docket for investigation on 26/10/2010. During investigation, he visited the place of occurrence and found the sketch map and index which prepared by S.I. Mizanur Rahman was correct. He identified the sketch map which marked as Exhibit 11 and the index marked as Exhibit 12. He identified the signatures thereon which marked as Exhibits 11/1 and 12/1 respectively. This witness also seized various articles including photographs of the place of occurrence and its surroundings, seized the Nikahnama (marriage contract) of the deceased and prepared seizure lists on 08/11/2010 and 09/11/2010. He identified his signature in the seizure list, these are marked as Exhibit 2/3 and Exhibit 3/3 respectively. He reviewed both the inquest report and post-mortem report. He collected and seized one negative of the photographs and a

printed receipt of the photographs from Shimul Digital Studio these are marked as Exhibit Nos.- 9 and 10 respectively. After conclusion of the investigation, finding *prima facie* case against the accused Asadul Haque alias Mamun, he submitted the Charge Sheet being No. 12 dated 16/01/2012 under Section 302 of the Penal Code. He deposed that one accused person is present on the dock.

During cross-examination this witness admitted that he did not type or compose the charge sheet himself. He also admitted that S.I. Nur Alam Siddique started the investigation and continued it up to 28/01/2006. S.I. Mizanur Rahman conducted the investigation up to 30/01/2006. S.I. Amanullah investigated the case from 27/04/2006 to 23/12/2006. S.I. Rashedul investigated the case from 28/11/2006 to 27/09/2007. S.I. Hakim investigated the case from 08/10/2007 to 06/07/2008. Inspector Nuruzzaman investigated the case from 30/10/2008 to 08/06/2010. He investigated the case from 26/10/2010 to

16/01/2012. He denied the suggestion that he and other Investigating Officers, intentionally failed to mention correct information about the incident. This witness admitted that he recorded statements of witnesses namely P.W.-2 Mst. Lucky, P.W.-5: Abdul Aziz and Joynob under Section 161 of the Code of Criminal Procedure. He denied the suggestion that although no witness mentioned about the gold chain, he intentionally included the gold chain in the column of the seizure list as seized alamot. He denied the suggestion that he falsely stated in the charge sheet with regard to the employment of the accused that he worked in a buying house though he was an employee of the Sonargaon Dyeing and Printing Industries. He denied the suggestion that none of the witnesses made statement that the accused has murdered the victim. He denied the suggestion that he did not conduct the investigation properly. He denied the suggestion that he being influenced by the informant submitted the charge sheet on false allegation against the accused, despite

finding no evidence against him. He denied the suggestion that the investigation was perfunctory.

These are the depositions of the prosecution witnesses. Let us now discuss the evidence of the defense witnesses one after another.

D.W.-1: Md. Asadul Haque Mamun (convict-appellant) is the husband of the victim deposed that he is the sole accused in this case. This witness and the victim, Ferdous Ara Lipi got married on 16/11/2004 and on March, 2005, they started living on the ground floor of a rented house situated at house No. 1/H, 4/4, Gudaraghat, Mirpur-1, under Shah Ali Police Station. At that time, he was employed as a cashier at Sonargaon Dyeing and Printing Industries Ltd., situated at 387, South Tejgaon. He also deposed that on 23/01/2006, he and his wife Ferdous Ara Lipi have had their breakfast together as usual and like every other day; she prepared and gave his lunch in a lunchbox. He then left home for work at about 8:15 a.m. and he arrived at the office by 9:15 a.m. wherein he signed the attendance register. This witness deposed that at

about 2:00 p.m., he ate the lunch which was prepared by his wife. Thereafter, at around 2:30–3:00 p.m., his brother-in-law, Md. Sumon, called him and said he has come to his house. He informed this witness that the house was locked. At that time, he told him to go upstairs to the landlord's house because his wife often stayed there and he asked him to inquire there. This witness also deposed that he along with his Accounts Manager Hasan Habib Milon, Administrative Officer Erfan, Purchase Officer Aftab, and Supervisor Nasir Uddin were working at the workplace during the office hours. At about 7:00 p.m., he called his brother-in-law Sumon and asked where he was and in reply he said that he had already left the house because he could not find his sister. Thereafter, he left the office for home at about 7:45–8:00 p.m. and he reached there at around 9:15–9:30 p.m. He saw the front gate was locked, and then he went upstairs to the landlord's house and asked the wife of landlord, whereabouts his wife. In reply, she told him that she had not seen her; he then

came back to downstairs. He deposed that his brother-in-law Hasni Jahidul Babu, who lived in the adjacent room and the landlord's son Masud came down with him. This witness tried to open the lock with his key, but it did not open, he then realized that a different lock had been used. He went to inspect the back door, which appeared to be merely closed. As he touched the door, it was opened. Thereafter, he turned the light on and saw his wife was lying on the floor with her throat cut. As he started hue and cry, the people came forward. He informed the incident to his brother-in-law Sumon. Next, the local Police from Shah Ali Police Station arrived there and arrested him and took him to the police station. This witness further deposed that he had a good relationship with his wife. He does not know who killed his wife or how she was killed. This witness submitted the attendance register of his office before this Court which was marked as Exhibit No. 'Ka'.

During cross-examination this witness admitted that before his marriage, he used to live in another nearby house as a paying guest which is the father's house of his sister-in law. He admitted that the marriage was arranged by their families. He also admitted that he entered his room through the back door and the same was merely closed and it was neither locked nor bolted. He deposed that anyone who previously visited their house knew that entry and exit through the back door was possible. He spoke to his brother-in-law at about 7:00 p.m., at that time; he told him that he had left because he could not find his sister. He admitted that his wife does not have any phone, so he never called her. He also admitted that although, his brother-in-law informed him at around 2:30 p.m. that the house was locked, at that time, he neither came back home nor he contacted with the landlord or his wife to inquire whereabouts his wife. He also admitted that he could not file the F.I.R himself as he was arrested and remained in custody for approximately five and a

half months. He denied the suggestion that due to his efforts, Final Reports True (FRT) were submitted twice. He also admitted that he did not file any Naraji (protest) petition against these two FRTs. He could not recall whether/not he made any application for discharging him from the charge leveled against him. He admitted that he did not file any separate case with regard to the incident.

During cross-examination this witness admitted that he never made any application to summon or produce the attendance register before the Court. He also admitted that the register does not mention the office reporting time or departure time; however, the register was maintained by the office. He admitted that the entries from 24/01/2006 onward contain overwriting regarding his absence and there are alterations in the section showing total attendance days.

He denied the suggestion that he murdered his wife and then went to the office and signed the attendance register on 23/01/2006. He admitted

that he did not produce the landlord, his wife, or their children as witnesses. This witness admitted that landlord's son, Masud Ali was an accused in the case but he was later discharged by the Investigating Officer. He admitted that the house was a semi two-storied building. He could not recall how many other tenants lived there. At the time of preparing the inquest report by the police, he was detained in the adjacent room of the house. He denied the suggestion that the police prepared the inquest report in his presence. He admitted that they are five brothers and one sister. He also admitted that at the time of the incident, he was engaged in a primary share business in addition to his job. He denied the suggestion that he murdered his wife as he did not receive money from shares or dowry. He denied the suggestion that he himself murdered his wife and therefore, he failed to mention or suspect anyone else.

D.W.-2: Md. Ahsan Habib in his testimony testifies that in the year of 2006, he was serving as

Factory Manager of Sonargaon Dyeing & Printing Ltd. This witness indentified his signature which appears at the Serial No. 1 of the factory attendance register, dated 23/01/2006. He deposed that the duty hours were from 9:00 a.m. to 8:00 p.m. and all staff member who signed the attendance register on that day were present at the factory. This witness also deposed that the police came to the factory on 24/01/2006 and on that day; he came to know that the accused Mamun's wife had been murdered. He also testified that the accused was present at the factory on 23/01/2006.

During cross-examination this witness admitted that he was not summoned by the Court. He admitted that the accused brought him here. This witness admitted that the attendance register is a company property and cannot normally be kept at home. He does not know how it came before the Court. He does not know where or how the accused may have killed his wife (objection noted). He admitted that there is a provision for Casual Leave in

their office, which requires a written application submitted in advance. He did not see any such application. This witness admitted that the attendance register shows Casual Leave granted from 24/01/2006 to 31/01/2006, and thereafter it shows him as absent. He admitted that he never visited the place of occurrence. He admitted that he does not know whether the accused killed the victim and then he came back to the office. This witness admitted that he knew nothing about the murder of the accused's wife on 23/01/2006.

These are the deposition of the prosecution and the defense witnesses.

We have gone through the First Information Report, Inquest Report, Charge sheet, deposition of the prosecution and defense witnesses, impugned judgment and order, grounds taken in the petition of appeal and other materials on record and we have given our anxious consideration to the submissions as advanced by the learned Advocates for both sides. We find that the appellant Md. Asadul Haque

Mamun was convicted and sentenced on the basis of the evidence adduced by the P.W.1 Md. Jamirul Abedin Sumon, P.W.-2 Mst. Lucky, P.W.-3 Md. Abu Sayed, PW-4: Md. Saiful Islam Talukder, P.W.-7: Dr. Kamrul Hasan Sardar and P.W. 9: A.S.P. Md. Iqbal Azad and circumstantial evidence.

In the instant case, there is no ocular evidence witnessing the commission of offence committed by convict appellant in their matrimonial home. Prosecution relied upon circumstantial evidence to proof of its case. Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false tutored and biased witnesses but it is very much difficult to procure circumstantial evidence.

In the instant case, we find that there is no direct evidence against the convict-appellant in causing murder of the deceased Lipi. The prosecution sought to prove the charge on the basis

of prosecution witnesses and certain circumstantial fact. P.W.1 Md. Jamirul Abedin Sumon is the informant and brother of the victim Ferdous Ara Lipi. He deposed that on 23/01/2006, at about 9:00 p.m. his brother-in-law, convict-appellant Asadul Haque Mamun, called him on his mobile phone and said that someone had killed his sister and locked the main gate from outside. He rushed to the place of occurrence and saw his sister's dead body was lying on the floor beside the bed in her bedroom with her throat cut and covered in blood. A sickle (*hasua*) was placed on a pillow. His sister was wearing a gold chain around her neck and bangles on her hands. None of the household belongings appeared to have been damaged or theft. This witness also deposed that after marriage, her husband, Asadul Haque Mamun used to put pressure and tortured her every month for money. As they failed to provide money, due to this reason, the convict appellant Mamun, in connivance with other accused, namely Sumir Ali Masud and Hasan Jahidul Babu were killed his

sister. Thereafter, he lodged this F.I.R and the same was registered as Shah Ali Police Station Case No.11 dated 24.01.2006 under sections 302/34 of the Penal Code. P.W.-2 Mst. Lucky, sister of the victim, deposed that the convict appellant Mamun used to put pressure on her sister to bring money for business purposes. She suspected that the convict appellant killed her sister. P.W.-3 Md. Abu Sayed deposed that the deceased Lipi is his niece. On getting information about the incident, he went to the place of occurrence and saw the victim lying on the floor with her throat cut. He saw the convict appellant Mamun was sitting in the adjacent room. He suspected that the convict appellant killed his niece, due to financial matter. P.W.-4: Md. Saiful Islam Talukdar deposed that the occurrence took place on 23/01/2006; he used to play badminton on the road in front of place of occurrence. He also deposed that at about 7:30 p.m. the convict appellant Mamun came there and called them. At that time, they entered into the flat from the back

side and they saw the dead body of the victim, beside the dead body there was a carpet, a blood-stained towel; a pillow; a bed sheet and a dao were there. There was a chain on the neck and two bangles on the hands of the victim. The police came to place of occurrence and they seized these items, prepared a seizure list. This witness heard sound of quarrel and altercation from that the house while they were playing badminton. They used to go to their house while playing and the victim was very cheerful and happy person. P.W. 8: Inspector Nur-E-Alam Siddique is the 1st Investigating Officer, on getting information; he along with other Police Officers went to the place of occurrence and saw the dead body of the deceased was lying on the cement floor beside a bed in the guest room. He prepared the inquest report, in presence of witnesses. He sent the dead body to the morgue for autopsy. P.W.-7: Dr. Kamrul Hasan Sardar, who examined the dead body of the deceased Mosammat Ferdous Ara Lipi brought and identified by Constable Md. Abu Taher on

24.01.2006 and he prepared Post Mortem Report. He found 3 (three) injury marks on the dead body and opined that “death was due to haemorrhage and shock as a result of above mentioned cut throat injuries, which was ante mortem and homicidal in nature.” P.W. 9: A.S.P. Md. Iqbal Azad is the 7th Investigating Officer. During investigation, he again visited the place of occurrence and found the sketch map and index prepared by S.I. Mizanur Rahman were correct and recorded statements of witnesses under section 161 of Cr.P.C. After conclusion of the investigation, finding *prima facie* case against the accused Asadul Haque alias Mamun, he submitted the Charge Sheet being No. 12 dated 16/01/2012 under Section 302 of the Penal Code and did not sent up in the Charge Sheet other 2 (two) accused as he did not find any *prima facie* case against them. Prosecution examined as many as 9 (nine) witnesses to prove their case and defence examined 2 (two) witnesses in his defence. On conclusion of the trial,

the appellant was convicted and sentenced as aforesaid.

Learned Advocate appearing for the Appellant argued that except the P.W. 4 all private prosecution witnesses are near relatives, which cast serious doubt as to the truthfulness of the prosecution case. There is illegality in initiation of the instant case and the defence case is more probably than the prosecution case; they failed to prove their case beyond reasonable doubt by adducing reliable oral and documentary evidence.

First question raised by learned Advocate for the Appellants that whether or not all the prosecution witnesses are near relatives of the Informant or victim and judgment and order of conviction and sentence passed by the trial Court against this appellant on the basis of the evidence of interested, inter-related and partisan witnesses is sustainable in law. The evidence of interested, inter-related and partisan witnesses must be closely scrutinized before it is accepted. We find support of

this contention in the case of *Nawabul Alam and ors.*

Vs. The State, 15 BLD (AD) 61 wherein it is held:

“The principle that is to be followed is that the evidence of persons falling in the category of interested, interrelated and partisan witnesses, must be closely and critically scrutinized. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses for that will result in a failure of justice, but their evidence is liable to be scrutinized with more care and caution than is necessary in the case of disinterested and unrelated witnesses. An interested witness is one who has a motive for falsely implicating an accused person and that is the reason why his evidence is initially suspect. His evidence has to cross the hurdle of critical appreciation. As his evidence cannot be thrown out mechanically because of his interestedness, so his evidence cannot be accepted mechanically without a critical examination. As Hamoodur Rahman, J. (as his Lordship then was) observed in

the case of Ali Ahmed vs. State (14 DLR (SC) 81):

“Prudence, of Course, requires that the evidence of an interested witness should be scrutinized with care and conviction should not be based upon such evidence alone unless the Court can place implicit reliance thereon” (Para -10).

.....The rule that, the evidence of interested witnesses requires corroboration is not an inflexible one it is a rule of caution rather than an ordinary rule of appreciation of evidence. The Supreme Court of Pakistan spelt out the rule in the case of Nazir Vs. The State, 14 DLR (SC) 159, as follows:

“.....we had no intention of laying down an inflexible rule that the statement of an interested witness (by which expression is meant a witness who has a motive for falsely implicating an accused person) can never be accepted without corroboration. There may be an interested witness whom the Court regards as incapable of falsely, implicating an innocent person. But he will be an exceptional witness and, so far as an ordinary interested witness is

concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated along with the guilty the Court will in the case of an ordinary interested witness look for some circumstances that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. That is what is meant by saying that the statement of an interested witness ordinarily needs corroboration.

.....The High court Division was obviously in the wrong in holding that no corroboration was necessary in this case. It failed to scrutinize the evidence of interested eye- witnesses and totally ignored the fact that the evidence of P.Ws. 3-5 having so many infirmities is by itself insufficient and unsafe to sustain any conviction on a capital charge and requires corroboration by either circumstantial or ocular corroborative evidence.”

In the instant case, Prosecution Witness Nos.1
2, 3 and 4 are material witnesses. Admittedly, P.W. 1

is the Informant and brother of the victim, P.W. 2 is the sister of the victim and P.W. 3 is the uncle of the victim and they are closely related to each other, though they are close relatives of the victim, but they cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 1, 2 and 3 can be discarded or liable to be flung to the wind simply because they happened to be close relative of the victim. They are most natural, probable and competent witnesses in the present case. We find support of this contention in the case of *State vs. Moslem reported in 55 DLR (2003) 116* wherein this Division held that:

“A close relative who is a material witness cannot be regarded as an interested witness. The terms ‘interestedness’ postulates that the witness must have some direct interest in having the accused somehow or the other connected for some animus or some other reasons. ‘Interestedness’ has been defined by Supreme Court of Pakistan in the case of Nazir and others vs. State, PLD 1962 (SC)269 in the

following words. "Interested witness is one who has a motive for falsely implicating an accused person."

There is no law that the statement of a particular witness is liable be flung to the wind simply because he happens to be a close relative of the victim. However, the court while putting reliance on the statement of a close relation and so-called interested witness would be on its tiptoe and guard and would scrutinize the statement more carefully. Evidence of close relative has only to be scrutinized with greater care in order to find out whether the same suffer from internal marks of falsehood due to interestedness."

Second question raised by the learned Advocate for the appellant whether or not belated statements of prosecution witnesses under section 161 of the Code of Criminal Procedure makes the prosecution case shaky and doubtful.

We have perused the evidence on record wherefrom it transpires that P.W. 8: Inspector Nur-E-Alam Siddique is the 1st Investigating Officer, who

started investigation of the case and continued it up to 24/01/2006. He did not record any statements of the witnesses under Section 161 of the Code of Criminal Procedure. P.W. 9: A.S.P. Md. Iqbal Azad is the 7th Investigating Officer, who started investigation of the case 11.10.2010 and he recorded the statement of witnesses namely P.W.-2 Mst. Lucky, P.W.-5: Abdul Aziz and Joynob under Section 161 of the Code of Criminal Procedure after a long lapse of time. The Police allowed a considerable long time and gave a long rope to prosecution witness Nos. 1, 2 and 3 for concoction and embellishment of the prosecution story and examination of the witnesses under section 161 of the Code of Criminal Procedure after a long lapse of time from the date of occurrence has rendered the testimony of witnesses unacceptable and the same was excluded from consideration and the witnesses were also disbelieved on that account. Long delay in examining the material witnesses naturally cast a doubt on the whole prosecution case and the learned D.A.G.

appearing for the state could not controvert the submission of the learned Advocate for the convict-appellant in this regards. The Investigation Officer has recorded the statements of prosecution witnesses after a long lapse of time, which gives undue opportunity to the prosecution to embellish their story.

In the case of *Muslim Uddin and others Vs, The State, reported in BLD 1987 page 1*, our Apex court held that examination of the witnesses under section 161 Cr.P.C. after a lapse of 34 days from the date of occurrence, has rendered the testimony of witnesses unacceptable and the same was excluded from consideration and the witnesses were also disbelieved on that account. Similar view was taken in the case of *Bangladesh (State) vs. Paran Chandra Baroi reported in BCR 1986(AD) 225*, our apex court and held that;

“long delay in examining the material witnesses naturally cast a doubt on the whole prosecution case.”

In the case of *Moin Ullah & ors Vs The State*, 40 DLR (1988), 447 this Division held that

“...the prosecution witnesses have been examined under section 161 P.C. after a considerable lapse of time. Although the thana was within 3 miles away from the place of occurrence, the investigating officer came to the place of occurrence on 25th March 1975. He could have examined the witnesses on that very date. He allowed the witnesses a considerable long time, giving a long rope to the prosecution for concoction and embellishment of the prosecution story. The sheer negligence on the part of the Investigation Officer, who should have recorded the statements of the witnesses earlier, is strongly disapproved by us. However as we have found that the prosecution has totally failed in proving their case as given in the F.I.R., it is needless to say anything relating to recording of statement under section 161 Cr.P.C. at a belated stage. It is suffice to say that recording of statement of witnesses after a long lapse of time positively cast serious doubt upon the prosecution story.”

Thirdly, learned Advocate for the appellant also argued that P.W. 4 is a chance witness. It is well settled that the evidence of a chance witness is very weak type of evidence and is not considered worthy in coming to a decision in a criminal case. However, he deposed that the occurrence took place on 23.01.2006, he used to play badminton on the road in front of the place of occurrence. This witness along with convict appellant and others entered into the house of victim and saw the dead body of the deceased. He also deposed that at about 7:30 p.m. on the date of occurrence, the convict-appellant Mamun came to their matrimonial house. This witness also deposed that they heard sound of quarrel and altercation from that house while they were playing badminton. They used to go to their house while playing and the victim was very cheerful and happy person. P.W.-5: Abdul Aziz took in total 15 photographs of the victim as well as the place of occurrence and P.W.-6 Md. Sumon delivered the negatives of these photographs to the Investigating

officers. They knew nothing about the incident. P.W.-7: Dr. Kamrul Hasan Sardar, who held autopsy on the dead body of the deceased Mosammat Ferdous Ara Lipi on 24.01.2006, P.W. 8: Inspector Nur-E-Alam Siddique and P.W. 9: A.S.P. Md. Iqbal Azad are the Investigating Officers. There is no eye witness or ocular evidence and none of the prosecution witnesses witnessed the incident.

Finally, the question is who caused her death and whether the prosecution could prove that the convict appellant in furtherance of his intention caused death of Mosammat Ferdous Ara Lipi. There is no ocular evidence. None of the prosecution witnesses saw the death of the deceased Lipi. We have categorically considered the depositions of all the prosecution and defense witnesses and other relevant documents on record and we find that this is a wife killing case. In this case, there is no direct evidence against the convict appellant in causing murder of the deceased. The prosecution sought to prove the charge on certain circumstantial facts that

victim was living with the convict-appellant and he was present in the house at the time of murder.

Admittedly, the deceased and the convict appellant were husband and wife and they lived in the same house. Ordinarily, an accused has no obligation to account for which he is placed on trial but in a wife killing case or wife murder case, the position of law is all together is different. The murder having taken place while the convict was living with the deceased wife in the same house, the convict has an obligation to explain how his wife met her death. The plea adopted from the side of husband-appellant that he was not present in his house at the time of alleged occurrence and to prove his plea the defense adduced two witnesses. The Convict-appellant himself as D.W.1 deposed that on 23/01/2006, he and his wife Ferdous Ara Lipi have had their breakfast together as usual and like every other day; she prepared and gave his lunch in a lunchbox. He then left home for work at about 8:15 a.m. and he arrived at the office by 9:15 a.m.

wherein he signed the attendance register. Thereafter, he left the office for home at about 7:45–8:00 p.m. and he reached there at around 9:15–9:30 p.m. He saw the front gate was locked and then he went upstairs to the landlord's house and asked the wife of landlord, whereabouts his wife. In reply, she told him that she did not see her; he then came back to downstairs. He along with others entered the house through the back door, which appeared to be merely closed. As he touched the door, it was opened. Thereafter, he turned the light on and saw his wife was lying on the floor with her throat cut. As he started hue and cry, the people came forward. Next, the local Police from Shah Ali Police Station arrived there and arrested him. They took him to the police station. This witness deposed that he had a good relationship with his wife. He does not know who killed his wife or how she was killed. The appellant submitted the attendance register of his office before this Court. He deposed that anyone who had previously visited their house knew that entry

and exit through the back door were possible. He also admitted that he could not log the F.I.R himself as he was arrested and remained in custody for approximately five and half months. He also admitted that the register does not mention the office reporting time or departure time; however, the register was maintained by the office. He admitted that the entries from 24/01/2006 onward contain overwriting regarding his absence and there are alterations in the section showing total attendance days. D.W.-2: Md. Ahsan Habib deposed that in the year of 2006, he was serving as Factory Manager of Sonargaon Dyeing & Printing Ltd. This witness identified his signature which appears at the Serial No. 1 of the factory attendance register, dated 23/01/2006. He deposed that the duty hours were from 9:00 a.m. to 8:00 p.m. and all staff member who signed the attendance register on that day were present at the factory. This witness also deposed that the police came to the factory on 24/01/2006. He

also testified that the appellant was present at the factory on 23/01/2006.

To hold the husband liable the minimum facts either by direct or circumstantial evidence should be proved that the husband was in the house at the relevant time of the occurrence. Then certain liabilities can be imposed on the husband to explain how his wife met her death.

On perusal of the record, we find that none of the prosecution witnesses deposed that on the alleged date and time of occurrence, the appellant-husband was present at his home, when his wife met her death. On the contrary, the P.W.-4 deposed that at about 7:30 p.m. on the date of occurrence, the convict-appellant Mamun came to their matrimonial house.

In the instant case, none of the prosecution witnesses deposed that the convict-appellant was present at the date and time of alleged occurrence in their matrimonial house and there is no

circumstantial evidence to prove that he was present there, which makes the prosecution case shaky and doubtful.

We also find that the convict appellant as the husband took initiative to inform his brother-in-law in respect of unnatural death of his sister, the deceased Lipi. There is no silence on the part of the convict appellant, which could be termed as guilty mind of the convict appellant. It is also evident from the record that the appellant did not flee away from the place of occurrence; rather he was arrested by the local Police on the alleged date of occurrence, which also could not be regarded as guilty mind on the part of the convict appellant. As there is break in the chain of causation and chain of circumstances failed to connect the convict with the killing of the victim Mosammat Ferdous Ara Lipi and as circumstantial evidence is more cogent than the evidence of eye witness and after perusing the materials on record, we are of the view that prosecution is unable to connect the convict-

appellant with the killing of his wife, which does not attract the provision of the Section 302 of the Penal Code. We find irregularity or illegality with regard to the conviction of the convict-appellant. Thus, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and as such, the appellant is entitled to get the benefit of doubt.

Considering the facts and circumstance of the case, we are of the view that the learned Judge of the trial Court failed to apply his judicial mind to appreciate the evidence on record and the testimony of the prosecution and defense witnesses which does not attribute any overt act on the part of the convict appellant. As such, we find substance in the submission of the learned Senior Advocate for the appellant. We also find that the conviction and sentence is unsafe and appellant is entitled to get benefit of doubt as per provision of the Section 114(g) of the Evidence Act.

Accordingly, the appeal is allowed and the judgment and order of conviction and sentence dated

01.02.2021 passed by the learned Additional Metropolitan Sessions Judge, 2nd Adalat, Dhaka in Metropolitan Session Case No.6095 of 2012, arising out of Shah Ali Police Station Case No. 11(01)2006, corresponding to G.R. No.11 of 2006 convicted the convict-appellant under section 302 of the Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Taka 10,000/-(Ten thousand) only, in default to suffer simple imprisonment for 02(two) months more is hereby set aside and the appellant be acquitted from the charge leveled against him. The appellant is discharged from the respective bail bond.

Send down the Lower Court Record with a copy of this judgment at once.

Md. Jabid Hossain, J:

I agree.