

Present:

Mr. Justice Shahidul Karim
and
Mr. Justice Md. Akhtaruzzaman

Death Reference No. 67 of 2016

with

Criminal Appeal No.8953 of 2021
 (arising out of Jail Appeal No.133 of 2016)

The State.

..... Petitioner.

-Versus-

Soumitra Barua alias Babu.

..... Condemned-Prisoner.

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. Dewan Abdun Naser, Advocate with
 Mr. Md. Rezaul Karim Bhuiyan, Advocate
 For the appellant

Heard on 02-01-2022, 03-01-2022, 09-01-2022 and Judgment on 30-01-2022.

Shahidul Karim, J.

This Death Reference has been submitted by the learned Additional Metropolitan Sessions Judge, 4th Court, Chattogram vide his Office Memo No. 13 dated 05-06-2016 for confirmation of the sentence of death imposed upon condemned accused, Soumitra Barua alias Babu under section 302 of the Penal Code. By the impugned judgment and order of conviction and sentence dated 01-

06-2016, the learned Judge of the Court below found the condemned accused guilty under Sections 302/201 of the Penal Code and sentenced him to death in Sessions Case No. 107 of 2006, arising out of Kotwali Police Station Case No. 42 dated 28-03-2005, corresponding to G.R. No. 205 of 2005 and acquitted co-accused Nazimuddin alias Sujon for want of evidence against him. Thereafter, the learned Additional Metropolitan Sessions Judge transmitted the entire proceedings of the case to this Court for confirmation of the death sentence awarded to the condemned accused. Against the aforesaid judgment and order of conviction and sentence, the condemned accused Soumitra Barua alias Babu has also preferred Jail Appeal No. 133 of 2016 which was subsequently converted to a regular Criminal Appeal being No. 8953 of 2021.

Since the death reference and the connected Criminal as well as Jail Appeal arose out of the same judgment and order, they have been heard together and are being disposed of by this single judgment.

The prosecution case came into being from an awful incident in which victim Tajuddin alias Babu was done to death by slaughtering as well as by inflicting dagger blows.

The essence of the prosecution case as has been portrayed in the FIR as well as unfurled during trial is that accused Soumitra Barua alias Babu got acquainted with informant's widowed sister, Nasrin Begum (P.W.10) and taking advantage of that the former often paid visit to the house of the latter. About 4/5 months prior to the incident, the accused gave marriage proposal to P.W.10 Nasrin Begum which was turned down by her family members as the former belongs to a different religion and also forbade him not to make any contact further with Nasrin. But without paying any heed to such request of the informant party, the accused became adamant to get the sister of the informant and started causing vexation to Nasrin on different occasions. In the mean time, P.W.10 Nasrin became familiar with Sujon, whereupon the latter used to pay visit to the house of the informant. Centering round that issue, accused Soumitra Barua alias Babu asked victim Tajuddin alias Babu, the brother of Nasrin to forbid his sister not to keep any contact with Sujon to which he raised protest disclosing that his sister is at liberty to roam about with any person whom she likes. As a result the accused got furious and threatened deceased victim Tajuddin alias Babu. In the morning of 27-03-2005 at around 8.00 am, accused Soumitra Barua made a mobile phone call to victim Babu and asked

him to come to his house at Alkaran on the pretext of providing him a job. Having received such phone call, victim Tajuddin alias Babu left for the residence of Soumitra at 10.00 am in the morning from his work place at Iqbal Store after informing his brother, Ziauddin an employee of that Store. On that night till 11.00 pm, deceased victim Tajuddin did not return home following which his family members being frightened started searching for him here and there. At one stage of searching at around 4.00 am in the night, the informant party got news through local Police Station that accused Soumitra Barua was caught red handed with the dead body of victim Tajuddin from the bank of the river near Abhaymitra Ghat, Firingi Bazar. Having learnt as such, the informant along with his brothers went to the police station and identified the dead body of victim Tajuddin with marks of injury on his occipital region as well as on the neck. It has been suspected that the accused might have killed the victim by inflicting knife blows as well as by slaughtering and eventually tried to hush up the matter by abandoning his dead body in the river after packing it with sack. Following the incident, P.W.1 Md. Jahangir Uddin being informant filed the FIR which gave rise to Kotwali P.S. Case No. 42 dated 28-03-2005.

After lodgement of the case, police took up investigation of the same and having found prima facie incriminating materials submitted charge sheet against accused Soumitra Barua alias Babu including another under sections 302/201 of the Penal Code.

At the commencement of trial, charge was framed against the aforesaid accused under sections 302/201/34 of the Penal Code to which they pleaded not guilty and claimed to be tried as per law.

In order to prove the charge, the prosecution had adduced as many as 15 witnesses out of 25 witnesses cited in the charge sheet who were aptly cross-examined by the defence.

It is to be noted that co-accused Nazimuddin alias Sujon went into hiding after getting bail and as such, the trial court concluded the trial after engaging a state defence Advocate on his behalf.

After closure of the prosecution witnesses, the accused was called upon to enter into his defence under section 342 of the Code while he repeated his innocence and also declined to adduce any evidence in support of his 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 the confession of the accused was not true and voluntary rather it was obtained by applying 3rd degree method.

Eventually, the learned Additional Metropolitan Sessions Judge, Chattogram, 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 successfully been able to bring the charge to the door of the accused to the core and accordingly, convicted and sentenced him in the manner as noted at the incept.

Feeling aggrieved thereby and dissatisfied with the impugned judgment and order of conviction and sentence, the condemned accused has filed the instant Criminal Appeal being No. 8953 of 2021(arising out of Jail Appeal No.133 of 2016). As we have already noticed, the learned Additional Metropolitan Sessions Judge has also submitted the entire proceedings of the case for confirmation of the death sentence awarded to the condemned accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General with Ms. Syeda Shobnum Mustary, the learned Assistant Attorney General appearing on behalf of the State upon placing the FIR, charge sheet, charge, inquest as well as post mortem examination report of the deceased victim, confessional statement of the accused,

evidences on record and impugned judgment and order of conviction and sentence submits with vehemence that the prosecution has successfully been able to bring home the charge levelled against the accused by adducing some cogent, indubitable and trustworthy evidence. He further submits that by giving corroborative evidence, P.W.Nos.4, 5 and 11 have satisfactorily proved that the dead body of deceased victim Tajuddin alias Babu was recovered from the possession of accused Soumitra Barua alias Babu in the night following 27-03-2005 at around 9.00/9.30 pm from Abhaymitra Ghat area. Moreover, the incriminating cutter blade along with some blood smeared wearing apparels and a pillow were recovered from the P.O. room i.e. from the homestead of the accused where the victim was killed, Mr. Ahmed further added. He next contends that accused Soumitra Barua alias Babu confessed to his guilt by making confessional statement which was found to be true, voluntary and inculpatory in nature and further that the accused did not file any retraction application challenging the voluntary and truthful character of his confession. Mr. Bashir Ahmed finally submits that the learned Additional Metropolitan Sessions Judge of the Court below on a careful scanning of the evidences and materials on record rightly and correctly adjudged the guilt of the

accused in the killing incident of the deceased victim and accordingly convicted and sentenced him by the impugned judgment and order which does not require any interference by this Court. In support of his submissions, Mr. Ahmed has put reliance on the cases reported in 17 BLC (AD) 204, 63 DLR (AD) 63, 4 BLC (AD) 223, 12 BLC (AD) 203, (2010) 12 SCC 324 and (2000) 5 SCC 207.

Having refuted the aforesaid submissions, Mr. Dewan Abdun Naser with Mr. Md. Rezaul Kabir Bhuiyan, the learned Advocate appearing on behalf of condemned accused Soumitra Barua alias Babu in Criminal Appeal No. 8953 of 2021 (arising out of Jail Appeal No.133 of 2016) has seriously criticized the impugned judgment and order contending that the prosecution has hopelessly failed to prove the charge mounted against the accused. The learned Advocate has tried to impeach the veracity of the impugned judgment and order on the following scores:

1. that the formal FIR lodged by P.W.1 (Exhibit No.1) cannot legally be treated as FIR since it was not first in point of time as because according to P.W.14, he first got the news about the dead body of the victim through wireless message as such it should have been treated as

FIR and Exhibit-1 should have been left out of consideration;

2. that the prosecution has failed to prove that accused Soumitra Barua alias Babu called away victim Tajuddin over mobile phone and no call list of the alleged phones was also produced before the Court rendering the prosecution case shaky and doubtful;
3. that the confession of the accused was not true and voluntary since it was preceded by 3(three) day remand and further that the relevant Magistrate did not make genuine effort to find out the real character of the confession;
4. that by adducing sufficient and corroborative evidences the prosecution has utterly failed to prove that victim Tajuddin was killed in the house of the accused;
5. that some vital witnesses including the baby taxi driver by which the dead body of deceased victim Tajuddin was alleged to have been carried to Abhaymitra Ghat were not examined as such the accused is entitled to get benefit of section 114(g) of the Evidence Act; and

6. that the prosecution has failed to prove the charge brought against the accused beyond reasonable doubt.

In a last ditch attempt, Mr. Naser submits with folding hand that if the conviction of the accused is ultimately maintained in that event the sentence of death awarded to him may be commuted to one of life imprisonment in view of the fact and circumstances of the case, particularly in consideration of the fact that the concerned accused has been suffering the pangs and agony of death sentence for more than 5 years.

We have heard the learned Advocates of both sides at length, perused the impugned judgment and order together with the entire evidences and materials on record and also took into consideration the attending and surrounding facts and circumstances of the case minutely.

With a view to arriving at a correct decision in the Death Reference and the connected Appeal, we are now called upon to sift and weigh the relevant evidences on record together with the facts and circumstances of the case.

P.W.1 Md. Jahangir Uddin is the full brother of deceased victim Tajuddin alias Babu. In his testimony this witness gives out that his widowed sister Nasrin used to stay with them in the

residence at the 2nd floor of Nasim Bhabon. About 1 & 1/2 years ago accused Soumitra Barua got acquainted with his sister Nasrin following which the former would come to their (P.W.1) residence off and on. At one stage, a love affair had developed between accused Soumitra Barua and his (P.W.1) sister Nasrin. 4/5 months prior to the occurrence, accused Soumitra Barua gave marriage proposal to the family member of Nasrin which was turned down by the latter since he belonged to a different religion. Thereupon, accused Soumitra Barua was forbidden not to keep any contact with Nasrin following which the former became furious, whereupon he used to disturb Nasrin. In the meantime, Nasrin got acquainted with one Sujon who held from Bandel Road as a result the latter used to come to the residence of the informant which had come to the notice of accused Soumitra Barua. 5/6 days prior to the incident, accused Soumitra Barua in presence of Sujon asked deceased victim Tajuddin alias Babu to refrain his sister Nasrin so that she does not keep any contact with Sujon to which the deceased victim replied negatively, whereupon accused Soumitra Barua became annoyed and intimidated the deceased victim. In the morning of 27-03-2005 at around 8.00 am, victim Tajuddin started off to his work place at Iqbal Store. At around 9.30 am accused Soumitra Barua informed

deceased victim Babu over mobile phone that he managed a job for him and also asked him to come to his (accused) residence at Alkaran. On arrival of another brother of the informant named Ziauddin Ali at Iqbal Store, deceased victim Tajuddin alias Babu informed him about the aforesaid conversation with accused Soumitra Barua over mobile phone, and thereafter, he went to the residence of the accused. Till 11.00 pm on that night deceased victim Tajuddin alias Babu did not return back home as a result all of them (informant) became worried and started searching for Babu at his friend's residence. On that night at around 3.00 am, Kotwali thana police came to their (P.W.1) house and informed that they detained accused Soumitra Barua along with a dead body from Abhaymitra Ghat of Firingi Bazar while he was about to dump the same in the river. Thereafter, the informant along with others went to Kotwali P.S. and identified the dead body to be of his brother deceased victim Tajuddin alias Babu. At the relevant time, they found injury marks on the neck and occipital region of the victim caused by sharp cutting weapon and also came to learn that accused Soumitra Barua killed deceased victim Tajuddin alias Babu as he put resistance to the former to keep relation with his sister Nasrin. Later, the informant went to Abhaymitra Ghat and having come to

know about the incident lodged the FIR on 28-03-2005 with Kotwali P.S. This witness proves the FIR including his signature appearing thereon as Exhibit Nos.1 and 1/1 respectively and also identified accused Soumitra Barua in the dock.

The defence has cross-examined P.W.1 in details. But nothing as such has come out from his mouth which could belittle his testimony. In reply to cross-examination this witness states that the accused did not threaten the victim in his presence and further that he was not present while deceased victim Babu was having conversation with the accused over mobile phone. This witness further states that he was not present at Abhaymitra Ghat while the dead body was about to be dumped there. His deceased brother Tajuddin alias Babu and another brother Ziauddin used to work as salesman at Iqbal Store of Riaz Uddin Bazar. Accused Soumitra Barua at first gave marriage proposal to Nasrin and after a long interval thereof accused Nazimuddin alias Sujon used to come to their (P.W.1) residence. He (P.W.1) could not say whether accused Nazimuddin got married with his sister Nasrin on 22-04-2005 through registered kabinnama or not at a dower amount of Tk.2 lac. P.W.1 denied the defence suggestions put to him by the defence strictly.

P.W.2 Mohammad Ali is another brother of deceased victim Tajuddin. In his evidence this witness discloses that he is a salesman at Iqbal Store of Riaz Uddin Bazar and his brother deceased Tajuddin used to work at the same Store. In his absence victim Tajuddin used to go to Iqbal Store and sit there. On 27-03-2005 as it was late for him to go to the shop, deceased victim Tajuddin alias Babu went to Iqbal Store of Riaz Uddin Bazar at around 8.00 am in the morning. Subsequently, he (P.W.2) went to the shop at around 9.00 am, whereupon victim Tajuddin alias Babu left the shop informing him that he would go to accused Soumitra Barua as he assured him to provide with a job. On that day deceased victim Tajuddin alias Babu did not return home following which they became anxious and searched for him here and there. On the night following 27-03-2005 at around 3.40 am (28-03-2005), Kotwali Thana Police came to their (P.W.2) residence and took his brother Jamir Uddin Ashique (P.W.3) and Jahangir Uddin (P.W.1) along with them. About $\frac{1}{2}$ an hour later, he (P.W.2) along with other members of his family went to Kotwali P.S. and found a dead body in a cart which they identified to be of deceased victim Tajuddin alias Babu. At the relevant time, they found marks of injuries on either side of the head including occipital region and also found

serious cut mark injury on the neck. At the material time they also found accused Soumitra Barua in the police station who was being detained there. On query made by police, accused Soumitra Barua admitted that he killed deceased victim Tajuddin alias Babu. Accused Soumitra Barua had a relation with his (P.W.2) sister and deceased victim Tajuddin alias Babu put resistance to that following which the accused became furious and killed the victim in a pre-planned manner along with his cony accused Sujon. This witness identified accused Soumitra Barua and Sujon in the dock.

In reply to cross-examination P.W.2 states that Iqbal Store is a Dry Food Shop and he took permission from the owner thereof so that in his absence his brother Tajuddin can do work on his behalf. This witness further says that he did not see as to when and how deceased victim Tajuddin alias Babu sustained injuries on his person. P.W.2 denied the defence suggestion amongst others that accused Soumitra Barua had no relation with his sister.

P.W.3 Md. Jamiruddin alias Ashique is another brother of deceased victim Tajuddin alias Babu. In his deposition this witness claims that there was a love affairs between accused Soumitra Barua and his sister Nasrin Akhter for about 2/3 years prior to the occurrence. His sister was a divorcee whereupon she used to stay

with them (P.W.3). At one stage, accused Soumitra Barua gave marriage proposal to his sister following which he (P.W.3) and his brother, deceased victim Tajuddin alias Babu put resistance to that proposal. One day, an altercation broke out between accused Soumitra Barua and deceased victim Tajudding alias Babu. In the meantime, a love affairs developed between accused Nazim Uddin and his sister Nasrin. His sister was elder than Nazim Uddin alias Sujon following which they (P.W.3) tried to make him understand the situation. In the morning of 27-03-2005 the around 9/10.00 am, deceased victim Tajuddin alias Babu went to his work place at Iqbal Store of Riaz Uddin Bazar but he did not return home as a result they made search for him here and there. On the following night at around 3/4 am, Kotwali Thana Police came to their (P.W.3) residence and asked them to go to the police station, whereupon he along with his brother Jahangir went to the police station. After $\frac{1}{2}$ an hour of their departure, his another brother Md. Ali (P.W.2) along with other family members went to the police station. On arrival at the police station they found the dead body of deceased victim Tajuddin alias Babu lying on a push cart. They identified the said dead body to be of victim Tajuddin alias Babu and also found accused Soumitra Barua who was being detained in the police

station. Accused Soumitra Barua confessed in their (P.W.3) presence that he killed Tajuddin alias Babu. They (P.W.3) found marks of injuries on the person of the deceased victim. They also came to learn that accused Soumitra Barua was caught red-handed by police and public with the dead body of his brother while he was trying to dump the same. P.W.3 identified accused Soumitra Barua in the dock.

In reply to cross-examination P.W.3 says that he did not witness the killing incident of his brother and further that he was not present while accused Soumitra Barua was being detained by the public. P.W.3 further states that a love affairs developed between accused Nazim Uddin alias Sujon and his (P.W.3) sister Nasrin Begum and thereafter they got married. P.W.3 denied the defence suggestions that accused Nazim Uddin alias Sujon killed his brother and further that he deposed falsely against accused Soumitra Barua implicating him with the incident as he was a friend of co-accused Nazim Uddin alias Sujon.

In his evidence P.W.4 Md. A. Kuddus avers that in the night following of 27-03-2005 at around 9/9.30 pm a CNG run baby taxi went straight to Abhaymitra Ghat. At the relevant time he was having dinner at a nearby restaurant. A person was unloading a

packed sack from the baby taxi which creates suspicion among the people present there. Subsequently, the local people detained that person who came along with the sack by baby taxi. Upon touching the sack the local people sensed that a dead body was being kept there. Subsequently, the matter was brought to the notice of the police, and thereafter, the detained person was handed over to police. A dead body was found inside the sack. Police then took away the detained person to the police station. Police recovered a pillow, vest (গেঞ্জী) and seized those articles vide seizure list (Exhibit No.2) to which he put his signature (Exhibit No.2/1) and also held inquest (Exhibit No.3) of the dead body. P.W.4 identified accused Soumitra Barua in the dock as the person who brought the dead body by a baby taxi and who was held by the public. This witness also identified the aforesaid seized pillow and vest which were tinged with blood as Material Exhibit No.I series.

In reply to cross-examination P.W.4 divulges that at the relevant time he was having dinner seating in a restaurant which is adjacent to the ghat. He heard as well as saw the incident as people were talking about the same. Police appeared at the spot and brought out the dead body after opening up the sack. After bringing the sack and dropping the same, the baby taxi driver went away. He

did not detain the accused at the spot, rather local people caught hold of him. He (P.W.4) himself saw the baby taxi to go to the ghat and also witnessed that the sack was being unloaded by labour. He could not recollect all the injuries found on the dead body except on the neck. P.W.4 denied the defence suggestions that the accused was not detained or that he deposed falsely.

In his testimony P.W.5 Md. Rafique asserts that the occurrence took place in 2005. One night at around 11/11.30 pm, having heard clamour of people he arose from sleep and came to Abhaymitra Ghat. Thereafter, he found a dead body clad in a pant. Police seized vest (গোষ্ঠী), gamcha and pant vide seizure list and obtained his signature thereto (Exhibit No.2/2).

In reply to cross-examination P.W.5 states that after going to the spot he saw the dead body and other articles. He could not say what was written in the paper by the police. Police obtained his signature for taking away the dead body.

P.W.6 Dr. Md. Fazle Rabbi is the relevant doctor who held autopsy of the dead body of deceased victim Tajuddin alias Babu on 28-03-2005 at around 3.10 pm at the identification of Constable No.489 Susanta Barua (P.W.7) and found the following injuries:

- (1) Lacerated wound on right occipital region 2"x1"x $\frac{1}{4}$ ".

(2) Lacerated wound on right parietal region $2'' \times \frac{1}{2}'' \times \frac{1}{4}''$.

(3) Lacerated wound on left eye brow $\frac{1}{2}'' \times \frac{1}{8}'' \times \frac{1}{8}''$, black both eyes.

(4) Lacerated wound on right eye brow $1'' \times \frac{1}{4}'' \times \frac{1}{8}''$.

(5) Haematoma found right and left parietal occipital $4'' \times 2''$.

(6) Incised wound front of right and left neck $2'' \times \frac{1}{4}'' \times \frac{1}{4}''$.

(7) Incised wound on left mandible $1\frac{1}{2}'' \times \frac{1}{2}'' \times \frac{1}{4}''$.

In his opinion, death was due to heamorrhage and shock which were ante-mortem and homicidal in nature. This witness identified the post-mortem examination report and his signature appearing thereon as Exhibit Nos.4 and 4/1 respectively.

P.W.6 was cross-examined by the defence but nothing discriminatory was detected in his cross-examination which can belittle his testimony. This witness denied the defence suggestion that the death was not caused due to neck injury.

P.W.7 Susanta Barua (Constable No.489) is the relevant police personnel who took the dead body of deceased victim to Chattogram Medical College Hospital for post-mortem examination vide Kotwali Thana C.C. No.01/05 dated 27-03-2005.

In reply to cross-examination P.W.7 states that he took the dead body of deceased Babu by a van and handed it over to the Forensic Department. P.W.7 denied the defence suggestions that the dead body did not belong to Babu or that he deposed falsely.

P.W.8 Md. Ali Noor is the relevant Magistrate who recorded the confessional statement of accused Soumitra Barua. In his evidence this witness states that on 13-06-2005 accused Soumitra Barua was brought before him in connection with Kotwali P.S. Case No.42(3)05 for recording his confessional statement, whereupon he afforded him sufficient time and also made him understood that he is a Magistrate not police and also made him aware about the effect of making confession. Thereafter, he jotted down the confession of the accused after complying with all legal necessary formalities and thereafter he read it over to the accused who put his signature thereto. P.W.8 proves the confessional statement of the accused and his signatures appearing thereon as Exhibit Nos.5 & 5/1 to 5/5.

In reply to cross-examination P.W.8 says that he afforded time to the accused while the accused did not complain about any injury on his person. P.W.8 denied the defence suggestions that the confession of the accused was extracted by torture or that it was not voluntary.

P.W.9 Inspector Md. Abdur Rahim is the last Investigating Officer of the case. In his testimony this witness states that during investigation he consulted the C.D, visited the place of occurrence, examined witnesses, prepared sketch map as well as index of the 2nd place of occurrence wherefrom the dead body of the deceased victim was found and also apprehended the accused. He also consulted the sketch map and index prepared by the previous Investigating Officer and found the same to be correct. However, having found prima-facie incriminating materials, he submitted police report against accused Soumitra Barua alias Babu and accused Nazimuddin alias Sujon under sections 302/201 of the Penal Code. P.W.9 proves the sketch map and index prepared on 28-03-2005 by the previous Investigating Officer as Exhibit Nos.6 & 7 respectively and also identified the sketch map and index prepared by him on 15-09-20005 as Exhibit Nos.8 & 9 respectively.

In reply to cross-examination P.W.9 states that the accused made confession during the investigation period of the previous Investigating Officer. P.W.9 denied the defence suggestions that accused Soumitra Barua did not commit any offence, rather accused Nazimuddin alone was responsible for the killing of the deceased victim or that he deposed falsely.

P.W.10 Nasrin Akhter is the sister of the informant as well as deceased victim Tajuddin Babu. In her deposition this witness unfurls that he got married with one Abdul Kader in 1991 and subsequently she divorced him in 1995 as she could not come in agreement with him. In the year of 1999 she became familiar with accused Soumitra Barua and as the intimacy grew up the latter gave her marriage proposal. Eventually, she came to learn that the accused is a ruffian who had a son by his first wife. Her younger brother Tajuddin alias Babu (victim) including other brothers forbade her not to keep relation with accused Soumitra Barua and also put resistance to the same. Subsequently, in the last part of 2004, she (P.W.10) got acquainted with Nazimuddin alias Sujon in connection with his business. At one stage, accused Nazimuddin alias Sujon also gave her marriage proposal and centering round that issue an altercation broke out between her and accused Soumitra Barua. In the morning of 27-03-2005 her brother victim Tajuddin alias Babu started off from house to his work place at Iqbal Store located on the Station Road. At around 10.00 am accused Soumitra Barua made a phone call to her brother while he was at Iqbal Store and asked him to go to his (accused) house in connection with a job. In the night her brother did not return home as a result they

(P.W.10) became anxious. On that night at around 3/4.00 am, police came to their house and informed that the dead body of deceased victim Tajuddin alias Babu was found at Abhaymitra Ghat and further that the accused was also detained. Later, her 2(two) brothers Jamir Uddin and Jahangir went to Abhaymitra Ghat along with police personnel. Subsequently, she along with her other brother went to the police station and found the dead body of her deceased brother on a push cart with mark of injury on head and cut mark on the throat. They also found accused Soumitra Barua in the police station. Having failed to marry her, accused Soumitra Barua killed deceased victim Tajuddin alias Babu after calling him over mobile phone, and thereafter the accused was caught he while concealing the dead body. This witness identified accused Soumitra Barua in the dock.

In reply to cross-examination P.W.10 discloses that she got married with accused Nazim Uddin alias Sujon and their marital relation still subsists. This witness further states that she did not go to Abhaymitra Ghat and also did not witness the killing incident of her brother, rather she saw the dead body of her brother. P.W.10 denied the defence suggestions that accused Nazim Uddin alias Sujon killed victim Tajuddin alias Babu or that accused Soumitra

Barua was framed up in the case in order to screen off her husband Nazim Uddin alias Sujon.

In his testimony P.W.11 Manik Chandra Das states that the occurrence took place 5/6 years ago. At around 9/9.30 in the night the accused was detained along with a sack by the public at Abhaymitra Ghat. Having heard uproar, he went to the spot and found that the accused was being beaten up by the public. After arrival of police, he (P.W.11) opened up the sack and found a dead body inside thereof which was wrapped with a bed sheet. Subsequently, as per dictation of police, he took the dead body to the police station. This witness identified accused Soumitra Barua in the dock as to be the person who was caught by the public at the spot. P.W.11 proves his signature appearing on the inquest-report as Exhibit No.3/2.

In reply to cross-examination P.W.11 asserts that one Shiraj and Munshi were among the people who flogged the accused. His (P.W.11) residence is located in a nearby place of the spot. He fetched a push cart. P.W.11 denied the defence suggestions that he did not open up the sack and brought out the dead body or that he deposed falsely.

P.W.12 Inspector Miah Zahid Hossain is an Investigating Officer of the case. In his evidence this witness states that during investigation he visited the place of occurrence, recorded the statements of witnesses, apprehended the accused, took him on remand and interrogated him about the incident. Subsequently, he made necessary arrangements for recording the confessional statement of accused by a Magistrate. Eventually, he handed over the case docket to A.C (DB) on 08-08-2005 due to his transfer elsewhere. Accused Soumitra Barua confessed to the Magistrate disclosing that he himself and accused Sujon killed victim Tajuddin alias Babu.

In his cross-examination P.W.12 says that the place of occurrence is the residence of the accused. The accused persons killed the victim using different sharp cutting as well as blunt weapon and also by smothering with pillow. P.W.12 denied the defence suggestion that the confession of accused Soumitra Barua was extracted by torture or intimidation.

P.W.13 is an employee of Iqbal Store. This witness claims in his evidence that one Md. Ali (P.W.2) was also worked along with him at the said store. Sometimes victim Tajuddin alias Babu came to Iqbal Store in lieu of his brother, Md. Ali and did the work. In the

morning of 27-03-2005 at around 7.30/8.00 am, victim Tajuddin alias Babu came to Iqbal Store and sat with him (P.W.13). At around 9.00 am, he heard that victim Tajuddin alias Babu was having conversation over mobile phone who left the shop at around 9.30 am after arrival of Md. Ali (P.W.2). On the following day i.e. on 08-03-2005, he came to learn from Md. Ali that victim Tajuddin was killed. He also came to learn from newspaper that accused Soumitra Barua committed murder of victim Tajuddin alias Babu.

In reply to cross-examination P.W.13 states that he came to learn about the incident from newspaper. He could not say as to who made phone call to deceased victim Tajuddin alias Babu at around 9.00 am and further that victim Tajuddin alias Babu did not inform him as to where he would go.

In his evidence P.W.14 S.I. Md. Abdur Rahim divulges that in the night following 27-03-2005 at around 21.05 hours he was on mobile duty within Kotwali Police Station, CMP vide G.D. No.1924 dated 27-03-2005. Having received information through wireless, he went to Abhaymitra Ghat and found that accused Soumitra Barua was being detained by local people and also found a packed sack dead body in front of accused Soumitra Barua. He found injury marks on the neck and head of the dead body, whereupon he held

inquest thereof and sent it for post-mortem examination. No sooner then he arrested accused Soumitra. On receiving information, the full brother of deceased victim, Jahangir Uddin (P.W.1) came to the spot and identified the dead body to be of his brother Tajuddin alias Babu. Later, he seized 2(two) sacks which were attached to each other, a cloth by which the dead body was wrapped, a blood stained vest (গেঞ্জী) including a pillow and a side pillow vide seizure list in presence of witness. On interrogation, the accused took them (P.W.14) to his residence where he killed the deceased victim, whereupon the accused drew out a sharp cutting cutter/blade which was tinged with blood following which he (P.W.14) seized the same. Subsequently, at the instance of the accused, he (P.W.14) recovered 3(three) blood stained maroon coloured stripe lungi and a pillow on 28-03-2005 at 10.05 am in presence of witnesses vide seizure list (Exhibit-10). After lodgment of the case, the task of investigation was entrusted to him. During investigation he visited the spot along with accused Soumitra and seized the alalmats as aforesaid, prepared sketch map and index thereof and examined 4(four) witnesses. On his query, accused Soumitra Barua informed that he summoned deceased victim Tajuddin alias Babu to his house and killed him and thereafter, in a bid to abandon the dead body he

took the same to the river ghat after stuffing the same in a gunny bag, while the local people present at the Abhaymitra Ghat apprehended him. P.W.14 proves the sketch map including his signature appearing thereon as Exhibit Nos.6 and 6/1 respectively along with his signature appearing on the index as Exhibit No.7/1 and also identified the blood stained cutter/blade, 3(three) pieces of blood stained lungi and a pillow cover as Material Exhibit No.II & III series and IV. Later, being directed, he handed over the case docket to DB, CMP on 25-05-2005.

In reply to cross-examination P.W.14 states that in the night following 27-03-2005 at 9.35 pm, he arrested accused Soumitra Barua from Abhaymitra Ghat. After receiving information from the officer-in-charge, he went to Abhaymitra Ghat. In the night following 27-03-2005 at 10.00 pm, the informant got the information of recovery of the dead body, and thereafter, he along with other family members came to Abhaymitra Ghat. He recovered a blood stained cutter/blade from underneath a cot at the instance of the accused. P.W.14 denied the defence suggestions that no blood tinged cutter/blade was recovered at the instance of the accused or that he extracted confession of the accused by torture or that he deposed falsely.

P.W.15 Mir Kashem is the Recording Officer of the case. In his testimony this witness states that on 28-03-2005 he was working as a duty officer at Kotwali Police Station, CMP. On that date at 9.20 am informant Md. Jahangir Alam filed the FIR, whereupon he lodged the case after filling in the FIR form. This witness proves the FIR form including his signature appearing thereon as Exhibit Nos.11 and 11/1 respectively.

These are all about the evidences that had been adduced by the prosecution in order to bring home the charge mounted against the accused.

The only point for determination in this case is, whether the impugned judgment and order of conviction and sentence is legally maintainable or not.

There is no dispute about the factum of death of deceased victim Tajuddin alias Babu. Nevertheless, since the offence alleged involves capital punishment in the form of death penalty, we would like to have a look at the inquest report to see for ourselves as to what injury or injuries were found on the person of the deceased victim at the initial stage of the case and what the apparent cause of death.

P.W. 14 S.I. Md. Abdur Rahim held inquest of the dead body of the deceased victim Tajuddin which has been marked as Exhibit No.3. The relevant portion of Exhibit No.3 reads as under:- “.....
মাথার ডান পাশে ধারালো অস্ত্রের অনুমান ৩” কাটা জখম, মাথার পিছন নিম্নাংশে অনুমান ৩”
ইঞ্চি ২টি কাটা জখম, ডান চোখের উপরে ২” কাটা জখম, বাম চোখের উপরে ভুরুতে
অনুমান ১” কাটা চিহ্ন, বাম চোখের বাম পাশে ১” অনুমান কাটা চিহ্ন দেখিতে পাইলাম। ---
----- মুখের সামনের উপরের পাটির ২টি দাঁত ও ২টি নিচের পাটির দাঁত দেখা গেল না।
দাঁতের মাঝে জিব্বা দেখা যায়। গলার নীচে ধারালো অস্ত্রের অনুমান ৫”x ৪”x ২” লম্বা
কাটা জখম দেখা গেল। ”

(Emphasis added)

From the aforesaid narration, it appears manifestly that at the initial stage of the case several marks of injuries were found on the head, face and neck of the deceased victim.

Regarding cause of death it has been mentioned in Exhibit No.3 that, “ঘটনাস্থল অভয় মিত্র ঘাটে লাশ ফেলার সময় জনতা কর্তৃক ধৃত সৌমিত্র বড়ুয়া
বাবু পিতা সন্তোষ বড়ুয়া সাং-৪৮২ আলকরন ৩ নং লেইন, থানা-কোতোয়ালী জানায় যে,
তাহারা কতিপয় বন্ধু অদ্য ২৭-০৩-২০০৫ তাং রাত ৮.০০ /৮.৩০ মি. এর সময় চান্দগাও
এলাকার কালার পুল এলাকায় হত্যা করিয়া CNG বেবিটেক্সী যোগে মৃত দেহ নদীতে
ফেলিয়া দেওয়ার জন্য তাহাকে পাঠায় বিনিময়ে সৌমিত্রকে ৫,০০০/- টাকা ও ১টি মোবাইল
সেট দেওয়া হইবে বলিয়া জানাইলে সে লাশ নদীতে ফেলিতে আসে এবং এক পর্যায়ে জনতা
কর্তৃক লাশ ফেলার সময় ধৃত হয়। ”

(Emphasis put)

From a bare reading of the aforesaid text it is thus patent that, on preliminary investigation, it was found that deceased victim Tajuddin alias Babu was killed in a brutal manner by accused Soumitra Barua along with his other cohorts and thereafter, while accused Soumitra Barua alias Babu was about to ditch his cadaver in the river, he was caught red handed by the local people.

Admittedly, there is no direct evidence leading to the incident of the brutal murder of deceased victim Tajuddin alias Babu and the fate of the case mainly hinges upon the confessional statement of accused Soumitra Barua alias Babu.

It is on record that during investigation the accused admitted to his guilt by making confessional statement which was recorded by Magistrate Md. Ali Noor (P.W.8) who proved the true and voluntary character of the same by giving evidence in the court.

It is by now well settled that an accused can legally be found guilty and convicted solely banking upon his confessional statement if, on scrutiny, it is found to be true, voluntary and inculpatory in nature. In order to find out whether the confession of accused Soumitra Barua alias Babu has satisfied all the aforesaid criteria or

not, we feel it necessary to have a peep at the relevant confession which has been marked as Exhibit No.5.

The exact text of the confession (Exhibit No. 5) of accused Soumitra Barua alias Babu is quoted below in verbatim:-

“নাসরিন নামের এক মেয়েকে ভালবাসি। সে বিবাহিতা। স্বামী পরিত্যক্ত। সে তার স্বামীর বন্ধুদের সাথে অসামাজিক কাজ করে। তাকে সেখান থেকে ফিরিয়ে আনার জন্য চেষ্টা করি। এভাবে তার সাথে আমার দীর্ঘ $3\frac{1}{2}$ বছর সম্পর্ক হয়। আমি সহ তার পরিবারের লোকজন বোঝানোর চেষ্টা করি। এতে তার প্রতি আমার গভীর ভালবাসা জন্মায়। আমি ঢাকা যাই সম্পর্ক হওয়ার মাঝে ঘটনার দেড় বছর আগে। এতে তার সাথে আমার একটি দুরত্বের সৃষ্টি হয়। এর মধ্যে সুজন নামের একটি ছেলের সঙ্গে সম্পর্ক তৈরী করে আমি জানতাম না। নাসরিনের সাথে আমার বিয়ের বিষয়টি তার পরিবার জানে। তাকে বিয়ে করার জন্য আমি ধর্মান্তরিত হওয়ার লক্ষে নাসরিনকে নিয়ে ডাঃ ইয়ামীনের কাছে গিয়ে সুন্নত করি। ঢাকায় আমাকে গোপন করে সুজনের সাথে নাসরিনের ফুফাত বোনের বাসায় বিয়েতে যোগ দেয়। সেখানে আমার যাওয়ার কথা ছিল। ঢাকা থেকে আমি ফোন করলে সে কথা বলতে চায় না। একদিন তার ফুফাত বোনের বাসায় যাই। বাহিরে সুজনের পরিচয় নিয়ে উভয়ের সাথে আমার ঝগড়া হয়। সেদিন থেকে নাসরীন যোগাযোগ বন্ধ করে। সুজনের সাথে যোগাযোগ করিলে সে আমাকে বলে নাসরিনের ছোট ভাইকে খুন করলে নাসরিনকে আমার কাছে ফিরিয়ে দিবে। আমি শর্তে রাজী হই। ঘটনার দিন সুজন সকাল ৮.০০ টায় আমার বাসায় আসে আমি নাসরিনের ছোট ভাই বাবুকে চাকুরীর কথা বলে আমার বাসায় ওকে নিয়ে আসি। আমি ও সুজন দুজনে মিলে বাবুকে হত্যা করি। সুজন লোহার রড দিয়ে মাথার পিছনে আঘাত করে। আমি খাটের পালং এর কাঠ দিয়ে বাবুকে মেঝের উপর সম্পূর্ণ চেপে ধরে আমি এন্টি কাটার দিয়ে গলায় ২টি আঘাত

করি। বেলা ৩.০০ টা পর্যন্ত বেচে ছিল। তখন আমি ও সুজন মুখের মধ্যে আমি গামছা ও সুজন বালিশ চেপে ধরে। তখন ২ মিনিটের মাথায় মারা যায়। সুজনকে বাসায় রেখে ২টি বস্তা কিনে এনে সেলাই করি মাগরিবের আযানের পর সুজন টেক্সি নিয়ে আসে। আমরা ২ জনে ধরে সিএনজিতে করে অভয়মিত্র ঘাটে নিয়ে যাই। লেবারের হাতে লাশসহ বস্তা তুলে দিলে আমি নৌকার জন্য যাই তখন সুজন পালিয়ে যায়। পরে লেবারসহ লোকজন আমাকে ডাক দেয় লাশ সন্দেহ করে আমাকে ধরে ফেলে। পুলিশকে খবর দেয়। পুলিশ এসে লাশ দেখে আমাকে থানায় নিয়ে যায়। ”

(Emphasis put).

From a plain reading of the aforesaid confession, it appears palpably that accused Soumitra Barua alias Babu implicated himself in the incident of murder of deceased victim Tajuddin alias Babu which had taken place in his own house. Moreover, the factum of arrest of accused Soumitra Barua alias Babu at the hand of the public while he tried to abandon the dead body of the victim has also been admitted by him in his confession. On a careful scrutiny of the confession, it is found that the same appears to be congruous to the prosecution story in material particulars. From a combined reading of the evidence of P.W.8 Md. Ali Noor together with the confession of accused Soumitra Barua alias Babu it transpires explicitly that the relevant Magistrate made genuine effort to find out the voluntary character of the confessional statement of the

accused by making necessary questions as set out under column 6 of the confession recording form. Moreover, the relevant Magistrate gave sufficient time for reflection to the accused while he was placed under the custody of the court peon named Md. Yunus and as the accused still expressed his willingness to confess, the Magistrate concerned took it down and thereafter, it was read over to the accused who admitted the contents thereof to be true and correct by putting his signature thereto. It further reveals from Exhibit No. 5 that under column No.1 the Magistrate concerned gave a memorandum to the following effect:

“প্রত্যয়ন করা যাচ্ছে যে, আসামীকে চিন্তা ভাবনা করার জন্য ১১-৩০ টায় (বেলা) থেকে ৩(তিন) ঘণ্টা সময় দেয়া হয়। বেলা ২-৩৫ মিঃ আসামীকে দোষ স্বীকার করবে কিনা জিজ্ঞাসা করা হলে সে দোষ স্বীকার করবে বলে জানায়। বেলা ২-৪৫ মিঃ থেকে দোষ স্বীকার উক্তি রেকর্ড করা শুরু করি। তাকে আমার খাস কামরায় ১১-৩০ টায় আনা হয়।”

(Underlining is ours).

Under column No.8 of the confession recording form the relevant Magistrate gave memorandum in the following manner:

“আমি আসামীকে পুলিশের ব্যবহার সম্পর্কে জিজ্ঞাসা করলে বলে পুলিশ তার সাথে ভাল ব্যবহার করেছে। দৃশ্যতঃ সে স্বেচ্ছায় স্বতঃ প্রণোদিত হয়ে স্বীকারউক্তি দিয়েছে।”

(Emphasis added).

Under column No.9 of the confessional recording form the Magistrate stated that, “আমি আসামীকে বুঝিয়ে দিয়েছি যে, সে দোষ স্বীকার করতে বাধ্য নয়। সে স্বেচ্ছায় স্বীকার উক্তি দিয়েছে।”

Furthermore, after recording the confession, the accused was sent to Chattogram Jail hajat on the same day at 3.25 pm.

P.W.6 Dr. Md. Fazle Rabbi is the relevant doctor who held autopsy of the cadaver of deceased victim Tajuddin alias Babu. In his evidence this witness gives out the description of 4(four) marks of injuries which were detected on the person of the deceased victim which comes in agreement with that of the injuries as disclosed by the accused in his confessional statement as well.

P.W. Nos. 4, 5 and 15 are private witnesses who gave corroborative evidence that on the occurrence night at around 9.00 / 9.30 pm, local people apprehended accused Soumitra Barua alias Babu along with a sack (বস্তা) at Abhaymitra Ghat and thereafter, recovered a dead body from his possession. P.W.4 and P.W.11 identified accused Soumitra Barua alias Babu in the dock as the person from whom the dead body of victim Tajuddin Babu was recovered.

From the evidences and materials on record it further reveals that accused Soumitra Barua alias Babu did not raise any objection

regarding police torture or intimidation at the time of making confession and also thereafter. Even, he did not file any retraction application after coming out of the clutches of the police. Moreover, the accused said nothing about the voluntary character of the confession though his attention was drawn to his confession by the learned Judge of the trial court while he was being examined under section 342 of the Code. In such view of the matter, the confession of accused Soumitra Barua alias Babu can be regarded as voluntary and true as well .

From the aforementioned discussions, the incriminating circumstances appearing against the accused can be put as underneath:

- (1) that accused Saumitra Barua alias Babu had love affairs with Nasrin, sister of deceased victim Tajuddin alias Babu and consequently accused Saumitra Barua gave marriage proposal to the family members of Nasrin which was turned down by them as he belonged to a different religion;
- (2) that accused Saumitra Barua was forbidden not to keep any contact with Nasrin following which he became furious and started to disturb her frequently;

(3)that in the meantime Nasrin had developed relation with one Sujon who used to visit the residence of the former which fact came to the notice of accused Saumitra and further that 5 to 6 days prior to the occurrence accused Saumitra Barua asked victim Tajuddin alias Babu to refrain his sister Nasrin so that she does not keep any contact with Sujon to which he replied negatively whereupon accused Saumitra Barua became annoyed and intimidated the deceased victim;

(4)that in the morning of 27-03-2005 at around 8.00 am deceased victim Tajuddin alias Babu started off to his work place at Iqbal Store and after reaching there at around 9.30 am accused Saumitra made a phone call to him (deceased victim) and informed that he managed a job for him and also asked him to come to his residence at Alkoron which fact was brought to the notice of his (deceased) elder brother Mohammad Ali (P.W.2) by the deceased victim on his (P.W.2) arrival at Iqbal Store;

(5) that thereafter deceased victim went missing and his whereabouts could not be found till late night of that day;

- (6)that in the night following 27-03-2005 at 9/9.30 pm accused Saumitra Barua went to Abaymitra Ghat by a CNG run baby taxi and unloaded a sack packed dead body from the baby taxi which creates suspicion among the persons present there;
- (7)that the local people, out of suspicion, detained accused Saumitra Barua and on search a dead body was found inside the sack whereupon the matter was brought to the notice of the local police and after arrival of the police the accused was handed over to them along with the dead body;
- (8)that on the occurrence night at around 3.00 am Kotwali police came to the residence of P.W.1 and informed them that they detained accused Saumitra Barua along with a dead body from Abhaymitra Ghat at Firingi Bazar while he was about to dump the same in the river;
- (9)that after being informed P.W.1 along with others went to Kotwali Police Station and identified the dead body to be his brother Tajuddin alias Babu which bore injury marks on neck and occipital region caused by sharp cutting weapon;

- (10) that as per medico-legal evidence the cause of death of the deceased victim is homicidal in nature since his neck was found cut along with other injury on right occipital and right parietal region;
- (11) that accused Saumitra Barua made confession implicating himself in the killing incident of deceased victim Tajuddin alias Babu which, on scrutiny, was found to be voluntary, true and inculpatory in nature; and
- (12) that the incriminating cutter/blade tinged with blade was recovered at the instance of the accused from his house.

The aforesaid incriminating circumstances, in our view, are undoubtedly incompatible with the innocence of the accused. The incriminating circumstances appearing against the accused in the case are well-knit, full and complete and there is no missing link in the chain of circumstances. Such being the position there is no hypothesis expect the guilt of the accused.

Contention has been raised on behalf of the accused that the formal FIR (Exhibit No.1) filed by P.W.1 cannot legally be treated as FIR since it was not first in point of time as because according to

P.W.14 he first got the news about the dead body of victim through wireless message and as such it should have been treated as FIR and consequently Exhibit-1 should have been left out of consideration. But in the facts and circumstances of the case we cannot see eye to eye with the above view expressed by the learned defence Advocate inasmuch as the said wireless message does not contain all the requirements of an FIR as mandated by section 154 of the Code. According to section 154 of the code, the information must relate to the commission of a cognizable offence and it shall be reduced to writing (if given orally) and shall be signed by its maker. The next requirement is that the substance thereof shall be entered in a book kept in the police station in such form as the government has prescribed. Moreover, the First Information Report has to be prepared and it shall be forwarded to the Magistrate who is empowered to take cognizance of such offence upon such report. The officer-in-charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the Officer-in-Charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has

been committed warranting investigation thereto. Since the wireless message in question does not fulfill all the requirements as mentioned hereinabove, the same cannot lawfully be regarded as FIR. It is on record that P.W.1 Md. Jahangir Uddin, the elder brother of the deceased victim went to the police station on the fateful night upon being informed by the police and found the dead body of his brother victim Tajuddin alias Babu with marks of injuries on it and thereupon, he went to Abhaymitra Ghat and became aware of the incident and thereafter, he lodged the FIR naming the accused which was eventually treated as FIR (Exhibit-1). In such view of the matter, no illegality appears to have been committed by the learned Judge of the trial court in treating Exhibit-1 as FIR and the argument put forward by the state defence Advocate on this count appears to be wide of the mark.

Contention has further been raised on behalf of the accused that the prosecution has failed to prove that accused Saumitra Barua alias Babu called away victim Tajuddin alias Babu over mobile phone as because no call lists of the alleged phones were produced before the court which creates doubt about the veracity of the prosecution story. It is true that no call lists of the alleged mobile phones were adduced and proved and admitted into the evidence by

the prosecution. But that alone will not render the prosecution case doubtful inasmuch as P.W.2 Mohammad Ali, the elder brother of the deceased victim categorically stated in his deposition that, “আমি বর্তমানে রিয়াজউদ্দিন বাজারে ইকবাল স্টোরসে সেলসম্যান এর চাকুরী করি। মাঝে মধ্যে আমার ছোট ভাই তাজুদ্দিন আমার চাকুরীস্থল ইকবাল স্টোর্সে বসিত। আমার দোকানে যাইতে দেরী হলে সেও মাঝে মধ্যে উক্ত দোকানে বসিত। আমি দোকানে পৌঁছিলে সে ফিরিত। গত ২৭-০৩-২০০৫ তারিখ আমার দোকানে যাইতে দেরী হওয়ায় আমার ছোট ভাই তাজুদ্দিন বাবু সে সকাল প্রায় ৮.০০ টার সময় রিয়াজউদ্দিন বাজারস্থ ইকবাল স্টোর্সে যায়। আমি সকাল প্রায় ৯.৩০ মিনিটে সেখানে গেলে আমার ভাই তাজুদ্দিন বাবু সে দোকান হতে চলে যায়। সে চলে যাওয়ার সময় সৌমিত্র বড়ুয়া তাকে চাকুরী দেওয়ার কথা বলেছে এবং সেখানে যাবে মর্মে বলেছে।”

P.W.13 Mohammad Junaiyed is an employee at Iqbal Store. Corroborating the aforementioned evidence of P.W.2 this witness (P.W.13) divulges in his testimony that, “আমার সাথে ইকবাল স্টোরে মোহাম্মদ আলী নামের আরো একজন চাকুরী করে। ভিকটিম তাজুদ্দিন বাবু মাঝে মাঝে তার ভাই মোহাম্মদ আলীর পরিবর্তে দোকানের কাজ করে দিত, দোকানে আসত। গত ২৭-০৩-২০০৫ ইং তারিখে সকাল অনুমান ৭.৩০/৮.০০ ঘটিকার সময় তাজুদ্দিন বাবু ইকবাল স্টোরে এসে আমার সাথে বসেছিল। সকাল ৯.০০ টার সময় তাজুদ্দিন বাবুকে মোবাইলে কথা বলতে শুনেছি। অনুমান ৯.৩০ ঘটিকায় মোহাম্মদ আলী দোকানে আসলে তাজুদ্দিন বাবু চলে যায়।”

Thus, it appears that in the morning of the fateful day victim Tajuddin Alias Babu went to Iqbal Store and after arrival of his brother there, he left the shop having informed his brother that accused Saumitra Barua made a phone call to him informing him that he managed a job for him and also asked him to go to his residence. The defence cross-examined P.W.2 and P.W.13 but failed to discard the aforesaid testimony of the witnesses. We also found nothing on record to disbelieve the evidences furnished by P.W.2 and P.W.13. From the aforesaid discussions it appears that in the morning of the fateful day accused Saumitra Barua made a phone call to deceased victim Tajuddin alias Babu and asked him to go to his residence at Alkoron informing that he managed a job for him and accordingly the deceased victim left for the residence of the accused Saumitra Barua after informing his elder brother about the said conversation with accused Saumitra Barua. In such a backdrop, the argument put forward by the learned Defence Advocate regarding non production of telephone call lists does not inspire confidence.

It has further been contended on behalf of the defence that the confession of the accused was not true and voluntary since it was preceded by 3(three) days remand and further that the relevant

Magistrate also did not make any genuine effort to find out the real character of the confession. But, upon going through the evidence and materials on record, we cannot align with the aforesaid submission made by the learned Defence Advocate inasmuch as an accused can be placed on remand either during investigation or at the trial stage of a criminal case under sections 167 and 344 of the Code. Therefore, if no allegation of torture or inducement is made from the relevant accused in that event his confessional statement cannot be viewed with suspicions merely because before making confession he was taken on remand. In the instant case at our hand it is found that accused Saumitra Barua did not make any complain about the voluntary character of his confession by making any retraction application. Moreover, we have already observed that the relevant Magistrate (P.W.8) undertook sincere effort to find out the real character of the confession by making necessary questions to the accused before recording his confessional statement as set forth under column 6 of the confession recording form. Furthermore, the accused was given sufficient time for reflection and upon being asked by the Magistrate he informed that the police behave gently with him. On top of that the relevant Magistrate gave certificate under his own hand that the accused made confession voluntarily.

Therefore, the submission put forward by the learned defence Advocate regarding the involuntariness of the confession does not hold water.

It has been surged forward by the defence that some vital witnesses including the Baby Taxi driver by which the dead body of deceased victim Tajuddin alias Babu was alleged to have been carried to Abhaymitra Ghat were not examined in the case as such the accused is entitled to get benefit under section 114(g) of the Evidence Act. The above submission of the learned defence Advocate is also untenable in law as because the prosecution is not bound to examine each and every witness to prove a particular fact. In otherwords, it is up to the prosecution to determine as to how many witnesses is required to examine in a case to prove a particular fact. In the instant case at our hand, it is true that the prosecution did not examine the concerned Baby Taxi driver by which the dead body of the deceased victim was alleged to have been brought to Abhaymitra Ghat. But this alone will not corrode the entire prosecution case inasmuch as P.W.4 Md. Abdul Kuddus, P.W.5 Md. Rafiq and P.W.11 made statement in unison regarding arrival of accused Saumitra Barua alias Babu along with a dead body at Abhaymitra Ghat by a CNG run bay taxi including the

factum of his being apprehended by the local people out of suspicion upon seeing the dead body kept in a sack with which the accused came to that ghat for dumping the same in the river. P.W.14 is the relevant police officer who first went to Abhaymitra Ghat and found accused Saumitra along with a dead body packed in a sack who was detained by the local people. This P.W.14 prepared inquest report of the dead body of deceased victim Tajuddin alias Babu and sent it for post-mortem examination. Therefore, non examination of CNG run Baby Taxi driver matters little in the face of the evidences on record and the same will not make the prosecution story doubtful and as such the accused is also entitled to get any benefit under section 114(g) of the Evidence Act as canvassed by the learned Defence Advocate.

On a careful scrutiny of the confession (Exhibit No.5) it appears that accused Saumitra Barua implicated himself along with co-accused Nazimuddin alias Sujon in the killing incident of deceased victim Tajuddin alias Babu. But the learned trial court on proper analysis of the evidences and materials on record opined that the prosecution has hopelessly failed to prove the charge brought against co-accused Nazimuddin alias Sujon and accordingly acquitted him. Against the aforesaid decision of the trial court the

State did not prefer any appeal. In the absence of an appeal against the acquittal order of co-accused Nazimuddin alias Sujon we are not inclined to embark upon the task of considering the veracity or legality of the acquittal order of accused Nazimuddin alias Sujon.

We have taken stock of the Jail Appeal being No.133 of 2016 filed by condemned-accused Saumitra Barua. In order to prove his innocence accused Saumitra Barua gave a detailed account of his family background including the hard struggle life of a middle class family man alike him. Moreover, the accused has tried to make out a case that the confession was extracted from him by applying 3rd degree method by the police and it was not voluntary in nature. But no evidence and materials were found on record in support of the aforesaid allegation of alleged torture made by accused Saumitra Barua in the process of obtaining his confession. Therefore, in the absence of any tangible evidence and materials, no reliance can be placed upon such belated statement made by accused Saumitra Barua in his jail appeal which was submitted on 05-06-2016. Suffice it to note that we have observed earlier upon a thread bare discussions that the confession made by accused Saumitra Barua was true, voluntary and inculpatory in nature. Moreover, P.W.4 Md. Abdul Kuddus identified accused Saumitra Barua in the dock saying

that, “যে লোকটি বেবী টেক্সীর মধ্যে লাশ বস্তায় ভরে এনেছিল এবং জনতা কর্তৃক ধৃত হয়েছিল সে অদ্য কাঠগড়ায় আছে সনাক্ত করিলাম।” Similarly, P.W.11 Manik Chandra Das also identified accused Saumitra Barua in the dock disclosing in his evidence that, ঘটনার তারিখ অনুমান রাত ৯/৯.৩০ ঘটিকার সময় অভয়মিত্র ঘাটে জনতা একটি বস্তাসহ আসামীকে আটক করে। আমি হৈ চৈ শুনে সেখানে যাইয়া দেখি ধৃত আসামীকে জনতা মারধর করিতেছে। পুলিশ এসে বস্তা আমি খুলিলে উহার ভিতর বেডসীট দিয়ে মোড়ানো লাশ পাই। আমি পুলিশের কথায় পরে উক্ত লাশটি থানায় নিয়ে যাই। অদ্য ঘটনাস্থলে জনতা কর্তৃক ধৃত আসামী কাঠগড়ায় আছে।”

On the face of the aforesaid evidences of 2(two) witnesses the allegation of the accused of his being falsely implicated in the case as disclosed in his petition of jail appeal appears to be untenable in law.

In the aforesaid premises, we are of the dispassionate view that the confession of accused Soumitra Barua alias Babu is true, voluntary and inculpatory in nature.

Regard being had to the aforementioned discussions and the observations made thereunder, we are tilted to hold that the learned Additional Metropolitan Sessions Judge, upon proper appreciation of the evidences and materials on record, rightly and correctly adjudged the culpability of the condemned accused in the killing incident of the deceased victim to a nicety by the impugned

judgment and order which does not call for any interference by this court.

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

In this case accused Soumitra Barua alias Babu committed murder of victim Tajuddin alias Babu in a brutal as well as shocking manner. He did not even feel a twinge in his conscience while finishing off the life of a young boy aged only 26 years old with whom he had no personal enmity. Deceased victim Tajuddin alias Babu had a long blissful life ahead of him but accused Soumitra Barua alias Babu deprived him to enjoy the air and ambiance of this beautiful world in a barbaric manner. Considering the aggravating as well as mitigating circumstances, we are of the view that death penalty would be the only appropriate punishment for the ruthless accused which will equally commensurate with the magnitude of the crime committed by him.

In the result, the Death Reference is accepted. The sentence of death imposed upon condemned accused Soumitra Barua alias Babu is hereby confirmed.

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

Criminal Appeal No.8953 of 2021 (arising out of Jail Appeal No.133 of 2016) is dismissed.

Send down the L.C. record along with a copy of the judgment to the Court concerned forthwith.

Md. Akhtaruzzaman, J.

I agree.