

Present:

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

Death Reference No.78 of 2016

with
Criminal Appeal No...5533 of 2016
With
Criminal Appeal No...5568 of 2016
With
Jail Appeal No...165 of 2016
With
Jail Appeal No...166 of 2016

The State.

..... Petitioner.

-Versus-

Ataur Rahman @ Ata and others
..... Condemned-Prisoners.

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

Mr. Abdullah-Al-Mamun, Advocate with
Mr. Md. Shaif Uddin, Advocates
.....For the Appellant (in Criminal
Appeal No.5533 of 2016).

Mr. Zulhas Uddin, Advocate with
Mr. Md. Shahed Rajmul Bari, Advocates
.....For the Appellant (in Criminal
Appeal No.5568 of 2016).

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

Heard on 06-03-2022, 07-03-2022, 08-03-2022, 10-03-2022, 13-03-2022, 14-03-2022, 15-03-2022, 04-04-2022, 05-04-2022 and Judgment on 26-04-2022.

Shahidul Karim, J.

This death reference being No. 78 of 2016 has been submitted by the learned Additional Sessions Judge, 1st Court, Gazipur recommending confirmation of death sentence awarded to accused 1. Ataur Rahman alias Ata 2. Alam Hossain and 3. Md. Yousuf alias Yousuf (Absconding). The condemned-accused were put on trial before the Additional Sessions Judge, 1st Court, Gazipur to answer charge under sections 302/34 of the Penal Code. By the impugned judgment and order dated 09-06-2016, the learned Additional Sessions Judge found the condemned-accused guilty under sections 365/387/302/201/34 of the Penal Code and sentenced them to death under section 302 of the Penal Code along with a fine of Tk.10,000/- each in Sessions Case No.125 of 1999, arising out of Kapasia P.S. Case No.8 dated 12-09-1996, corresponding to G.R. No.39 of 1996. By the self-same judgment the condemned-accused were also sentenced to life imprisonment under section 387, 7 years rigorous imprisonment under section 365 and 3 years rigorous imprisonment under section 201 of the Penal Code including fine with default clause. Against the aforesaid

judgment and order of conviction and sentence, accused Aatur Rahman alias Ata and Alam Hossain preferred 2(two) Jail Appeals being Nos.165 of 2016 and 166 of 2016 followed by 2 regular Criminal Appeals No.5568 of 2016 and 5533 of 2016 respectively.

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

The prosecution case sprouted from an awful incident in which an ill-fated boy named Gias Uddin (15) was kidnapped for ransom by miscreants and subsequently he was done to death for not satisfying the said demand.

The essence of the prosecution case, as projected in the FIR as well as unfurled during trial, is that victim Gias Uddin is the son of informant, Md. Abdul Baten Bepary (since deceased), who was called away from his village home by accused Alam and Yousuf and took away along with them in the afternoon of 05-09-1996 at around 5.30 pm and thereafter, the victim boy went missing. Subsequently, having failed to locate the whereabouts of the victim boy, the informant along with P.W.7 and others went to the house of accused Alam and inquired him about victim Gias Uddin while

he disclosed that he along with accused Yousuf took victim Gias Uddin to Monohardi by rickshaw from Chalar Bazar to enjoy circus party. Accused Alam further disclosed that after reaching Monohardi Bus Stand, they met accused Aatur Rahman who along with co-accused Yousuf took away victim Gias Uddin with them having boarded on a bus and also sent him (Alam) back to his residence. Thereupon, the informant went to the residence of accused Aatur Rahman at Velanagor Norsingdi and asked him about his missing son Gias Uddin while the later disclosed that he could search out the victim boy if Tk. 50,000/- is paid to him. It is the hunch of the informant party that his son victim Gias Uddin was confined by the above named accused after abducting him for realization of ransom amounting Tk. 50,000/-. Following the incident, the informant Md. Abdul Baten Bepary (now deceased) lodged the FIR with Kapasia Police Station on 12-09-1996 at 12.15 pm which gave rise to Kapasia P.S. Case No. 8 dated 12-09-1996.

After lodgment of the case, at first, police of the relevant P.S. took up investigation of the same and thereafter, the case was investigated by the D.B. Police, Gazipur. During investigation, it was unveiled that the accused demanded ransom by sending letters and as the ransom demand was not fulfilled the victim boy was

killed and his dead body was dumped at the bank of a canal in Madoli Marshland wherefrom the remains of the dead body of the victim boy was recovered, whereupon the kith and kin of the victim boy identified the same to be of victim Gias Uddin upon seeing the wearing apparels found along with the remains of the dead body. Moreover, during investigation, accused Yousuf was arrested by the police who, on interrogation, admitted to his guilt by making confession that he along with Alam called away victim Gias Uddin along with them in the name of enjoying circus and thereafter, they handed him over to Ataur who took away the victim boy along with him. However, having found prima facie incriminating materials, the Investigating Officer S.I. Selim Ahmed submitted police report against the condemned accused including others under sections 365/387/302/201/34 of the Penal Code.

At the commencement of trial, charge was framed against the condemned accused including others under sections 302/34 of the Penal Code and the charge so framed was read over and explained to the accused present in the dock who pleaded not guilty and claimed to be tried as per law.

In support of the charge, the prosecution had adduced as many as 20 (twenty) witnesses out of 33 (thirty three) witnesses

cited in the charge sheet who were aptly cross examined by the defence.

After closure of the prosecution witnesses, the accused were called upon to enter into their defence under section 342 of the Code while they repeated their innocence and also declined to adduce any evidence in their defence.

The defence case, that could be gathered from the trend of cross examination as well as from the examination of the accused under section 342 of the Code, is of complete innocence and false implication. The further case of the defence is that the confession of accused Yousuf is not voluntary and true rather it was extracted from him by applying 3rd degree method.

Thereafter, the learned Additional Sessions Judge, upon taking hearing from both sides and on an appraisal of the evidences and materials on record, came to the conclusion that the prosecution had successfully been able to bring home the charge brought against the accused to the core and accordingly, convicted and sentenced them in the manner as noted at the incept.

Feeling aggrieved thereby and dissatisfied with the aforesaid judgment and order of conviction and sentence, the condemned-

accused have preferred Jail Appeals followed by 2(two) regular Criminal Appeals. As we have already noticed, the learned Additional Sessions Judge has also transmitted the entire proceedings of the case for confirmation of the death sentence imposed against the accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General with Mr. Tariqul Islam Hira, the learned Assistant Attorney General appearing on behalf of the State and in support of the death reference at the outset has shouldered the painstaking task of placing the FIR, charge-sheet, charge, evidences of witnesses, post-mortem as well as inquest report, confession of the accused, impugned judgment and order of conviction and sentence and other connected materials available in the paper book and then submits with vehemence that the prosecution has successfully been able to prove the charge brought against the accused by adducing some clinching and impregnable circumstantial evidences which unerringly suggests that it is none but the condemned-accused who are responsible for the kidnapping as well as murder of the deceased victim, Gias Uddin. He next submits that by giving corroborating evidence P.W. Nos. 1,3,10 and 13 discloses that before missing, victim Gias Uddin was last seen in the company of

accused Alam and Yousuf and thereafter, taking clue from a letter issued by the miscreants the remains of the dead body of the victim boy was recovered from a distance place i.e. Madoli swamp which was identified by the mother and brother of the victim boy upon seeing his wearing apparels. Moreover, after apprehension, co-accused Yousuf admitted his guilt by making judicial confession wherein he categorically disclosed that he along with Alam called away victim Gias Uddin as per instruction of co-accused Aatur and took him to Monohardi Bus Stand wherefrom they handed him over to co-accused Aatur. Lastly, Mr. Ahmed submits that the learned Additional Sessions Judge, on meticulous analysis of the evidences and materials on record, rightly and correctly found the culpability of the condemned accused in the killing incident of the victim and accordingly, convicted and sentenced them by the impugned judgment and order which, being well founded both in law and facts, does not warrant any interference by this Court. In order to bolster up his submissions, Mr. Bashir Ahmed has referred to the decisions reported in 28 DLR (AD)123, 19 BLC (AD)178, 17 BLD (AD) 241, 66 DLR (AD)111, 35 BLD(AD) 63, 20 DLR (SC) 306, 12 DLR (SC)156, 23 BLD (AD)182, 6 BLD(AD) 79, (1992) 3 SCC 43, (2013)12 SCC 796, (1985) 1 SCC 505, (2002) 6 SCC 81,

(2017) 11 SCC 195, (1983) 3 SCC 217, (2020)12 SCC 467, AIR 1956 (SC) 415, 53 DLR (AD) 50, 29 DLR (AD)1, 74 DLR (AD)11 and 69 DLR (AD)490.

As against these, Mr. Zulhas Uddin Ahmed, the learned Advocate with Mr. Md. Shahed Rajmul Bari appearing on behalf of condemned-accused Ataur Rahman alias Ata in Criminal Appeal No. 5568 of 2016 has critically assailed the veracity of the impugned judgment and order on the following scores:-

1. that there is no eye witness of the occurrence leading to the incident of killing of victim Gias Uddin;
2. that the dead body of the victim boy was not found;
3. that the alleged ransom amount was noted differently at different stages of the case which creates doubt about the veracity of the prosecution story;
4. that the alleged letters claiming ransom were not exhibited and the author of the said letters was not also identified during investigation; and
5. that the facts disclosed in the confession of accused Yousuf is not full and complete so far accused Ataur Rahman is concerned.

On the flipside, Mr. Abdulla Al Mamun, the learned Advocate with Mr. Md. Saifuddin appearing on behalf of accused Alam Hossain in Criminal Appeal No.5533 of 2016 has tried to impeach the veracity of the impugned judgment and order on the following counts:

1. that there is no eye witness of the occurrence leading to the incident of killing of the victim boy;
2. that the evidence of the prosecution witnesses so far the alleged calling away of the victim boy from his residence are not congruous to each other, and as such, the same do not inspire confidence;
3. that the evidence of the prosecution witnesses so far the last seen of the victim boy in the company of accused Alam and Yousuf are also incongruous and as such, they should have been left out of consideration by the trial court;
4. that the alleged letters demanding ransom money did not find place in the FIR though according to P.W.1 they received those letters after 2 days of the incident suggesting that those are afterthought and concocted matter;

5. that the motive of the case has not been proved satisfactorily since there remain differences so far the amount of ransom money as alleged;
6. that the dead body of victim Gias Uddin was not recovered in the case rather some human body remains were found which on medical examination are not found to be of the age group of the victim boy, and as such, it is highly doubtful whether the human body remains found in the case belonged to victim Gias Uddin or not;
7. that most of the prosecution witnesses i.e. P.W.1, P.W.10, P.W.11, P.W. 12 and P.W.13 are relatives of the victim boy and as such, no reliance can safely be placed upon their testimonies ;
8. that no DNA test was done to identify the remains of the dead body alleged to have been found in the case;
9. that accused Alam and deceased victim Gias Uddin being minors their trial ought to have been held by a Juvenile Court;
- 10.that the observation of the learned Additional Sessions Judge so far the age of the victim Gias Uddin is concerned is based on conjecture and surmises; and

11.that the investigation was done in a perfunctory manner.

Lastly, Mr. Mamun submits that the convict appellant has been suffering the pangs and torment of death sentence for the last about 6(six) years. In order to buttress up his submission, Mr. Mamun has placed reliance on the decisions reported in 42 DLR (AD)50, 43 DLR (AD)203, 41 DLR (AD) 152.

Mr. Hafizur Rahman Khan, the learned State Defence Advocate appearing on behalf of absconding accused Md. Yousuf has strenuously criticized the impugned judgment and order submitting that there is no evidence in the case to connect accused Yousuf with the incident of murder of victim Gias Uddin. He next submits that the evidence of P.W.1, P.W.10 and P.W.13 so far the factum of calling away the victim boy by Alam and Yousuf are self- contradictory and as such, no reliance can be placed upon it. He further submits that the confession of accused Yousuf was not brought to his notice while he was being examined under section 342 of the Code as such he was prejudiced in his defence. Moreover, the learned Judge of the Court below most illegally framed charge against the accused under section 365 and 387 of the Penal Code and also convicted and sentenced him thereunder without bringing the same to the notice of the concerned accused

and as such, the accused was highly prejudiced in his defence, Mr. Rahman further added. He also submits that an application was filed on behalf of accused Yousuf before the trial Court for sending the case to the Juvenile Court inasmuch as per confession the relevant accused was a boy of only 15 years of old for which he should have been tried by a Juvenile Court, but the trial court most illegally rejected the same on 26-04-2011. In a last ditch attempt, Mr. Hafizur Rahman has urges upon the court to commute the death sentence of accused Yousuf, especially in consideration of his tender age.

Heard the learned Advocates of both the sides at length, perused the impugned judgment and order along with the evidences and materials on record and also considered the facts and circumstances of the case minutely.

With a view to arriving at a correct decision in the death reference and the connected Criminal as well as Jail Appeals, we are now required to sift and scrutinize the relevant evidences together with the facts and surrounding circumstances of the case.

P.W.1 Umme Kulsum is the sister-in-law (ভাবী) of deceased victim Gias Uddin. In her testimony this witness divulges that there

is a swamp (বিল) towards the northern side of their (P.W.1) homestead. Accused Alam called victim Gias Uddin from the bank of that swamp following which she inquired him (accused) why he was calling the victim boy so loudly. In reply Alam informed her that it was necessary following which deceased victim Gias Uddin went away after coming out of the room. After 2(two) days, a ransom letter was found on the door of the house of her brother-in-law (ভাসুর) Helal. By the letter a ransom amount of Tk.1(one) lac 5(five) thousand was demanded otherwise it was warned that victim Gias Uddin would be killed. It was her (P.W.1) hunch that for non fulfillment of the ransom demand the accused killed the victim boy after taking him away and thereafter, concealed his dead body. Having identified accused Alam and Yousuf as to be the friends of victim Gias Uddin, P.W.1 further states that the above 2(two) accused used to come to their (P.W.1) homestead frequently being close friends of the victim boy. Accused Alam and Yousuf called away victim Gias Uddin from his residence and thereafter killed him. The occurrence came into being about 6/7 years ago, but she could not recollect the exact date thereof.

In reply to cross-examination P.W.1 states that she did not witness the incident of killing her brother-in-law (দেবর) victim Gias

Uddin. Baten is her father-in-law who died 3/4 years ago. There is a large land towards the northern side of the homestead of her father-in-law. She used to reside in her matrimonial house which is surrounded by other homesteads. She could not say as to who gave the ransom letter to whom and when it was delivered. She also could not say who wrote the said letter and to whom it was given. This witness denied the defence suggestions that accused Alam and Yousuf were not bosom friends of deceased victim Gias Uddin or that accused Alam did not call away the victim boy or that she deposed falsely.

In his testimony P.W.2 Shahid Morol states that he knew the informant who had died. The occurrence passed off 7/8 years ago. One day, police apprehended accused Alam, whereupon he disclosed that he took victim Gias Uddin to Monohordi in the name of witnessing movie wherefrom accused Ata took away victim Gias Uddin. Subsequently, he also came to learn that the dead body of Gias Uddin was found after 4/5 months. This witness identified the accused in the dock.

In reply to cross-examination P.W.2 states that he did not personally witness the incident and also could not say where the incident of murder had occurred. The occurrence took place long

ago. This witness further states that he did not see the dead body of the victim and also could not say whether the dead body belonged to victim Gias Uddin or not. He did not see victim Gias Uddin in the company of accused Alam and Ata. P.W.2 denied the defence suggestions that accused Alam did not say anything while he was being apprehended by police or that he deposed falsely.

In his evidence P.W.3 Md. Kajol claims that he knew the informant as well as accused Alam and other accused. The occurrence took place 7/8 years ago. One day Joynal, brother of victim Gias Uddin was searching for his brother while he (P.W.3) informed him that on the preceding day he found accused Alam along with deceased Gias Uddin and another unknown person at Arjun Chor under Monhordi Police Station. At the relevant time, Joynal further told him that ransom letter was found hanging on the door of their homestead whereby 01(one) lac 20(twenty) thousand taka was demanded as ransom and also asked to take away victim Gias Uddin from the bank of Dholadia marshland after paying the ransom money. Later, he came to learn that the dead body of deceased victim Gias Uddin was found near Aglatek vicinity. P.W.3 identified accused Alam in the dock.

In reply to cross-examination P.W.3 discloses that he could not say who wrote the ransom letter which was found hanging on the door of the P.O. house and he also did not see that letter. The unknown person found in the company of the deceased is not present in the dock. P.W.3 reiterated that he found accused Alam and victim Gias Uddin in Arjun Chor area. He did not witness the incident and also could not say who are the perpetrators of the crime. He (P.W.3) used to deal in vegetable at Monohordi Bazar which is located towards the southern side of Arjun Chor. P.W.3 denied the defence suggestion that he did not see accused Alam and victim Gias Uddin at Arjun Chor or that he deposed falsely.

In his evidence P.W.4 Chalim Uddin gives out that informant Baten was known to him and the accused are also familiar to him. The occurrence came into being 5/6 years ago. He is a neighbour of deceased victim Gias Uddin who was known to him from before. One day accused Alam called away victim Gias Uddin. Subsequently, after 2/3 days he came to learn that victim Gias Uddin died and his dead body was found near Beguni Bazar.

In reply to cross-examination P.W.4 says that he heard that victim Gias Uddin was being called away by accused Alam, but he did not see the latter. He did not saw the dead body of deceased

victim Gias Uddin. P.W.4 denied the defence suggestion that he deposed falsely that accused Alam called away victim Gias Uddin.

In his evidence Abdus Samad P.W.5 avers that the informant as well as victim Gias Uddin are known to him. The occurrence took place on 05-09-1996 while victim Gias Uddin was a 7th grader at Chala School. After closure of school, accused Alam and Yousuf called away victim Gias Uddin from his residence took him to Chalar Bazar wherefrom the aforesaid 3(three) persons went to Monohordi by a rickshaw. Later, accused Yousuf and Alam returned back home after handing over victim Gias Uddin to accused Ata. Thereafter, the whereabouts of deceased victim Gias Uddin could not be known. After a long interval the dead body of deceased victim Gias Uddin was found which was packed in a sack. The dead body was identified upon seeing its wearing apparels. A ransom letter was found hanging on the door of the residence of victim Gias Uddin whereby Tk.1,05,000/- was demanded as ransom. He saw that letter which was seized by police vide Exhibit No.1 to which he put his signature (Exhibit No.1/1). This witness identified the accused in the dock.

In reply to cross-examination P.W.5 states that the homestead of the accused is about 1(one) mile away from that of the victim.

He did not see the victim to go to Monohordi by rickshaw including the incident of his being handed over to accused Ata. He did not identify the dead body of the victim. He (P.W.5) did not recognize the handwriting of the scribe of the ransom letter.

In his evidence P.W.6 Md. Ukil Uddin discloses that he knew the informant as well as victim Gias Uddin. The occurrence had happened on 05-03-1993. The mother of Gias Uddin informed him shouting that accused Alam called away her son whereupon he went missing. After being apprehended, accused Alam was interrogated by the police in front of many others including herself while the concerned accused disclosed that he along with accused Yousuf took away victim Gias Uddin and handed him over to accused Ata. Thereafter, the whereabouts of victim Gias Uddin could not be found.

In reply to cross-examination P.W.6 says that he could not say as to when and how victim Gias Uddin died. He did not see the incident of taking away of victim Gias Uddin as well as the factum of his being handed over to accused Ata. This witness further states that the dead body of deceased victim Gias Uddin was not found.

P.W.7 Md. Hoazrat Ali, P.W.9 Md. Aminul Hoque and P.W.14 Abdur Razzak were tendered and the defence also declined to cross-examine them.

In his testimony P.W.8 Tomij Uddin Master divulges that the informant as well as the victim are known to him. On 05-09-1996 victim Gias Uddin was killed. On 10-11-1996 he found bones, heir, vest, lungi which were packed in a sack at the bank of Maduli Marshland. He came to learn that victim Gias Uddin was kidnapped for Tk.50,000/- and the accused persons gave letter to the father of the victim for realization of ransom money. The father of the victim did not response due to fear of life. Subsequently, the accused persons informed the father of the victim by sending letter that his son was kept in Maduli swamp. Accused Ata, Alam, Yousuf, Abdul Hai and his son including son's wife killed the victim. On 10-11-2016 he found the dead body of the victim to the western side of Maduli Canal. Police seized some articles vide seizure list to which he put his signature (Exhibit No.1/2). This witness identified the seized alamats in the court as Material Exhibit Nos.I, II, III & IV.

In reply to cross-examination P.W.8 states that the informant is his cousin brother. His (P.W.8) residence is about 1(one)mile away from Maduli Marshland. He did not see the incident of taking

away victim Gias Uddin and further that he is not an eye witness of the occurrence. He did not see any dead body. He could not say as to whose dead body was recovered and whose wearing apparels as well as letter was seized. Rather, he heard that a boy was killed but he could not say who kidnapped as well as killed him. P.W.8 denied the defence suggestion that he deposed falsely.

P.W.10 Nurjahan is the mother of deceased victim Gias Uddin as well as the wife of the informant. In her testimony this witness gives out that on 10 Bhadra, 1996 accused Yousuf and Alam called away her son Gias Uddin from her residence and took him to Monhordi Bus Stand by rickshaw whereupon they handed over her son to accused Ata. By sending letter accused Ata including others asked her husband to go to the bank of Dhalai swamp under Shibpur P.S. along with ransom money amounting Tk.1,50,000/-. But, due to fear, her husband did not go there, whereupon the accused persons killed her son and abandoned his dead body in the swamp after stuffing it into a sack. Accused Ata again informed them (P.W.10) by sending letter that the victim boy had been killed. Her son was killed by the accused in a pre-planned manner.

In reply to cross-examination done by accused Ata and Alam P.W.10 says that she was not present at the spot while her son was killed. Accused Alam is a friend of his son and they maintained a good relation. She alone was present at her residence while her son was being summoned by accused Yousuf and Alam. During the night they carried out search for her son as he did not return back home. The ransom letter was found in the night. She did not go to see the dead body because she had fallen ill. A human skeleton was brought to her residence. She found a wearing lungi and vest(গেঞ্জী) along with the human skeleton after 3(three) months into the incident. Her son was wearing lungi and vest(গেঞ্জী) while he went missing. She could not say as to who wrote the ransom letter addressing to her husband. She could not say as to who wrote the ransom letter as well as who delivered it. P.W.10 denied the defence suggestions that accused Alam did not take away her son from the residence by calling or that she deposed falsely.

In reply to cross-examination conducted by accused Yousuf P.W.10 states that accused Yousuf came to her residence and called away victim Gias Uddin along with him. P.W.10 denied the defence suggestions that accused Yousuf did not take away her son or that she knew nothing about the killing of her son.

P.W.11 Md. Bonde Ali is the brother-in-law (বেয়াই) of the informant. This witness unfurls in his evidence that he knew deceased victim Gias Uddin and the accused are also known to him. The occurrence came to pass on 10th Bhadra, 1996. Accused Alam and Yousuf went to the house of the informant and took away deceased victim Gias Uddin along with them to Monohordi by rickshaw and handed him over to accused Ata. They (P.W.11) interrogated accused Alam while he disclosed that they handed over deceased Gias Uddin to accused Ata. Tk.1 (one) lac 5(five) thousand was demanded to the informant by sending letter, but he could not pay the same. Following which victim Gias Uddin was killed and thereafter, his dead body was abandoned in the marshland after putting it in a sack. Later, the accused persons informed by sending letter that the dead body was ditched in the swamp and also asked to do the funeral after taking it.

In reply to cross-examination done by accused Yousuf, Ata and Alam P.W.11 says that in the night of occurrence he came to learn from informant that accused Yousuf and Alam called away victim Gias Uddin. He is not an eye witness of the incident. He could not say who wrote the ransom letter as well as tounge out the same. In the police station Alam admitted that he called away

victim Gias Uddin. P.W.11 denied the defence suggestions that accused Alam did not call away victim Gias Uddin from his residence or that he deposed falsely.

In his testimony P.W.12 Mainuddin asserts that the occurrence took place in the month of Bhadra, 1996. He knew both the informant and the victim. In the afternoon of the date of occurrence at around 5.30 pm., accused Alam and Yousuf came to residence of the informant and took away victim Gias Uddin from his house in the name of witnessing circus. He (P.W.12) himself saw accused Alam and Yousuf to call away victim Gias Uddin. Later, the accused persons demanded Tk.1(one) lac 5(five) thousand by sending letter in lieu of release of victim Gias Uddin. He saw the ransom letter. But his uncle did not respond to the said letter following which the accused persons killed deceased victim Gias Uddin and abandoned his dead body in the swamp after putting it into a sack. About 2/3 months later, the accused informed by giving letter that the dead body of victim Gias Uddin was lying on the marshland.

In reply to cross-examination done by accused Ata, Yousuf and Alam P.W.12 discloses that he was at the northern side of the residence while Alam called away victim Gias Uddin. He saw

victim Gias Uddin to go along with the accused. P.W.12 denied the defence suggestions that Yousuf and Alam did not call away victim Gias Uddin or that the accused are not connected in the incident of killing of the victim or that he deposed falsely.

P.W.13 Joynal Abedin alias Joynal is the elder brother of deceased victim Gias Uddin. In his evidence this witness claims that the occurrence took place on 05-09-1996. On that date he was selling rice at Chalar Bazar. In the afternoon at around 5.00 pm, he found his brother Gias Uddin in the market along with accused Yousuf and Alam who were having nut. Thereafter, accused Yousuf and Alam took away his brother in the name of witnessing circus and handed him over to accused Ata. Later, accused Ata demanded Tk.1(one) lac 5(five) thousand as ransom by sending letter. Thereupon, having failed to realise the ransom amount, the accused persons killed his brother and ditched his dead body at Aglartek of Maduli marshland after stuffing the same in a sack. They (P.W.13) went to the house of accused Alam and Yousuf who demanded money to find out his brother. Thereafter, one Kajol informed them by sending letter that the dead body of his brother could be found at Maduli swamp land, whereupon they went there and recovered the dead body of his brother which was identified by seeing torn vest (গেঞ্জী) and lungi of his brother.

In reply to cross-examination conducted by accused Yousuf P.W.13 states that he was at his residence while deceased victim Gias Uddin was being summoned from his house. He was at his shop in Chalar Bazar while at around 5.00 pm his brother was taken away by the accused. The accused persons sent 3/4 letters demanding ransom amount of Tk.1,05,000/-. Accused Ata delivered those letters. The dead body of his brother was found after 3(three) months. By sending letter accused Kajol informed the place where the dead body of his brother could be found.

This witness further states that he did not see the accused to take away victim Gias Uddin. At the relevant time the age of accused Yousuf was 11/12 years who including accused Alam, Yousuf and victim Gias Uddin were students of school. P.W.13 denied the defence suggestions that accused Yousuf did know nothing about the killing of the deceased victim or that he did not see accused Alam and Yousuf having nut along with victim Gias Uddin in the Bazar.

In reply to cross-examination done by other accused P.W.13 says that his brother was a student of Chalar Bazar School who had no animosity with the accused. He did not raise alarm while his bother was being taken away by the accused or he did not follow them since he could not know that the accused would kill him. At first the accused persons took his brother to Chalar Bazar. He did

not witness as to how his brother was killed and further that he also did not know who delivered the ransom letter but those were written by accused Kajol. He did not see accused Kajol to write those letters. P.W.13 denied the defence suggestions that the recovered dead body did not belong to his brother or that the accused persons did not take away his brother by calling and killed him.

P.W.15 Md. Jahir Uddin Babor is the concerned 1st Class Magistrate who penned down the confessional statement of accused Yousuf. In his evidence this witness asserts that on 23-09-1996 at around 2.30 pm, accused Yousuf was brought before him by the police of Kotwali Police Station for recording his confessional statement. Thereafter, he afforded to accused sufficient time for reflection and then took down his confessional statement at his chamber. This witness proves the confessional statement including his signature appearing thereon as Exhibit No.3.

In reply to cross-examination P.W.15 states that at the time of recording confession accused Yousuf was in good health. He could not say what was the actual age of the accused at the relevant time. P.W.15 denied the defence suggestion that accused Yousuf was tortured by the police and thereafter he was produced before him for recording of his confessional statement.

P.W.16 Inspector Md. Nazmul Hoque is the Investigating Officer of the case. In his testimony this witness states that on 29-09-1996 while he was working at Gazipur D.B Police as S.I, the task of investigation of the case was entrusted to him, whereupon he took the charge of investigation on 01-10-1996. During investigation, he consulted the case record, visited the place of occurrence and examined witnesses who were earlier asked by the previous I.O., took under his custody the ransom letter received by the informant and got down the statement of witnesses under section 161 of the Code, received the human skull recovered by S.I. Sahajan Ali of Kotwali Police Station and made necessary arrangement for chemical examination of the same and also took necessary measures for recording the confessional statement of accused Yousuf. Subsequently, being directed by the chemical examiner, he sent the skeleton of deceased victim Gias Uddin to Forensic Medical, Department of Dhaka Medical College Hospital. During his investigation, he found prima-facie incriminating materials against the accused. However, on 20-09-1998, he handed over the case docket of the case to O.C, D.B.

In reply to cross-examination P.W.16 says that as per FIR, the occurrence took place on 05-09-1996 and the case was registered on 12-09-1996 with Kowtali Police Station which is 12 (twelve) miles away from the homestead of the informant. During

the above period, the informant did not file any G.D Entry in connection with his son Gias Uddin. He (P.W.16) did not find any eye witness to the occurrence. P.W.16 denied the defence suggestions that he did not find anything regarding the involvement of the accused in the incident or that the recovered human skeleton did not belong to Gias Uddin.

P.W.17 S.I. Md. Nazmul Islam Khan is another Investigating Officer of the case. In his evidence this witness says that during investigation, he visited the spot and examined witnesses, obtained viscera report and sent the bones of the dead body to Forensic Department, Dhaka Medical College Hospital. Later, due to his transfer to Joydebpur Police Station, he handed over the case docket to O.C, DB.

In reply to cross-examination P.W.17 states that he was transferred before receiving Forensic Report of the bones of deceased Gias Uddin. He visited the place of occurrence 2/3 times.

P.W.18 S.I. Selim Ahmed is another Investigating Officer of the case. In his evidence this witness deposed that while he was working at Gazipur D.B on 14-06-1999, he got the charge of investigation of the case. During investigation, he visited the place of occurrence and found the sketch map and index correct which were prepared by the previous Investigating Officer. He also noted down the statement of some witnesses and collected the

chemical examination report of the bones of deceased victim Gias Uddin. However, having found prima-facie incriminating materials, he submitted police report against the accused under sections 365/387/302/201/34 of the Penal Code.

In reply to cross-examination P.W.18 states that he consulted the case docket prepared by the previous Investigating Officer.

P.W.19 Dr. Md. Mozibor Rahman is a member of the Medical Board which, on 13-11-1996, conducted autopsy of some human bones at the identification of Kotwali Police Station Constable No.182 Md. Shamsul Hoque which were stuffed in a sack. It was written in the challan that the human bones belonged to Md. Gias Uddin. During examination, they found the following bones:

- (1) Skull one piece,
- (2) Some hair length about $2\frac{1}{4}$ " ,
- (3) Vertebrae 23 pieces,
- (4) Socket $\frac{7/6}{7/7}$, mandible one,
- (5) 3(three) teeth,
- (6) 21(twenty) pieces of ribs bone,
- (7) Ulna 2(two) pieces,
- (8) Scapula 2(two) pieces,
- (9) Hip bone 2(two) pieces,

- (10) Femur 2(two) pieces,
- (11) Tibia 2(two) pieces,
- (12) Radius 2(two) pieces,
- (13) Fibula 2(two) pieces,
- (14) Scrum one piece,
- (15) Tales one,
- (16) Metatarsal 5(five) pieces,
- (17) Metatarsal 4(four) pieces,
- (18) Phalanxs 5(five) pieces and
- (19) Cuniform bone one pice.

Having examined the aforesaid human bones they (P.W.19) concurrently held that those belonged to a male person aged about 17-20 years who had died few months ago.

This witness further says that the aforesaid human bones were sent for chemical examination but no poison was detected there. But, as per forensic report, those bones belonged to an adult male person. P.W.19 proves the post-mortem examination report including his signature appearing thereon as Exhibit Nos.4 & 4/1 respectively, chemical examination report as Exhibit No.5, forensic report dated 04-06-1998 as Exhibit Nos.6 including the report prepared on 01-04-1999 and his signature appearing thereon as Exhibit Nos.7 & 7/1 respectively.

In reply to cross-examination P.W.19 states that police constable Md. Shasul Hoque brought a sack stuffed with human bones and told that those belonged to Md. Gias Uddin. Except skull, a human body contains 206 pieces of bones. They did not find all the bones of a human being in the sack. Having seen hip bone it could be detected whether it belonged to male or female. Hip bone of a male person is smaller than that of the female. They did not find any marks of injuries on the bones and also could not detect the actual cause of death.

P.W.20 Md. Shamsul Kabir is the recording officer of the case. In his evidence this witness states that on 12-09-1996, he was working at Kowtwali Police Station as officer-in-charge while upon receiving a written FIR from informant Md. Baten Bepari he lodged the case under sections 365/387 of the Penal Code and handed over the task of investigation to P.S.I. Ohidul Islam. This witness proves the FIR form including his signatures appearing thereon as Exhibit Nos.8, 8/1 & 8/2 and 8/3. Subsequently, he came to learn that the informant died.

In reply to cross-examination P.W.20 says that the informant caused the FIR written by another person.

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

Having waided through the evidences and materials on record as discussed above, it appears manifestly that victim Gias Uddin, accused Alam Hossain and Yousuf are known to each other from before being friends and on the date of occurrence i.e. in the afternoon of 05-09-1996 at around 5.30 pm, Thursday, the aforesaid 2(two) accused called away victim Gias Uddin from his residence and took him to Monohardi in the name of enjoying circus.

P.W.1 Umme Kulsum is the sister in law (ভাবি) of deceased victim Gias Uddin who in her evidence categorically unveils that, 'আমার বাড়ীর উত্তরে বিল আছে। ঐ বিলের পাঁড় থেকে আলম, গিয়াস উদ্দিনকে ডাক দিয়াছিল, তখন আলমকে বলি এত জোরে গিয়াস উদ্দিনকে ডাকেন কেন? তখন আলম আমাকে জানায় দরকার আছে তার পর দেখি গিয়াস উদ্দিন ঘর থেকে বাহির হইয়া যাইতেছে।'

P.W.10 Nur Jahan is the mother of the victim Gias Uddin who in her testimony avers that, '১৯৯৬ সালের ১০ই ভাদ্র আসামী ইউসুফ ও আলম আমার ছেলে গিয়াস উদ্দিনকে আমার বাড়ী হতে ডেকে নিয়ে যায়।'

In reply to cross examination this witness reiterated that, 'ইউসুফ ও আলম যখন আমার ছেলেকে ডেকে নেয় তখন বাড়ীতে আমি একা ছিলাম। আমার ছেলে রাত্রে বাড়ী না আসলে বাড়ী বাড়ী খোজ খবর করেছি।'

She further states in her cross-examination that, 'ইউসুফ আমার বাড়ীতে এসে আমার ছেলে গিয়াস উদ্দিনকে নিয়ে যায়।'

P.W.12 Moin Uddin is the nephew of the informant who in his testimony gives out that, 'ঘটনার দিন বিকাল অনুমান ৫.৩০ মিনিটের সময় আলম/ইউসুফ এজাহারকারীর বাড়ীতে এসে সার্কাস দেখার কথা বলে গিয়াস উদ্দিনকে বাড়ী থেকে নিয়ে যায়। আলম ও ইউসুফ যখন গিয়াস উদ্দিনকে ডেকে নিয়ে যায় তখন আমি দেখেছি।'

In reply to cross examination this witness also reiterated that, 'গিয়াস উদ্দিন যখন আলমকে ডাক দেয় তখন আমি নিজ বাড়ীর উত্তর পার্শ্বে ছিলাম। আসামীদের সাথে গিয়াস উদ্দিনকে যেতে দেখেছি।'

P.W.13 Joynal Abedin @ Janal is the elder brother of deceased victim Yousuf who in his evidence discloses in univocal terms that, '.....ঘটনার তারিখ ০৫-০৯-১৯৯৬। ঐ তারিখে আমি চালার বাজারে চাল বিক্রয় করছিলাম। ঐ সময় বিকাল অনুমান ৫.০০ ঘটিকার সময় আমি আমার ভাই গিয়াস উদ্দিনকে বাজারে দেখতে পাই। আসামী ইউসুফ ও আলম এবং আমার ভাই বাজারে বাদাম খাচ্ছিল।'

This P.W.13 was subjected to cross-examination by the defence but nothing as such has come out from his mouth which could belittle his aforesaid evidence so far the factum of seeing victim Gias Uddin in the company of accused Yousuf and Alam in Chalar Bazar is concerned. Having corroborated the aforesaid testimony of P.W.Nos.1,3,10,12 and 13, P.W.11. Md. Bonday Ali also unveiled in his evidence that in the night of the occurrence he came to learn from the informant himself that accused Yousuf and Alam called away victim Gias Uddin.

Evidences on record further reveal that victim Gias Uddin went missing after he was being called away by accused Yousuf and Alam. From the evidence of P.W.13, it is also found that the informant party including P.W.13 and others went to the house of accused Yousuf and Alam in search of the victim boy while they demanded money to find him out. This part of the evidence has not at all been denied or controverted by the accused while he was being cross-examined by the defence. In his evidence P.W. 13 says that, 'আমরা অন্যান্য লোকজন নিয়ে ইউসুফ ও আলম এর বাড়িতে গেলে তারা টাকা দাবি করে। বলে টাকা দিলে আমার ভাইকে বের করে দিবে।'

From a careful scrutiny of the evidences on record, it appears explicitly that after missing of the victim boy, the informant party

got several letters from the miscreants who demanded ransom amounting Tk. 1,05,000/- in lieu of release of the victim boy which was accompanied with a threat of dire consequences, if the demand of ransom is not fulfilled. Evidences and materials on record further go to show that the informant being a poor farmer and out of fear he could not comply with the direction of the miscreants and subsequently, after 2-3 months into the incident, the miscreants by sending another letter informed him that the dead body of Gias Uddin could be found at Madoli swamp. Thereafter, on 10-11-1996, taking clue therefrom one PSI of Kapasia Thana named Md. Shajahan Ali recovered some human body remains in presence of P.W.8, 12 and 13 vide inquest report Exhibit No.2.

In his evidence P.W. 8 Tamiz Uddin Master divulges that on 10-11-1996 he found some human bones and hair including Lungi and Gamcha in a sack at the bank of Madoli Canal. He heard that victim Gias Uddin was kidnapped for ransom amounting Tk. 50,000/- and the miscreants sent letter to the father of the victim. But the father of the victim boy out of fear did not go to meet the demand of ransom following which the miscreants informed him by giving letter that they had killed the victim boy and abandoned his dead body at Madoli Canal for not satisfying their demand. He

(P.W.8) saw human remains at the western bank of the said Canal on 10-11-1996, whereupon police prepared a seizure list to which he put his signature (Exhibit No.1 / 2). This witness proves the alamats such as a torn white colour vest, 2(two) parts of a check lungi, a sack and 4(four) pieces of rope as Material Exhibit Nos. I,II,III and IV respectively.

In his testimony P.W.13 discloses that the miscreants informed that the dead body of his brother could be found at Madoli swamp, whereupon they recovered the same which was packed in a sack along with his torn vest and lungi. This witness categorically states that upon seeing the torn vest (গোঞ্জি) and lungi they identified the dead body to be of his brother, Gias Uddin.

P.W.12 also disclosed in his evidence that after 2/3 months into the incident, the accused informed through letters that the dead body of victim Gias Uddin was lying on the marshland.

P.W.10 Ms. Nur Jahan discloses in her evidence that her son Gias Uddin went missing while he was wearing lungi and vest (গোঞ্জি) which they found when the human body remains were brought to the house. Incidentally, we may have a look at the

inquest report to see for ourselves what actually was found from Madoli Canal and how it could be identified at that point of time.

Exhibit No.2 is the inquest report of which the relevant portion is quoted below in verbatim:

“আমি পি,এস, আই মোঃ শাহজাহান আলী কাপাসিয়া থানা অদ্য ইং ১০-১১-১৯৯৬
তারিখ বেলা ১১.৪৫ মিঃ এর সময় কাপাসিয়া থানাধীন মাদুলী বন নামক স্থানে উপস্থিত
হইয়া মৃত গিয়াস উদ্দিন পিং মোঃ আঃ বাতেন সাং সার্লদে থানা- কাপাসিয়া জেলা-গাজীপুর
এর নরকংকাল প্রাপ্ত হইয়া এবং মৃতের পিতা মোঃ আঃ বাতেন, আপন বড় ভাই জয়নাল
আবেদীন, আপন চাচাতো ভাই হযরত আলী, চাচাতো ভাই মাইন উদ্দিন, চাচা তমিজ উদ্দিন
মাষ্টারদের উপস্থিতিতে মাদুলী খালের পশ্চিম পাড়ে কাদা মাটিতে যাহার ১ কি.মি. ব্যাসার্ধের
মধ্যে কোন জনবসতি নাই, ঢোল কলমী বনের নীচে কিছু নরকংকাল পাওয়া যায়।
নরকংকালের পাশেই একটি সাদা সূতি গেঞ্জী ছেঁড়া দুই খন্ড, একটি চেক সূতি লুঙ্গির দুই খন্ড,
পাটের ৪টি রশি দিয়া বাঁশের ৪টি খুঁটি দ্বারা নরকংকালের অনেক অংশ বাধা অবস্থায় পাওয়া
যায়। নরকংকালের পাশেই বড় একটি ছালার বস্তা পাওয়া যায়।”

(Emphasis supplied).

From a perusal of the inquest report, it reveals that during investigation 3(three) letters alleged to have been sent by the miscreants to the informant party of which, 2(two) were sent for ransom money amounting Tk.1,05,000/- and in another letter the miscreants disclosed the place where the body remains of victim

Gias Uddin could be found, were seized. But those 3(three) letters were not produced before the court and marked as Exhibit which shows the ignorance or callousness of the learned Additional Public Prosecutor, Abdul Karim (Thandu) who conducted the case at the trial court. We have observed earlier that as per letter sent by the miscreants, some human body remains were recovered from Madoli Marshland and upon seeing the lungi and vest found along with the aforesaid human body remains the mother, brother, cousin and sister-in-law identified the human body remains to be of deceased victim Gias Uddin. In such view of the matter, non-production of the aforesaid 3(three) letters seized in the case will not be fatal to the prosecution story as a whole.

From the aforesaid discussion, it is apparent that from a distant as well as an uninhabited place some human body remains were found from the western bank of Madoli Canal along with 2(two) parts of a check lungi, 1(one) torn vest, 4(four) pieces of ropes and a jute made sack.

Regarding identification of the human remains it was mentioned in the inquest report that, মৃত গিয়াস উদ্দিন গত ইং ০৫-০৯-১৯৯৬ তাং অপহৃত হয়। অপহরনের সময় তাহার পরনের লুঙ্গী ও গেঞ্জী যাহাছিল নরকংকালের পার্শ্বে পাওয়া লুঙ্গী ও গেঞ্জীর ছেড়া অংশ দেখিয়া মুঃ গিয়াস উদ্দিনের পিতা মোঃ আঃ বাতেন, আপন

বড় ভাই জয়নাল আবেদীন, চাচাতো ভাই হযরত আলী ও চাচাতো ভাই মাইন উদ্দিন ছেঁড়া
লুঙ্গীর অংশ ও ছেঁড়া গেঞ্জীর অংশ গিয়াস উদ্দিনের বলিয়া সনাক্ত করেন এবং নরকংকাল
গুলি, মৃত গিয়াস উদ্দিনের বলিয়া সনাক্ত করেন।'

(Underlining is ours).

It is on record that a medical board was constituted to examine the human body remains found in connection with the present case and P.W.19 Dr. Mojibur Rahman was one of the member of the said board. This witness categorically discloses in his evidence that they found various human bones, and on examination they gave report that those belong to a male person aged about 17-20 years. But they could not identify the cause of death of the person whose body remains were examined.

Materials on record further go to show that accused Yousuf was arrested in the morning of 23-09-1996 at 8.00 am, and thereafter, he was brought before the concerned Magistrate on the same date at 2.30 pm and as, on preliminary grilling, he confessed to his guilt, his confessional statement was recorded by P.W. 15 Md. Jahir Uddin Babor, the then 1st class Magistrate, Gazipur.

It is by now well settled that an accused can be found guilty and convicted solely banking on his confession if, on scrutiny, it is

found to be true, voluntary and inculpatory in nature. To find out whether the confession of accused Yousuf satisfied all the aforesaid criteria or not, it would be profitable to have a peep at the same which is quoted below in vernacular.

The confession of accused Yousuf has been marked as Exhibit No.3 which reads as under:

“আমি কাপাসিয়া থানাধীন দারারটেক বাজারে ০৫-০৯-১৯৯৬ তারিখ অনুমান ৫.৩০ মিঃ দাড়ানো ছিলাম। ঐ দিন বৃহস্পতিবার ছিল। আলম আমার সহপাঠী। সে গিয়া তখন গিয়াস উদ্দিনকে ডাকিয়া আনে। আলম আমাকে গিয়াস উদ্দিনকে সার্কাসে যাওয়ার জন্য বলে। তখন আমি, আলম ও গিয়াস উদ্দিন এক রিক্সা যোগে মনোহরদী বাস স্টান্ডে যাই এবং সেখান থেকে তিনজন একত্রে বাসে করে আতাউর আসে এবং আতাউরও বাসে উঠে। আতাউরের সাথে আলমের কথা ছিল যে গিয়াস উদ্দিনকে আনিয়া দিলে ১০০০/- দেওয়া হইবে এবং আতাউর থেকে ১০০০/- টাকা পাইলে আলম আমাকে ৫০০/- টাকা দিয়া দিবে। বাসে আলম আতাউরের কাছে টাকা চাইলে আতাউর আমাকে ও আলমকে ধাককা দিয়া বাস থেকে পেট্রোল পাম্পের অপরদিকে ফেলিয়া দেয়। বাস আস্তে আস্তে যাওয়ায় আমরা ব্যথা পাই নাই। তারপর আলম ও আমি মনোহরদি থেকে হাটিয়া বাড়ী আসি। পরে গিয়াস উদ্দিনকে কোথায় নেয় জানি না।”

(Emphasis put)

From a plain reading of the aforesaid confession, it appears that on the date of occurrence i.e. 05-09-1996 at around 5.30 pm,

Thursday, accused Alam called away victim Gias Uddin from his homestead and thereupon accused Alam, Yousuf and victim Gias Uddin went to Monohardi Bus Stand by rickshaw and got boarded on a Bus where they met with accused Aatur. Moreover, as per instructions of accused Aatur, Alam called away Gias Uddin and handed him over to Aatur on the allurement of Tk.1000/- from Alam, wherefrom Alam promised to give Tk.500/- to accused Yousuf. While accused Alam demanded the promised money, accused Aatur shoved him and co-accused Yousuf off the bus at the opposite of the petrol pump, but they did not get hurt as the bus was moving slowly. Subsequently, accused Yousuf and accused Alam returned back home walking and they could not say where victim Gias Uddin was taken. Thus, it is apparent that for want of money accused Alam and Yousuf called away victim Gias Uddin from his residence and eventually, handed him over to co-accused Aatur. In such a backdrop, the account of events as were depicted by accused Yousuf in his confessional statement do come in agreement in material particulars with that of the prosecution story so far the calling away of victim Gias Uddin from his village residence by accused Alam and Yousuf is concerned. Therefore, the confession of accused Yousuf can be regarded as a true account of the incident.

On a careful consideration of the evidence of P.W.15 together with Exhibit No.3, it further reveals that accused Yousuf was given sufficient time for reflection after he was brought before the concerned Magistrate while he was kept under the custody of Court peon named Raton and as the accused still expressed his willingness to confess, the relevant Magistrate made him understood the questions as set forth under column 5 & 6 of the confession recording form and having understood the same as the accused was still adamant to make confession, P.W.15 jotted down the same and thereafter, it was read over to the accused who put his signature thereto admitting the contents thereof to be correct. Moreover, after recording the confession, the accused was sent to jail by the concerned Magistrate. From a combined reading of the evidence of P.W. 15 together with the confession of the accused (Exhibit No.3), we are of the view that the Magistrate concerned undertook genuine effort to find out the real character of the confession.

Furthermore, under Column 10 of the confessing recording form, P.W.15 gave certificate in the following terms:

“গৃহীত জবানবন্দী আসামীকে পড়িয়া শুনাইলে সে শুদ্ধরূপে এবং তাহার বলা মতে লিখা হইয়াছে মর্মে স্বীকার করিয়া সে আমার সামনে স্বাক্ষর করে।”

In his evidence P.W.15 also disclosed that while recording confession he found accused Yousuf in hale and hearty condition.

It is true that by filing an application dated 18-09-1997 accused Yousuf retracted his confession alleging police torture during remand. But this belated retraction application filed by the accused bears no value in the eye of law since the confession of accused is found to be true and voluntary. Moreover, we have already observed that the accused was not taken on remand in connection with the instant case and as such, the story as disclosed in the retraction application is nothing but a blatant lie. On top of that the retraction application was not filed through proper channel rather it was directly filed before the concerned Magistrate Court after affixing Court fees thereon. Therefore, it is palpably clear that it is nothing but the brain child of the engaged Advocate of the accused.

It is true that except the confessional statement of accused Yousuf there is no direct evidence against other 2(two) co-accused. But since all the accused standing on trial for the same offence, we can take into consideration of the confession of accused Yousuf in finding the guilty of the other 02(two) co-accused since no animosity is found among themselves. Moreover, nothing is found

on record to show that confessing accused Yousuf had or have any axe to grind against co-accused Alam Hossain and Aatur Rahman alias Ata. On top of that the confession of accused Yousuf was seconded by the witnesses in material particulars. In this connection, we may profitably refer to the case of Md. Shukur Ali and another vs. State reported in 74 DLR (AD) 11, wherein it has been observed by our Apex Court:

“We hold that confessional statement of a co-accused can be used against others non-confessing accused if there is corroboration of that statement by other direct or circumstantial evidence. In the instant case, the makers of the confessional statements vividly have stated the role played by other co-accused in the rape incident and murder of the deceased which is also supported/corroborated by the inquest report, postmortem report and by the depositions of the witnesses particularly the deposition of P.Ws.1,2,3,10,11,12,14 and 18 regarding the marks of injury on the body of the deceased. Every case should be considered in the facts and circumstances of that particular case. In light of the facts and circumstances of the present case, we are of the view that the confessional statement of a co-accused can be used for the purpose of crime control against other accused persons even if there is a little bit of corroboration of that

confessional statement by any sort of evidence either direct or circumstantial. (Emphasis added). Thus, the accused namely Shukur and Sentu are equally liable like Azanur and Mamun for murdering the deceased after committing rape.”

Being fortified with the above decision, we are of considered view that banking on the confession of accused Yousuf coupled with the evidences furnished by prosecution witnesses the culpability of accused Alam Hossain and Ataur Rahman can also be safely adjudged.

From the aforementioned discussions, the incriminating circumstances appearing against the condemned-accused may be summarized as follows:

1. that deceased victim Gias Uddin, accused Alam and Yousuf are friends and in the afternoon of 05-09-1996 at around 5.30 pm accused Alam and Yousuf called away victim Gias Uddin from his residence whereupon the latter went missing;
2. that victim Gias Uddin was last seen in the company of accused Yousuf and Alam at Chalar Bazar;
3. that accused Yousuf by making confessional statement admitted that he and Alam called away victim Gias Uddin from his house on the pretext of witnessing circus and after

taking the victim boy to Monohordi Bus Stand they handed him over to co-accused Ataur, whereupon Ataur took away the victim boy to an unknown place and that thereafter the victim boy went missing;

4. that as per confession, accused Yousuf and Alam did call away the victim boy in lieu of money proposed to be given to them by co-accused Ataur;
5. that after missing of victim Gias Uddin the miscreants demanded ransom money by sending letters in lieu of release of the former;
6. that the informant and others went to the house of accused Yousuf and Alam and inquired about the victim boy, whereupon the relevant accused disclosed that they would bring out the victim boy if they be paid off money;
7. that as per letter sent by the miscreants, some human body remains were found from the bank of a canal located at Maduli marshland along with lungi, genji (vest) and hair which were stuffed in a gunny bag;
8. that upon seeing the aforesaid lungi and genji the mother, brother and other relatives of the deceased victim identified the same to be of deceased victim Gias Uddin;

9. that there is nothing on record to show or at least suggests that at the nearby time of the date of occurrence any other boy except deceased victim Gais Uddin went missing from the concerned locality or from the neighbourhood thereof;
10. that apart from the kith and kin of victim Gias Uddin no one else from the concerned locality claimed that the torn lungi and genji which were found along with human body remains belonged to their any relative; and
11. that accused Yousuf went into hiding immediately on the preceding day of the date of pronouncement of judgment which reflects his guilty mind and such unexplained conduct of the relevant accused strongly suggests that he was involved in the incident of killing of the victim.

All these incriminating circumstances, to our view, are undoubtedly inconsistent with the innocence of the accused. The chain of circumstance appears to be well-knit, complete and unbroken. In other words, there is no missing link in the chain of circumstances appearing against the accused. Such being the position, no other hypothesis except the guilt of the accused is possible.

Contention has been raised on behalf of the defence that there is no eye witness of the occurrence leading to the incident of

killing victim Gias Uddin which creates doubt about the veracity of the prosecution story. It is true that in the instant case the prosecution did not adduce any eye witness leading to the incident of killing of the victim boy. But, in the facts and circumstances of the instant case, that alone will not create any dent in the prosecution story inasmuch as there is no hard and fast rule that a criminal case must fail in the absence of any direct evidence. In such circumstances the prosecution had no other option but to rely on circumstantial evidences including the attending and surrounding facts and circumstances of the case. It is often said that circumstantial evidence may be and frequently is more cogent than the evidence of eye witnesses inasmuch as it is not difficult to produce false evidence of eye witnesses, whereas it is extremely difficult to produce circumstantial evidence of a convincing nature and therefore, circumstantial evidence, if convincing, is more cogent than the evidence of eye witnesses. In the instant case at our hand it is found from the evidences and materials on record that accused Yousuf and Alam called away victim Gias Uddin from his dwelling hut and took him to Monohordi Bus Stand wherefrom the victim boy was handed over to co-accused Aatur Rahman alias Ata and thereafter the victim boy went missing. After 2/3 months of the

missing of the victim boy, some human body remains were found from a barren Marshland on the basis of a letter sent by the miscreants and the kith and kin of the victim boy identified the same to be of Gias Uddin upon seeing his wearing lungi and vest (গেঞ্জী) found with the human body remains. In such circumstances, it was not possible on the part of the prosecution to adduce any eye witness of the killing incident of victim Gias Uddin. Therefore, the argument put forward by the learned Defence Advocate is not tenable in law.

Contention has further been raised that the motive of the case has not been proved satisfactorily since there existed differences in the evidences of the prosecution witnesses so far the amount of ransom money alleged to have been demanded by the miscreants is concerned. On going through the evidences of the prosecution witnesses, it appears that there are some differences in quoting the amount of money demanded by the miscreants in lieu of release of the victim boy. But this anomaly will not corrode the prosecution version of the case as because, in our view, the differences about the ransom money amount can be regarded as minor discrepancies. Fact remains that the prosecution witnesses disclosed in unequivocal term that the miscreants demanded ransom money by

sending letters. Moreover, the occurrence took place in the year 1996, whereas the witnesses deposed before the court almost 8/9 years of the incident i.e. in 2004 and 2005. In such circumstances, it can easily be presumed that due to lapse of time the witnesses gave different amount in their testimonies. It should be borne in mind that human memory is always fleeting.

Moreover, motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. [(1992) 3 SCC 43 MULAKH RAJ V. SATISH KUMAR]. In such a backdrop, the argument advanced by the learned Defence Advocate appears to be wide of the mark.

It has further been contended on behalf of the defence that the human body remains recovered in the case were not satisfactorily proved to be the body remains of victim Gias Uddin

inasmuch as no DNA test of the same was done. The above contention of the learned Defence Advocate cannot also be countenanced as because the occurrence took place in the year 1996 of which the investigation was completed on 23-08-1999 when DNA test was not in vogue in our country. In our country DNA test was started in the year 2014. Furthermore, admittedly, some human body remains were found after more than 3(three) months of the missing of the victim boy which were recovered on the basis of a letter sent by the miscreants. From the evidence of P.W.19, it appears that on forensic examination it was detected that the age of the human body remains belonged to a person of the age group of 17-20 years. We have already observed that a wearing lungi and vest were also found along with the human body remains and the mother, brother and other relatives identified the same to be of deceased victim Gias Uddin which remained unassailed in their cross-examination. Therefore, we cannot go along with the submission of the learned Defence Advocate so far the identity of the recovered human body remains is concerned.

It has also been argued on behalf of the defence that P.W. Nos.1, 10, 12 and 13 are relatives of victim Gias Uddin, and as such no reliance can safely be placed upon their testimonies. But we

cannot agree with the above view expressed by the learned Defence Advocate inasmuch as P.W.1, P.W.10, P.W.12 and P.W.13 are respectively the sister-in-law (ভাবী), mother, cousin brother and full brother of victim Gias Uddin, who gave out in their evidence that on the date of occurrence accused Yousuf and Alam called away victim Gias Uddin from his residence and they have witnessed the same. Therefore, P.W. Nos.1, 10, 12 and 13 can be regarded as natural, important and vital witnesses of the factum of taking away of the victim boy from his house, and as such, their evidence carries much value to find out the actual truth. In such a backdrop, the argument advanced by the learned Defence Advocate on this count also bites the dust.

It has also been pressed into service on behalf of the Defence that the observations of the learned Sessions Judge so far the age of the victim Gias Uddin is concerned is based on conjuncture and surmises and as such it carries no value in the eye of law. We cannot align with the aforesaid view expressed by the learned Defence Advocate as because the learned Additional Sessions Judge considered the victim boy to be of the age group of 16-17 years holding that as per evidence he was a student of class 7 and it is common place in our society that the age of a village boy of class

7 often stands in between 16 and 17 years which comes in agreement with the report of the medical board that the human body remains found belonged to a person of the age of 17-20 years. We can take judicial notice of the fact that in our country generally the tendency among the parents is to show the age of their offspring 1/2 years less in consideration of his/her future prospect in service or otherwise. In such view of the matter, we concur with the view expressed by the learned Additional Sessions Judge so far the age of victim Gias Uddin is concerned.

Contention has further been raised that accused Alam and Yousuf were minor and as such their trial ought to have been held by a Juvenile Court. The occurrence took place in the year 1996 when Children Act, 1974 was in vogue in our country. According to the aforesaid law, persons below the age of 16 years are considered to be children. In this case at our hand no tangible materials is found on the record to show or at least suggests that accused Alam and Yousuf were minor at the time of framing charge in the year 2001.

It appears from the confessional statement that in the opening part thereof the age of accused Yousuf was written as 24 years while under column 5 the age of the concerned accused was

mentioned as 15 years. On the other hand, accused Yousuf was examined on 2(two) occasions under section 342 of the Code i.e. on 12-05-2008 and 24-02-2014 while at the first instance he gave out of his age as 22 years, while on the second occasion he mentioned his age as 30 years. Except this 2(two) figures, no other School Certificate, Birth Certificate or National ID Card was produced before the court to show that accused Yousuf was a minor at the time of framing charge in 2001. Similarly, accused Alam Hossain was examined twice under section 342 of the Code on 12-05-2008 while he disclosed his age to be of 20 and 24 years. No document in support of his alleged age was also produced before the trial court to show that he was a minor at the time of framing charge in 2001. Therefore, after a long lapse of time it is not possible on our part to determine the actual age of the aforesaid 2(two) accused to consider their alleged minority.

Materials on record further go to show that by filing an application accused Yousuf prayed for holding trial by a Juvenile Court on 12-07-2009 and the learned Judge of the Trial Court rejected the said application vide order No.137 dated 28-04-2011. But challenging the aforesaid order the accused did not prefer any revision in the higher court as such the order remains as such. On

the otherhand, Alam Hossain has also filed a similar application on 04-01-2010 for holding trial of the case by a Juvenile Court claiming himself to be a minor, but the said application was remained undisposed of. No tangible evidence or materials were found on record in support of the alleged minority of the above duo. By this time much water has gone by the river and at present it will be a futile exercise on our part to direct the trial court to cause any inquiry to find out what was the actual age of the aforesaid 2(two) accused at the time of framing charge since the offence occurred in the year 1996 and trial of the case was concluded in the year 2006. The current year running is 2022. If we give an order to cause inquiry as to the minority of accused Yousuf and Alam it will cause much hardship to both the parties, particularly in the absence of any tangible document touching the alleged minority of the aforesaid 2(two) accused.

It was argued on behalf of accused Yousuf that the confession alleged to have been made by the concerned accused was not brought to his notice while he was being examined under section 342 of the Code as such the accused was prejudiced in his defence. It is true that the confession made by accused Yousuf was not brought to his notice when he was examined under section 342 of

the Code. But that is not enough to leave aside the confession of the relevant accused from out of consideration as because accused Yousuf was very much aware that he made confession which is evident from the cross-examination of the relevant Magistrate who gave evidence in the case as P.W.15. Suggestion was put to P.W.15 that the confession of the accused was the product of torture which he denied stoutly. This P.W.15 including P.W.16 (one of the Investigating Officer) were examined in presence of accused Yousuf and therefore it can easily be presumed that he was very much aware of the fact of making confession. Moreover, by filing an application in the court on 18-01-1997 accused Yousuf retracted his confessional statement. Furthermore, the defence has failed to show that how and in what manner accused Yousuf was prejudiced in his defence for not bringing confession to his notice while he was examined under section 342 of the Code. Therefore, the argument advanced by the learned defence Advocate on this score does not inspire confidence.

The learned defence Advocate argued that the investigation of the case was done in a perfunctory manner and as such the accused being a privileged person is entitled to get benefit of such defent. There is no gainsaying that investigation of a criminal case is

important to find out the real culprit of a crime. But much emphasis must not be attached to the investigation part of a criminal case, otherwise the whole purpose of the criminal trial will be frustrated. In this connection, we may profitably refer to the case reported in (2010) 9 SCC 567 wherein it was observed as under:

“There may be highly defective investigation in a case.

However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigations, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the

truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.” In such a backdrop, we cannot endorse the view expressed by the learned Defence Advocate on 12 is court as well.

On going through the impugned judgment and order, it appears that the learned Sessions Judge also found the condemned accused guilty under sections 365/387/201 of the Penal Code and sentenced them thereunder to rigorous imprisonment for 7(seven) years, life term rigorous imprisonment and 3(three) years rigorous imprisonment respectively along with fine with a default clause. But, from a careful analysis of the record it appears that though the learned Sessions Judge took cognizance against all the accused under sections 365/387/302/201/34 of the Penal Code vide order No.1 dated 01-03-1999, charge was framed against the accused only under sections 302/34 of the Penal Code. On going through the impugned judgment and order, it transpires that at the time of writing judgment the trial court recasted the charge under sections 365/387/201/34 of the Penal Code. It is true that the learned Sessions Judge is empowered to alter charge at any time before the pronouncement of judgment under section 227(1) of the Code. But

in that case the learned Sessions Judge is required to read and explain the charge so altered (section 227(2)). The offence under section 302 and that of under sections 365 and 387 are different classes of offences, and as such framing charge under sections 365 and 387 beyond the notice of the accused as well as handed down punishment upon the accused under the aforesaid sections is wholly untenable in law as because the accused were not given any chance to defend themselves by cross-examining the prosecution witnesses on that counts.

It is to be noted here that even without framing charge under section 201 of the Penal Code an accused can be found guilty both under sections 302 and 201 in view of the provision of section 236 and 237 of the Code. But imposition of separate sentences under the aforesaid 2(two) counts is not proper. Furthermore, there is no evidence or materials on record to show that the accused persons participated in the concealment and burial of the dead body of victim Gias Uddin on giving false information respecting the offence of murder of the victim boy. Therefore, the conviction and sentence of the 3(three) accused under section 201 of the Penal Code is liable to be set-aside.

Regard being had to the aforesaid discussions and the observations made thereunder, we are of the dispassionate view that accused Alam Hossain, Yousuf (absconded) and accused Ataur

Rahman alias Aatur are guilty under sections 302/109 of the Penal Code. As per evidences and materials on record, the victim boy was last seen in the company of accused Alam Yousuf and Aatur Rahmam alias Ata and thereafter, his body remains were found along with his torn vest and lungi from a distant as well as abandoned place of Madoli Canal after 2/3 months into the incident. Admittedly, in this case there is no direct evidence to connect the accused in the killing incident of victim Gias Uddin. But the victim was last seen in the company of the accused. Not only that accused Alam and Yousuf demanded Tk. 50,000/- from the informant party to give the whereabouts of the victim boy. Since the fate of the case mainly hinges upon the circumstantial evidence including the confession of co-accused Yousuf, our considered view is that justice would be best served if the sentence of death of the condemned accused is commuted to one of life imprisonment along with fine.

Accordingly, the Death Reference is rejected.

Accused Alam Hossain, Aatur Rahman alias Ata and Md. Yousuf (absconding) are found guilty under sections 302/109 of the Penal Code and they are to undergo imprisonment for life along with a fine of Tk.20,000/- in default, to suffer rigorous imprisonment for 1(one) year more.

The conviction and sentence of the aforesaid 3(three) accused under sections 365/387/201 of the Penal Code is hereby set-aside being unlawful.

With this modification, the impugned judgment and order is maintained.

Accused Aatur Rahman alias Ata and Alam Hossain will get benefit under section 35A of the Code.

The connected Criminal Appeals along with Jail Appeals are hereby dismissed.

The authority concerned is directed to shift accused Aatur Rahman and Alam Hossain from death cell to a normal prison forthwith.

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

Md. Akhtaruzzaman, J.

I agree.