

Present:
Justice Shahidul Karim
and
Justice Md. Akhtaruzzaman
Death Reference No.58 of 2016
with
Criminal Appeal No. 4688 of 2016.
With
Criminal Appeal No. 5612 of 2016.
With
Jail Appeal No. 110 of 2016.
with
Jail Appeal No. 111 of 2016
The State.

..... Petitioner.

-Versus-

Ranjon alias Raktim and another.
..... Condemned-Prisoners.

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

Mr. S.M. Shahjahan, Advocate with
Mr. Md. Masudul Hoque, Advocates
..... For the Appellant
(in Criminal Appeal No. 4688 of 2016.)

Mr. Md. Mahbubur Rahman, Advocate
..... For the Appellant
(in Criminal Appeal No.5612 of 2016.)

Heard on 30-05-2022, 31-05-2022, 05-06-2022, 14-06-2022, 16-06-2022 and Judgment on 29-06-2022.

Shahidul Karim, J.

This Death Reference has been submitted under section 374 of the Code of Criminal Procedure (briefly, the Code) by the

learned Additional Sessions Judge, Rajbari for confirmation of death sentence awarded to condemned accused, namely, Ranjon alias Raktim and Rasel who have been found guilty under sections 302/34 of the Penal Code and convicted thereunder to death along with a fine of Tk.20,000/- each by the impugned judgment and order dated 18-05-2016 recorded in Sessions Case No.315 of 2014, arising out of Rajbari P.S. Case No.15 dated 09-11-2013, corresponding to G.R. No.432/13(Ka). By the self same judgment, convict-appellant Rony has also been convicted under the aforesaid sections of law and was sentenced to suffer imprisonment for life along with a fine of Tk.20,000/- with a default clause. Thereafter, the learned Additional Sessions Judge submitted the entire proceedings of the case for confirmation of the death sentence imposed upon the accused vide his office Memo No. ৩১০/ফৌজঃ/এ,ডি,জে/রাজ তারিখ ১৮-০৫-২০১৬. Against the aforesaid judgment and order of conviction and sentence, the condemned-prisoners, namely, Rasel and Ranjon alias Raktim have filed Jail Appeal Nos.110 of 2016 and 111 of 2016 respectively followed by a regular Criminal Appeal being No.4688 of 2016 while convict-accused Rony has preferred a separate Criminal Appeal being No.5612 of 2016.

Since the death reference and the connected Jail Appeal as well as Criminal Appeals have originated from the same judgment and order of conviction and sentence, they have been heard together and are being disposed of by this consolidated judgment.

The prosecution case has arisen out of a ghastly incident in which an ill-starred minor boy name Rifat (12) was first kidnapped for ransom and thereafter he was brutally done to death by manual strangulation.

The prosecution case as portrayed in the FIR as well as unveiled during trial, in short, is that the father of the victim boy Md. Moktar Mondal (P.W.1) is an expatriate who used to live in Baharain in connection with his job. After taking 3(three) months leave, on 20-09-2013, he came to his homestead in Bangladesh. Deceased victim Rifat, the son of the informant Md. Moktar Mondal, was a student of Rajbari Kindergarten School. In the morning of 06-11-2013 the informant Md. Moktar Mondal took his son Rifat to the said Kindergarten, but he did not return home from School even after 1.00 pm following which a vigorous search was carried out but to no avail. Subsequently, a G.D. being number 200 dated 06-11-2013 was registered with Rajbari P.S. about the missing news of the victim boy. In the evening of 06-11-2013 at

around 7.00 pm, the informant got a mobile phone call from phone No.01988372123 to his own mobile phone No. bearing 01852553881 whereby the caller demanded Tk. 15(fifteen) lac as ransom in lieu of release of his son informing that the victim boy was in their custody. The informant then disseminated the said news to the relevant P.S. Thereafter, on query, the informant came to know that accused 1. Ranjon alias Raktim, 2. Rasel and 3. Rony along with 03(three) others including some unknown accused kidnapped his son Rifat on 06-11-2013 at around 1.00 pm from in front of Rajbari Kindergarten School and detained him in an unknown place and further that the above persons are now claiming ransom of Tk. 15(fifteen) lac by using the aforesaid mobile phone. Following the incident, P.W.1 being informant, lodged the FIR to the relevant Police Station which gave rise to Rajbari P.S. Case No. 15 dated 09-11-2013.

Police then took up investigation of the case during which the 3(three) condemned-accused were apprehended of whom, accused Ranjon alias Raktim and Rasel made confessional statement implicating themselves along with co-accused Rony with the incident of Kidnapping followed by murder of deceased victim Rifat. Moreover, the dead body of deceased victim Rifat was

recovered at the showing of accused Ranjon alias Raktim from the septic-tank of the toilet located behind the residence of one Bhairob Shill (P.W.4). However, having found prima facie incriminating materials, the Investigating Officer submitted police report against the 3(three) accused under sections 302/201/34 of the Penal Code.

It would not be out of place to note that the Investigating Officer also submitted a separate police report against the self-same accused recommending their trial under sections 8/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

At the commencement of trial, charge was framed against the aforesaid 3(three) accused under sections 302/34 of the Penal Code and the charge so framed was read over and explained to the accused who pleaded not guilty and claimed to be tried as per law.

In support of the charge, the prosecution had adduced as many as 12 witnesses out of 14 charge sheeted witnesses who were sufficiently 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 to which they repeated their innocence and also declined to adduce any evidence.

The defence case, that could be gathered from the trend of cross-examination of the prosecution witnesses as well as from their examination under section 342 of the Code, is of complete innocence and false implication. The further case of the defence is that the confessions of the accused are not true and voluntary rather those were extracted 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 succeeded in bringing the charge to the door of the accused to the core and accordingly convicted and sentenced them thereunder by the impugned judgment and order in the manner as noted at the incept.

Feeling aggrieved thereby, the condemned accused have preferred the instant Jail as well as Criminal Appeals. As we have already noticed, the learned Additional Sessions Judge has also submitted the entire proceedings of the case for confirmation of the death sentence awarded to the accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General along with Ms. Syeda Shobnum Mustary, learned Assistant Attorney General appearing on behalf of the State and in support of

the death reference has shouldered the painstaking task of placing the FIR, charge-sheet, charge, inquest as well as post mortem report of the deceased victim, seizure list, confessional statements 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 had successfully been able to bring home the charge brought against the accused by adducing some clinching evidences both oral and documentary. He further submits that the dead body of deceased victim Rifat was recovered at the instance of accused Ranjon alias Raktim from the septic-tank of a toilet located to the backyard of the homestead of P.W.4 Bhairob Shill. Moreover, the incriminating mobile phone through which ransom was demanded to the informant was also recovered and seized from the possession of accused Ranjon alias Raktim. He further contends that both accused Ranjon alias Raktim and Rasel have made confessional statements implicating themselves along with co-accused Rony in the incident of kidnapping followed by his brutal murder which, on scrutiny, were found to be true, inculpatory and voluntary in nature. Though the case has originally arisen out of a kidnapping incident of a minor boy whereupon it was started under sections 8/30 of the Nari-O-

Shishu Nirjatan Daman Ain, 2000, but no illegality has been committed by the learned Additional Sessions Judge in holding separate trial of the case filed under sections 302/34 of the Penal Code, Mr. Ahmed further added. Mr. Ahmed finally submits that the learned Judge of the court below on proper consideration of the evidences and materials on record rightly and correctly found the guilty of the accused in the killing incident of victim Rifat and accordingly convicted and sentenced them by the impugned judgment and order which does not warrant any interference by this Court. In support of his submissions, Mr. Ahmed has referred to the decisions reported in 62 DLR(AD)1, 27 BLC (AD) 49, 74 DLR (AD) 11 and 73 DLR (AD) 83.

On the flip-side, Mr. S.M. Shahjahan, the learned Advocate with Mr. Md. Masudul Hoque appearing on behalf of convict accused Ranjon alias Raktim and Rasel in Criminal Appeal No. 4688 of 2016 has assailed the impugned judgment and order of conviction and sentence critically 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 counts:

1. that the FIR was lodged after 3(three) days of the occurrence and that too against 6(six) persons of whom, 3(three) were not sent up for trial by the Investigating Officer which has made the truthfulness of the FIR story shaky and doubtful;
2. that there is no eye witness of the occurrence leading to the incident of murder of the victim boy;
3. that the FIR named accused Kaiyum, the full brother of the informant was not sent up for trial by the Investigating Officer;
4. that the confession of the accused are not true and voluntary rather those were extracted by torture and intimidation; and
5. that the fate of the case mainly depends upon the circumstantial evidence which are not well-knit and convincing in nature.

On the other hand, Mr. Md. Mahbubur Rahman, the learned Advocate appearing on behalf of accused appellant Rony in Criminal Appeal No.5612 of 2016 has criticized the impugned judgment and order contending that out of 12 witness examined in the case no one gave any evidence against accused Rony

implicating him in the incident of kidnapping of the victim boy followed by murder. He further submits that no one from the Kindergarten School was produced as witness and further that the Investigating Officer of the case also did not seize the School Register and other documents and brought the same before the Court which has rendered the veracity of the prosecution case highly doubtful. He next submits that accused Rony was taken on remand by the Investigating Officer, but he did not make any confessional statement implicating himself in the incident. Accused Rony was most illegally found guilty and convicted solely banking on the confessions of 2(two) co-accused which runs counter to the settled principle that no one should be punished relying on the confession of a co-accused without any further corroboration, Mr. Rahman further added. He lastly submits that the confessions of 2(two) confessing co-accused are not also congruous to each other so far the manner of occurrence is concerned and as such the impugned judgment and order of conviction and sentence is liable to be knocked down as much as it relates to accused Rony. In support of his submissions, Mr. Rahman has placed reliance on the case reported in 37 DLR(AD) 139.

Heard the submissions advanced by the learned Deputy Attorney General as well as by the learned defence Advocates, perused the impugned judgment and order along with other connected materials available in the paper book 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 scrutinize and weigh the relevant evidences together with the surrounding facts and circumstances of the case.

P.W.1 Moktar Mondal is the informant as well as the father of deceased victim Rifat (12). In his evidence this witness gives out that he came to Bangladesh on 20-09-2013 from Bahrain after taking 3(three) months leave. On 06-11-2013 he took his minor son Rifat to Rajbari Kindergarten and thereafter he returned home. But after closure of school his son did not come back, whereupon he along with other relatives went to the school and inquired about his son Rifat and came to know from teachers and students that Rifat went away immediately after closure of the school. Subsequently, he (P.W.1) carried out search here and there but to no avail. Later, he filed a G.D. bearing No.200 dated 06-11-2013 with the concerned Police Station. On that evening at around 7.00 pm he

received a phone call of which the last three digits were 123 whereby an unknown person demanded Tk.15(fifteen) lac as ransom for release of the victim boy disclosing that he (victim) was under their custody. He then brought the matter to the notice of the police and also tried to make contact with the said number but it was found switched off. On the following day at around 9.00 am, the miscreants again made phone call to him (P.W.1) and demanded Tk.15(fifteen) lacs in lieu of release of the victim boy. Thereupon, rigorous search was carried out by him including the police and during that period he found description of some people following which he suspected that victim Rifat might have been taken away by accused Roni. Later, he filed ejahar against Roni, Ranjon alias Raktim, Rasel and some other persons. Thereafter, on 10-11-2013, accused Roni, Ranjon and another was arrested by the police. In the night following 13-11-2013 at around 12 O'clock police asked him to come to the house of one Bhairob Shill located towards the western side of Faridpur-Rajbari main road opposite to T&T office, whereupon he along with other relatives went to that house on that night at around 3.00 am and found the sack packed dead body of his son Rifat which was recovered from the back side toilet of the house of Bhairob Shill. At the relevant time, he also

found accused Ranjon there under the custody of police. The dead body was taken to the police station wherein inquest was held. The dead body of the victim boy got swollen. Accused Ranjon made confessional statement whereupon he (P.W.1) came to learn that on 06-11-2013 accused Roni took victim Rifat to the house of accused Ranjon by alluring him of a computer and made him unconscious after giving him spiked Mojo and thereafter killed him by wrapping scarf (গামছা) around his neck as well as by smothering with a pillow. After killing the victim boy the dead body was kept under the cot of the house of accused Ranjon and eventually it was dumped in the latrine of Bhairob Shill after stuffing the same in a sack.

P.W.1 further says that police recovered the dead body of his son Rifat at the instance as well as showing of accused Ranjon and Rasel. After the incident, accused Ranjon kidnapped a girl following which he was arrested along with her. This witness proves the FIR and inquest report including his signatures appearing thereon as Exhibit No.1, 1/1 and 2, 2/2 respectively. This witness also proves the seizure list (Exhibit No.3) dated 10-11-2013 by virtue of which 2(two) mobile sets of which, one was Symphony model and the other one was Nokia model whereby the accused persons made conversations among themselves. P.W.1 identified

accused Rasel, Ranjon alias Raktim and Roni in the dock and also proves the Symphony mobile set and Nokia mobile set as Material Exhibit Nos.I & II respectively.

In reply to cross-examination P.W.1 states that it was mentioned in the FIR that in the morning of 06-11-2013 his son Rifat went to Kindergarten where he had been pursuing his study for about 5/6 years. During that period his wife used to take her son to the Kindergarten and also brought him back home. After coming to Bangladesh, he (P.W.1) used to take his son to the school. There is no eye witness of the occurrence so far the instance of kidnapping as well as killing of the victim boy. He came to learn from the kids of the school that accused Roni took away his son but he could not recollect the name of the teacher or kids from whom he heard the name of accused Roni. Accused Roni is his (P.W.1) neighbour. He helped police to arrest accused Roni. P.W.1 denied the defence suggestions that the dead body of deceased victim was not recovered at the instance of accused Ranjon or that he deposed falsely.

P.W.2 Badsha Mondal is the elder brother of the informant. In his evidence this witness avers that his younger brother Moktar Mondal (informant) was an employee in Bahrain who, on 20-09-

2013, came to Bangladesh on 3(three) months leave. On 06-11-2013 his younger brother took his son Rifat (12) to Rajbari Kindergarten, but he did not return home after 1.00 pm. Thereupon, they (P.W.2) made search here and there and the matter was brought to the notice of the local Police Station. Eventually, his brother Moktar filed a G.D. in connection with the missing of his son. In the evening his brother received a mobile phone call whereby the miscreants demanded Tk.15(fifteen) lacs as ransom in lieu of release of victim Rifat disclosing that victim boy was under their custody. The matter was then brought to the notice of the police station and search was carried out by them (P.W.2) as well as by police, but no avail. Later, on 09-11-2013, his brother filed FIR with the police station against accused Roni, Rasel, Ranjon and others. In the night following 13-11-2013 at around 12'O clock they got information that victim Rifat was found, whereupon they went to the house of Bhairob Shill located to the western side of Faridpur-Rajbari main road and found that the sack packed dead body of Rifat was kept there after recovery of the same from septic tank. He also found accused Ranjon there who was under police custody. The dead body of victim Rifat was recovered at the showing of accused Ranjon. Thereafter, he came to learn that on

06-11-2013 victim Rifat was taken away to the house of accused Ranjon alluring him of laptop and thereafter got him unconscious upon giving spiked cold drinks, killed him by wrapping scarf (গামছা) around his neck and eventually dumped his dead body in the latrine. Accused Ranjon confessed to his guilt to the police as well as to the Magistrate. Later, the dead body was taken to the police station and after completion of autopsy it was buried upon taking home. This witness proves the seizure list dated 14-11-2013 including his signatures appearing thereon as Exhibit No.3(Ka) and 3(Ka)/1 respectively and also identified the CDR of the concerned mobile phone as Material Exhibit No.III. P.W.2 identified accused Roni, Ranjon and Rasel in the dock.

In reply to cross-examination P.W.2 says that he did not see the occurrence. He heard that accused Ranjon confessed to the police. This witness also says that he is an illiterate person and police called him from house to obtain his signature. P.W.2 denied the defence suggestion that he did not disclose to the police that on 06-11-2013 accused Roni took away victim Rifat by alluring him of a laptop.

In his testimony P.W.3 Bacchu Sarder alias Babu discloses that he knows informant Moktar Mondal. On 06-11-2013

informant's son Rifat did not come back from Rajbari Kindergarten and his whereabouts could not be known following which a G.D. was filed with the concerned police station. Subsequently, a case was filed regarding the same matter. The miscreants demanded Tk.15,00,000/- lacs from the informant for the release of his son Rifat. At first, police arrested accused Roni and thereafter accused Ranjon and Rasel were apprehended. In the night following 13th it was disseminated from the police station that victim Rifat was found following which they (P.W.3) went to the house of one Bhairob Shill which is located near the house of accused Ranjon. The dead body of the victim was found in the latrine located behind the house of Bhairob Shill. At the relevant time accused Ranjon was handcuffed. Thereafter, inquest of the dead body was held to which he put his signature (Exhibit No.2/2). After post-mortem examination, the dead body of the victim was brought back home and it was buried there. Accused Roni, Rasel and Ranjon committed murder of victim Rifat in the house of accused Ranjon. P.W.3 identified accused Roni, Rasel and Ranjon in the dock.

In reply to cross-examination P.W.3 divulges that accused Rasel confessed to his guilt in the night following 13-11-2013 at around 12'O clock while he was beside the house of Bhairob Shill

in presence of many people. At the time of admitting guilt all the 3(three) accused were present who were handcuffed. P.W.3 denied the defence suggestion that he deposed falsely as the informant is his friend.

In his testimony P.W.4 Bhairob Shill claims that the police aroused him one night at around 3.00 am in the month of November, 2013 and thereafter a sack packed dead body was recovered from the back side toilet of his house. He felt uneasy upon seeing the dead body which belonged to deceased Rifat. At the relevant time police and a number of people were present there. Police then held inquest of the dead body to which he put his signature (Exhibit No.2/3). Having seen the incident he became semi unconscious whereupon water was poured on his head. The dead body was swollen but the face could be recognized.

In reply to cross-examination P.W.4 states that he became unconscious upon seeing the dead body. He could not say whether or not he put his signature to a written or blank paper. The occurrence held in the night while many people including journalists and public servant were present at the spot.

P.W.5 Anil Sarker disclosed that in the night of 14-11-2013 at around 3.00 am he aroused from sleep sensing presence of many

people following which he came to the backyard of the house of Bhairob Shill (P.W.4) where police personnel including many people were present. Eventually a sack packed dead body was recovered after opening up the slab of the latrine. Subsequently, he heard that the name of the victim boy is Rifat. The dead body was swollen but the face could be recognised. P.W.5 proves his signature appearing in the inquest report as Exhibit No.2/4.

In reply to cross-examination P.W.5 says that the surrounding tin of the latrine was not removed but the slab was opened up. He went to the spot after recovery of the dead body from the latrine. P.W.5 denied the defence suggestion that he deposed falsely being biased by the informant.

In his evidence P.W.6 A.S.I Hiron Kumar Biswash divulges that on 06-11-2013 he was posted at Rajbari Police Station as A.S.I. On that date a G.D. bearing No.200 was lodged with the relevant police station regarding the missing news of Rifat Mondal (12), a K.G student. Thereafter, the task of investigation of the said G.D. was entrusted to him (P.W.6). On 07-11-2013 the maker of G.D. named Moktar Mondal (P.W.1) informed him that the miscreants, by making phone call from a mobile phone bearing No.01852553881, demanded Tk.15,00,000/- lacs as ransom in lieu

of release of his son. Subsequently, he (P.W.6) brought the matter to the notice of the officer-in-charge who instructed him to collect the call lists, of the aforesaid mobile phone. Thereupon, he collected the call lists, of the above telephone number and on perusal of the same he came to know that the aforesaid SIM was used from 2(two) IMEI bearing Nos.353062040502310 and 353062040402310. The miscreants made several calls to the informant following which the conversation of the miscreants was recorded. Subsequently, upon making search, it appears that the miscreant was making call using SIM No.01911836727. Accused Rasel talked to accused Roni and Ranjon alias Raktim several times by making phone call using the aforesaid SIM number. Thereupon, he made attempt to apprehend the accused whereupon at first accused Roni was arrested who gave out that the victim boy was kept in the custody of accused Rasel and Ranjon. Having consulted the call lists it was found that accused Ranjon was staying at village Kabirajpur under Rajoir P.S, District Madaripur. Thereafter, he (P.W.6) along with the Investigating Officer Mizanur Rahman (P.W.10) and other police personnel went to Rajoir in the night of 14-11-2013 and thereupon, with the help of the police of the relevant P.S. apprehended accused Ranjon from village Kabirajpur

and also recovered a girl named Tamanna from his custody. Subsequently, at the instance of accused Ranjon alias Raktim, the dead body of deceased victim Rifat was recovered from the toilet of Bhairob Shill (P.W.4) at Sajjankanda. Before that, the relatives of the deceased boy was informed who identified the dead body of deceased victim Rifat. The Investigating Officer then held inquest of the dead body and thereafter all of them (P.W.6) came to the police station along with the dead body. A mobile phone including the SIM thereof was recovered from accused Raktim in the night of 14-11-2013 and those were seized vide seizure list. On interrogation, accused Ranjon admitted that he along with co-accused Roni and Rasel contrived to abduct victim Rifat Mondal in order to realise ransom from his father who was an expatriate(বিদেশে থাকা). Thereafter, as per planning, in the afternoon of 06-11-2013 accused Roni picked up victim Rifat from in front of his Kindergarten located nearby Rajbari Government College by his bicycle showing him allurements of a laptop and took him to the house of Ranjon. Subsequently, accused Rasel came there with mojo drinks. Thereupon, all the 3(three) accused persons spiked the said drinks with sleeping pills and offered the same to victim Rifat Mondal who became unconscious after having spiked cold drinks.

In the meantime, the father of accused Ranjon named Ranjit gave a phone call and informed him that he was coming to his home as a result the accused persons became worried. Accused Roni and Ranjon then gave proposal to conceal the victim boy to accused Rasel but he expressed his inability. Thereafter, all the accused persons took plan to kill the victim boy otherwise he would make the incident public if he could return to his house. Thereupon, accused Ranjon sat on the body of the victim boy who was on a cot and wrapped a gamcha (গামছা) around his neck and strangled him to death. Thereafter, the dead body of accused Rifat was stuffed in a plastic sack which was kept under the cot of the P.O. room. Later, accused Rasel went to his house located in a nearby place for having lunch following which accused Ranjon and Roni kept the sack packed dead body of deceased Rifat in the kitchen room of accused Ranjon. Thereafter, accused Rasel came to the house of accused Ranjon who gave a phone number to the former whereby ransom was demanded. Subsequently, in the night time the aforesaid 3(three) accused persons ditched the sack packed dead body of deceased victim Rifat in the latrine of Bhairob Shill after pulling up the slab thereof.

P.W.6 further states that accused Ranjon disclosed the aforesaid incidents in their presence. Later, in the morning of 18-11-2013 at about 5.00 am, accused Rasel was caught from the roundabout of Goalonda Ghat wherefrom he was brought to the police station. Eventually, as per instruction of the officer-in-charge, a mobile phone including 2(two) SIM were recovered from accused Rasel and those were seized vide seizure list (Exhibit No.4) dated 18-11-2013. P.W.6 proves the Nokia mobile phone and 2(two) mobile SIMs as Material Exhibit Nos.IV series and also identified accused Ranjon, Rasel and Roni in the dock.

The defence cross-examined P.W.6 but nothing as such has come out from his mouth which could belittle his testimony. In his cross-examination P.W.6 says that one Jakir Patwary, the informant of Nari-O-Shishu Case No.168 of 2014 accompanied them while they went to Rajoir. Accused Raktim was arrested after filling of the said case. The aforesaid Jakir Patwary came to learn from one Milon about the whereabouts of her daughter and thereafter, he went to Rajoir and arrested accused Ranjon and also recovered his daughter Tamanna. P.W.6 denied all other suggestions put to him by the defence.

P.W.7 Dr. Sheikh Md. Abdul Hannan is the chairperson of the medical board which, on 14-11-2013, carried out autopsy of the dead body of victim Rifat (12), at the identification of constable Jugal Das (P.W.12). This witness states that the dead body of the victim boy became swollen and the skin as well as hair of head was peeled off and further that worm was found wriggling on some areas of the body. The tongue was found protruded as well as beaten up by teeth and both the eyes were about to come out. The face was roughly recognizable. The internal organs of the body did not decompose and no disease was detected on the body of the deceased boy. According to the medical board, the cause of death of the deceased victim was due to asphyxia from homicidal suffocation. P.W.7 proves the attested photocopy of the post-mortem examination report including his signature appearing thereon as Exhibit Nos.5 and 5/1 respectively.

In reply to cross-examination P.W.7 states that suffocation can be caused due to pressing of mouth as well as by smothering with pillow. The skin was peeled off from different areas of the dead body which was partially decomposed. P.W.7 denied the defence suggestion that they whimsically submitted post-mortem examination report.

In his testimony P.W.8 A.S.I Md. Bazlur Rahman discloses that on 14-11-2013 he was posted at Rajbari Police Station as duty officer. In the morning of that day at around 6.30 am accused Raktim alias Ranjon was brought to the police station under arrest whereupon a black coloured mobile set and 3(three) mobile SIMs were seized from him vide seizure list. This witness proves the seizure list dated 14-11-2013 including his signature appearing thereon as Exhibit Nos.3(ka) & 3 respectively. P.W.8 also identified the seized articles in the court and recognized accused Ranjon in the dock.

In reply to cross-examination P.W.8 states that the Investigating Officer brought accused Ranjon to the Police Station at around 6.30 am, whereupon the concerned accused brought out a mobile phone from his pocket.

P.W.9 Md. Nasir Uddin is the relevant Magistrate who penned down the confession of accused Raktim Sarker alias Ranjon and Md. Rasel Sheikh on 14-11-2013 and 18-11-2013 respectively. In his testimony this witness avers that while he was posted in Rajbari as Senior Judicial Magistrate, Inspector (Investigation) Mizanur Rahman produced accused Raktim Sarker alias Ranjon before him on 14-11-2013 at around 1.00 pm for recording his

confessional statement, whereupon he afforded him (accused) 3(three) hours time for reflection. Thereupon, the concerned accused expressed his willingness to make confession following which he made him understand the result of making confession and also asked him different questions in order to verify whether he was making confession voluntarily or not. Thereafter, he jotted down the confession of accused Raktim Sarker alias Ranjon after observing all necessary formalities. In his confession the accused gave a detailed account as to how he committed murder of the victim boy. It is his (P.W.9) belief that the accused made confession voluntarily and the same was true as well. After recording the confession, he read it over to the accused who put his signature thereto admitting the contents thereof to be true. P.W.9 proves the confession of accused Raktim Sarker alias Ranjon including his signatures appearing thereon as Exhibit Nos.6 and 6/1 series respectively.

This witness further states that in the afternoon of 18-11-2013 at around 1.00 pm, police Inspector Saiful Islam produced accused Md. Rasel Sheikh at his chamber for recording his confessional statement, whereupon he made him understand as to the effect of making confession and also asked him different

questions. Thereafter, he afforded the accused 3(three) hours time for reflection. Since the accused expressed his desire to make confession he (P.W.9) jotted it down and thereafter read it over to the accused who admitted the contents thereof to be true by putting his signatures thereon. It appears to him (P.W.9) that the confession of the relevant accused was true and voluntary. P.W.9 proves the confessional statement of accused Md. Rasel Sheikh including his signatures appearing thereon as Exhibit Nos.7 and 7/1 series.

In reply to cross-examination P.W.9 states that accused Ranjon was detained on 14-11-2013 at around 12'O clock in the night from Kojuri village (Kabirajpur) of Rajoir Police Station under Madaripur District.

This witness further states that under coloumn 8 he mentioned that the confession of the accused is true and voluntary. He asked the accused whether he was malhanded or whether he had any injuries on his person. He mentioned the date and time of arrest of accused Rasel as per police forwarding and also as per information furnished by the accused. P.W.9 denied the defence suggestions that accused Ranjon was produced before him after 36 hours of his arrest or that the confession of the accused are not voluntary in nature.

P.W.10 Inspector (Investigation) A.K.M. Mizanur Rahman is the first investigating officer of the case. In his testimony this witness avers that on 09-11-2013 the task of investigation of the instant case was entrusted to him, whereupon he visited the place of occurrence and prepared sketch map (Exhibit No.8) and index (Exhibit No.9), examined witnesses under section 161 of the Code, apprehended accused Roni and took him on remand for 1(one) day during which, on interrogation, he (accused) admitted that after kidnapping victim Rifat he handed him over to co-accused Rasel and Ranjon. During investigation, he also seized the mobile phone of accused Roni as well as accused Raktim vide seizure list. Subsequently, on consultation of the mobile call lists he (P.W.10) detained accused Ranjon from a village of Rajoir P.S. under Madaripur. Later, as per disclosure as well as at the showing of accused Ranjon, he recovered the sack packed dead body of deceased Rifat from the backyard latrine of the residence of Bhairob Shill. On information, the father of deceased victim Rifat along with his other relatives came to that spot and identified the dead body of deceased Rifat. Subsequently, he prepared inquest report of the dead body. He also seized the plastic sack within which the dead body of victim Rifat was stuffed including the white

plastic bag with which the face of the victim boy was entangled vide seizure list (Exhibit No.10) in presence of witnesses. He also seized the mobile set of accused Ranjon including the SIM thereof using which ransom was demanded vide seizure list. Under the leadership of the then of officer-in-charge, they (P.W.10) nabbed accused Rasel. Later, both accused Ranjon and Rasel made judicial confession before the Magistrate implicating themselves with the incident. During investigation, he found prima-facie incriminating materials against the accused. Eventually, on 21-11-2010, he handed over the C.D. to the officer-in-charge due to his transfer elsewhere.

In reply to cross-examination done by accused Raktim alias Ranjon and Rasel P.W.10 says that he along with A.S.I Hiron Biswash arrested the accused. He further states that he was not the Investigating Officer of Rajbari P.S. Case No.21 dated 14-11-2013. They detained accused Raktim alias Ranjon in the night following on 13-11-2013 at around 1.30 am from Begumpotty village of Kobirajpur union under Rajoir P.S, Madaripur and also recovered a young girl named Tamanna Mustary (16) from his (accused) custody. This witness further states that Rajbari is about 60(sixty) kilometer away from the aforesaid place of arrest of the accused.

He (10) arrested accused Ranjon as per disclosure made by co-accused Roni as well as taking clue from the mobile call lists of accused Ranjon. Ransom was claimed by making phone call to the Robi SIM number of the informant. He did not seize the mobile phone of the informant since its number was found in the call lists of the accused. The slab of the latrine was removed by them (P.W.10) but it was not seized in the case. As per docket, accused Ranjon was arrested in the night following 14-11-2013 and further that he made incorrect statement that the relevant accused was nabbed in the night following 13-11-2013. A.S.I Hiron did not carry out investigation, rather he assisted him (P.W.10) in the investigation. The dead body was recovered from the toilet of Bhairob Shill and thereafter, it was sent to the morgue. P.W.10 denied the defence suggestions that the dead body was not recovered at the instance of the accused or that the accused made confession due to torture.

In reply to cross-examination conducted by accused Roni, P.W.10 further says that accused Roni was apprehended in the night following 09-11-2013 at around 9.00 pm and he (P.W.10) forwarded him to the court on the following day i.e. on 10-11-2013. He did not seize any documents in connection with the seized

mobile SIM of accused Roni, but he (P.W.10) became certain upon seeing the call list. P.W.10 denied the defence suggestion that accused Roni did not admit his guilt to him.

P.W.11 Md. Abdul Khalek is one of the Investigating Officer of the case. In his deposition this witness discloses that he took the charge of investigation on 25-11-2013 since the earlier Investigating Officer was transferred elsewhere. During investigation, he consulted the case docket prepared by the earlier Investigating Officer and recorded the statement of one witness under section 161 of the Code. Having found prima facie incriminating materials he submitted police report being No.64(1) dated 25-02-2014 against accused Raktim alias Ranjon, Rasel and Roni under sections 302/201/34 of the Penal Code.

In reply to cross-examination done by accused Raktim alias Ranjon and Rasel P.W.11 says that he could not say under the custody of which police accused Ranjon was being kept in the night following 14-11-2013 since he was not then working at the relevant police station. The place of occurrence is in front of the Kindergarten School and the other place of occurrence is the house of accused Raktim. Accused Rasel is aged about 22/23 years while accused Ranjon is 20 years old. A.S.I Hiron prepared a seizure list

in connection with Case No.15 dated 09-11-2013 who assisted the Investigating Officer of the instant case.

In reply to cross examination conducted by accused Roni P.W.11 further states that he did not seize any attendance Register from Rajbari Kindergarten and also did not make query to any person of that school. He also did not ask any question to the surrounding people of the P.O. area wherefrom the dead body was recovered.

P.W.12 Constable No.192 Sree Jugal Das is the relevant police personnel who took the dead body of deceased victim Rifat to the morgue for post-mortem examination. In his testimony this witness discloses that on 14-11-2013 while he was posted at Rajbari P.S, he went to the backyard of the residence of Bhairab Shill (P.W.4) at Sajjankanda along with the officer-in-charge (Investigation) and found many people present there. Subsequently, the dead body of deceased victim Rifat was recovered from the septic tank of the latrine thereof whereupon inquest of the same was held following which the dead body was brought back to the police station, wherefrom he took it to the morgue.

In reply to cross-examination P.W.12 says that he took the dead body to the morgue in the morning at around 10.00 am from

the police station. The dead body got swollen. He identified the dead body to the doctor and also disclosed to him as to wherefrom the dead body was brought. P.W.12 denied the defence suggestions that the dead body was petrified or that he did not go to the residence of Bhairob Shill at Sajjonkanda.

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

There is no dispute about the brutal killing of the minor son of the informant, Md. Moktar Mondal named Rifat (12). Albeit, since the matter involves capital punishment in the form of death penalty, we would like to have a close look at the inquest report to find out what injury or injuries were found on the cadaver of the deceased victim at the initial stage of the case and what the apparent cause of death.

P.W.10 Inspector (Investigation) A.K.M. Mizanur Rahman is the relevant police officer who prepared inquest report (Exhibit No.2) of the dead body of deceased victim Rifat.

The relevant text of Exhibit No.2 is quoted below in verbatim:

“আমি পুলিশ পরিদর্শক (তদন্ত) এ.কে.এম, মিজানুর রহমান সংগীয় এ.এস.আই/১৬ হিরন কুমার বিশ্বাস, কং/৯৪ যুগল দাস সহ অদ্য ইং ১৪/১১/১৩ তাং রাত ০৩.২০ ঘটিকার সময় প্রেফতারকৃত এজাহারনামীয় ১নং আসামী রঞ্জনের দেখানো মতে তাহার বাড়ীর পূর্ব পার্শ্বে প্রতিবেশী ভৈরব শীলের টিনের কাচা পায়খানার স্নাবের নীচে ট্যাংকির ভিতর হইতে প্লাষ্টিকের বস্তাবন্দি লাশ ডোম আজিম এর সাহায্য নিয়া উদ্ধার করিয়া বস্তা হইতে বিবস্ত্র অবস্থায় বাহির করিয়া ল্যাট্রিনের সামনে ফাকা জায়গায় উত্তর শিয়রী রাখিয়া সুরতহাল প্রতিবেদন পার্শ্বে বর্ণিত সাক্ষীদের মোকাবেলায় প্রস্তুত করিতে আরম্ভ করিলাম। মৃতের বয়স অনুমান ১২ বৎসর। স্বাস্থ্য ভাল। মাথার চুল কালো। লম্বা অনুমান ১ থেকে ১ $\frac{১}{২}$ ইঞ্চি, অধিকাংশ উপরে গেছে। চোখের মনি বাহির অবস্থায় ফুলে আছে। জিহবা কামড়ানো অবস্থায় কিছু অংশ বাহির করা। বুক পিঠ স্বাভাবিক। পুরুষ লিঙ্গে লোম নেই। অভকোষ ফুলে আছে। পা দুটো ভাজ করা বাকানো। শরীর ফুলে ফেপে আছে। ডোম আজিমের দ্বারা শরীর উল্টাইয়া পাল্টাইয়া আঘাতের চিহ্ন পাওয়া গেল না। কারণ শরীর ধুয়ে গেছে।”

(Emphasis put).

From the aforesaid narration it appears that the hacked dead body of deceased victim Rifat was recovered on 14-11-2013 at 3.20 pm from the septic-tank of the Tin Shed toilet of one Voirob Shil (P.W.4) and that too at the showing of accused Ranjon alias Raktim which was wrapped with plastic bag. It further appears that at the relevant time the eyes of the victim boy were found almost come out and the tongue was found protruded as well as bitten by teeth.

The entire body of the victim boy was swollen and no visible mark of injury could be detected as it was washed out.

Regarding cause of death it has been stated in Exhibit No.2 that,

“প্রাথমিক তদন্তে আসামী রঞ্জনের জিজ্ঞাসাবাদে জানায় রনি বিবাদীকে নিয়ে রঞ্জনের বাসায় নিয়ে দুপুর ১২.৩০ মিনিটের দিকে যায় তারিখ ছিল ইং ০৬/১১/১৩ তাং। মুক্তিপনের জন্য আটক রাখা অবস্থায় রঞ্জনের বাড়ীর এক রুমে আসামী রাসেল, রনি ও রঞ্জন উপর করে গামছা পেচিয়ে বালিশের উপর মুখ চেপে হত্যা করে। আমার তদন্তেও তাহাই প্রতীয়মান হয়। তথাপি মৃত রিফাদের মৃত্যুর সঠিক কারণ নির্ণয়ের জন্য কং/৯৪ যুগল দাসের মাধ্যমে মেডিকেল অফিসার সদর হাসপাতাল মর্গে মৃতের মরদেহের ময়না তদন্তের প্রয়োজনীয় কাগজপত্র সহ প্রেরণ করিলাম। ”

(underlining is ours).

Thus, on preliminary investigation, it was found that on 06-11-2013 at around 12.30 pm victim Rifat was taken to the residence of accused Ranjon by co-accused Rony and detained him there for realization of ransom and thereafter all the accused i.e. Rasel, Rony and Ranjon conjointly killed him by strangulation as well as by smothering.

It is on record that P.W.7 Dr. Sheikh Md. Abdul Hannan was a member of the medical board which conducted autopsy of the

dead body of deceased victim Rifat. According to P.W.7, the skin and hair of the victim boy were found denuded and the tongue was found protruded as well as bitten by teeth. Moreover, no other disease or any other abnormality was found on the dead body of the deceased victim boy. As per P.W.7, the cause of death of deceased victim Rifat was due to asphyxia from homicidal suffocation. P.W. 7 was cross-examined by the defence but nothing as such has come out from his mouth which could belittle his testimony so far the cause of death of deceased victim is concerned. We also found nothing on record to hold a different view with that of the medico-legal evidence furnished by P.W.7. In such a backdrop, we are of the view that the prosecution has successfully been able to prove the fact that deceased victim Rifat (12) was done to death by homicidal suffocation.

Now, the most striking question that calls for our determination is, who is or are the actual assailant or assailants of deceased victim Rifat.

Admittedly, there is no eye witness to the incident of kidnapping followed by the gruesome murder of deceased victim Rifat. The mainstay in embroiling the accused in the incident of killing of deceased victim Rifat is the confessional statements made

by accused Ranjon alias Raktim and Md. Rasel sheikh regarding which we will take stock of now.

It is by now a settled principle of law that an accused can be found guilty and convicted solely banking on his confessional statement, if the same on scrutiny, is found to be true, voluntary and inculpatory in nature. In this context, we may profitably refer the case of Md. Islam Uddin @ Din Islam Vs. The State reported in 27 BLD (AD) 37 wherein our Appellate Division has observed as under:

“7. It is now the settled principle of Law that judicial confession if it is found to be true and voluntary can form the sole basis of conviction as against the maker of the same. The High Court Division as noticed earlier found the judicial confession of the condemned prisoner true and voluntary and considering the same, the extra judicial confession and circumstances of the case found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”

In the case of Aziz vs. State reported in 73 DLR (AD) (2021) 365 it has been observed as under:

“When the voluntary character of the confession and truth are accepted it is safe to rely on it. Indeed a confession, if it is voluntary and true and not made under any inducement or threat or promise, is the most patent piece of evidence against the maker. A confession may form the legal basis of conviction if the court is satisfied that it is true and was voluntarily made.”

In the case of *Dogdu v. State of Maharashtra* reported in AIR 1977 SC 1759 it was observed that when in case involving capital punishment, prosecution demands conviction primarily on the basis of confession, the court must apply the double tests: (1) Whether the confession is perfectly voluntary, and (II) if so, whether it is perfectly true.

Let us now find out whether the confessions of accused Ranjon alias Raktim and Rasel have satisfied the aforesaid criteria or not and for that matter it would be profitable to have a peep at the same with a searching eye.

The confession of accused Ranjon alias Raktim has been marked as Exhibit No.6 which is reproduced below in vernacular:

“যশোর এবং বেনাপোল থেকে ফেন্সিডিল এনে পাবলিক হেলথ মোড়ের নাইন বাবুর মাধ্যমে বিক্রি করিতাম। ফেন্সিডিলের কয়েকটি চালান ধরা পড়লে বাবু এবং রহিমের নিকট আমার ২০,০০০/- টাকা দেনা হয়ে যায়। এরপর ২০১২ সালের ডিসেম্বর মাসের ০১ তারিখ

৪০বোতল ফেন্সিডিলসহ আমি শার্শায় ধরা পড়ি। এক মাসের উর্ধ্বকাল পর যশোর কেন্দ্রীয় কারাগার থেকে বের হই। এরপর আমি কিছুদিন রাজবাড়ি ছিলাম না। রাজবাড়ী ফিরে আসার পর রহিম এবং বাবু পাওনা টাকার জন্য আমাকে চাপ দিতে থাকে। আমি খুব একটা বাইরে বের হতাম না। রনি পিং মালেক, সাং চরনারায়নপুর এবং রাসেল পিং দুলাল সাং সজ্জনকান্দার সাথে এই সময় আমার ভাল সম্পর্ক ছিলো। সব ঝামেলা থেকে মুক্ত হওয়ার জন্য আমার ৬০/৭০ হাজার টাকার দরকার ছিল। রাসেল, রনি এবং আমি ঘটনার পূর্বে রেল স্টেশনের পানির ট্যাংকে এর পাশের ওভার ব্রিজে পর পর ০৩ দিন বসে এই অপহরনের পরিকল্পনা করি। অপহরন করার দায়িত্বে থাকে রনি। রাসেলের দায়িত্ব থাকে তাহাকে জীবিত অবস্থায় লুকিয়ে রাখা। আমার দায়িত্ব থাকে ফোন করে মুক্তিপন আদায় করা। এই মাসের ০৬-১১-২০১৩ তারিখ দুপুর অনুমান ১২.৩০ ঘটিকায় রনি আমাকে ফোন দিয়ে বলে যে, সে নাকি রিফাতকে নিয়ে আসছে। আল গাজ্জালী স্কুলের সামনে রনি ও রিফাতের সাথে আমার দেখা হয়। একটা ল্যাপটপের কথা বলে রিফাতকে ভুলিয়ে রনি নিয়ে এসেছিল। আমরা ৩ জন আমার বাসায় যাই। রিফাতকে ঘরে বসিয়ে রেখে রনি একটা মোজো **Cold Drinks** নিয়ে আসে। রাসেল আগেই ঘুমের ঔষধ গুড়া করে আমার নিকট দিয়ে রেখেছিল। রনি **Cold Drinks** এর সাথে ঘুমের ঔষধ মিশিয়ে দেয়। রিফাত অর্ধেক **Cold Drinks** খেয়ে ১০/১২ মিনিটের মধ্যে ঘুমিয়ে যায়। আমি রাসেলকে ফোন দেই। অনুমান ১ ঘন্টা পর রাসেল আসে। রিফাতকে নিরাপদ জায়গায় লুকিয়ে রাখার জন্য আমরা ০২ জন রাসেল কে অনুরোধ করি। কিন্তু রাসেল বলে যে, যে জায়গায় রিফাত কে রাখার কথা ছিল সেখানে এখন রাখা সম্ভব নয়। আমি আমার বাসায় রাখতে অস্বীকার করি। তখন রাসেল প্রথমে রিফাতকে মেরে ফেলার প্রস্তাব দেয়। কিন্তু আমি ও রনি প্রথমে রাজি হই নাই। রাসেল বলে যে, এটা কোনো ব্যাপার না। রাসেল উপুর হয়ে ঘুমিয়ে থাকা রিফাতের পিঠে বসে গামছা দিয়ে গলায়

ফাঁস দিয়ে ঘাড়ের দিকে প্যাচ দিয়ে $2\frac{1}{2}$ / ৩ মিনিট ধরে রাখে। রিফাত মারা যায়। রাসেল আমাকে বস্তা নিয়ে আসতে বলে। আমি ২ টা প্লাষ্টিকের বস্তা নিয়ে আসি। একটা বস্তা মাথার দিক থেকে এবং একটা বস্তা পায়ের দিক থেকে ঢুকিয়ে রিফাত কে রান্না ঘরে ফেলে রাখি। রনি বাসায় চলে যায়। রাসেল গওয়ালন্দ চলে যায়। সন্ধ্যার একটু আগে আমি রিফাতের বাসায় ফোন দেই। রিফাতের বাবার কাছে ১৫ লক্ষ টাকা মুক্তিপন দাবী করি। রিফাতের বাবা বলে যে, এত টাকা আমি কোথায় পাবো। টাকা দিবে কি দিবে না এ বিষয়ে কোনো সিদ্ধান্ত হওয়ার আগেই আমি ফোন কেটে দেই। সন্ধ্যার পর রাসেল আসে। আমি ও রাসেল কিভাবে টাকা নেব এ বিষয়ে পরিকল্পনা করিতে থাকি। রাত অনুমান ১২.০০ ঘটিকার দিকে আমি ও রাসেল রিফাতের বস্তা বন্দী মৃত দেহ নিয়ে আমার প্রতিবেশী ভৈরব শীলের বাসার পাশের টয়লেটের কাছে যাই। টয়লেট টা টিন দিয়ে ঘেরা এবং কুয়ার উপর স্নাব বসানো। আমরা দুজন মিলে স্নাবটা উচু করে রিফাতের মৃতদেহ কুয়ার ফেলে দেই। রাসেল তার বাসায় চলে যায়। আমি আমার বাসায় চলে আসি। পরদিন দুপুরে শিবরামপুরে রাসেলের সাথে দেখা করতে যাই। শিবরামপুর বাজারে রাসেলের সাথে দেখা হয়। রাসেল কে সাথে নিয়ে বিকাল ৩.৩০ ঘটিকায় রাজবাড়ি আসি। ইং ০৮/১১/১৩ তারিখ দুপুর বেলা সম্ভবত রাজবাড়ি থানা থেকে আমাকে ফোন করা হয়। আমি বিষয়টি অনুধাবন করি যে, পুলিশ সব কিছু জেনে গেছে। আমি ফরিদপুরের ভাঙ্গায় পালিয়ে যাই। খালাতো বোনের বাসায় একরাত থাকি। ০৯ তারিখ দুপুরে তামান্না সেখানে যায়। তামান্নাকে নিয়ে দেউড়ায় ১২ তারিখ পর্যন্ত থাকি। ১২ তারিখ রাতে পুলিশ তল্লাশী চালায়। আমরা পালিয়ে যাই। গতকাল রাতে পুলিশ কৈজুরী গ্রাম থেকে আমাকে ও তামান্নাকে গ্রেফতার করে। ”

(Underlining is ours).

The exact text of the confession of accused Md. Rasel Sheikh
(Exhibit No. 7) reads as follows:

“রঞ্জন ও রক্তিম ও রনির সাথে আমার ভাল সম্পর্ক ছিল। বয়সে বড় হওয়ায় তারা আমাকে বড় ভাই ডাকিত। রঞ্জন আমাকে অবৈধ পথে অনেক টাকা পয়সার মালিক হওয়ার লোভ দেখাইতো। রনির নিজ নামে থাকা সম্পত্তির একটা দলিলের মাধ্যমে আমরা সুদে টাকা কর্জ নেয়ার চেষ্টা করি। কিন্তু রনির নিজ নামে নাম পত্তন না থাকায় আমাদের কেউ টাকা দিতে রাজি হয় না। তারপর এই ঘটনার অনুমান ১৫ দিন পূর্বে রনি রেল স্টেশনের দ্বিতীয় ওভারব্রীজ এর উপর বসে বলে যে, তাহার বাড়ির পাশে একটা লোক দীর্ঘদিন পর বিদেশ থেকে এসেছে। তার একটা ছেলে আছে। ঐ ছেলেকে এনে আটক রাখতে পারলে অনেক টাকা পাওয়া যাবে। আরও ০২দিন একই স্থানে কথা বার্তা বলার পর আমরা ০৩ জন রনির কথিত ছেলে কে অপহরণ করার বিষয়ে একমত হই। রনির দায়িত্ব থাকে ঐ ছেলেকে ল্যাপটপ কম্পিউটারের কথা বলে ভুলিয়ে রঞ্জন এর বাসায় আনা। রঞ্জন এর বাবা কীর্তন সঙ্গীত করে। কোনো একটা অনুষ্ঠানের কারণে তার ০২ দিন বাইরে যাবার কথা ছিল। ঐ সুযোগে আমি ও রঞ্জন, রনির আনা ছেলে কে রঞ্জন এর বাসায় আটক রাখবো এমন কথা থাকে। মোবাইল ফোনে মুক্তিপন হিসাবে ১৫ লক্ষ টাকা দাবী করার দায়িত্ব থাকে রঞ্জনের। ইং ০৬/১১/১৩ তারিখ আমি শিবরামপুরে আমার কর্মস্থলে ছিলাম। ঐ দিন অনুমান ১২.৩০ ঘটিকায় রঞ্জন আমাকে ফোন করে বলে যে, রনি ঐ ছেলে কে তাহার বাসায় নিয়ে এসেছে। আমাকে তাড়াতাড়ি চলে আসার জন্য বলে। অনুমান ৩.০০ ঘটিকায় আমি রঞ্জনের বাসায় আসি। আমি ঘরে ঢুকে দেখি যে, পূর্ব পরিকল্পনা অনুযায়ী রঞ্জন ও রনি **MOJO Cold drinks** এর সাথে ঘুমের ঔষধ খাইয়ে ছেলেটাকে ঘুম পাড়িয়ে রেখেছে। ছেলেটার বয়স অনুমান ১০/১১ বৎসর হবে। তার পরনে ফুল ফ্যান্ট এবং গায়ে শার্ট ছিল। আমি রঞ্জনকে বলি যে, তোর বাবা

তো বাইরে যায় নাই। তখন রঞ্জন বলে যে, বাবার যাওয়ার কথা ছিল কিন্তু যায় নাই। রঞ্জন ছেলেটাকে অন্য কোথাও লুকিয়ে রাখার জন্য আমাকে অনুরোধ করে। কিন্তু আমার পরিচিত তেমন কোনো নির্ভরযোগ্য জায়গা ছিল না। এরপর রনি প্রথমে বলে যে, এই ছেলের বাবার সাথে তাহার পিতার পূর্ব শত্রুতা আছে। সে তাকে মেরে ফেলার প্রস্তাব দেয়। আমি ও রঞ্জন একটু আপত্তি করি। কিন্তু রনি বলে যে, যেহেতু তার ঘুম ভাঙ্গার সম্ভাবনা নাই আবার কোথাও লুকিয়ে রাখাও সম্ভব হচ্ছে না সেহেতু তাহাকে মেরে ফেলাই উত্তম। কোনো উপায় না দেখে আমরা ০৩ জনই তাকে মেরে ফেলার সিদ্ধান্ত নেই। রনি ঘরের মধ্যে রশিতে ঝুলতে থাকে একটা গামছা নিয়ে আসে। আমি ছেলেটার মাথা ধরে ২/৩ বার ঝাকি দেই। কিন্তু কোন সাড়া শব্দ পাই না। আমি ছেলেটার পিঠের উপরে বসে ওর মাথা উচু করে ধরি। রনি গলার নিচ দিয়ে গামছা দেয়। আমি গামছার এক প্রান্ত রঞ্জন এর হাতে দেই। আরেক প্রান্ত রনির হাতে থাকে। যখন ঘাড়ের দিকে গামছায় প্যচ দিয়ে দুদিক থেকে রনি ও রঞ্জন টান মারে তখন ছেলেটা নড়ে উঠে। আমি তখন ছেলেটার কোমরের উপর বসে পিছন দিকে মুখ করে হাত ভাঙ্গা অবস্থায় দুই পায়ের গোড়ালি শক্ত করে ধরে রাখি। রনি ও রঞ্জন ওর দুই পা দিয়ে চেপে ধরে রাখে। অনুমান $2\frac{1}{2}$ / ৩ মিনিটের মধ্যে ছেলেটা মারা যায়। রনি ও রঞ্জনকে লাশের পাহারায় রেখে বেলা অনুমান ৩.৩০ ঘটিকায় আমি খাওয়ার জন্য বাসায় চলে যাই। অনুমান ৪০ মিনিট পর এসে দেখি যে, রনি ও রঞ্জন লাশ বস্তায় ভরে রঞ্জন এর শোবার খাটের নিচে রেখে দিয়েছে। আমি আসার পর রনি বাড়ি চলে যায়। এর পর রঞ্জন মোবাইলে মুক্তিপন দাবী করে। কিন্তু রঞ্জন ঠিক কখন মুক্তি দাবী করেছিল তা আমি বলতে পারবো না। রাত অনুমান ৮.৩০-৯.০০ ঘটিকার দিকে রঞ্জন এর বাবা বাইরে গেলে আমরা লাশ রঞ্জন এর বাসার রান্না ঘরে রেখে দেই। রাত আরো গভীর হলে লাশ কোথায় ফেলবো এ নিয়ে আমি ও রঞ্জন আলোচনা করতে থাকি। এক পর্যায়ে রঞ্জন বলে যে, তার প্রতিবেশী ভৈরব শীলের টয়লেটের

স্নাব আলাগা সে কিছুদিন আগে দেখেছে। স্নাবটা উচু করে কুয়ায় লাশ ফেলা যাবে। রাত অনুমান ১২.০০ ঘটিকায় আমি ও রঞ্জন বস্তাবন্দি লাশ নিয়ে ভৈরব শীলের টয়লেটের কাছে যাই। আমি স্নাব উচু করি। রঞ্জন লাশ সমেত বস্তা কুয়ায় ফেলে দেয়। এরপর রঞ্জন ও আমি নিজ নিজ বাড়ীতে চলে যাই। পরদিন সকালে আমি রঞ্জন কে ফোনে না পেয়ে যথারীতি শিবরামপুরে আমার কর্মস্থলে চলে যাই। রঞ্জন বিকলে ৩.৩০ ঘটিকায় আমার কর্মস্থলে আমার সাথে দেখা করে। মুক্তিপন আদায় হলে রঞ্জন আমাকে জানাবে এমন কথা হয়। ইং ০৮/১১/২০১৩ তারিখ সন্ধ্যায় আমার মা আমাকে ফোন করে বলে যে, রঞ্জন এর বাবাকে পুলিশে ধরে নিয়ে গেছে এবং রঞ্জনকে খুঁজছে। একটু পরেই হিরন দারোগা আমার মায়ের মোবাইল থেকে আমাকে ফোন দেয়। আমি বলি যে, আমি কিছু জানি না। এরপর আমি দ্রুত রঞ্জনের সাথে যোগাযোগ করার চেষ্টা করি। কিন্তু যোগাযোগ করতে পারি না। আমি পরিস্থিতি বুঝে আমার ফোন বন্ধ করে দেই। আমার মায়ের পরামর্শ মত আমি নাড়ুয়ায় আমার নানা বাড়ীতে চলে যাই। ৪/৫ দিন নানী বাড়ীতে পালিয়ে থাকি। আজ থেকে ০২দিন আগে আমি নাড়ুয়া থেকে রাজবাড়ী আসি। গোয়ালন্দ মোড়ে আমার খালু শুগুর বাড়ী একরাত থাকি। গতকাল রাত ৮.০০ ঘটিকার দিকে আমি আবু বককার সিদ্দিক নামের একজনের মোটর সাইকেলে দৌলতদিয়া ঘাটে যাচ্ছিলাম। আমি ঢাকায় পালিয়ে যেতে চাইছিলাম। ০৪ লেন রাস্তার শুরুতে পুলিশ মটর সাইকেল থামিয়ে আমাকে অনেকক্ষন জিজ্ঞাসাবাদ করে পরিচয় জানতে পেরে আমাকে গ্রেফতার করে। ”

(Emphasis added).

From a combined reading of the aforesaid 2(two) confessions it appears palpably that both the accused gave a blow by blow description of the entire incident starting from planning as well as

kidnapping of deceased victim Rifat for ransom which ended with abandonment of his dead body in the septic-tank of a nearby house of accused Ranjon after killing him including the reason of committing such heinous crime. According to the confessions of the accused, before the incident they were in need of money and for that the 3(three) accused i.e. accused Rasel, Rony and Ranjon conspired among themselves for consecutive 3(three) days sitting on the over bridge located near the over-head water tank of the Railway Station and in consequence of that conspiracy accused Rony was given the task of kidnapping the victim boy who did it so by giving allurement of a laptop to victim Rifat and took him to the house of Ranjon and thereafter they gave him to drink Mojo Cold Drinks spiked with sleeping pill following which the victim boy had fallen asleep. Subsequently, as there was no place of concealment of the victim boy, all of the aforesaid 3(three) accused killed him by strangulation with a gamcha (গামছা) and thereafter accused Ranjon and Rasel ditched the dead body of deceased victim Rifat which was wrapped with plastic bag in the septic-tank of one of the neighbor of accused Ranjon named Bahirab Shil (P.W.4). The aforesaid description as was given by the accused in their confessional statements come in agreement in material

particulars with that of the prosecution story. Thus, the confessions of accused Ranjon alias Raktim and Rasel can be termed as true and inculpatory in nature.

P.W. 9 Md. Naser Uddin is the relevant Magistrate who jotted down the confession of accused Ranjon alias Raktim and Rasel. Materials on record go to show that with the assistance of information technology accused Rony was first nabbed in the case and thereafter on information gleaned from him accused Ranjon alias Raktim Sarkar was detained in the night following 13-11-2013 at around 1.30 am from Village Begum Patti of Kabirajpur Union under Rajoir Police Station, Madaripur, wherefrom Rajbari District is about 60(sixty) miles off. Thereafter, on the following day i.e. on 14-11-2013, he was produced before the Magistrate Court as, on preliminary grilling, he expressed his willingness to make confession, whereupon P.W.9 afforded him 3(three) hours time for reflection during which he was kept under the custody of court peon named Mostafizur Rahman. Thereupon, after asking necessary questions as set out under column 6 of the confession recording form as the relevant accused expressed his desire to make confession, P.W.9 took it down and thereafter, it was read over to the accused who admitted the contents thereof to be true and correct

account of the incident by putting his signature thereto. On a reference to Exhibit No.6 it further reveals that under column 1 (one) the Magistrate concerned make statement in the following language:

“আসামী রঞ্জিম সরকার ওরফে রঞ্জন কে পুলিশ পরিদর্শক (তদন্ত) এ,কে,এম মিজানুর রহমান দুপুর ১.০০ ঘটিকায় আমার খাস কামরায় দোষ স্বীকারোক্তি মূলক জবানবন্দি রেকর্ড করানোর জন্য নিয়ে এনে আমি তাহাকে MLSS মুস্তাফিজ এর জিম্মায় চিন্তা ভাবনা করার জন্য ০৩ ঘণ্টা সময় দেই। এরপর বিকাল ৪.০০ ঘটিকায় আসামীকে জিজ্ঞাসাবাদ করিলে আসামী স্বেচ্ছায় দোষ স্বীকারোক্তি করিতে রাজি হওয়ায় আমি তাহার স্বীকারোক্তি মূলক জবানবন্দি রেকর্ড করি। এই সময় আমার খাস কামরায় অন্য কেউ ছিল না।

(Emphasis put).

Under column 8 of the confession (Exhibit No.6) P.W. 9 gave certificate in the following terms:

“আমি আসামীকে সতর্ক করি যে, সে দোষ স্বীকার করিতে বাধ্য নয় এবং তাহার স্বীকারোক্তি তাহার বিরুদ্ধে সাক্ষ্য হিসাবে ব্যবহৃত হইতে পারে। তাহা সত্ত্বেও আসামী দোষ স্বীকার করিতে সম্মত হওয়ায় আমি বিশ্বাস করি যে, তাহার এই স্বীকারোক্তি সত্য এবং স্বেচ্ছামূলক।”

(Emphasis added).

Moreover, after penning down the confession, accused Ranjon alias Raktim was sent to Rajbari Jail on the self-same day.

On the other hand, accused Rasel was arrested in the night following 17-11-2013 at around 9.00 pm from the roundabout of Dowlatdia Ghat and thereafter, he was produced on the following day i.e. on 18-11-2013 at 1.00 pm before the relevant Magistrate Court for recording his confession, whereupon P.W.9 afforded him 3(three) hours time for reflection during which he was placed under the custody of Court peon, Mostafizur Rahman. Thereafter, P.W.9 being satisfied about the voluntary character of the confession by making necessary quires as set out under column 6 of the confession recording form, jotted down the confession of accused Rasel Sheikh and thereupon it was read over to the relevant accused who admitted the same to be correct and true account of the incident by putting his signature thereto. On a reference to the confession of accused Rasel Exhibit No.7, it further appears that under column 1 the relevant Magistrate made statement in the following language:

“আসামী মোঃ রাসেল শেখ কে পুলিশ পরিদর্শক মোঃ সাইফুল ইসলাম দুপুর ১.০০ ঘটিকায় আমার খাস কামরায় দোষ স্বীকারোক্তিমূলক জবানবন্দি রেকর্ড করার জন্য নিয়ে এলে আমি তাহাকে MLSS মুস্তাফিজ এর হেফাজতে চিন্তা ভাবনা করার জন্য ০৩.০০ ঘণ্টা সময় দেই। এরপর বিকাল ৪.০০ ঘটিকায় আসামীকে জিজ্ঞাসাবাদ করিলে আসামী

স্বেচ্ছায় দোষ স্বীকার করিতে রাজি হওয়ায় আমি তাহার দোষ স্বীকারোক্তমূলক জবানবন্দি লিপিবদ্ধ করি। এই সময় আমার খাস কামরায় অন্য কেউ ছিল না।”

(Underlining is ours).

Under column 8 of the confessional recording form P.W.9 gave memorandum stating that,

“আমি আসামীকে সতর্ক করি যে, সে স্বেচ্ছায় দোষ স্বীকার করিতে বাধ্য নয় এবং তাহার স্বীকারোক্তি তাহার বিরুদ্ধে সাম্প্র্য হিসাবে ব্যবহৃত হইতে পারে। তাহা সত্ত্বেও আসামী দোষ স্বীকার করিতে সম্মত হওয়ায় আমি বিশ্বাস করি যে, তাহার এই দোষ স্বীকারোক্তি সত্য এবং স্বেচ্ছামূলক।”

(Emphasis put).

Finally, after recording the confession, this accused was also sent to Rajbari Jail hazat on the self-same day. It further reveals that after coming out of the clutches of the police, both the accused did not file any retraction application challenging the voluntariness of their confessions. But on perusal of the record it appears that after lapse of 2(two) years and few months the accused for the first time raised objection regarding the voluntary character of their confession by filing written statement while they were being examined under section 342 of the Code. We have gone through the written statements as well as the reply given by both the accused

while they were examined under section 342 of the Code, but we find nothing tangible on record in support of the allegations made by both the accused which are belated in point of time as well and as such, no reliance can be placed upon such belated statements made by accused Ranjon alias Raktim and Rasel so far the voluntary character of their confessions is concerned.

From the evidence of P.W.10 it appears that, at first, accused Rony was arrested in the case and he was taken on remand by the Investigating Officer and on the basis of information gleaned from him and taking assistance of information technology co-accused Ranjon alias Raktim was arrested from a village of Rajoir Police Station, Madaripur along with a girl named Tamanna Mustary (16). It further appears that thereafter the Investigating Officer recovered the dead body of deceased victim Rifat (12) from the septic-tank of P.W.4 Bhairob Shil and that too at the showing of accused Ranjon. From the evidence of P.W.1, it is found that accused Rony is a close door neighbor of the informant. It further appears that after receiving ransom demand, P.W.1 brought the matter to the notice of the relevant police and he himself also carried out search here and there. At that time, the informant got some descriptions of a person

whom he suspected to be the kidnapper of his son. In his evidence, P.W.1 gives out that,

“ খোঁজা খুজির পর্যায়ে কিছু লোকের সন্ধান পাই। বর্ননা শুনে আমি রনিকে অনুমান করি যে, সে রিফাতকে নিয়ে যেতে পারে। ”

Contention has been raised on behalf of the defence that FIR was filed after 3(three) days into the incident and that too against 6(six) persons of whom, 3(three) including the brother of the informant, Kaiyum were not sent up for trial by the Investigating Officer which has made the prosecution story doubtful and shaky. But, in the facts and circumstances of the instant case, we cannot align with the above view expressed by learned defence Advocate Mr. Shahjahan inasmuch as from the FIR story as well as from the testimony of the informant (P.W.1) it appears that at first, the informant thought that his victim son, Rifat might have gone missing whereupon search was carried out for the victim boy hither and thither and eventually a G.D. Entry was lodged. Subsequently, in the evening of the date of occurrence, an unknown miscreant made a phone call to the mobile phone of the informant and demanded Tk.15 (fifteen) lac as ransom for release of the victim boy disclosing that he was under their custody. Having received such mobile call, the informant became certain that his son was

abducted by some miscreants following which he conducted rigorous search but to no avail and he also informed the matter to the local police. During making search for his victim son, the informant came to know the descriptions of some persons which prompted him to suspect accused Roni as a person who might have taken away his son Rifat. Thereupon, the informant lodged the FIR naming accused Roni and his some close associates as accused. Furthermore, it has been mentioned in the FIR that due to the time spent for collecting the names and addresses of the FIR named accused as well as for making search for the victim boy from pillar to post, delay was caused in filing the FIR. The explanation as has been given in the FIR for delay in filing the case appears to be reasonable and acceptable.

Now, we can deal with the 2nd part of the argument advanced by Mr. Shahjahan that the FIR story is doubtful since only 3(three) accused were sent up for trial out of 6(six) named thereon. This view of the defence also cannot be countenanced as because the informant named 6(six) persons as suspected accused in the FIR, but during investigation nothing tangible was found against 3(three) of the suspected accused whereupon the Investigating Officer also did not forward them for trial. It is worthwhile to note that the

informant also did not file any naraji application against the non-sent up 3(three) suspected accused. Therefore, it will not create any dent in the prosecution story inasmuch as it is common-place in our society that sometimes some innocent persons are made accused in a criminal case for various reasons who eventually get rid of the case after investigation, but that alone cannot be a ground to inspire doubt about the prosecution story.

It has further been contended by the defence that the confessions of the 2(two) confessing accused are not true and voluntary and those were extracted by police torture and intimidation. On this score we gave our detailed reasoning in the earlier part of the judgment. Suffice it to note that the manner of causing death of the victim boy as disclosed by the confessing accused in their confessions comes in agreement with the post-mortem examination report wherein it has been stated that the cause of death was due to asphyxia from homicidal suffocation. Moreover, the concerned Magistrate (P.W.9) after complying with all legal requirements, recorded the confessions of the accused and thereafter, he gave certificate under his own hand about the true and voluntary nature of the confessions. P.W.9 is a judicial officer who neither had any axe to grind against the accused nor was he friendly

to the informant party, and as such, there is no earthly reason to discard his evidence. Above all, the confessions of the 2(two) confessing accused are found to be congruous to each other so far the factum of planning, kidnapping and killing of the victim boy as well as dumping his corpse in the latrine of P.W.4 wherefrom it was eventually recovered at the instance of accused Ranjon alias Raktim. In such view of the matter, the argument put forward by the learned defence Advocate regarding correctness and voluntariness of the confessions appears to be wide of the mark.

Mr. Shahjahan further contends that the circumstantial evidences of the case are not well knit and convincing in nature. But, we also cannot see eye to eye with the aforesaid view expressed by the learned defence Advocate for the simple reason that during making search for the victim boy, the informant got descriptions of some persons which tally with accused Roni, whereupon he filed the FIR naming Roni and other 5(five) of his close associates as accused. Thereupon, the Investigating Officer (P.W.10) at first nabbed accused Roni and on the basis of information gleaned from him, the other 2(two) accused were apprehended one after another. Thereafter, at the instance of accused Ranjon alias Raktim the sack packed dead body of the

victim boy was eventually recovered from the backside latrine of the dwelling house of P.W.4 Bhairab Shill. Moreover, the cause of death of the victim boy as was disclosed by the accused in their confessional statement also comes in agreement with that of the medico legal evidence furnished by P.W.7 Dr. Sheikh Md. Abdul Hannan. On top of that, immediately after arrest of accused Roni, the other 2(two) accused namely, Ranjon and Rasel went into hiding and they were eventually caught by the Investigating Officer while they were hiding in a distance place from their own houses. All these incriminating circumstances unerringly point to the guilt of the accused and therefore, the argument advanced by the learned Advocate on this score bites the dust.

On the other hand, Mr. Mahbubur Rahman, the learned Advocate appearing for accused Roni contends that there is no iota of evidence against the accused connecting him in the incident of kidnapping followed by murder of the victim boy. He further submits that the learned Judge of the trial court erred in law in finding the guilt of the accused solely banking on the confession of 2(two) co-accused. In this context, the learned Advocate has referred to the decision reported in 37 DLR (AD) 139. We are in complete deference to the ratio of the above decision of our Apex

Court. But by now the legal scenario has been changed. In the case of Shukur Ali Vs. State [74 DLR (AD) 11] it has been observed that,

“We hold that confessional statement of a co-accused can be used against other 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, post-mortem report and by the depositions of the witnesses particularly the deposition of PWs 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.”

In the instant case at our hand, it is found that accused Roni is a neighbour of the informant, who enticed away the victim boy showing allurements of a laptop. In his evidence P.W.1 unfurls that during search for the victim boy he got descriptions of some persons who might have taken away the victim boy which bore resemblance to accused Roni following which he filed FIR against Roni and his other close associates. Moreover, it appears from the materials on record that accused Roni, Ranjon and Rasel are close friends to each other and there was no animosity between accused Roni and the other 2(two) co-accused. We have observed earlier that the confessions of the 2(two) confessing co-accused are found to be true, voluntary and inculpatory in nature since it comes in agreement with the medico-legal evidence so far the cause of death of the victim boy. In their confessions the 2(two) co-accused categorically stated that the task of kidnapping the victim boy was entrusted to accused Roni as he was a close neighbour of the informant. In his evidence the informant (P.W.1) discloses that,

“পরের দিন ৯.০০ টার পরে ঐ নাম্বারে আমাকে পুনরায় ফোন করে ১৫ লক্ষ টাকা চায় এবং টাকা দিলে আমার ছেলেকে ফেরত দিতে চায়। পুলিশও খোঁজাখুঁজি করে। আমরাও বিভিন্ন জায়গায় খোঁজাখুঁজি করি। খোঁজাখুঁজির পর্যায়ে কিছু লোকের সন্ধান পাই। বর্ণনা শুনে আমি রনিকে অনুমান করি যে, সে রিফাতকে নিয়ে যেতে পারে।”

It further reveals from the evidences on record that after lodgment of the FIR at first, accused Roni was arrested by the Investigating Officer and thereafter, on the basis of information gleaned from him accused Ranjon alias Raktim and Rasel were nabbed one after another from distance places of their dwelling hut. Eventually, the dead body of the victim boy was recovered at the instance of accused Ranjon alias Raktim from the latrine of the house of P.W.4 Bhairob Shill. From the evidence of the Investigating Officer it further reveals that after apprehension of the accused 3(three) mobile sets were recovered and seized in the case vide seizure list as Exhibit Nos.3, 3(ka) & 4 and on going through the call lists thereof it is found that the accused persons kept contact as well as had conversation among themselves after the incident. Therefore, in the facts and circumstances of the instant case, we can easily rely on the ratio of Shukur Ali case reported in 74 DLR(AD) 11 in finding the culpability of accused Roni upon relying on the confessions of the 2(two) co-accused. If we consider the circumstantial evidence as discussed above together with the confession of the 2(two) co-accused, then it manifestly appears that accused, Roni was also involved in the kidnapping as well as

killing incident of victim Rifat. Therefore, the argument put forward by Mr. Rahman does not have any leg to stand on.

Regarding being had to the aforesaid discussions and the observations made thereunder, we are of the dispassionate view that the learned Additional Sessions Judge rightly and correctly adjudged the culpability of the accused, namely, (1) Ranjon alias Raktim, (2) Rasel and (3) Roni in the killing incident of deceased victim Rifat to the nicety and as such the impugned judgment and order deserved no interference.

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

Of late, the incidents of kidnapping as well as killing of children for ransom are alarmingly on the rise. Therefore, in order to rein such heinous activities, the offenders are required to be dealt with a heavy-hand. In this connection, we may profitably refer to the decision reported in 29 BLT (AD) 303 wherein our Appellate Division has observed as underneath:

“Children are vulnerable and defenseless class of victim deserving of special protection. The children are the future of every nation. The children not only need to be protection of their parents,

but also need to be protected by the society at large. Killing of a child need to be condemned and deprecated in the harshest terms legally, morally and socially. The criminal law is general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. In recent years, the rising crime rate particularly violent crime against children has made the criminal sentencing by the courts a subject of concern. The measure of punishment in a given case must depend upon the atrocity of the crime; conduct of the criminal and the defenceless and unprotected state of the victim. Having played with life of a child the appellant does not deserve any leniency and for him sympathizing on the ground sought for will be wholly uncalled for. In this case the appellant has betrayed the trust of the society and of the child. In the case at hand, the appellant killed the victim in a brutal and barbaric manner. The nature of the crime and the manner the same was committed inhumanly. It is not only betrayal of an individual trust but destruction and devastation of social trust. We, therefore, affirm the view taken by the High Court Division.”

Accused Ranjon alias Raktim, Rasel and Rony killed a forlorn boy aged about 12(twelve) years only for satisfying their avarice for money. Deceased victim Rifat had a long blissful life

ahead of him but accused Ranjon alias Raktim, Rasel and Rony put to an end to the same in a brutal manner without any fault of his own. Accused Rasel, Rony and Ranjon did not even feel a twinge in their conscious in killing an innocent boy by strangulation. Having considered the aggravating and mitigating circumstances, we are of the dispassionate view that death penalty would be the only appropriate punishment for the ruthless accused Ranjon alias Raktim and Rasel which is equally commensurate with the gravity of the offence committed by them.

On the other hand, since the culpability of accused Roni was adjudged relying on some circumstantial evidences including the confessional statement of 2(two) co-accused, the learned judge of the trial court sentenced him to imprisonment for life along with a fine of tk.20,000/- (twenty thousand) with default clause. In the facts and circumstances of the case, we endorse the above view of the learned judge of the trial court.

Accordingly, the death reference is accepted.

Accused Rajon alias Raktim and Rasel are found guilty under section 302/34 of the Penal Code and the sentence of death awarded to them is confirmed. The conviction and sentence of accused Rony is also maintained under Section 302/34 of the Penal Code.

The impugned judgment and order of conviction and sentence is up held.

The connected Criminal Appeal including Jail Appeals are dismissed being devoid any substance.

Send down the L.C. Records along with a copy of the judgment at once.

Md. Akhtaruzzaman, J.

I agree.