

Present:

Mr. Justice S.M. Emdadul Hoque

And

Mr. Justice Ashish Ranjan Das

Death Reference No.87 of 2016.

The State

..... Petitioner

-Versus-

Md. Sohel Ibne Karim.

..... Condemned-Convict.

With

Criminal Appeal No. 6438 of 2016.

Sree Sengupta Ghosh.

.....The convict-appellant (abated).

Versus

The State

.....The respondent.

With

Criminal Appeal No. 6489 of 2016

Md. Shakil Sarker

.....The convict-appellant.

Versus

The State

.....The respondent.

With

Criminal Miscellaneous Case No. 32024 of 2017

Md. Ahad Ali

.....The convict-petitioner.

Versus

The State

.....The respondent.

Mr. Md. Fazlur Rahman Khan (F.R. Khan), D.A.G with

Mr. Md. Rezaul Karim, D.A.G. with

Mr. Sharifuzzaman Majumder A.A.G with

Mr. Ashikuzzaman Bablu, A.A.G with

Mr. Abu Naser (Swapon), A.A.G.

..... for the State.

(In the reference and respondents of all appeals and Misc. Case)

Mr. Md. Hafizur Rahman Khan, Advocate

..... The State Defence Lawyer for the condemned-convict.

Mr. Taj Mohammad Sheikh, Advocate

..... for the appellant and petitioner in criminal Miscellaneous case.

**Heard on: 07.04.2022, 10.04.2022, 11.04.2022,
12.04.2022, 13.04.2022 and Judgment on: 18.04.2022.**

S.M. Emdadul Hoque, J:

This death reference under Section 374 of the Code of Criminal Procedure has been made by the learned Judge (District and Sessions Judge) Druto Bichar Tribunal, Rajshahi for confirmation of the sentence of death of the condemned-convict Md. Sohel Ibne Karim son of Md. A. Karim (absconding) and sentence awarded upon him under Section 302 of the Penal Code in Druto Bichar case No. 02 of 2016 arising out of Adamdighi Police Station Case No.07 dated 14.12.2012 corresponding to G.R. No. 172 of 2012 (Adamdighi) by its judgment and order of conviction and sentence dated 29.06.2016 and also sentence to fine of Tk.50,000/- (fifty thousand). The tribunal by the same judgment convicted the convict Md. Shakil Sarkar son of Md. Moniruzzaman, Sree Sengupta Ghosh, son of Sree Santosh Chandra Ghosh and Md. Ahad Ali @ Ahad Fakir, son of Alhaj Khoibor Ali Fakir under Section 302/448/34 of the penal code and sentencing them to

imprisonment for life with a fine of Tk.50,000/- each in default to suffer imprisonment for 01 (one) year more.

Against the impugned judgment and order of conviction and sentence the convict Sree Sengupta Ghosh as appellant preferred Criminal Appeal No. 6438 of 2016 and convict Md. Shakil Sarker @ Shakiluzzaman as appellant preferred Criminal Appeal No. 6489 of 2016 and subsequently absconding convict Md. Ahad Ali @ Ahad Fakir was arrested and since the date for preferring appeal was ended he filed Criminal Miscellaneous Case No. 32024 of 2017 under section 561A of the code of criminal procedure for quashment of the impugned judgment.

During the pendency of the appeal the convict-appellant Sree Sengupta Ghosh enlarged on bail but subsequently on 05.11.2021 he died due to road traffic accident and in support of the same the learned Advocate also submitted a photocopy of the death certificate of the condemned prisoner Sree Sengupta Ghosh thus as per section 431 of the Code of Criminal Procedure the appellant the Criminal Appeal No. 6438 of 2016 has been abated.

The criminal appeals and the Criminal Miscellaneous case since arising out of the same judgment and order of conviction being heard together along with the death reference and thus disposed of by this single judgment.

The prosecution case as made out by the informant P.W.1 Md. Azizur Rahman the father of victim Most. Shrin Aktar, in short, is that his daughter Most. Shrin Aktar (23) married the condemned-convict Md. Sohel Ibne Karim without his permission before 1½ years of the incident. After 1 year of the marriage the accused Sohel started to torture her from dowry. The victim returned back to his house 5 months ago thereafter the victim divorced her husband on 18.08.2012. Accused Sohel Ibne Karim and his friend Sree Sengupta tried to compromise the matter and thereafter in many times they threatened her to kill. That on 12.12.2012 the informant and his wife went to their village house and at about 4:00 pm in absence of the informant 2/3 unknown persons entered into his house and knocked the door and the victim opened the door. Then said 2/3 unknown persons caught hold her and brought her to the south and then pressed her neck by orna

and cut the leg of the victim and they went towards the west by a Micro Bus. The son of the informant Mamun saw the incident and could identify the accused No. 1 Sohel Ibne Karim. Mamun tried to come out from the room but could not succeed since all the doors were locked from outside. Thereafter the neighbours come to the place of occurrence and he could went out with their help and found her with a bloody condition and then taken her to Adamdighi Hospital. From where she was brought to Noagaon Sadar Hospital and the doctor referred her to Shahid Ziaur Rahman Medical College Hospital, Bogura and subsequently from where she was taken to Apollo Hospital, Dhaka. Wherein she was in ICU. Thereafter the informant lodged the written ejahar with the Adamdighi Police Station being Adamdidhi P.S Case No.07 dated 14.12.2012 under Sections 143/448/326/307/34 of the Penal Code mentioning the name of Md. Sohel Ibne Karim along with 5/6 unknown accused persons. Hence the case.

The case was investigated by Abdul Motaleb Inspector of Police (investigation) of Adamdighi Police Station who visited the place of occurrence, prepared the sketch map along with

separate index, examined the witnesses and recorded their statements under section 161 of the code of criminal procedure. Subsequently the victim died on 26.08.2013 long after 9 months of the incidence. Thereafter he held the inquest of the dead body and sent the dead body to the morgue for autopsy. Arrested some of the accused and thereafter produced the condemned-convict Md. Sohel Ibne Karim before the magistrate for recording his confessional statement under section 164 of the code of criminal procedure and after completing all the formalities of the investigation he found *prima- facie* case against the accused persons and submitted the charge-sheet being No.127 dated 08.11.2013 under Section 448/302/34 of the Penal Code.

Thereafter the case record came to the file of the learned Sessions Judge and registered as Sessions Case No. 1540 of 2014 and the learned Sessions Judge, took cognizance against the accused persons and sent the record to the Additional Sessions Judge, 3rd Court, Bogura for trial.

Thereafter on the basis of the gazette published on 16.07.2015 the case was sent to the court of learned Druto

Bichar Tribunal, Rajshahi for trial of the case and renumbered as Druto Bichar Tribunal Case No. 2 of 2016. The tribunal framed charge against the accused persons under Section 448/302/34 of the Penal code on 17.02.2016 which was read over to the accused persons who were present on the dock which they pleaded not guilty and claimed to be tried. But the charge could not be read out to the condemned-convict Md. Sohel Ibne Karim since absconding and the court for the ends of justice and the procedure of law appointed a State defence lawyer to conduct the case in favour of him.

At the trial the prosecution examined as many as 11 (eleven) witnesses among the 15 charge sheeted witnesses and they were duly cross examined by the defence, but the defence examined none.

After close of the prosecution witnesses the convict-accused Md. Shakil Sarkar, Sree Sengupta Ghose and Md. Ahad Ali @ Ahad Fakir were examined under Section 342 of the Code of Criminal Procedure which was read over to them to which they reiterated their innocence again.

The defence case as could be gathered from the trend of cross-examination of the prosecution witnesses and the examination under Section 342 of the Code of Criminal Procedure is total denial of the prosecution case. Their further case was that the accused persons were not involved with the offence and the prosecution falsely implicated them in this case. The confessional statement of the accused Soheli was not true and voluntary and which was collected by coercion, intimidation and on promise.

The tribunal after consideration of the evidence on record found the accused persons guilty of the charge leveled against them and convicted them as aforesaid by its judgment and order of conviction and sentence dated 29.06.2016 and made this Reference under Section 374 of the Code of Criminal Procedure and sent all the case record to this Court for confirmation of the death sentence of condemned-convict Md. Soheli Ibne Karim.

Mr. Sharifuzzaman Majumder, the learned Assistant Attorney General takes us through the impugned judgment, the ejahar, charge-sheet, the charge, inquest report, post-

mortem report, Medical report, deposition of the witnesses, the confessional statement of condemned-convict Soheli, the 342 examination and the papers and documents as available on the record.

Mr. Md. Fazlur Rahman Khan, the learned Deputy Attorney General also Mr. Md. Rezaul Karim, learned Deputy Attorney General both made submission in support of the death reference on behalf of the State.

The learned Deputy Attorney General Mr. Md. Fazlur Rahman Khan submits that this is a brutal murder and the prosecution to prove the case adduced sufficient evidence and the tribunal after consideration of the evidence on record found the accused persons guilty of the charge leveled against them. He further submits that in the instant case the victim married the condemned convict Soheli Ibne Karim with her will and without the consent of the family but after a while he started to torture her for dowry thus the victim left the house of the condemned convict. He submits that convict Soheli tried to resolve the matter and for taking back the victim in his house with the help of appellant Sree Sengupta but failed then

threatened her to kill and thus thereafter committed the offence. He submits that the condemned convict Md. Sohel Ibne Karim came to the house of the informant and forcefully taken her and since could not bring her then seriously injured the victim with the help of the other accused persons and consequently she died after 9 months of the incident bearing the injuries caused by the accused persons. He further submits that in the instant case the P.W.6 the brother of the victim was the eye witness and he saw the incident and stated and narrated the incident and the said facts has been corroborated by the P.W.3 and though the P.W.2 was declared hostile but ultimately in cross examination of the prosecution he admitted that he saw the condemned-convict Md. Sohel Ibne Karim in the said area before the occurrence, so, from the aforesaid evidence it can safely be said that the condemned-convict Md. Sohel Ibne Karim committed the offence with the help of other accused persons. He further submits that since at least 3 (three) prosecution witnesses deposed that they saw the condemned-convict Md. Sohel Ibne Karim near the house of the informant and admittedly he was the husband of the

victim Most. Shirin Aktar who divorced him before 5/6 months of the incident and in such a case it can safely be said that the prosecution succeed to prove the case beyond all reasonable doubt.

He further submits that the condemned-convict Md. Soheli Ibne Karim was absconding after the occurrence and he was arrested long after the occurrence, furthermore, after obtaining bail subsequently did not appear before the court and the trial court issued warrant of arrest and thus he became fugitive and as such the aforesaid conduct proves the guilty mind of the condemned-convict.

He further submits that the condemned-convict Md. Soheli Ibne Karim made confessional statement before the magistrate though some part of the confessional statement was exculpatory but another part was inculpatory in nature and narrated that he hired the other accused-persons and committed the offence and which was true and voluntary and as such the same may be the sole basis for conviction. He further submits that the confessional statement of Soheli Ibne Karim also supported by inquest report, post mortem report

and no case that the accused persons did not commit the offence and from the above it can be safely said that the condemned-convict Md. Sohel Ibne Karim committed the offence with the help of the other accused persons and thus the Tribunal rightly found the accused persons guilty of the charge leveled against them.

Mr. Rezaul Karim the learned Deputy Attorney General also made some submission that no doubt that the condemned convict Sohel Ibne Karim committed the offence and he was identified by Mamun the brother of the victim and other witnesses deposed that they saw that the condemned convict along with other accused were wandering in the aforesaid area and this circumstantial evidence is enough to prove the guilty of the accused. He further submits that the confessional statement of condemned convict Sohel was true and voluntary and he never claimed that which was not true and in such a case the confessional statement is to be based the sole basis for conviction. The learned D.A.G. cited the decisions of the case of Wajer Rahman Moral –versus- The State, reported in 43 DLR (AD)-25 and the Mobile Kader's case

reported in 67 DLR (AD)-6. He prayed for acceptance of the death reference and for dismissal of the appeal.

Mr. Md. Hafizur Rahman, the learned State Defence lawyer, appearing on behalf of the condemned-convict Md. Sohel Ibne Karim submits that the conviction and sentence awarded upon the condemned convict without basing the evidence on record. He submits that none of the witnesses saw the occurrence that the accused persons injured the victim. He further submits that only P.W.6 claimed that he could identify the condemned-convict Md. Sohel Ibne Karim when the victim was brought by him and seriously injured the victim but none of the witnesses corroborated the said facts. From the evidence of P.W.6 it cannot be said that the prosecution succeed to prove the case beyond all reasonable doubt that the condemned-convict Md. Sohel Ibne Karim committed the offence or injured the victim as alleged in the medical report. He further submits that the P.W.2 was declared hostile and P.W.3 is the close relation of the informant but in their testimony only disclosed that they saw the condemned-convict Md. Sohel Ibne Karim in the Bazar area along with one co-

accused Sree Sengupta Ghosh nothing more, in such a case it is clear that the prosecution measurably failed to prove the case against the condemned-convict Md. Sohel Ibne Karim.

He further submits that the 164 statement made by the condemned-convict Sohel Ibne Karim purely an exculpatory confession in nature, furthermore, which is not true and voluntarily. He further submits that the magistrate without following the procedure of section 164 or 364 of the code of criminal procedure recorded the confessional statement of condemned convict Sohel Ibne Karim, furthermore the mandatory provision of memorandum also has not been made by the recording magistrate and it is settled principle that the magistrate ought to have written the memorandum in his own hand in brief the reason that which was true and voluntarily. He further submits that the magistrate before recording the confessional statement also did not put mandatory question to the accused. He further submits that on perusal of the confessional statement it is found that the condemned-convict did not take any part to commit the offence and as such the conviction and sentence passed by the tribunal should not be

sustained. In support of his argument he referred the decision of the case of Md. Azad Sheikh @ Azad Sheikh –versus- The State, reported in 41 DLR(HCD)-62.

He further submits that mere absconion of the accused at the time of trial is not the sole basis to presume the guilty mind of the convict. In the instant case initially the trial was started in the Sessions Judge, Bogura but subsequently the case was transferred to the Druto Bichar Tribunal, Rajshahi in such a case the Druto Bichar Tribunal should have followed the procedure that to assure for appearance of the accused and also to direct the sureties to produce the accused and it appears that the tribunal without fixing the date for appearance and directing the surety to produce the accused started and continue the trial and passed the impugned judgment and thus the condemned-convict was seriously prejudiced. In support of his argument the learned Advocate cited the decision of the case of Naser Ahmed –vs. The State, reported in 49 DLR (AD)-111 and the case of Sento –versus- The State, reported in 50 DLR (HCD)-220.

He finally submits that the prosecution measurably failed to prove the case of murder and involvement of the condemned-convict in the instant case. He prayed for rejection of the death reference.

Mr. Taj Mohammad Sheikh, the learned Advocate appearing on behalf of the convict-appellant Md. Shakil Sarkar in Criminal Appeal No. 6489 of 2016 submits that the convict-appellant was not an F.I.R. named accused, even none of the witnesses disclosed his name that he was present in the place of occurrence at the relevant time or took part to commit the offence. He further submits that the trial court without considering the evidence on record convicted the accused-appellant, only relying upon the confessional statement of the condemned convict Md. Sohel Ibne Karim but the said confessional statement was purely an exculpatory in nature and which was also not supported by the substantive evidence and as per provision of section 30 of the Evidence Act, the confession of the co-accused should not be used against the convict-appellant without any substantive evidence. In support of his argument he cited the decision of the case of Solicitor,

the Government of Bangladesh –vs. Syed Sanwar Ali, reported in 27 DLR (AD)-19, The State –Vs. Badsha Khan and Hatem Ali, reported in 10 DLR (HCD)-580 and the decisions reported in 13 BLC(AD)-524, 8 BLC (HCD)-87, 13 BLC (AD)-17 and 3 BLC (AD)-53.

The learned Advocate further submits that no evidence against the accused-appellant, even the incriminating materials specially the confessional statement of accused Md. Sohail Ibne Karim has not been put to his notice in the examination under section 342 of code of the criminal procedure and thus he was seriously prejudiced and the tribunal did not consider the said material facts at all. In support of his argument he cited the decision of the case of The State –vs. Monu Miah and others, reported in 54 DLR (AD)-60 and the case of Alauddin and another –Vs. The State, reported in 2 ALR (HCD)-457. He prayed for allowing the appeal.

The learned Advocate Mr. Taj Mohammad Sheikh also appearing on behalf of convict-petitioner Md. Ahad Ali @ Ahad Fakir in criminal Miscellaneous Case No. 32024 of 2017 under section 561A of the code of criminal procedure for quashment

of the impugned judgment submits that since no evidence against the convict-petitioner Md. Ahad Ali in such a case the conviction against him should not be sustained. He further submits that mere moral conviction cannot be awarded since none of the prosecution witnesses disclosed that the accused-petitioner was present at the time of commission of offence and as such the impugned judgment should be quashed. He further submits that though the condemned convict Md. Ahad Ali was not present at the time of delivery of judgment but subsequently he was arrested by the police and filed criminal Miscellaneous case under section 561A of the code of criminal procedure for quashment of the proceedings since no legal evidence adduced in support of the case against him, furthermore, the evidence adduced clearly or manifestly fails to prove the charge against the petitioner. He further submits that the confessional statement of the condemned convict Md. Sohail Ibne Karim purely on exculpatory in nature even which was not true and voluntary thus the proceeding initiated against the accused petitioner should be quashed. He cited the decision of the case of Ali Akkas –versus- Enayet Hossain and

others, reported in 17 BLD (AD)-44 and submits that when no evidence adduced against the petitioner then the judgment should be quashed and the Rule should be made absolute. He prayed for making the Rule absolute.

Let us discussed the main contention of the evidence of the prosecution witnesses.

P.W-1 Md. Azizar Rahman, the informant of this case deposed that accused Soheli Karim married his daughter Most. Shireen Akhtar about one year ago without their consent and they used to live in the house of accused Soheli but subsequently he claimed money and furniture as dowry and stated to torture her. He deposed that subsequently the victim came back to his house and divorced the accused Soheli Karim on 18/8/2012. He deposed that on 13/12/12 he and his wife were not at home but his son Mamunur Rashid and daughter Shireen Akter were in the house and at about 4:00 pm his daughter sweeping the yard and Mamun watching TV inside the room and hearing knock on the front door of the house his daughter Shireen Akter opened the door thinking

that her parents had come to the house. At that time 2/3 unknown entered into his house and forcibly abducted his daughter and took her to the south side of the house and strangled her neck and injured several part of her body and cut off the ankles of both feet and left her unconscious and fled away from the scene towards the west by a Microbus. He deposed that his son Mamunur Rashid saw the incident through the window by the west side of the house and could recognize the accused Sohal Ibne Karim and when his son tried to leave the house to rescue his daughter he found the front door was locked from the outside and on hearing sound the people around his house came and opened the lock of the door and his son called the victim but get no response and then he found his daughter unconscious with a bloody wound on the wall of the south side of the house. Then the victim taken to Adamdighi Hospital and from where she was taken to Naogaon Sadar Hospital and subsequent she was shifted to Bogra Shaheed Ziaur Rahman Medical College Hospital for treatment. According to doctor's advice the victim was brought to Dhaka Apollo Hospital on 14/12/12 for better treatment.

Subsequently she was released from hospital on the 1st week of February. Then she was under treatment at his residence. His daughter died on 26/8/13 at 5.00 a.m. and he lodged the Ejaher with the Adamdighi police station on 14/12/12. The investigating officer arrested accused Soheli Ibne Karim on 29/12/12. The investigation officer informed him that the said accused made confessional statement. He proved the F.I.R. as Ext-1 and his signature as Ext-1/1. The inquest report was prepared by the police in presence of him. He was examined by the police and he disclosed the facts to the police at the time of inquest. He proved the inquest report marked as Ext-2 and his signature in serial No.1 marked as Ext- 2/1.

In cross examination on behalf of the accused Ahad Ali this witness stated that he knew his neighbour Abdul Majeed Mandal, Rashidul Alam, Aminur Rahman, Majedul Islam, Saiful Islam, Shahnaz Begum, Mamunur Rashid but he only discussed the matter with Mamunur Rashid before filing the Ejaher.

In cross-examination on behalf of accused Sengupta Ghosh he admitted that he and his wife did not see the incident. On 13/12/12 he heard the incident from his son

Mamun. On 14/12/12 after discussion with Rashidul Alam and Aminur Rahman he lodged the Ejaher. He did not give false statement nor concealed any facts in the Ejaher. He stated that his daughter was speechless from the time she was injured until she died. He heard from his son Mamun that 2/3 unknown persons forcibly abducted his daughter putting a cloth on her face and took her to the south side of the wall of his house. There were three bedrooms in his house which is L pattern house with one door facing south and another door facing south and another door facing west and a bedroom on the east side. These rooms have one balcony on the south side. On the south side of the verandah was a courtyard of the house. On the south-east edge the outside the wall his wounded daughter was lying. There was a small open space on the north side of the bedroom and there was a tinned godown room on the north side of the house. His son was watching news on TV at home. It is not true that according to him at the time of the date of occurrence no incident happened as per his statement. It is not true that his daughter died due to injury and he deposed falsely.

In cross-examination on behalf of accused Shakil he stated that Adamdighi Thana is Westward from Bogra Town. Dupchanchia police station between Bogra and Adamdighi. The incident took place on the south side of the wall. It is not true that due to the enmity between Sohel he filed this case.

In cross-examination of the state defence lawyer for condemned-convict Sohel Ibn Karim this witnesses stated that it is not true that his daughter died due to accident and he falsely implicated this accused since he was his daughter's ex-husband.

P.W-2 Md. Aminur Islam, deposed that he knew the informant and the date of the incident. He was working for Murali Bazaar Samiti for 16 years. He was travelled by the road next to the house of the informant. On 13th November, 2012 at 4.00 pm while he was going to the market, saw a white color microbus and some people in front of the informant's house. About 20 minutes thereafter he heard that someone left the informant's daughter in a bloody state. He did not know what happened next. The prosecution declared him hostile.

In cross examination of the prosecution this witness stated that the incident took place on 13/12/12 at about 4.00 p.m. He saw 4 young men were gossiping in the Microbus. He denied that he saw son-in-law of the informant Md. Sohel Ibne Karim and Sree Sengupta in the said Microbus. He stated that they were coming and going around the market on a motorcycle. He also saw accused Sohel and Shree Sengupta and two others roaming in the market area. He denied the suggestion that he knew that the accused persons injured the informant's daughter with the intention to kill her. It is not true that he has hidden the truth.

The defence declined to cross examine this witnesses.

P.W-3 Md Rashidul Alam, deposed that he knew the informant. On 13/12/12 at approximately 8.00/8.30 PM he came to the market to purchase medicine by a bicycle and on the way back to home he found a white microbus on the west side of the chatal of the informant on the Bogra-Naogaon-Highway. He saw 4/5 boys with Sohel Ibn Karim next to the microbus. Thereafter he went to his house and after sometime the people were saying that the daughter of informant Shirin

Akhtar, was beaten and she was laying on the south side of the house and then he rushed to the said house and saw that victim Shirin Akhtar was taking to the hospital.

All the accused except Sohail Ibne Karim declined to cross-examine him.

In cross-examination of the State defence lawyer for absconding accused Sohail Ibne Karim he stated that the informant was his cousin. He did not see that accused Sohail sitting inside the microbus but Sohail was standing next to the microbus. He denied the suggestion that he did not see the accused Sohail was standing near the microbus. It is not true that he did not see anything on the date of incident. It is not true that he gave false statement.

P.W-4 Md. Majedul Islam deposed that on 15/12/12 at 10.35 a.m. the police officer seized some materials of wearing materials of the victim Shireen Akhter presented by the informant such as a bloodstained 4 cubits Orna, bloodstained Kathali color paizama and kamiz and bloodstained mud . He proved the seizure list marked as Ext- 3 and his signature present in the seizure list marked as Ext-3/1

The defence declined to cross-examine this witness.

P.W-5 Most Shahnaz Begum, the wife of the informant and the mother of the victim Shireen Akter deposed that accused Soheli Ibn Karim married her daughter Shireen Akhtar without their knowledge and she used to live in the house of Soheli about one year. Thereafter the accused Soheli demanded furniture and dowry from her daughter but she refused to give the same thus the accused tortured and beat her daughter and unable to bear the torture, the victim came to her house and divorced her husband Soheli after 7 (seven) days of her return. At the time of the incident the examination of her daughter was going on and while she was studying for her examination by the pond accused Soheli and Sengupta came there by riding a motorbike. Accused Soheli and Sengupta were talking on mobile then she took her daughter inside the house. She deposed that after a few days she along with her husband went home to collect paddy and rice then son and daughter were staying at home. On the date of occurrence around 4.00 pm she heard that Soheli and Sengupta along with 2 others kidnapped her daughter outside the house. She was informed

from her son that the miscreant inflicted sharp weapon and cut the leg of her daughter beside the pond of the south side of their house. Her son took her daughter to Adamdighi Hospital. She went there too. She took her daughter to Naogaon hospital and then Bogra Medical College Hospital. Subsequently she was taken to Dhaka Apollo Hospital for advanced treatment. Her daughter died while she was undergoing treatment. His daughter received severe injuries on her head, hands, fingers and feet and for that injuries she died. Accused Sohel and his other associates injured her daughter with the intention of killing her.

In cross examination on behalf of the accused Sree Sengupta this witness stated that she and her husband went to the village house of Dumuridham. She cannot say when her husband returned back home after the incident. After the incident, she returned to the home at the evening. She moved alone from the village house to the city house on the day of the incident. She cannot say who informed her of the incident. While she saw the condition of her daughter, she fainted. She went home and saw that her daughter was not there and she

was taken to hospital. She met with her husband at Adamdighi Hospital. She was with her daughter the day she died. Mamunur Rashid was there when she took her daughter to Dhaka for treatment. Her two sons-in-law Intiaz and Saiful Islam and daughter-in-law Hafiza were with them when she was at Apollo Hospital, Dhaka.

The victim was taken to Dhaka on the date of the incident and she returned back from Dhaka after 3 days and her son Mamunur Rashid was staying in Dhaka for more than a month and a half. Her son used to live in the west side room when her daughter was injured and her son did not see the beating of her daughter. Her son told her husband about the incident. Her son told his father on mobile what was happened. She was examined by the investigating officer and she told everything to him as she knew and heard about the incident. She did not tell lie to the I/O or concealed anything. She did not tell the I/O that her son could not recognize accused Sengupta. It is not true that her son could not recognize anyone except one of the accused. Her daughter had a swollen lesion on Chandi, both the legs were amputated and

there was a wound on the chest. Her son disclosed the facts while the victim was taken to Dhaka. She denied the defence suggestion that nothing was happened as she told and she heard nothing from her son.

In cross-examination on behalf of accused Shakil Sarkar and Ahad Ali this witness stated that it is not true that her son disclosed that other two unknown accused were involved.

In cross examination of the State defence lawyer for absconding accused Soheli Ibn Karim this witness stated that her son could recognize Soheli and told her about the same. She denied the defence suggestion that her daughter died by other injury.

P.W 6 Md. Mamunur Rashid, the son of the informant deposed that his sister Shirin Akhtar got married of her own free intention with Soheli Ibne Karim. When the victim was staying in the house of her husband, he started to beat and physically tortured his sister in various ways for dowry. She came to their house from the house of her husband. His sister divorced her husband on 18/8/12. A few days after the divorce accused Soheli Ibne Karim and Shree Sengupta came to their

house with his relatives for compromise but since his sister didn't want to go, he threatened to cut the veins of her legs and kill her and also told that they will not let her life and immobilized her. His father did not file any GD about the threatening. His sister had appeared her degree examination. On the day of the incident, approximately 4 months after the divorce on 13/12/12 the accused came to their house by a Micro Bus at about 4 p.m. His father told him to stay at home since he is going out a bit while he returning back to his house from the outside. He went to the west room and while he was watching TV then he heard knocking at the main gate and since he was watching TV he thought that his mother was coming and his sister from yard went and opened the door. In a moment, he got a sound in the room with a knock from the outside. He looks through the west side window kept watching TV and saw the incident. Her ex-husband Sohail was holding his sister's neck tight and other accused were dragging his sister. They taken her to the south side wall, ducks with a veil around the neck and cut off the both ankles. He shouted from the house then a woman was coming who opened the door and

then he searched for his sister. At one stage of searching on the south side of the house he identified his sister with cut injury of her both ankles. He searched the accused and found 5/6 of them ran away and saw 8 persons were boarded in the Micro Bus and he could identified the accused Soheli. He took his sister to Adamdighi Hospital. From where she was taken to Naogaon Hospital and there from she was taken to Dhaka. The victim was died on 26/8/13. He told her father about the details while he was at Adamdighi Hospital. On 26/8/13 at 8.30 a.m. the police prepared the inquest report and he put his signature in the inquest report. He proved his signature present in the inquest report marked as Ext- 2/2.

In cross-examination on behalf of accused Sengupta this witness stated that he disclosed the facts of the incident to all the witnesses among them Haji Ramzan Ali was there. The accused persons threatened his sister since she divorced the accused Soheli but they did not file any GD or case against them. They came to the hospital at around 4.10 pm and then his father also came to the Hospital between 4.10 to 4.20 p.m. He could not say when his mother came to Adamdighi

Hospital. He told his parents about the incident. He did not hide anything. It is not true that he did not tell the I.O. that he stated false. It is not true that the room where he was had no window and it did not see anything. He denied the defence suggestion that accused Soheli did not threaten his sister after obtaining the divorce letter or he deposed falsely.

This witness denied the suggestion that he did not disclose to the police officer that the accused Soheli cut nose, mouth and throat of his sister. It is not true that there was no window of the room where he was and the south side of the wall is not visible from the said room.

P.W-7 Md. Ferdous Wahid, Judge (Joint District Judge), Land Survey Tribunal, Lalmonirhat deposed that on 30/12/12 he was a Judicial Magistrate, Bogura and the Investigating Officer brought the accused Soheli Ibn Karim before him for recording his confessional statement. He explained the details to the accused in several ways. The accused was given 3 (three) hours time for reflection and when the accused agreed to confess voluntarily then he recorded the confessional statement of the said accused. He proved the confessional

statement marked as Ext-4, which is attached with 2 additional pages to the original form and his 8 (eight) signatures marked as Ext- 4 (1)-4 (8). The confession was read over to the accused Sohail Ibn Karim and found true he put his 7 signatures in the confessional statement.

In cross-examination on behalf of accused Sengupta he stated that the accused Sohail was brought before him on 30/12/12 at 3.00 p.m. He stated that the time to send the accused to the District Jail is not mentioned. It is not true that the accused was not given 3 (three) hours time for his mental refreshment. He explained the details to the accused as such which was on record to make his confession voluntary. He did not write in column 6 that he was not a policeman but a magistrate. He did not record in any column that the confession should be used as evidence against the accused and whether he confess or not, he will no longer be sent to the police custody and will be sent to the jail. He denied the suggestion that the accused did not say anything against his involvement of the occurrence in his entire confession. He examined the accused and found no marks of injury on the

body of the accused and did not write anything in the statement form. He denied that he did not record this confession following the provisions of Sections 164 and 364 of the code of criminal procedure.

In cross-examination on behalf of accused Ahad Ali and Shakeel Sarkar he stated that it is not mentioned when he started to record the statement. He recorded the statement after court's hour. Accused was placed in his custody and the police did not enter into the Ezlash. He did not mention whether the handicap was opened when the accused was in his custody. It is not mentioned whether the accused was willing to confess. He did not ask the accused how long he was in police custody. He admitted that he did not write the memorandum after recording the confessional statement of the accused. He denied that he did not follow the provisions of the High Court Rule- 34 while recording the confession and the confession was exculpatory.

The State defense lawyer for accused Sohail Ibne Karim Adopted the cross examination of other accused.

He denied the suggestion that the confession of the accused Sohail was not voluntary.

P.W.8 Dr. Chandra Prakash Dakwal, the Consultant in Respiratory Medicine of Apollo Hospital, Dhaka deposed that on 14th December 2012 at 6.21 am, patient Shireen Akhtar was admitted to the emergency department of Apollo Hospital. As the condition of the patient was serious and as such various medical measures were taken urgently including emergency oxygen. Victim Shireen Akhtar was referred to his department for treatment under his supervision from the emergency department and she was under his treatment from 14/12/12 to 17/1/2013. Then the condition of the patient worsened again and she was given treatment from 20/1/13 to 01/2/13. Thereafter the victim was discharged from the hospital. He identified the 5 pages summary of discharge certificate marked as Ext-5 series and his signature marked as Ext-5/1. He identified another certificate issued on 15/6/2013 regarding injury marked as Ext-6 and his signature with seal marked as Ext-6/1.

In cross-examination on behalf of accused Sree Sengupta he stated that if the patient's condition being alarming, they try to give her better treatment admitting the victim in the Hospital. He stated that if the condition of the patient has not been improved in that case, patient has been advised for better treatment. They usually discharged the patient when his condition being improved and if it is possible to continue his treatment at home then they discharged the patient. The patient's condition may deteriorate at any time during treatment and should not have been discharged due to deterioration of the patient's condition. However, the patient's physical condition has been explained to the attendants so that they could know about his condition and treatment has given.

In cross examination on behalf of accused Ahad and Shakil this witness stated that the age of injury was not mentioned.

The State defence lawyer of accused Sohel Ibn Karim adopted the cross examination of others accused.

P.W.9 Dr. S.K. Das, Neuro Medicine Consultant deposed that the patient Shireen Akhtar was referred to him but he did not give her any Neuro medicine treatment. He could not remember whether he was examined by the investigation officer.

P.W-10 Md. Abdul Motaleb, officer in charge at Sonatala police station of Bogra District, deposed that on 14/12/12, when he was inspector at Adamdighi police station in Bogra District, he was entrusted to investigate the case by the officer-in-charge of Adamdighi police station. He visited the place of occurrence, prepared the sketch map along with separate index, seized some alamats, examined the witnesses and recorded their statements under section 161 of the code of criminal procedure, arrested the accused Soheli Ibn Karim and brought him to the magistrate for recording his confessional statement under section 164 of the code of criminal procedure. Accused Soheli Ibn Karim implicated himself and stated the details to the Magistrate regarding the incident of the case. The victim Shireen Akter was undergoing treatment at Apollo Hospital in Dhaka. Later, as the condition

did not improve, she was released with a medical certificate and the victim died subsequently on 26/8/13 while she was undergoing treatment at home. He held the inquest of the deceased and prepared the inquest report, sent the dead body to Ziaur Rahman Medical College Morgue for post-mortem. He proved the inquest report marked as Ext-2 and his signature marked as Ext-2/3. The sketch map and index prepared and drawn on the same paper marked as Ext-7 and his signature marked as Ext-7/1. He proved the seizure list marked as Ext-3 and his signature marked as Ext-3/1. He proved the seized blood-stained mud marked as material Ext-I, and wearing 4 cubits light pink white print Veil of victim as material Ext-II. One bloodstained wearing kathali color pajama with black and white print marked as material Ext-III. One wearing bloodstained light color black and white print Kamiz marked as material Ext-IV. The seizure list was prepared in presence of the witnesses. He proved the FIR form marked as Ext-8, and his signature and the signature of Officer-in-Charge Md. Tozammel Haque marked as Ext- 8/1 and 8/2, he knew his signature since he was working with him. Another signature of

the officer-in-charge marked as Ext-1/2. He perused the statement of the witnesses, the chemical test opinion, inquest report, post-mortem report and confessional statement of accused Sohail Ibn Karim and found prima-facie case against the accused persons and accordingly submitted the charge sheet being No. 127 dated 8/1/2013 under sections 448/302/34 of the penal code. Accused Sohail Ibn Karim was not in the dock but he identified the accused Sengupta Ghosh, Ahad Ali, Shakil Sarkar present in court.

In cross-examination on behalf of accused Sengupta this witness stated that the Ejaher was lodged when the victim was admitted in the Adamdighi Hospital. Later she was taken to Naogaon Hospital. He denied that he did not know anything about the admission of the victim at Adamdighi Hospital. He denied the suggestion that he did not collect any information regarding admission to Adamdighi Hospital even no note on his CD that he went to the hospital to verify that the victim was under treatment at Adamdighi Hospital and similarly, he did not go to Naogaon Sadar Hospital or Bogura Ziaur Rahman Medical College Hospital and also did not collect any

information from there. He stated that none told him whether she was under treatment and he did not mention it in the CD. He did not do any correspondence to collect information from the Hospitals. He did not go to Apollo Hospital in Dhaka. In the inquest report nothing was mentioned related to Sengupta, Shakil and Ahad. In the inquest report nothing was mentioned that there was any injury marked on the victim's throat. At the time of preparing the inquest report the brother of victim was there and her father, sister were also present. The inquest report of the victim was held at the house of victim. Her mother also present in the house. Time of death has not been mentioned in the inquest report. He got the news of death at about 7.05 a.m. and went to the place of occurrence after receiving the news. No certificate that the victim got treatment at Apollo Hospital. No one told him that if someone dies of suffocation, he will die within three hours. He denied the suggestion that accused Soheli Karim made a confessional statement on torture when he was on remand. The accused Soheli Karim was arrested on 30/12/12 but he could not say the time of arrest. Accused Soheli Karim was arrested

from Nandail Bazar of Mymensingh District on 29/12/12. It takes 7/8 hours to reach Adamdighi thana from Nandail Bazar. Distance of the Bogra Court was 40 km away from Adamdighi police station. He brought the accused to the court at 2.00 pm. He went to the police station with accused Sohail Ibn Karim on 30/12/12. Accused Sohail was taken remanded on 13/1/13 and brought before the magistrate on 15/1/13.

He did not conduct any search bringing the accused Sohail Ibn Karim when he was on remand. He could not collect any additional information on the basis of the 164 statement of the accused Sohail Ibne Karim. He did not examine anyone and did not adopt any other method to clarify the veracity of the section 164 statement of the accused Sohail Ibn Karim. He did not know the occupation of accused Sengupta. Accused Sohail Ibn Karim was a student by profession. He did not see whether in the post mortem report it has written any mark injury on the victim Shireen Akhtar. Accused Sohail Ibn Karim made confession before the death of victim Shireen Akhtar. Accused Sohail Ibn Karim made confession under section 164 on 30/12/12 and victim Shireen died on 26/8/13. Accused

Sohel Ibn Karim in his confession did not make any statement involving himself with the incident. He did not properly investigate who killed Shireen by suffocating her.

In cross-examination on behalf of accused Ahad Ali and Shakil this witness stated that he arrested accused Ahad Ali on 9/2/13 and sent him to the court with a prayer for remand on the same day and allowed for one day remand of the accused on 13/2/13 and sent him to the court on 14/2/13 after remand. He denied the suggestion that he took remand of the accused Ahad twice. Accused Soheli Ibn Karim in his confession mentioned the name of accused Ahad and Shakil without mentioning the name and address of their father.

In the confession of accused Soheli though it was mentioned the name of accused Ahad and Shakil but he could not find out any information in that regard. He denied the suggestion that he did not properly investigate the case and falsely implicate these accused persons under the influence of their enemy and it is not true that he physically tortured the accused Soheli Ibn Karim to collect the confession and threatened him that if he did not make confession he will be

taken remand again. He denied the defence suggestion that he did not properly investigate the case and his investigation is perfunctory.

P.W-11 Md. Rezaul Karim, an assistant professor of the Department of Forensic Medicine at Bogra Ziaur Rahman Medical College deposed that he held the Post Mortem of the dead body of the victim Shirin Akter, aged about 25 years brought and identified by the constable No. 1128 Md. Abdul Based. He found the following injuries.

1. No recent external injuries were found.
2. Fracture of Tracheotomy fistula was found.
3. Scars mark (previous) was found in both ankles.

After decesction: Congestion of the brain because of cerebral ischemia and encephalitis wound in trachea was found.

And opined to the effect: Death was due to asphyxia and cerebral ischemia resulting from hypoxia because of previous injuries which was anti-mortem in nature and manner depends on circumstantial evidence.

He proved the post-mortem report marked as Ext-9 and his signature marked as Ext-9/1. He knew Dr. K.M Saiful Islam and his signature which marked as Ext-9/2.

In cross-examination for accused Sengupta this witness stated that he reviewed inquest report before holding post mortem report and before that the case was filed on 14/12/2012. Witness No. 1 Azizur Rahman the father of the deceased Shireen Akhtar was present at the time of inquest report which was prepared on 26/8/13 at 8:30 a.m. Rigor Motive was present and at that time as per weather the R.M. may continue for 18 hours. He stated that Asphyxia causes death within a maximum of 7 (seven) minutes and this Asphyxia was Occurred within 19 hours prior to preparation of post-mortem. There is no indication or description of how this asphyxia was occurred in the inquest report. He did not know how the injury No. 3 was happened. In serial No. 1 nothing was mentioned regarding the injury. In serial No. 2 it was written Fracture of fistula and other cause were lack of oxygen and Infections of the brain and the same may be caused from Asphyxia. He denied the suggestion that his opinion was not

properly mentioned as per medical jurisprudence since no mentioning about the previous injury and he made opinion as per the instruction of the police office.

In cross-examination on behalf of accused Ahad and Shaki this witness stated that he got infection in the brain, but could not say how it can be caused. He also got anemia. He denied that he did not gave specific opinion and it was not mentioned the manner of death and his opinion was not correct.

These are all about the evidence on record as adduced by the prosecution.

We have heard the learned Deputy Attorney General, the State defence lawyer and the Advocate of the appellants, perused the impugned judgment, the FIR, the charge-sheet, the inquest report, the post-mortem report, the deposition of the witnesses, the confessional statement of the condemned-convict Sohel Ibne Karim and the papers and documents as available on the record.

The prosecution case is that the victim Shirin Aktar the daughter of P.W.1 married the condemned-convict Md. Sohel

Ibne Karim before 2 ½ years ago of the incident and she returned back to her father's house before 5/6 months of the incident due to the torture of her husband for dowry and divorced him. The victim Shirin Aktar was seriously injured on 13.12.2012 and immediately after the occurrence the informant lodged the Ejaheer implicating the name of the condemned convict Md. Sohel Ibne Karim and Sree Sengupta Ghosh along with 5/6 unknown persons and claimed that the accused persons threatened the victim to kill or to be injured the victim. The case was also supported by the P.W.5 the mother of the victim and the P.W.6 brother of the victim. The P.W.6 claimed that on the date of occurrence the condemned convict Md. Sohel Ibne Karim along with others brought the victim in the southern side of their house and he saw the incident by the western side window of their house and on hue and cry of the victim the local people came to the place of occurrence and thereafter on searching he found the injured victim on the southern side of the wall of their house.

The P.W.6 the brother of the victim was only the witness in the instant case who claimed that he saw the incident by the

window since the accused persons locked the door before the occurrence and hearing shouting the local people opened the door and then he went out from his room and he searching the victim along with the witnesses and found the injured victim with bloody condition beside the wall on the southern side of their house. The prosecution did not produce the witness who opened the door and who were also present at the time of recovery of the victim. It is also found that the evidence of P.W.6 has not been corroborated by any of the independent witnesses who were present at the time of recovery of the victim. Even the P.W.6 claimed that condemned convict Md. Sohel Ibne Karim brought the victim in the southern side of the house of the informant and seriously injured her but the said facts also not corroborated by other witnesses. The P.W.3 in his deposition stated that: “১৩/১২/২০১২ ইং তারিখে অনুমান বিকাল ৪.০০/৪.৩০ মিনিটে আমি ঔষধ নেয়ার জন্য বাজারে আসি। আমি বাই সাইকেল যোগে যাই। বাড়ী ফেরার পথে এজাহারকারীর চাতালে পশ্চিম পার্শ্বে বগুড়া-নওগাঁ মহাসড়কের দক্ষিণ পার্শ্বে পশ্চিম মুখী অবস্থায় একটি সাদা মাইক্রোবাস দেখি। এ মাইক্রোবাসের পার্শ্বে সোহেল ইবনে করিমসহ ৪/৫ জন ছেলে আমি দেখতে পাই।”

P.W.3 saw the condemned convict Md. Sohel Ibne Karim was

standing beside a Microbus near the Chattal of the informant nothing more.

It is found that only the P.W.6 deposed that he could recognize the condemned convict Md. Sohel Ibne Karim while he running away after the incident along with other 5/6 unknown accused persons, so, from the aforesaid facts it is proved that no evidence except the evidence of P.W.6 that the condemned convict Md. Sohel Ibne Karim could be recognized by the P.W.6 that who hold the neck and mouth of the victim and bringing her towards the southern side of their house.

The P.W.1 and P.W.5 are the parents of victim and they were not present at their house at the time of the incident and only deposed that they heard the facts from their son Mamunur the P.W.6. The P.W.2 was declared hostile. P.W.3 the cousin of the informant only deposed that he saw the accused Sohel Ibne Karim along with 4/5 unknown boys standing beside a Microbus in the western side of the Chattal (rice preparing place) of the informant. The P.W.4 is the seizure list witness who proved the seizure list marked as Exhibit No.4. P.W.7 the Joint District Judge, who recorded the

confessional statement of accused Soheli Ibne Karim. P.W.8 and P.W.9 are the doctors who were attached at Apollo Hospital, Dhaka at the relevant time and gave treatment of the victim. P.W.11 Dr. Md. Rezaul Karim who held the post mortem of the deceased Shirin Akhter. P.W.10 is the investigating officer.

From the above it is found that only the P.W.6 deposed that he saw the accused Soheli Ibne Karim and P.W.3 deposed that he saw accused Soheli was standing beside the Microbus in the western side of the Chattal of the informant. The P.W.2 though declared hostile but in his cross-examination of the prosecution stated that he saw 4/5 unknown young boy sitting inside a Microbus and also saw that Soheli Ibne Karim the husband of the victim and one Sree Sengupta wandering in the Bazar area by a Motorcycle.

From the evidence of the prosecution witnesses it is proved that the victim Shirin Akhter was seriously injured on 12.12.2012 and she got treatment in local Hospital as well as Apollo Hospital, Dhaka and she died on 26.08.2013 long after 9 months of the occurrence at the residence of the informant.

The learned Advocate Mr. Md. Hafizur Rahman submits that as per sketch map it is found that the room where the P.W.6 was watching TV and it is clear that no window from the western side of the said room, so the statement of the P.W.6 that the condemned convict Md. Sohel Ibne Karim brought the victim towards the southern side of their house should not be sustained. It is admitted that the prosecution could not adduce any witness that who saw that the condemned convict Md. Sohel Ibne Karim brought the victim and with the help of others seriously injured the victim. The P.W.3 only claimed that he saw the condemned convict Md. Sohel Ibne Karim standing beside a Microbus near the Chattal of the informant and P.W.2 though declared hostile but in cross he stated that he saw the accused Sohel Ibne Karim and one Sree Sengupa Ghosh were wandering in the Bazar area. In such a case mere presence in the outside of the place of occurrence house or Bazar its generally could not be presumed that the convict Sohel Ibn Karim committed the alleged offence beyond all reasonable doubt.

However, the condemned-convict Soheli made a confessional statement before the magistrate under section 164 of the code of criminal procedure stating that he paid Tk. 7000/- to the co-accused to bring the victim to his custody.

On perusal of the confessional statement it appears that which was purely an exculpatory confession in nature. It also appears that the magistrate the P.W.7 in his cross examination stated that he did not write memorandum in the said confessional statement and also did not put some mandatory question that if the accused made confessional statement which may be used against him and in such a case the learned Advocate Mr. Md. Hafizur Rahman argued that considering the settled principle the said confessional statement should not be treated as true and voluntary.

The confessional statement of Md. Soheli Ibne Karim as under: *‘আমি শিরিন আক্তার এর সাথে দেড় বছর সংসার করি বিয়ে করার পর। তার সাথে বিয়ের আগে ৪ মাসের প্রেমের সম্পর্ক ছিল। আমাদের বিয়েটা মেয়ের বাবা-মা মেনে নেয় নি। আমার অবর্তমানে শিরিন তার মা ও আত্মীয় স্বজনের সাথে দেখা করত। এই বিষয়টা টের পেয়ে আমি তাকে বকাবকি করি এবং বলি তুমি কেন তাদের সাথে যোগাযোগ করছ তারাও আমাদের সম্পর্ক মেনে নেয় নি। এর কিছুদিন পর সে*

তার মার সাথে আবার দেখা করে। তার মা তাকে চলে যাবার জন্য নানারকম প্রলোভন দেয়। এই বিষয় নিয়ে তার সাথে আমার কথা কাটাকাটি হলে সে বোরকা পড়ে একাই তার মার বাড়ী চলে যায়। এর কিছুদিন পর তার সাথে ফোনে যোগাযোগ করতাম। সে আমার সাথে মাঝে ফোনে কথা বলত এবং আমি তাকে চলে আসতে বলতাম। সে বলে ‘আমি যাব কেন, তুমি আমার বাবাকে বলে আমাকে নিয়ে যাও’। এর কিছুদিন পর আমি আমার বন্ধু মকবুল মারফত জানতে পারি, শিরিন আমাকে তালাক দিয়েছে। এরপরও সে আমার সাথে ফোনে কথা বলত। তখন তাকে তালাকের বিষয়ে জিজ্ঞাস করলে সে বিষয়টি এড়িয়ে যায়। আমি তালাকের কাগজ পাইনি, আমি তালাকের কাগজ খোজাখুঁজি করি। এরপর জানতে পারি ইউনিয়ন পরিষদে তালাকের কাগজ এসেছে। এরপরও সে বেশ কিছুদিন আমার সাথে ফোনে কথা বলত এবং বিগত ৬/১২/১২ ইং তারিখে শিরিন ডিগ্রী পরীক্ষা দিতে এসে আমার সাথে দেখা করে। দেখা করার পর সে আমাকে তাকে নিয়ে আসতে বলে। আমি তাকে নিয়ে আসতে চাইলে সে বলে যে, পরীক্ষা শেষে সে আসবে। এই ঘটনা টের পেয়ে তার বাবা তাকে মারধর করে। মারধর করার দুই দিন পর সে আমাকে মোবাইলে বিষয় জানায়। আমি তাকে নিয়ে যেতে চাইলে সে বলে যে সময় হলে সে আমাকে জানাবে। ফোনে তার সাথে সম্পর্ক আবার গভীর হয় এবং তাকে নিয়ে আসার পরিকল্পনা করি। তাকে নিয়ে আসার জন্য আমার বড় ভাই আহাদের সাথে কথা বলি। আহাদ তাকে নিয়ে আমার কাছে পৌঁছিয়ে দিতে চায়। আহাদ কিছু টাকা চায় এবাবদ আমি তাকে মোট ৭০০০ টাকা দিই। ঘটনার দিন বিকেল ৪ টায় শিরিন আমাকে ফোন দেয় এবং আমাকে তার সাথে দেখা করতে বলে। তখন আমি আহাদের সাথে এবং শাকিলের সাথে যোগাযোগ করি। এরপর আমি তারা ভিন্ন ভিন্ন পথে শিরীনের বাড়ীর দিকে রওনা হই। শিরীনের বাড়ীর কাছে আমরা তিনজন

একত্রিত হই এবং আহাদ ও শাকিলকে বলি শিরীনকে নিয়ে আসতে। আহাদের সাথে আরো দুজন ছিল যাদের নাম আমি জানিনা। আহাদ তাদের দুজনকে নিয়ে এসেছিল। আমার সাথে আমার আরেক বন্ধু সেনগুপ্ত ছিল। আহাদেরা মাইক্রো ভাড়া করে নিয়ে আসে এবং তাদের সাথে কথা হয়, যে তারা আমাকে ও শিরীনকে মাইক্রোতে তুলে পাঠিয়ে দিবে। আহাদ তার সাথে অপরিচিত ২ জন এবং শাকিল শিরিনের দিকে এগিয়ে যায়, যখন শিরিন বাড়ী থেকে বের হয়ে আসে। আমি ও সেনগুপ্ত পাশে দাড়িয়ে ছিলাম। শিরিনের দিকে আহাদরা এগিয়ে গেলে শিরিন একটু সাইডে চলে যায়। আমি শিরিনের দিকে এগিয়ে যেতে চাইলে, আহাদরা আমাকে বলে যে আমার যাবার দরকার নেই। সেনগুপ্ত আমার কাছ থেকে শিরিনের দিকে অর্থাৎ ঘটনার দিকে এগিয়ে যায়। আহাদরাও শিরিনের দিকে এগিয়ে গিয়ে শিরিনকে ধরে এবং বাসার পিছনে নিয়ে যায়। আমি তখন মনে করি শিরিনকে মুখ বেধে নিয়ে আসবে, তাই আমি অপেক্ষা করি কিছুক্ষণ। একটু দেরী হওয়াতে আমি সে দিকে এগিয়ে যাই। তখন দেখতে পাই আহাদ ওড়না দিয়ে শিরিনের গলায় ফাস দিয়ে আছে এবং সেনগুপ্ত ওড়না ধরে ছিল বাকীদের মধ্যে অপরিচিত দুজন শিরিনের দুই পা ধরে ছিল আমি তাদেরকে ধাক্কাধাক্কি শুরু করি। তখন শাকিল তার পকেটে থাকা চাকু বের করে শিরিনের পায়ের রগ কাটতে শুরু করে। শাকিলকে বাধা দিবার চেষ্টা করলে সে আমাকে ধাক্কা দিয়ে ফেলে দেয় এবং সে আমার সামনে শিরিনের পায়ের রগ কেটে দেয়। তখন আমি শাকিলকে বলি, একি করলেন ভাই। তখন শাকিল বলে বেশি কথা বলিস না, আসতে না চাইলে কি করব। এরপর আমাকে ফেলায়ে রেখে আহাদরা শাকিল মাইক্রো নিয়ে চলে যায়। সেনগুপ্ত আমার সাথে ছিল। এরপর আমি ঘটনাস্থল থেকে একদিকে পালাই এবং সেনগুপ্ত আরেক দিক দিয়ে পালায়। সেনগুপ্তও আহাদের সঙ্গে যারা দুজন অপরিচিত ছিল তাদের চিনে না।

এই আমার জবানবন্দী। আহাদ আমার পরিচিত ছিল, সে খারাপ লোক। তার সঙ্গে সেনগুপ্তের সম্পর্ক ছিল না। আমি সত্য জবানবন্দী দিলাম।”

We have also examined the said 164 statement. From where it is found that the magistrate did not write memorandum in his own hand in para 6 or 7 or in any other columns and did not put the vital or mandatory question to the condemned convict Md. Sohel Ibne Karim as stated in para 5 and 6. We have considered the evidence of the recording magistrate, the P.W.7. In cross examination of the defence this witness admitted that “আসামীদের দোষ স্বীকারোক্তিমূলক জবানবন্দী লিপিবদ্ধ করার পর আমার ব্যক্তিগত সত্যতা বিষয়ে কোন মন্তব্য লিপিবদ্ধ করা নেই।”

The learned Magistrate also stated that “আমি পুলিশ নই ম্যাজিস্ট্রেট একথা ৬নং কলামে লিখি নাই। স্বীকারোক্তি প্রদান করলে আসামীর বিরুদ্ধে সাক্ষ্য হিসেবে ব্যক্ত হবে একথা আমি কোন কলামে লিপিবদ্ধ করি নাই। আপনি স্বীকারোক্তি করুন বা না করুন আপনাকে আর পুলিশ হেফাজতে পাঠানো হবে না এবং জেলহাজতে প্রেরণ করা হবে একথা লিপিবদ্ধ করি নাই।” The Magistrate also stated that “আমার এজলাশে আসামীকে রাখা হয়েছিল। এজলাশে পুলিশ এজলাশ চলাকালীন প্রবেশ করেছে।”

Considering the above facts it is clear that the magistrate without maintaining the mandatory requirements

of section 164 and 364 of the code of criminal procedure recorded the confessional statement of the accused and such type of confession cannot be said true and voluntary.

In the case of The State –Vs. Babul Miah, reported in 63 DLR (AD)-10, wherein our Apex court set the principle that: *“It is a mandatory requirement that after recording a confessional statement the recording Magistrate is required to make a memorandum to the confession containing a clause to the effect that he had warned the accused that he was no bound to make a confession, that if he makes a confession, it would be used against him, that the statement was true and voluntary, that it was recorded as per version of the maker and that it was read over to the maker after his statement was recorded which was the true and correct version and it contained a full and true account of statement made by the maker.”*

If we consider the said confessional statement is true and voluntarily then it is found that no part had been played by the said accused. It is found that he haired some persons and paid Tk. 7,000/- to bring the victim in his possession nothing more. In such a case the confessional statement

considering the decision of our apex court should not be the only basis for conviction of the accused. It is settled principle that on the basis of such type of confessional statement the conviction cannot be based.

Furthermore, we have already found that the said confessional statement was not true and voluntary. But on considering the evidence of P.W.6 it is found that he could recognize the condemned-convict Md. Sohel Ibne Karim who had held the neck and mouth of the victim and brought her towards the southern side. The learned Advocate of the appellant submits that considering the material facts specially the sketch map it can be safely said the P.W.6 did not see the occurrence since no window from the western side of the room. Furthermore it could not be possible to see the occurrence from the eastside of the room where the P.W.6 was watching TV and it was the case that the said room was locked from the outside. Furthermore when he left out from his room he searching the victim and ultimately found her in the vacant place of near the Wall which clearly proves that he

could not see the abduction or the occurrence as he stated in his chief.

The informant, the P.W.5 and the P.W.6 in their deposition stated that the accused married the victim 1 ½ years ago and no denial by the condemned convict Md. Sohel Ibne Karim about the said facts and since the P.W.2 and P.W.3 also saw him nearby the Chattal of the informant and also were wandering in the Bazar area. Considering the above facts it is our view that the prosecution succeed to prove that the condemned convict Md. Sohel Ibne Karim had involvement about the alleged offence since his presence nearby the place of the house of the informant has been proved and also he disclosed in his confessional statement that he was present in the place of occurrence at the time of incident. Furthermore he paid Tk. 7000/- to the co-accused for bringing the victim in his possession.

However, since it is admitted that the victim died after 9 months of the incident and she got treatment in Apollo Hospital, Dhaka for 1½ months. But thereafter about 8 months she was in the house of her father and no evidence that she

was under treatment by any of the doctor and the prosecution also did not adduce any witness to prove that she was under treatment by the doctor. In such a case it is our considered view that the charge under section 302/34 of the Penal Code should not be sustained.

In the case of Humayun Matubbar –versus- The State, reported 51 DLR (AD)-433 wherein their lordships held: *“The injury inflicted did not cause instant death. The victim was alive for about 1 ½ months at the hospital. This shows the injury inflicted was not likely to cause death, but it endangered the life and ultimately resulted in death. The appellant therefore is guilty under section 326 of the Penal Code.”*

Considering the above decision of our Apex court it is our view that the injuries as found was likely to cause death but it endangered the life of the victim and ultimately she was died long after 9 months of the occurrence. Thus the condemned-convict Soheli Ibne Karim was found guilty of the charge under section 326 of the Penal Code. Thus the condemned-convict Md. Soheli Ibne Karim is convicted under section 326 of the Penal Code and is sentenced to suffer

rigorous imprisonment for 10 (ten) years and also to pay a fine of Tk. 20,000/- in default to suffer rigorous imprisonment for 6 months more.

The convict-appellant Md. Shakil Sarker preferred the criminal appeal No. 6489 of 2016

We have already considered the submissions of the learned Deputy Attorney General and the learned Advocate of the appellant. It appears that no substantive evidence against the appellant even none of the witness disclosed that they saw the appellant Shakil in the place of occurrence. As such only on the basis of the confessional statement of co-accused without any substantive evidence it cannot be said that the appellant found guilty of the charge leveled against him beyond all reasonable doubt. This principle has been discussed in the case of Mobile Kader –versus- The State, reported in 67 DLR (AD)-6, wherein our apex court discussing details about the section 3 and 30 of the Evidence Act, took view that the confessional statement of the co-accused cannot be used against the other co-accused without any substantive evidence. Similar view has been taken in the decision of the case of Majid Sheikh alias

Majid and others –vs. The State, reported in 11 BLC (AD)-149, wherein their lordships held: *“So many decisions have earlier been pronounced by the Appellate Division to the effect that confessional statement of co-accused cannot be basis of conviction of other co-accused in the absence of other independent evidence.”*

Considering the facts it appears that no substantive evidence against the appellant Shakil and we have already found that 164 statement of the accused Sohel Ibne Karim is not true and voluntary.

Having considered the aforesaid facts and circumstances of the case and the decisions of our Apex Court it is our view that the prosecution measurably failed to prove the charge leveled against the convict-appellant Md. Shakil Sarker beyond all reasonable doubt and the conviction and sentence against him should not be sustained and the same should be set-aside.

Now we have considered the case of the convict-petitioner Ahad Ali who filed Criminal Miscellaneous Case No. 32024 of 2017 for quashment of the impugned judgment and order of conviction under section 561A of the code of criminal

procedure. We have considered the evidence on record from where it is found that the prosecution could not adduced any evidence against the petitioner Ahad Ali. None of the prosecution witness disclosed that they saw the accused in the aforesaid area. Only the confessional statement of co-accused Sohail who disclosed that the petitioner was hanged and he committed the offence along with others. But we have already considered that the said confessional statement of Sohail was not true and voluntary and which is not the basis for conviction.

However, this petitioner was not present at the time of pronouncement of judgment and did not file appeal within the prescribed time as per Druto Bichar Tribunal Ain and as such filed this Miscellaneous case for quashment of the judgment under section 561A of the code of criminal procedure.

The section 561A provides the inherent power of the High Court Division that: *Nothing in this code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any*

order under this code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

The case in hand of the High Court Division if it is found that it requires to prevent abuse of the process of any court or otherwise to secure the ends of justice then nothing in this code shall be deemed to limit or effect the inherent power to make such order as may be necessary.

The details regarding quashment under section 561A of the code of criminal procedure has been discussed in the case of Ali Akkas –versus- Anayet Hossain and other, reported in 17 BLD (AD)(1997)-44, wherein our apex court settled the principle of quashing the proceedings to the effect: *“the settled principle of law is that to bring a case within the purview of section 561A for the purpose of quashing a proceeding one of the following condition must be fulfilled (1) interference even at an limited stage may be justified where the facts are so preposterous that even an admitted facts no case stand against the accused. (2) where the institution and constitution of the proceedings amounts to an abuse of the process of the court (3) where there is a legal bar against the*

limitation and continuation of the proceedings and in a case where the allegation in the F.I.R. or the petition of the complain even if taken at their face and accepted in their entirety do not constitute the offence alleged and (5) the allegations against accused although constitute offence alleged but there is no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly failed to prove the charged.

In the case of Rajib Ullah and another –Vs. The State, reported in 20 BLC (AD)-249, wherein the principle laid down that: *“In a proceeding under section 561A of the code praying for quashment of a judgment and order of conviction and sentence there is no scope for reassessment of the evidence on record. The inherent power conferred by section 561A of the code may be exercised to quash a proceeding or even a conviction and sentence on conclusion of trial if the court concerned had no jurisdiction to hold the trial or the facts alleged against the accused do not constitute any criminal offence or the conviction has been based on no evidence or otherwise to secure the ends of justice.”*

Considering the provision of law and the above cited decisions that the case which has already been disposed of wherein if it is found that the facts alleged against the accused do not constitute any criminal offence or the conviction has been based on no evidence in such a case to secure the ends of justice the High Court Division shall quashed the impugned judgment invoking the inherent power conferred by section 561A of the code of criminal procedure.

We have already considered that none of the witnesses disclosed the name of this accused that he was present at the time of commission of offence. Even we have also considered the confessional statement of accused Sohail Ibne Karim and took view that the said confession was not true and voluntary and purely an exculpatory in nature, and it is found that no substantive evidence against this petitioner thus the same should not be based for conviction of the co-accused. As such it is our view that the conviction and sentence of the convict-petitioner Md. Ahad Ali @ Ahad Fakir without any legal evidence and the same should not be sustained and the

impugned judgment so far as relates to the petitioner Md. Ahad Ali @ Ahad Fakir should be quashed to prevent the abuse of the process of the court and to secure the ends of justice. Thus the impugned judgment so far as relates to the petitioner Md. Ahad Ali @ Ahad Fakir is hereby quashed and thus the Rule should be made absolute.

In the result, the death reference is rejected. The impugned judgment and order of conviction and sentence so far as relates to the condemned-convict Md. Sohel Ibne Karim (absconding) should be modified. The condemned-convict Md. Sohel Ibne Karim is convicted under section 326 instead of section 302 of the Penal Code and is sentenced to suffer rigorous imprisonment for 10 (ten) years and also to pay a fine of Tk. 20,000/- in default to suffer rigorous imprisonment for 6 months more.

The criminal appeal No. 6489 of 2016 is hereby allowed. The impugned judgment and order of conviction so far as relates to the appellant Md. Shakil Sarkar @ Shakil Uzzaman is set-aside and he is not found guilty of the charge leveled against him and is discharged from his bail bond.

The Rule in Criminal Miscellaneous Case No. 32024 of 2017 is made absolute. The impugned judgment and order of conviction and sentence so far as relates to the convict-petitioner Md. Ahad Ali @ Ahad Fakir is hereby quashed. He is not found guilty of the charge leveled against him and is discharged from his bail bond.

The Deputy Commissioner of Bogura and the Superintendent of Police is directed to secure the arrest of the condemned convict Md. Sohel Ibne Karim (absconding). However, he should get the benefit of section 35A of the code of criminal procedure in both if he will surrender to serve his rest sentence and after his arrest.

Communicate the impugned judgment and order and send down the lower Court records at once.

Ashish Ranjan Das, J:

I agree.

M.R.