

Present:

Mr. Justice S.M. Emdadul Hoque
and
Mr. Justice K M Zahid Sarwar

Death Reference No.80 of 2016.

with

Criminal Appeal No.5774 of 2016

with

Jail Appeal No.148 of 2016

The State

..... Petitioner

-Versus-

Md. Faruk Shikder

..... Condemned-Prisoner.

Mr. Harunur Rashid, D.A.G with

Mr. Zahid Ahammad (Hero) A.A.G with

Mr. Mohammad Shaiful Alam, A.A.G

..... for the State.

Mr. Md. Saiful Islam Khandker, Advocate

.... for the appellant

Heard on: 23.03.2022, 24.03.2022 and

Judgment on: 30.03.2022.

S.M. Emdadul Hoque, J:

This death reference has been made by the judge (District Judge) Nari-O-Shishu Nirjaton Daman Tribunal No. 4, Dhaka under Section 374 of the Code of Criminal Procedure for confirmation of the sentence of death awarded upon him under Section 4(1) of the of the Nari-O-Shishu Nirjaton Daman Ain, 2000 by its judgment and order of conviction and

sentence dated 15.06.2016 in Nari-O-Shishu Tribunal Case No.417 of 2013 arising out of Khilgaon Police Station Case No.26 dated 14.03.2013. The tribunal also sentencing him to pay a fine of Tk.10,000/-.

The prosecution case as made out by the informant the P.W-1 Md. Suruj Mia the father of the victim Polly Akhter in short, is that, his daughter Polly Akhter married the condemned-prisoner Md. Faruk Shikder about $1\frac{1}{2}$ years ago of the date of occurrence. He as a Rickshaw Puller went out from house and the wife of the brother of condemned-prisoner Md. Faruk Shikder came to their house and informed that accused beat his daughter and pouring Kerosene on her head and set fire on her wearing cloth and burnt her with intention to kill the victim. The condemned-prisoner then taken her to the Dhaka Medical College Hospital and fled away therefrom after admitting the victim to the Hospital. On getting the such information he went to the house of the accused but did not find the victim. Thereafter he went to the Dhaka Medical College Hospital and saw the victim in the hospital about 95% burn injury. The victim disclosed to him

that due to non-payment of dowry the accused pouring Kerosene on her body and set her fire. Then he went to the Khilgaon Police Station and lodged the ejarah being Khilgaon Police Station Case No.26 dated 14.03.2013. The victim Polly Akhter made a dying declaration while she was in Dhaka Medical College Hospital and the Doctor Md. Mahbubur Rahman recorded the same and after five days of the occurrence she breathed her last in the Hospital. The Police came to the Hospital and prepared the inquest report of the death body and seized the wearing clothes of the victim and also seized a Plastic bottle from the house of the accused. Hence, the case.

The case was initially investigated by Sub-Inspector Md. Abdus Salam of Khilgaon Police Station who visited the place of occurrence, prepared the sketch map along with separate index and seized some alamsats and prepared the seizure list, examined 11 (eleven) witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure, sent a plastic bottle contained some Kerosene to the expert and expert gave opinion that the existence of Kerosene was found

in that bottle and after completing all the formalities of the investigation he found *prima-facie* case against the accused Md. Faruk Sikder and submitted the charge-sheet being No.211 dated 27.07.2013 against him under Section 4(1) of Nari-O-Shishu Nirjaton Daman Ain, 2000 (amended 2003) and not sent up the other three accused.

Against the said charge-sheet the informant filed a naraji petition and then the case was sent to the CID Dhaka for further investigation. The investigation was done by S.I Arif Hossain of CID, who after completing all the formalities of investigation found *prima-facie* case against the condemned-prisoner Md. Faruk Sikder and submitted the fresh charge-sheet against him under Section 4(1) of the Nari-O-Shishu Nirjaton Daman Ain, 2000 on 11.03.2014.

Thereafter the case record was sent to the Judge (District Judge) Nari-O-Shishu Nirjaton Daman Tribunal No.4, Dhaka who framed charge against the accused under Section 4(1) of the Nari-O-Shishu Nirjaton Daman Ain, 2000 which was read over to him to which he pleaded not guilty and claimed to be tried.

At the trial the prosecution examined as many as 17 witnesses among the 27 charge-sheeted witnesses and they were duly cross-examined by the defence but the defence examined none.

After close of the prosecution witnesses the accused was examined under Section 342 of the Code of Criminal Procedure which was read over to him to which he reiterated his 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. Further, case is that at the time of incident he was in the Rajarbag Police line for making quilt and the victim since had a son aged about three months she went to the chula (stove) situated in a vacant space and while she set it fire incidentally the Kerosene dropped in her clothes and accordingly she was burnt and after getting the said information he returned to his house and

brought the victim to the Dhaka Medical College Hospital for proper treatment.

The Tribunal after consideration of the evidence on record and the argument as advanced by both the sides found the accused guilty of the charge leveled against him and convicted him as aforesaid and made this reference under Section 374 of the Code of Criminal Procedure and sent the record to this Court.

Thereafter, the condemned-prisoner filed a Jail Appeal through the concerned authority being Jail Appeal No.148 of 2016 and subsequently preferred regular Criminal Appeal No. 5774 of 2016.

Mr. Zahid Ahammad (Hero), the learned Assistant Attorney General takes us through the ejahar, charge-sheet, the charge, inquest report, Medical report, deposition of the witnesses, the 342 examination, the impugned judgment and the papers and documents as available on the record and stated the facts both of the prosecution and defence.

Mr. Harunur Rashid, the learned Deputy Attorney General appearing on behalf of the state submits that the tribunal after consideration of the evidence on record rightly convicted the condemned-prisoner. He further submits that this is a brutal murder and the husband killed his innocent wife setting her fire pouring kerosene on her body and subsequently she succumbed to her injuries after 5 days of the occurrence in the hospital. He further submits that the time, the date, the place of occurrence and the manner of occurrence has been proved by the prosecution by adducing sufficient evidence. He submits that it is admitted fact that the victim Polly Akter was burned in kerosene in the house of her husband and in struggling with the burn injuries she died at Dhaka Medical College Hospital.

He further submits that the victim herself made a dying declaration and which was recorded by the Doctor Md. Mahbubur Rahman the P.W-15 and he proved the said dying declaration and the P.W-14 Doctor Mohammad Azad who as an attesting witness also corroborated the same and though the defence cross-examined them but could not find any

contrary from their evidence and the said dying declaration has been exhibited as evidence. He further submits that though no eye witness in the instance case to see that the husband pouring kerosene and burnt the deceased Polly Akhter but immediately after the occurrence on hearing screaming of the victim, the landlady P.W-11 rushed to the said place of occurrence and pouring water extinguished the fire which proves that the condemned-prisoner burnt the victim by pouring kerosene. He further submit that the chemical expert found existence of kerosene in the seized bottle and also in the Kameez of the victim which also proves that the victim died due to burn injury caused by kerosene.

He further submits that though the P.W-4, 6, 8 and 9 did not disclose the facts to the investigation officer that they came to know that the condemned-prisoner threw kerosene and burnt the victim but the evidence of the witnesses if otherwise credit worthy cannot be discarded merely because it was not available in the statement of witnesses recorded under Section 161 of the Code of Criminal Procedure. In

support of his argument he cited the case of Yasin Rahman @ Rahman Yasin @ Titu Vs. State reported in 19 BLC (AD)-8.

He further submits that when the defence took plea that he was not in the house at the relevant time then burden of proving that fact especially within the knowledge of the accused vest upon him relying upon the decision of the case of Mahabur Sheikh alias Mahabur Vs. State reported in 67 DLR (AD)-54.

The learned Deputy Attorney General further submits that dying declaration of a person about the cause of his death or circumstance leading to his death is substantive evidence under Section 32 (1) of the evidence Act if found to be reliable, then it may by itself be the basis for conviction even without corroboration.

He submits that Section 32(1) of the evidence Act provides that dying declaration may be recorded by any person who is available and it may be written or it may be verbal or may be incidental by sign and gesture in answer to question there is no requirement of law that a dying declaration should

be recorded by a magistrate as in the case of confessional statement of an accused under Section 164 of the Code of Criminal Procedure. He cited the decision of the case of Nurjahan Begum wife of Abu Bakar Siddique Vs. State reported in 42 DLR (AD)-130.

The learned Deputy Attorney General further submits that if the husband was present in the house at the relevant time then he should explain as to how his wife met her death while she was living with him and the accused made out a story of sudden fire but accused failed to prove the same in such a case the husband is liable for killing his wife. He cited the decision of the case of Azam Reza Vs. The State reported in 15 MLR (AD)-219.

He further submits that the trial Court after proper consideration of the evidence on record found that the prosecution succeed to prove the case beyond all reasonable doubt and thus the tribunal rightly convicted the accused. He prayed for acceptance of the death reference and for dismissal of the appeal.

On the contrary, Mr. Md. Saiful Islam Khandker, the learned Advocate of the appellant submits that the prosecution miserably failed to prove the case by adducing sufficient evidence that the husband killed his wife setting her fire pouring kerosene on her body. He further submits that none of the witnesses deposed that they saw that the husband was present in the house at the relevant time and he pouring kerosene. He further submits that the alleged dying declaration is not the basis for conviction and which cannot be said substantive evidence without any corroboration and the same cannot be used for conviction. He submits that the dying declaration was recorded by the Doctor on the application of the investigating officer but no such document is available in the record even which has not been produced for evidence as such it can be safely said that the prosecution failed to prove the case of dying declaration. He further submits that the P.W-14 Dr. Mohammad Azad did not corroborate the time of recording dying declaration by the P.W-15 Dr. Md. Mahbubur Rahman which is vital contradiction regarding the dying declaration.

He submits that admittedly the victim was brought to the Dhaka Medical College Hospital by the husband himself for proper treatment and the prosecution since could not prove that husband pouring kerosene and set her fire in such a case it can be safely said that the prosecution miserably failed to prove the charge leveled against the condemned-prisoner.

He further submits that in chemical report the expert found the presence of kerosene in the plastic bottle and in the wearing kammiz of the victim but the prosecution case is that the husband pouring kerosene on the head in such a case the oil ought to have in the Orna but purposely the said Orna was not sent for compearing even on perusal of the seizure-list it is found that an empty plastic bottle was seized from the room of the condemned-prisoner whereas in the report it is found that $\frac{1}{2}$ milliliter kerosene was in the said bottle which creates serious doubt about the prosecution case. He submits that even the said report has not been proved by chemical expert and the expert was not produce as witness.

He further submits that several contradiction has been found from the evidence of P.W-4, 6, 8 and 9 and they did not

disclose to the I.O that victim told them that condemned-prisoner pouring kerosene on her body and burnt her in such a case it is clear that the prosecution miserably failed to prove the charge leveled against the condemned-prisoner. He prayed for allowing the appeal and rejection of the death reference.

Let us discuss the main contention of the evidence of the witnesses for consideration of the prosecution case.

P.W-1 Md. Suroj Mia, the informant of the case and the father of the deceased Polly Akhter deposed that the date of occurrence on 14.03.2013 at about 11:00 A.M and his daughter Polly Akhter married the accused Md. Faruk Shikder about $1\frac{1}{2}$ years ago of the incident and the incident happened at the West Nondipara the house of her husband. He further deposed that the husband of victim demanded dowry and beaten her for the said dowry. He deposed that on the date of occurrence he went out from his house with his Rickshaw and came to know that the wife of the brother of accused came to their house and told that the accused had beaten the victim and poured kerosene on her and set her fire and accordingly he went to the Dhaka Medical College Hospital

and found the victim in the burn unit of the Hospital. He deposed that the husband of the victim brought the victim to Dhaka Medical College Hospital but he could not find the accused in the Hospital. He further deposed that accused had often beaten the victim prior the incident for dowry and on the date of occurrence he poured kerosene on her head and set her fire and his daughter disclosed the same to him and thereafter he lodged the ejahar with the Khilgaon Police Station and after five days of the incident she succumbed to her injuries in the said Hospital. He proved the ejahar as exhibit-1. He further deposed that Doctor Md. Mahbubur Rahman recorded the dying declaration of his daughter and the wearing appearance were examined by the chemical expert and they found alamat of kerosene and after the death of victim the autopsy of the victim was held and the investigating officer examined him. He identified the accused on the dock.

In cross-examination of the defence this witnesses stated that the victim was his 2nd daughter and initially she was given marriage at Gaibanda and had two children. He stated

that they did not arrange the marriage of Polly with the accused Faruk and a child aged about $3\frac{1}{2}$ months was born during their wedlock but said child died after the incident. He stated that he was a rickshaw puller and he went to the house of victim only one day after her marriage. There is no gas connection in the said house and his daughter cooked by lakri (wood) in the open space in front of her house and he came to know the incident at about $11/11\frac{1}{2}$ hours and went to the house of his daughter but did not see her and heard that she was taken to the Dhaka Medical College Hospital and then he went there at about $2\frac{1}{2}/3$ P.M. He lodged the FIR with the Khilgaon Police station at about $4/5$ P.M. He stated that one Police officer wrote the ejahar.

He denied the defence suggestion that victim was not tortured by the accused for dowry and the victim went to Chula and when she set the wood fire by pouring kerosene then kerosene felt on her wearing apparels. He further stated that accused Faruk Shikder was a thunkar and they had a shop in the Tremohony of Madertake. He denied the suggestion that

at that time accused Faruk was at Rajarbag Police line for making quilt and they came to know that the fire was spreaded while the victim tried to set-fire on the Chula/Stove. He stated that he lodged the false ejahar and deposed falsely.

P.W-2 Razia, a neighbour of the victim deposed that she knew the informant, the victim and the accused Faruk Shikder the son-in-law of Suroj Mia. She could not memorize the date of occurrence and heard that the daughter of Suroj Mia burned to death and did not know how she burned to death.

The prosecution declared her hostile and cross-examined her.

In cross-examination of the prosecution she stated that brother-in-law of victim was her tenant. She stated that she had no knowledge that the victim and her husband was the tenant of her neighbour Alam Member and they had entrance of the house of her daughter-in-law. She was examined by the Police officer. She denied the suggestion that the victim Polly told her that her husband torturing her for dowry and she had no knowledge that accused Md. Faruk Shikder poured

kerosene and burnt the victim. She denied that to save the accused she deposed falsely.

The defence declined to cross-examine her.

P.W-3 Jamal, One of the brothers of victim Polly Akter deposed that his sister married the accused about $1\frac{1}{2}$ years ago but later he demanded dowry and made quarrel and beating her in sometimes and on the date of occurrence on 14.03.2013 he was informed the incident from his father and accordingly went to the place of occurrence but did not find any one in the said house. He went to the Dhaka Medical College Hospital and found his sister in the Hospital with 95% burn injury. He deposed that the victim disclosed to the Doctor that since his father could not pay the dowry thus her husband beat her and pouring kerosene and set her fire. He deposed that he was standing there when his sister disclosed the same to the doctor and she died after five days of the occurrence and the Police Inspector examined him. He identified the accused in the dock.

In cross-examination of the defence this witness stated that he was a Bus helper which run towards Sayadabad to

Gazipur and at that time he was at Basabo area and he received phone call from his father and went to their house at afternoon and he along with his father went to the house of his sister but could not memorize whether which was at Asr or Maghrib time. He denied the suggestion that they went to the house of Polly at the time of Maghrib prayer and found some people there and from where he along with his father went to the Dhaka Medical College Hospital at 5:00 P.M and he could not say where his father was staying in the said night but he was on the floor in the Dhaka Medical College Hospital and he was also present in the Police Station when his father lodged the ejarah but could not memorize the date.

In cross-examination of the defence he stated that on the said night they went to the Police station and he admitted that his sister cooked in a wooden chula and it is not true that she was burned when she was cooking food and while she set fire pouring kerosene in the wood then fire spareded to her apparels and he never went to the said house before the incident. He could not say who brought the victim to the Hospital. He denied the suggestion that they collected the

materials for admission of the victim in the Hospital from the accused and falsely implicated the accused hiding the truth and they did not file any G.D or case regarding the demand of dowry. He denied the suggestion that they did not go to the house of the victim since she married the accused without their will and as such they did not like her and he deposed falsely. He further denied that the accused was not present in the place of occurrence at the time of incident and it is not true that the accused set his sister fire.

P.W-4 Md. Nayem, one of the neighbour of the informant deposed that he knew the informant Suroj Mia and the occurrence took place on 14.03.2013 at about 11:00 A.M. He came to know the incident at about 3:00 P.M and while he returned back from his duty place on the way to his house he met with the father of victim Polly and the informant told him to the effect: তিনি কেঁদে কেঁদে আমাকে জানায় যে, পলির শরীরে আগুন লাগিয়ে দি-য় পুড়ি-য় দি-য়-ছ । Thereafter he went to the Dhaka Medical College Burn Unit and saw the victim and her entire body was covered by bandage and the victim disclosed to the Doctor that accused Md. Faruk Shikder set her fire pouring kerosene.

He deposed that Police prepared the inquest report and took his signature. He proved the said inquest report and his signature present in the inquest report as exhibit-2 and 2/1 respectively.

In cross-examination of the defence this witness stated that he was the neighbour of the informant and he met with him at about $3\frac{1}{2}$ P.M and they went to the Dhaka Medical College Hospital by Rickshaw and reached at about 5:00 P.M and saw the victim in the burn unit and none from the house of the husband of victim was present there. He denied the suggestion that he did not disclose to the Police Officer that while he was returning back from his job on the way to his house he met with the father of victim Ploy and he told him that she was burned. He denied the suggestion that he did not disclose to the Police Officer that he went to the Medical College Hospital along with the informant at about 5:00 P.M and victim disclosed to the doctor that her husband set her fire pouring kerosene. He further denied that since Suroj Mia was

his neighbor on his investigation he deposed falsely without knowing any information.

P.W-5 Md. Zakir Hossain, nephew of Suroj Mia deposed that victim was his cousin sister. He identified the accused in the dock. He could not memorize the date of occurrence but which happened about two years ago at the house of accused Md. Faruk Shikder. He deposed that while he was at his job place he received a phone call from Suroj Mia that accused Md. Faruk Shikder set the victim fire pouring kerosene and reached at the house of Md. Faruk Shikder within half an hour and saw many people present there and came to know that the victim was brought to the Dhaka Medical College Hospital and victim Polly died after five days of the occurrence.

He was further examined on recall and stated that on 15.03.2015 at about 8:35 A.M Police seized a half liter size blank cold drinking bottle with smelling of kerosene and a -পটি-কাট and a red colour printed comiz and some other materials and prepared the seizure-list. He prove the said seizure-list and his signature therein as exhibit-3 and 3/1 and

also proved the seized alampats as material exhibit No. 1. He stated that the seized bottle was not present in the Court and he was examined by the Police. In cross-examination of the defence this witness stated that he could not memorize whether he disclosed to the I.O that informant told him that Md. Faruk Shikder set the victim fire. He further stated that he could not memorize that he disclosed to the I.O that: ১৪-০৩-২০১৩ ইং তাং আমি আমার বাসায় অবস্থান করা কা-ল বেলা অনুমান ১১ টার সময় আসামী ফারুক-কর ঘ-র ডাক-চিৎকার শু-ন আমি ও পার্শ্ববর্তী লোকজন দৌ-ড় বের হ-য় এসে পলির শরীরে আগুন জ্বলতে দেখে আমি ও অন্যরা আগুন নিভানোর জন্য পানি ও বালু ছিটি-য় দেই কিনা বা তার শরীর পু-ড় যাওয়ায় তা-ক চিকিৎসার জন্য আসামীর লোকজন দ্রুত ঢাকা মেডি-কল ক-লজ হাসপাতা-ল নি-য় যায় । “He further denied the defence suggestion that it is not true that while Polly tried to set the stove fire then fire spreaded upon her and Md. Faruk Shikder did not set her fire and he deposed falsely.

P.W-6 Mainuddin, the another brother of the victim deposed that occurrence took place on 14.03.2013 at about 11:00 A.M at the house of Md. Faruk Shikder. He deposed that at that time he was in Narayangonj and received a phone call from his father that accused Faruk burnt his sister Polly Akhter

pouring kerosene and accordingly on the next day he came to the house and went to the house of accused and learnt from the neighbour of the said house that accused set her fire pouring kerosene for dowry and then he went to the Dhaka Medical College Hospital. The victim died after five days of the occurrence. The Police held the inquest of the victim Polly in presence of him and took his signature. He proved his signature present in the inquest report as exhibit-2/2.

In cross-examination of the defence he stated that he came to his house at about 11:00 A.M on the next day and went to the house of Polly Akter at about 12:00 P.M but could not find any one in the said house and he went to the hospital after three days of the occurrence along with his father and Polly Akter disclosed to him that accused Faruk Shikder set her fire pouring kerosene and then his father, aunt, mother and one Zakir were present there. He also stated that he came to know the said facts from one of the tenant adjacent to the house of Faruk Shikder. He denied the suggestion that he did not mention the same to the I.O. He denied the suggestion that Polly Akter did not disclose to him

that her husband set her fire and he did not disclose the same to the I.O. He denied the suggestion that he came to know that while Polly Akter starting to set the stove fire then kerosene spilled from the stove and then fire spreaded on her body. He denied the suggestion that Polly did not disclose to him that Faruk Shikder set her fire and he deposed falsely hiding the truth.

P.W-7 Jahanara, mother of the victim deposed that her daughter Polly Akter married the accused Faruk Shikder before two years of the occurrence and occurrence took place at about 11: 00 A.M at the house of Faruk. She deposed that Faruk Shikder beaten her daughter and also set her fire pouring kerosene on her body for dowry and she lost her sense. She deposed that on the next day she went to the Hospital and saw that the whole body of the victim was burned and which was covered by bandage and Polly disclosed to her that accused tortured her and set her fire pouring kerosene for dowry. She deposed that victim died after five days. She identify the accused on the dock.

In cross-examination of the defence this witness stated that initially Polly Akter got marriage on Mozibour Rahman of Gaibandha and no children during their wedlock. She deposed that Polly and Md. Faruk Shikder married for love and one son was born during their wedlock and he was three months old at the time of incident and she went their house only one day to see the said son. She admitted that she did not disclose to the I.O that the husband of Polly tortured victim and thereafter setting her fire pouring kerosene. She denied the defence suggestion that no gas burner in the house of Faruk and Polly used to cook in a Chula by wood in a vacant area in the house of Polly and while she tried to lit the Chula then fire spraded on her apparels. She also denied the defence suggestion that Md. Faruk Shikder and Polly got married for love and never claim dowry and she deposed falsely and Md. Faruk Shikder did not set her fire pouring kerosene.

P.W-8 Rahman, age 10 years the younger brother of deceased Polly Akhter deposed that on 14.03.2013 at about 11 A.M he went to the house of his sister Polly at Nondipara and while his brother-in-law accused Md. Faruk Shikder saw him he

tried to beat him with a stick and on the gesture of Polly he fled away from the said area and went to a field and there after returned back to his house and subsequently he came to know from his father that accused had beaten his sister and then set her fire pouring kerosene. He went to the Dhaka Medical College Hospital and saw her with burned injury and she told that accused burnt her pouring kerosene for dowry and she died after 4/5 days of the occurrence and Police officer examined him. He identified the accused in the dock.

In cross-examination of the defence this witnesses stated that he was a student of class three. He did not go to the house of accused Faruk after the incident. He stated that he went to the said house occasionally and Faruk hired one among the four rooms but could not memorize the name of any of the child of the said house. He admitted that his sister cocked in a chula in a vacant space of the said room by wood and set the wood fire on pouring kerosene. He denied the suggestion that he did not disclose to the I.O that accused set his sister fire on pouring kerosene for dowry.

P.W-9 Sufia, the daughter-in-law of the landlady deposed that the victim and accused resided her father-in-laws house as a tenant and at about 10:00 A.M she went to School along with his child and returned back at about 2:30 P.M. and heard that victim Polly was burned by fire and subsequently came to know that her husband set her fire on pouring kerosene. She did not see the incident and the victim died after 5/7 days of the incident and she was examined by the I.O. She identified the accused in the dock.

In cross-examination of the defence this witness stated that his father-in-law rented only one room and they occupying four rooms. She admitted at that time no gas line in their house and they cooked by wood in a Chula/(oven) and used the paper to light the fire in the Chula but in some times they also used kerosene and admitted that victim also used a wooden Chula and she often cocked shuji for her child. She denied the defence suggestion that she did not learn that victim was set on fire but could not say the name who disclosed the same. However, the people of the surrounding area and the relatives of the accused Faraque were talking

about the same. She also stated that she came to know that the husband of the victim, his sister and brother brought the victim in the hospital and a lot of people disclosed that Polly was burnt when she went to cock suji for her child.

P.W-10 Rahela, deposed that she knew Polly and Md. Faruk Shikder and they resided adjacent to their room and at that time she was not present in the house and while she return back at evening came to know from the people that Polly was burnt by fire but could not say how the fire spraded.

The defence declined to cross-examine her.

P.W-11 Ayesha Begum, the landlady deposed that Plloy and Md. Faruk Shikder were their tenant and the occurrence took place about three years ago at about 11:00 A.M while she was in her room, then she heard sound fire, fire and came out from the room and saw fire spraded on the body of Polly and she brought water and extinguished the fire and subsequently came to know that which was caused from kerosene but could not say who set her fire and also did not see the same. She identified the accused in the dock.

The defence declined to cross-examine this witness.

P.W-12 Rehana, aunt (maternal) of victim deposed that on 16.03.2013 at night she came to know from her brother-in-law Suroj Mia that accused Md. Faruk Shikder the husband of Polly set her fire on pouring kerosene and on the next day the 17th March, 2013 at morning while she went to the Dhaka Medical College Hospital she saw the dead body of Polly. The Police held the inquest of dead body and prepared the inquest report and took her signature. The whole body of victim was bandaged. She proved her signature present in the inquest report as exhibit-2/3. The Police examined her. She identified the accused in the dock.

In cross-examination of the defence this witness stated that Police examined her on 17.03.2013 and since the I.O did not ask her anything so she did not disclose to the I.O that Suroj Mia told her that accused set the victim fire on pouring kerosene. She denied the defence suggestion that she came to know that while Polly started to light the fire in the Chula on pouring kerosene then fire sparaded on her body. She denied

the suggestion that she did not see nothing and deposed falsely.

P.W-13 Dr. A.K.M. Shafiuzzaman, deposed that on 18.03.2013 he was attached at Dhaka Medical College Hospital as a lecturer of Forensic Medical Department and the constable No.17124 Abdul Khaleque identified the dead body of Polly Akter and accordingly on the basis of Khilgaon Police Station Case No.26 dated 14.03.2013 he held the post mortem at 3:00 P.M and found the following condition of the deceased Polly Akhter: *“After removal of surgical bandage, infected burn wounds found on the face, forehead, neck, chest, abdomen, both upper and lower limbs and also could not find any internal injury of the dead body. He opined that “The death was due to shock, as a results of above mentioned burn injuries which are anti-mortem.”* He proved the post mortem report and his signature as exhibit-4 and 4/1.

In cross-examination of the defence this witnesses stated that he perused the inquest report, chalan and the

death certificate and denied the suggestion that he did not give any proper report on perusal of the said documents.

P.W-14 Dr. Md. Azad deposed that he was attached at the Plastic Surgery Department as a trainee Doctor. On 14.09.2013 the Assistant Register burn and Plastic Surgery Department Dr. Md. Mahbubur Rahman recorded the dying declaration of the victim in presence of him. He proved the said dying declaration and his signature as exhibit-5 and 5/1.

In cross-examination of the defence this witness stated that he was on duty under Professor Dr. Md. Sajjad Khandoker. He stated that at the time of recording dying declaration he had no duty and he went there calling by the Assistant Register. The victim was in the heart dependency ward and there were twelve beds in the said ward. He was in the said Burn Unit ward without any duty. He stated that the dying declaration may be recorded in between 12:00 to 1:00 P.M and he was present there and he read the said dying declaration and put his signature and none except they two were present there. He denied the suggestion that victim did

not make any statement in presence of him and on the request of his superior Doctor he only put his signature. He stated that Doctor Mahbubur Rahman recorded the said statement. He denied the suggestion that the statement was not written in presence of him since he had no duty at that time and which was written in presence of the father and the relatives of the victim and subsequently without reading the same he put his signature and he deposed falsely.

P.W-15 Dr. Md. Mahbubur Rahman, deposed that on 14.03.2013 he was attached at Dhaka Medical College burn and plastic unit as Assistant Register and he recorded the dying declaration of Ms. Polly Akhter daughter of Soruj Mia at about 9:10 P.M. He proved the dying declaration and his signature as exhibit-5 and 5/2. He deposed that Dr. Md. Azad was present when he recorded the dying declaration and he put his signature and the victim voluntarily put her signature (with objection).

In cross-examination of the defence this witness stated that he was on duty from 8:00 A.M. to 2:30 P.M. He was in

charge of the word and as such he ought to have come any time within 24 hours. He stated that he could not memorize whether the victim was admitted under him. He admitted that in the dying declaration there was a স্মারক নং along with referring No and date but he could not explain the same at this stage and also could not say who made application for recording the dying declaration and when he wrote the declaration none except Dr. Md. Azad was present there and he collected the Thumb impression/signature of the victim in the said statement. He stated that one of the Medical Officer phoned to him and accordingly he came to the hospital and it was the duty of the Assistant Registrar to record the statement. He came to the Hospital about 8:30 P.M. He could not memorize the name of the said Doctor who phoned to him. He stated that so far as his knowledge Dr. Md. Azad was on duty at the relevant time and he recorded the statement in presence of said duty Doctor. He denied the suggestion that in his statement he did not make any certificate that the victim voluntarily made the statement. He denied the suggestion that on 14.03.2013 at about 12:00-1:00 P.M he recorded the

statement of the victim wherein a thumb impression was present and victim told him to the effect: “সুজি রান্না কর-ত যে-য় চুলায় লাকড়িতে কেরোসিন তেল দিলে শরীরে আগুন লাগে মর্মে ভিকটিম বলেছিল” He denied the suggestion that victim did not disclose that her husband set her fire but at the instigation of the relatives of victim he tornd the above statement and created this false dying declaration. He denied the suggestion that he deposed falsely on the basis of his concocted recording statements.

P.W-16 Abdus Salam Sub-Inspector of Police and the investigation officer deposed that on 14.03.2013 he was attached at Khilgaon Police Station and was entrusted to investigate the case. He visited the place of occurrence, prepared the sketch map along with separate index. He proved the sketch map and his signature as exhibit-6 and 6/1, the index and his signature as exhibit-7 and 7/1. He deposed that he seized an empty $\frac{1}{2}$ litter in size of cold drink bottle with smelling of kerosene, one burnt and tornd yellow color petty cot, one burnt and tornd red color printed Kamiz and a burnt and tornd yellow color orna as alamats and prepared the

seizure-list. He proved his signature present in the seizure-list as exhibit-3/2. He examined the witnesses from the surrounding houses of the place of occurrence. He sent the alamat Nos. 1 and 3 to the CID Mohakhali for chemical report and deposited the alamat Nos. 2 and 4 to the Malkhana. This witness deposed that he forwarded an application for recording dying declaration to the duty Doctor and arrested accused Md. Faruk Shikder and Most. Farida Begum. The victim Polly died on 18.03.2018 while she was under treatment at burn unit of Dhaka Medical College Hospital. He held the inquest of the dead body and prepared the inquest report. He proved his signature present in the inquest report as exhibit-2/4. He sent the dead body to the morgue for postmortem. He sent a piece of cloth and a half liter in size of cold drink bottle to the chemical examiner of CID Mohakhali. He perused the post mortem report and perused the chemical report wherein expert opined that “প্লাস্টিক-কর বোতল-ল রক্ষিত তরল পদার্থ ও কামি-জ কে-রাসিন দাহ্য পদার্থ পাওয়া গিয়া-ছ ।” He deposed that the Doctor recorded the dying declaration of the victim wherein she

disclosed that on the date of occurrence at about 11:30 A.M. the accused set her fire pouring kerosene.

This witness stated that in his investigation he found that the accused and victim got married according to Islami Saira and also found that the accused demand dowry in several times and tortured the victim. He found that on the date of occurrence the younger brother of victim Abdur Rahman (age 7) came to their house to see her thus the accused was excited and made a slap upon the victim and while the accused went inside the room to bring stick then she sent her brother Rahman to the house of her father and on exciting accused pouring kerosene on the body of the victim and thereafter set her fire by stick of match and then she made shouting and the local people rushed to the place of occurrence and extinguished the fire throwing water but in the meantime she was burnt 90% and she was immediately taken to the Dhaka Medical College Hospital and was admitted to the burn unit After completing all the formalities of the investigation he found *prima facie* case against accused Md. Faruk Shikder and accordingly submitted the charge-sheet being No.211 dated

27.07.2013 under Section 4(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000. He identified the accused in the dock.

In cross-examination of the defence this witness stated that he was entrusted to investigate the case on 15.03.2013. He went to the place of occurrence at morning about 7:45 hours and prepared the sketch map along with separate index. The place of occurrence showing as "A" which is inside of the bed room of accused and no materials including the alamats of fire was found in the bed room or in front of the open space. He did not find any wooden Chula or gas burner in the open space. He admitted that it was not mentioned in the ejahar and in the dying declaration and inquest report that Md. Faruk Shikder tortured the victim for dowry. He prepared the inquest report on 15.03.2013 at 8:35 P.M. He admitted that he filed an application for recording dying declaration on 14.03.2013 to the director, Dhaka Medical College Hospital but he had no receipt of approval of dying declaration of the victim by the concerned authority and which was not in the CD and he was not present when the dying declaration was recorded and also did not file any application for recording dying declaration in

favour of the magistrate. He went to the hospital on 15.03.2013 at 14:20 hours but since the condition of the victim was bad he could not talk with the victim.

In cross-examination of the defence he stated that in his investigation he did not find any Gas burner or wooden Chula wherein victim cooked food. He stated that the P.W-5 Md. Zakir Hossain in his 161 statement disclosed to the effect: “আগুন নেভানোর পর আসামীর লোকজন ভিকটিমকে দ্রুত চিকিৎসার জন্য ঢাকা মেডি-ক-ল নি-য় যায়”। He stated that witness Shah Alam in his 161 statement disclosed to the effect: “আসামীপ-ক্ষর লোকজন ভিকটিম-ক দ্রুত চিকিৎসার জন্য ঢাকা মেডি-কল ক-ল-জ নি-য় যায়”। He admitted that it was not mentioned in the ejahar that the victim was tortured for dowry. He admitted that the witness Nayem in his 161 statement did not disclose that “ডিউটি থে-ক বাড়ী ফেরার প-থ কলির বাবার সাথে দেখা হওয়া বা তিনি কলির গায়ে আগুন দেওয়ার কথা বলে নাই ।” He also did not mention to the effect: “বিকাল ৫ টায় কলির বাবা তা-ক নি-য় ঢাকা মেডিকেল কলেজ হাসপাতালে যাওয়া বা তার সামনে কলি ডাক্তার সাহেবের নিকট মৃত্যুকালীন জবানবন্দি দি-ত শুনার কথা উ-ল্লখ ক-রন নাই ।” He further admitted that in 161 statement witness Myinuddin P.W-6 did not disclose to the effect: “সে তার বাবার সা-থ হাসপাতা-ল যায়, কলি

আজ্ঞার তাকে বলেছে যে, ফারুক যৌতুকের জন্য কলি আজ্ঞারকে পুড়িয়ে দিয়েছে বা ঐ কথা বলার সময় তার বাবা, ফুফু (জাকি-রর মা) উপস্থিত ছি-লন বা তার বাবা ফো-ন তা-ক সংবাদ দেয় বা কলির বাসার বাম পা-র্শ্বর বাসার পুরুষ ভাড়া-ট থে-ক শু-ন-ছ যে, যৌতু-কর জন্য কে-রাসিন দি-য় পুড়ি-য় দি-য়-ছ ।” Regarding the suggestion about the 161 statement of the witness Abdur Rahman he disclose to the effect: “-যৌতুকের দাবী-ত আসামী কো-রাসিন দি-য় কলির শরীরে আগুন দেওয়ার কথা আমাকে না বলা সত্য ।” This witness denied the suggestion that it is not true that the place of occurrence is a vacant space in front of the room of Md. Faruk Shikder wherein the wooden Chula was present and purposely he shown the P.O on the bed room. He denied the suggestion to the effect: “তদ-ন্ত পাই যে, মৃতার ২ মাস বয়সী সন্তান-ক খাওয়া-নার জন্য সুজি রান্না করতে যেয়ে চুলায় কেরোসিন দিয়ে আগুন দিতে গেলে ঐ আগুন ভিকটিমের কাপ-ড় লা-গ বা সঠিকভা-ব তদন্ত করি নাই ।” He denied the defence suggestion that on instigation of the informant side he falsely submitted the charge-sheet and deposed falsely.

P.W-17 Md. Arif Hossain, deposed that he was attached as Inspector CID Motijil on 08.11.2013 and was entrusted to investigate the case and thereafter he visited the place of occurrence and examined the sketch map and index prepared

by the earlier investigation officer and he examined the witnesses Ayesha Begum, Sufia, Rehela, Leza Begum, Razia, Suvan Talukder, Jahanara, Md. Naim Rahman, Mayinuddin, Rahena, Shahalam, Jamal and recorded their statements under Section 161 of the Code of Criminal Procedure and found *prima-facie* case against the accused and submitted the supplementary charge-sheet being No.62 dated 11.03.2014 against the accused under Section 4(1) of the Nari-O-Shishu Nirjatan Daman Ain, 2000. He identified the accused in the dock.

In cross-examination of the defence this witness stated that he received the case docket on 18.11.2013 and examined the witnesses Ayesha Begum, Sufia, Rehela, Leza, Rahela and visited the place of occurrence at about 12:10 hours. He stated that witness Sufia Begum P.W-9 in her 161 statement stated to the effect: “ভিকটিম পলি তার বাচ্চা মুন্নর জন্য জ-ন্মর পর ঘ-রর কা-ছ লাকড়ি দি-য় রান্না কর-তা ।” He further stated that witness Leza in her 161 statement disclosed to the effect: “ভিকটিম পলি বেগম তা-ক কখনও ব-ল নাই যে, তার স্বামী তা-ক যৌতু-কর জন্য অত্যাচার কর-তা । আরও উ-ল্লখ আ-ছ যে, সন্তান জ-ন্মর পর পলি-ক ঘ-রর কা-ছ লাকড়ি দি-য় রান্না-বান্না কর-ত দেখ-তা ।”

He admitted that no sketch map of the place of cocking and also admitted that in his investigation he came to know that Md. Faruk Shikder as a weaver did job in several places along with his brother. He in his report did not mention that fire speraded in the outside of the room but in the dying declaration it was mentioned that the accused set her fire outside of the room. In his investigation he did not find any eye witness and also did not find that Polly herself set fire in the wooden চুলা by pouring kerosene. He denied the suggestion that in his investigation he found while victim Polly set fire in the wooden চুলা pouring kerosene then fire speraded in her Orna. He denied the suggestion that if he properly investigated the case he could find the truth and denied that he submitted a false charge-sheet only relying upon the investigation made by the earlier investigating officer and deposed falsely on the basis of false charge-sheet.

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

We have heard the learned Deputy Attorney General and the learned Advocate of the appellant, perused the evidence on record.

The prosecution case is that the condemned-prisoner Md. Faruk Shikder had married the victim Polly Akhter in love but subsequently he started to tortured the victim for dowry. Further case is that on 14.03.2013 the accused set her fire on pouring kerosene which she was burned about 95% and the accused took the victim to Dhaka Medical College Hospital wherein she succumbed to her injuries after 05 days i.e. on 18.03.2013 and stating the above facts the informant lodged the ejahar as such the Khilgaon Police Station Case No.26 dated 14.03.2013 was started.

Further case was that while the victim was admitted in Dhaka Medical College Hospital she made a dying declaration and which was recorded by Doctor Md. Mahbubur Rahman the P.W-15.

On perusal of the evidence on record it is found that there is no dispute about the date, time and place of

occurrence and also that the victim was burnt at the house of accused Md. Faruk Shikder.

To prove the case the prosecution examined as many as 17 (seventeen) witnesses. Among them P.W-1 is the informant who as a hearsay witness lodge the ejahar hearing the facts from the victim. The P.W-3, 6 and 8 are the brother of victim P.W-7 the mother of the victim P.W-5 the nephew of the informant and P.W-4 neighbour of the informant. The P.W-12 Aunt (maternal) khala of the victim but they all are the hearsay witnesses. But P.W-8 Rahman (age-7) the brother of victim disclosed that before the incident he went to the house of his sister but the accused tried to beat him so, his sister technically let him out from her house.

The P.W-2 the neighbour of the victim but she did not disclose anything and as such she was declared hostile. The

P.W-11 was the landlady who was only the witness who rushed to the place of occurrence and tried to extinguish the fire but did not disclose anything of the involvement of the accused. P.W-9 the daughter in law of the land lady who stated that she heard that accused Faruque Sikder set the victim fire. The P.W-10 also a neighbour of the victim but she deposed nothing and stated that she did not see the occurrence. P.W-13 the Doctor who held the postmortem and P.W-15 Doctor Md. Mahbubur Rahman recorded the dying declaration of the victim and P.W-14 another Doctor as attesting witness corroborated the evidence of P.W-15 regarding the dying declaration but in his cross-examination he contradict with the P.W-15 about the time of recording dying declaration. The P.W.16 and P.W-17 are the investigating officer of the case.

In the instant case none of the witness disclosed that how the victim Polly was burnt. Only the P.W-11 Ayesha the land lady deposed that on hearing sound fire, fire she came out from her room and saw the incident then she brought water and extinguished the fire pouring water but she did not disclose that the accused was present at the place of

occurrence or he set her fire on pouring kerosene on the body of the victim Polly. The P.W-9 in her deposition stated that she was not present in the house but when she returned back at 2:30 P.M learnt that Md. Faruk Shikder set the victim fire pouring kerosene on the body of the victim but she could not say from whom she came to know the said facts. On close reading of the evidence that no other witness were deposed who were present at the time of occurrence. So it is admitted that no eye witness in the instance case.

In deposition the P.W-1, 3, 4, 5, 6 and 7 though stated that they had heard that the condemned-prisoner Faruq Sikder set the victim fire pouring kerosene on her body and which the victim was 90% burnt. But in cross-examination the two investigation officer admitted that those witnesses did not disclose the said facts to them.

The learned Deputy Attorney General submits that the omission only in their 161 statement do not make their whole evidence discarded. In support the learned Deputy Attorney General cited the decisions of the case of *Yasin Rahman @ Rahman Yasin @ Titu Vs. The State* reported in 19 BLC (AD)-8

wherein their lordships held: *“However, the above mentioned omissions in the 161 statements of the P.Ws 5,6,7 and 17 are not fatal at all these are minor omissions. The other part of the evidence of these witnesses before the Court could not be shaken by the defence. These witnesses deposed before Court narrating some facts or any particular event by several sentence. The omission of one or two of these sentences only in their 161 statements cannot make their whole evidence before Court not creditworthy. Evidence of an witness otherwise credit worthy cannot be discarded merely because it was not available in the statement of witness recorded under Section 161 of the Code of Criminal Procedure (vide AIR 2003 (SC)-282 Alamgir Vs. State). It should be mentioned here that the P.W-5 P.W-6, P.W-7 and P.W-19 made statements before the magistrate also which were recorded under Section 164 of the Code of Criminal Procedure and except P.W-19 only the other 3 P.Ws stated before the magistrate the same as what they stated before the Court.”*

But in the instant case we found that none of the other prosecution witnesses corroborated the facts that they

disclose to them that accused set the victim fire pouring kerosene on her body. In such a case it is our view that their evidence regarding that facts that accused set the victim fire cannot be accepted since only the land lady P.W-11 who hearing sound fire, fire came out from her room and extinguished the fire pouring water but did not mention that she saw the accused in the place of occurrence. Furthermore, P.W-9 daughter-in-law of the P.W-11 deposed that she went to the school and return back at about 2:50 P.M and heard that accused committed the offence. But in cross-examination of the defence she admitted that a lot of people disclosed that victim Polly was burnt when she went to cock Suji for her child.

The P.W-1 is the informant P.W-3, P.W-6 and P.W-8 are the brothers of victim. P.W-4 the mother of the victim P.W-5 cousin of the victim and P.W-12 Aunt of the victim and they all are the close relation of the informant and all are the hearsay witnesses. The P.W-8 minor son of the informant only disclosed that on the date of occurrence he went to the house of his sister and accused had beaten the victim then he left the said house nothing more.

On close reading of their evidence of prosecution witness there were several contradiction found from their evidence. So their evidence is not sufficient to convict the accused.

In the instant case the involvement of the accused found only from the dying declaration of the victim Polly Akhter.

The P.W-15 Doctor Md. Mahbubur Rahman the Assistant Registrar of the Burn Unit of the Dhaka Medical College Hospital recorded the dying declaration of the victim Polly and which was supported by Mr. Mohammad Azad the P.W-14 who put his signature in the said dying declaration as attesting witness and all the other witnesses were hearsay witness and formal witnesses.

Now we have considered the dying declaration of the victim Polly Akhter. Victim Polly Akhter was admitted in Burn Unit of Dhaka Medical College Hospital at about 3:00 P.M on 14.03.2013. On the same day at about 9:10 P.M. Dr. Mahbubur Rahman the Assistant Registrar of Burn Unit recorded the dying declaration of the victim Polly Akhter while she was admitted in the Burn Unit of Dhaka Medical College Hospital.

The Doctor Mahbubur Rahman as P.W-15 proved the said dying declaration which marked as exhibit No.5. It also appears that the P.W-14 Dr. Mohammad Azad as attesting witness proved his signature present in the dying declaration. The Doctor Md. Mahbubur Rahman the P.W-15 in his chief stated that he recorded the dying declaration at about 9:30 P.M in presence of P.W-14 Dr. Mohammad Azad. The P.W-14 Dr. Mohammad Azad in his cross-examination stated that the dying declaration may be written in presence of him at about 12:00 to 1:00 P.M. If the same is true then the time of recording the dying declaration by P.W-15 Dr. Mahbubur Rahman at about 9:30 P.M materially contradict to each other. Even it is found from the evidence that the informant the father and the P.W-3 and 6 the brother of the victim were also present when the Doctor recording the dying declaration. We have examined the dying declaration but could not find any thumb impression in the dying declaration but the Doctor in his deposition stated that he took thumb impression of the victim and took signature. So it is our considered view that the said dying declaration is very doubtful one.

No doubt the statement of a person about his/her cause of death or circumstance leading to his/her death is substantive evidence under Section 32 (1) of the evidence Act, if found the same to be reliable, then it may be itself be the basis for conviction even without corroboration. This view has been taken by our Apex Court in the case of Nurjahan Begum Vs. The State reported in 42 DLR (AD)-130.

But we have already considered the alleged dying declaration and the evidence of the P.W-14 and P.W-15 along with the evidence of the other witness the said dying declaration cannot be left out from doubt.

We have also considered the chemical examination report. In the report it has been mentioned that the presence of Kerosene in the alamats is found. But the prosecution did not examine the said chemical expert to prove the same. Even on perusal of the seizure-list and the chemical examination report which contradict to each other. From the seizure-list it appears that an 1/2 litter in size of empty cold drink bottle with smilling of kerosene was seized and which was sent to the expert but the expert opined that he found .05 milliliter

kerosene in the said bottle. So, the report of chemical expert is doubtful and the same should not be considered as material evidence.

But the expert found smelling of kerosene in the wearing kamiz of the victim. It is admitted that the victim was burnt by fire and she succumb to her injury. So, it is presumed that the chemical report so far as relates to the opinion that smelling of kerosene in the wearing kamiz is only the evidence.

But by which it cannot be said that which was caused by the condemned-prisoner. The defence case is that since the victim went to the wooden Chula in the vacant space of the house of the P.W-11 for cocking Suji for the baby and when she set the Chula fire pouring kerosene then kerosene spreaded her body and thus she was burnt which also supported by the P.W-9 and 11 thus on the basis of the chemical report it cannot be said that the prosecution proved the said case beyond all reasonable doubt that accused set the victim fire by pouring kerosene.

However, admittedly the victim was burned in the house of the accused. Though the defence made case that at the

relevant time he was in the Rajarbag Police line and on getting information he rushed to his house and taken the victim to the Hospital. But in proving the said fact the defence did not adduce any witness. Furthermore it is admitted fact that the accused took the victim to the Hospital for treatment. In such a case it is the accused to explain how his wife was burnt at the relevant time.

But on close reading of the cross-examination and the examination under Section 342 of the Code of Criminal Procedure we find nothing that at the relevant time husband was not present in the said house. Though P.W-11 stated that the accused was not found in the house at the relevant time. Considering the facts and circumstances of the case since it is admitted that husband brought the victim to the Hospital, and P.W-8 the younger brother of the victim deposed that when he was at the house of his sister before the incident the accused slept the victim seeing him and the gather of the victim he left the said house in such a but it can be presumed that some short of corroboration of presence of the accused in the house at the relevant is found.

Considering the aforesaid facts it is our view that the condemned-prisoner failed to prove that at the relevant time he was not present in the house. The accused made out the case that he was in the Rajarbag Police line making quilt, but none from the Police line was examined to prove the said case. So, it is our view that husband was present in the house at the relevant time. It is the husband who is to explain how his wife was met to death when she was along with him in his house.

This principle supported by the decision of the case of *Gourango Kumar Shaha Vs. State* reported in 2 BLC (AD)-126 and similar decision in the case of *State Vs. Md Sadequl Islam Tusar and others* reported in 63 DLR (AD)-134, 43 DLR (AD)-92.

In the case of *Abu Sayed Vs. The State* reported in 12 BLC (AD)-55 wherein their lordships held:

“It is by now settled that a wife being found killed in the house of her husband onus heavily lies upon the shoulders of her husband to explain the circumstances leading to the death of his wife. In the absence of any plausible explanation in the present case by the accused-petitioner, his plea of

innocence falls to the ground. Tilting balance of the facts and circumstances of this case is such that there is no other way but to maintain the conviction of the accused petitioner.”

Considering the above facts and evidence on record and the decisions of our Apex Court it is our view that the prosecution succeed to prove the case against the condemned-prisoner.

However, considering the facts and circumstance of the case, it is found that the condemned-prisoner is in death cell for more than 5 years and for the mental agony of the condemned-prisoner and his age the absence of notice intention and also that he brought the victim to the Hospital for treatment and considering the decision of the case of *Azam Reza Vs. The State reported in 15 MLR (AD)-219 Nausher Ali Sarder and others Vs. The State reported in 39 DLR (AD)-194, and the case of Dipok Kumar Sarker Vs. The State reported in 40 DLR (AD)-139 and the decisions of the case of Anwar Sheikh Vs. The State reported in 16 SCOB (AD)-40, and Monir Ahmed Vs. The State reported in 16 SCOB (AD)-51, 11 SCOB (AD)-36,*

and the case of Md. Hafizuddin Vs. Mozaffor Mridha and others reported in 10 SCOB (AD)-12 and the case of Hazrat Ali and others Vs. The State reported in 44 DLR (AD)-51 it is our view that the justice will be best served if the appellant is sentenced to imprisonment for life.

In the result, the death reference is rejected. The Criminal Appeal No.5774 of 2016 is dismissed with modification of sentence.

The impugned judgment and order of conviction dated 15.06.2016 passed by the Bicharak District Judge, Nari-O-Shishu Nirjatan Daman Tribunal No.4, Dhaka in Nari-O-Shishu Nirjatan Tribunal Case No.417 arising out of Khilgaon Police Station Case No.26 dated 14.03.2013 is hereby upheld with modification of sentence. The condemned-prisoner is sentenced to imprisonment for life instead of death sentence.

Consequently, the Jail Appeal No.148 of 2016 is disposed of.

The concerned authority including the jail authority is directed to shift the condemned-prisoner Md. Faruk Shikder, son of Abdur Rahman Shikder from the condemned cell to the

prison meant for the prisoners alike to serve his remaining sentence.

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

K M Zahid Sarwar, J:

I agree.