

**Present:**

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

**Death Reference No.69 of 2016**

with  
Criminal Appeal No.5358 of 2016  
with  
Jail Appeal No.145 of 2016

The State.

..... Petitioner.

-Versus-

Fatiha Mashkura.

..... Condemned-Prisoner.

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

Mr. Md. Khurshid Alam Khan, Advocate with  
Mr. Titus Hillol Rema, Advocate  
..... For the appellant

**Heard on 05-01-2022, 06-01-2022, 10-01-2022, 11-01-2022, 12-01-2022 and Judgment on 30-01-2022 & 31-01-2022.**

**Shahidul Karim, J.**

This Death Reference being No.69 of 2016 has been submitted by the learned Metropolitan Sessions Judge, Sylhet vide his office Memo No.1129 dated 07-06-2016 for confirmation of the death sentence awarded to condemned accused, Mrs. Fatiha Mashkura. The condemned accused was put on trial before the Court of the Metropolitan Sessions Judge, Sylhet to answer charge

under section 302 of the Penal Code. By the impugned judgment and order dated 06-06-2016, the learned Metropolitan Sessions Judge found her guilty under section 302 of the Penal Code and accordingly, sentenced her to death along with a fine of Tk.1,000/- in Sessions Case No.1105 of 2015, arising out of Kotwali P.S. Case No.22, dated 18-05-2015, corresponding to G.R. No.126 of 2015. Thereafter, the learned Judge submitted the entire proceedings of the case under section 374 of the Code of Criminal Procedure (for short, the Code). On the other hand, challenging the legality and propriety of the aforesaid judgment and order, the condemned accused, Mrs. Fatiha Mashkura has filed Jail Appeal No.145 of 2016 followed by a regular Criminal Appeal being No.5358 of 2016.

The prosecution case originated from a horrendous incident in which an ill-starred husband named Ibrahim Abu Khalil was brutally killed by his wife, Mrs. Fatiha Mashkura while he was asleep in his dwelling house by inflicting blows with railway iron plate and knife.

Since the death reference and the connected Criminal as well as Jail Appeal have arisen out of the same judgment and order, they

have been heard together and are being disposed of by this common judgment.

The prosecution case finds its initiation from the FIR lodged by P.W.1 S.I. Tareq Md. Masud. On 18-05-2015 at about 22.05 hours, P.W.1 S.I. Tareq Md. Masud, being informant, lodged the FIR with Kotwali Model Police Station, Sylhet alleging, inter alia, that on 18-05-2015 he along with Constable Abu Naser Sadeq (P.W.10), Moslem (P.W.9) and Constable Tohidul Islam was on Siara duty (সিয়ারা ডিউটি) vide Kotwali Police Station G.D. entry No. 900 dated 18-05-2015. At around 8.20 A.M. in the morning, upon receiving wireless message, he went to house No. 1, Showdagortola Dhopa Digirpar and upon entering into that house, found the dead body of deceased victim Ibrahim Abu Khalil on the right side of the drawing room thereof with marks of injuries on his neck, head and abdomen. Thereafter, P.W.1 held inquest (Exhibit No.1) of the dead body and also seized a knife, 2(two) blood smeared pillows, a pair of sandal and a blood stained railway iron plate. Eventually, on query made by the informant and others, accused Mrs. Fatiha Mashkura, the wife of deceased victim Ibrahim Abu Khalil admitted that in the preceding night at around 00.30 am, she out of prolonged family feud assaulted her husband while he was asleep

and thereafter, inflicted several knife blows on his abdomen and neck. Eventually, the dead body of the deceased victim was sent to Osmani Medical College Hospital for autopsy. Thereafter, having made preliminary investigation, P.W.1, upon his arrival at the Police Station, has filed the FIR (Exhibit No. 3) which gave rise to Sylhet Kotwali Model Police Station Case No. 22 dated 18-05-2015.

Police then took up investigation of the case and having found prima facie incriminating materials submitted police report against accused Mrs. Fatiha Mashkura recommending her trial under section 302 of the Penal Code.

At the commencement of trial, charge was framed against the accused under section 302 of the Penal Code to which she pleaded not guilty and claimed to be tried as per law.

In support of the charge, the prosecution had examined 21 witnesses out of 30 charge sheeted witnesses who were aptly cross-examined by the defence.

After closure of the prosecution witnesses, the accused was called upon to enter into her defence under section 342 of the Code while she repeated her innocence and adduced one defence witness.

D.W.1 Hujifa Abdulla Al Hafiz, the son of both the deceased victim and the accused deposed as defence witness.

The defence case, that could be gathered from the trend of cross-examination as well as from the evidence of the D.W.1, is of complete innocence and false implication. The further case of the defence is that the confession of accused Mrs. Fatiha Mashkura was not true and voluntary, rather it was obtained on intimidation.

Eventually, the learned Metropolitan Sessions Judge, upon hearing argument from both sides and on an appraisal of the evidences and materials on record, came to the conclusion that the prosecution had successfully been able to bring home the charge levelled against the accused to the core and accordingly, convicted and sentenced her by the impugned judgment and order in the manner as noted at the outset.

Being aggrieved thereby and dissatisfied with the aforesaid judgment and order of conviction and sentence, the condemned accused Mrs. Fatiha Mashkura has preferred the instant Criminal as well as Jail Appeal. As we have already noticed, the learned Metropolitan Sessions Judge has also submitted the entire proceedings for confirmation of the death sentence imposed upon the accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General with Mr. Nirmal Kumar Das, the learned Assistant Attorney General appearing in support of the death reference at the outset under took the troublesome responsibility of placing the FIR, charge sheet, charge, inquest as well as post mortem examination report of the deceased victim, confessional statement of the accused, evidences of witnesses and the impugned judgment and order of conviction and sentence along with other connected materials available in the paper book and then submits that it was not possible on the part of the prosecution to adduce any ocular evidence of the incident inasmuch as the occurrence had happen at dead of night and that too inside the dwelling house of the deceased victim where at the material time he was living there with his wife, the convict appellant Mrs. Fatiha Mashkura, younger son and a maid servant. He next submits that it was the duty of the condemned accused to give an explanation about the killing of her husband since the matter was within her special knowledge. But she did not give any other explanation rather she admitted her guilt in the killing of her husband, the deceased victim by making confessional statement which was found to be true, voluntary and inculpatory in nature. Moreover, the recording Magistrate by giving

evidence in the court as P.W.17 proved that the confession was recorded after complying with all the required legal formalities, Mr. Ahmed further added. He next contents that the crime weapon i.e. blood stained knife, blood smeared railway, iron plate, 2(two) pillow tinged with blood and a pair of plastic made blood stained sandal were also recovered from the place of occurrence and those have been brought before the court and marked as Material Exhibit Nos.I, II, III, IV, V and VI. Furthermore, the manner of occurrence as has been disclosed by the condemned accused is found to be congruous to the prosecution story in material particulars. Mr. Bashir lastly submits that the prosecution had successfully been able to bring home the charge to the door of the accused by adducing some cogent and impeccable evidences and the learned Metropolitan Sessions Judge rightly and correctly found her guilty by the impugned judgment and order which does not require any interference by this court.

In support of his submission Mr. Ahmed has put reliance on the cases reported in 39 DLR (AD)194, 73 DLR(AD)365, 12 DLR(SC)156, 11 DLR (SC) 84, 44 DLR(AD)53, 23 BLC(AD)150, 39 DLR (AD) 117, 63 DLR(AD)105, 7 DLR (FC) 87, 28 DLR(SC)

35, 16 BLD(AD)293, 23 DBLC(AD)750, 14 DLR (SC)269, (2015)6 SCC, 632, 1988 BLD (AD)109 & 68 DLR (AD) 392.

On repelling the aforesaid submission, Mr. Khurshid Alam Khan, the learned Advocate with Mr. Titus Hillol Rema appearing on behalf of condemned appellant, Mrs. Fatiha Mashkura in Criminal Appeal No.5358 of 2016 (Jail Appeal No.145 of 2016) assailed the veracity of the impugned judgment and order of conviction and sentence rigorously submitting that the prosecution has hopelessly failed to bring the charge to the door of the accused by adducing some cogent and trustworthy evidences inasmuch as there is no eye witnesses of the occurrence leading to the incident of murder of the deceased victim. Mr. Alam has tried to impeach the veracity of the judgment and order on the following counts:

1. that the confession of the accused was not true and voluntary as it was recorded immediately after police custody;
2. that the confession of the accused was not recorded in accordance with the provisions of section 164 and 364 of the Code inasmuch as the recording Magistrate i.e. P.W. 17 did not mention in the confession recording form as to whether he afforded sufficient time for reflection to the



accused or not and further that the accused was not given any assurance that she would not be given to the police custody again if she did not make confession;

3. that the description of injury as was given by the accused in her confession does not come in agreement with that of the post-mortem examination report;
4. that as per confession, the accused did not kill the victim consciously ; and
5. that the accused was not properly examined under section 342 of the Code since some vital evidences were not brought to her notice as such she has been prejudiced in her defence;

In a last ditch attempt, Mr. Khurshed Alam candidly submits that if the conviction of the condemned accused is maintained in that event her sentence may be commuted to one of life imprisonment in view of the fact that she has been suffering from heart disease as well as being a Pardanashin lady she has been in the death cell for more than 5 years without any fault of her own.

In support of his submission, Mr. Alam has referred to a number of decisions reported in 63 DLR(AD)10, 73 DLR (AD) 365 & 189, 17 BLC (AD) 204, 70 DLR (AD)1 and 15 BLC (HD) 586.

Heard the submissions advanced by both the parties at length and perused the impugned judgment and order along with other connected materials available on record together with the surrounding facts and circumstances of the case exhaustively.

P.W.1 S.I. Tarek Mohammad Masud is the informant of the case. In his evidence this witness gives out that on 18-05-2015 while working at Kotwali Police Station, Sylhet Metropolitan Police, Sylhet he along with other police personnel were on siara duty vide Kotwali P.S. G.D. Entry No.900 dated 18-05-2015. On that date at about 8.20 am, having received information through wireless, he went to house No.1 Showdagortola located on the bank of Dhopadighi and found the dead body of deceased victim Abu Ibrahim inside the drawing room thereof with marks of injuries on his person including head, neck and abdomen. In the meantime, higher police officials and local people also thronged at the spot. He then held inquest(Exhibit No.1) of the dead body and obtained signature of the witnesses thereto. Thereafter, he seized a knife, 2(two) bloodstained pillows, a pair of brown colour sandal and a bloodstained railway plate (লোহার পাত) vide seizure list (Exhibit No.4) in presence of witnesses. Subsequently, on query, the wife of deceased victim Ibrahim, Fatiha Mashkura (accused) admitted that

she killed her husband in the night following 18-05-2015 while he was sleeping by inflicting blows with railway slipper and also by causing injury with the recovered knife on different parts of his body including neck. Thereupon, he (P.W.1) sent the dead body of the deceased victim to Osmani Medical College Hospital for post-mortem examination vide challan (Exhibit No.2) and also sent accused Fatiha to Kotwali Police Station with police force. Subsequently, upon holding preliminary investigation, he came back to the police station and lodged the FIR. P.W.1 proves the FIR including his signature appearing thereon as Exhibit Nos.3 and 3/1 respectively and also identified the seized 2(two) pillows, a knife, a pair of sandal and a railway slipper (লোহার পাত) as Material Exhibit Nos.I, II, III, IV, V & VI.

In reply to cross-examination P.W.1 states that as per inquest report both the hands of the victim was tightened up with rope, but he did not seize the same as it was attached to the dead body. He mentioned the length of the railway slipper (লোহার পাত) but did not mention the width and weight thereof. The accused was found normal and healthy while she was being interrogated. He came to learn about the killing incident of blogger Ananto Bijoy at Subid Bazar under Airport Police Station on 12-05-2015, but he could not

say as to how and in what manner he was killed. Deceased victim was a pious man as well as a member of Tablig Zamat. He (P.W.1) came to learn that the deceased victim was well known both in Bangladesh and India as an organizer of Tablig Zamat. On the preceding day of the incident, the deceased victim came from India after attending Tablig Zamat. He could not say whether he was a target person of Islamic terrorist who are against Tablig Zamat or not. P.W.1 denied the defence suggestion that he obtained the confessional statement of the accused on intimidation.

P.W.2 Md. Rajib Hossain is a neighbour of the P.O. house as well as a student of Sylhet International University who was studying in BBA (Hon's). In his evidence this witness says that he used to help his brother Abul Kalam Azad at his business shop named 'Jony Enterprise' located at Showdagortola. In the morning of 18-05-2015 at around 10.00 am, he came to open up their shop while he found police and public at the P.O house. Thereafter, he went to the house of deceased victim Ibrahim Khalil and found his bloodstained dead body lying on the floor with marks of injuries on head and abdomen. Police then held accused Fatiha and took her along with the dead body to the police station.

In reply to cross-examination P.W.2 says that about 150/200 people were thronged at the P.O house. The dead body was covered with a piece of cloth.

In his testimony P.W.3 Amulla Das, a tea stall owner asserts that one morning at around 8/9.00 am about 7/8 months ago he found that people gathered at the house of deceased victim Ibrahim Khalil, whereupon he also went there and found the bloodstained dead body of Ibrahim Khalil lying on the floor. Police appeared at the spot and took away the dead body along with a women whose face was covered with cloth. Later, he heard that the accused is the wife of deceased victim Ibrahim Khalil.

In reply to cross-examination P.W.3 discloses that about 200/300 people thronged at the P.O house. The dead body was covered with a piece of cloth.

P.W.4 Nitai Das is the owner of a sanitary shop at Dhopadighir Par of Showdagortola. In his evidence this witness claims that in the morning of 18-05-2015 at around 10.00 am, he came to his shop and found many people and police present in the house of deceased victim Ibrahim Khalil located behind the market in which his shop is situated. Thereafter, he went to the P.O house and came to learn that deceased victim Ibrahim Khalil was killed.

Police, thereafter, took away the dead body for post-mortem examination and also apprehended the wife of deceased victim Ibrahim Khalil. Later, he came to learn through newspaper that Ibrahim Khalil was killed by his wife. The people of the concerned locality were also having conversation likewise.

P.W.4 was cross-examined by the defence but nothing has come out from his mouth which could belittle his testimony.

P.W.5 Sabbir Ahmed is a physics teacher at South Surma College. In his evidence this witness claims that in the morning of 18-05-2015 at around 10.00 am, he went to the P.O. house located at the northern side of Dhopadighir Par and found many people and police present there. Upon going to the P.O. house he found the dead body of deceased victim Ibrahim Khalil lying on the western side of the drawing room thereof with marks of injuries on his neck, abdomen, hand and head. He also found a small railway slipper, a knife, 2(two) bloodstained pillows and a pair of plastic sandal near the dead body. He found a piece of rope in the hand of the deceased. Police, thereafter, prepared seizure list and obtained his signature (Exhibit No.4/2) thereto. Police also held inquest in his presence and obtained signature thereto (Exhibit No.1/2). Police then took away the wife of deceased victim Ibrahim Khalil under

arrest. P.W.5 identified the seized railway slippers, a bloodstained knife, 2(two) blood-tinged pillows and a pair of sandal in the court as Material Exhibit Nos.I, II, III, IV, V & VI and also identified the accused in the dock.

In reply to cross-examination P.W.5 states that there was a cot in the P.O. room but no blood was found in the bed thereof. The dead body was found lying on the floor on a mat (পাটি). The deceased was a pious man and he was involved in Tablig Jamat. He came to learn about the incident from his friend Khorshed Alam and within one hour thereafter he went to P.O house. Deceased victim Ibrahim was his (P.W.5) friend. Probably, police took the accused along with her son. The deceased person had no enemy.

In reply to a question put by the court P.W.5 further discloses that he came to learn that accused Fatiha was connected with the killing and further that someone else might have been involved with her. P.W.5 denied the defence suggestions that the persons who are against Tablig Jamat had killed the victim or that he deposed falsely.

P.W.6 Bilash alias Abdul Ahad is an inhabitant of the P.O ward. This witness says that he knew deceased victim Ibrahim

Khalil who was killed in his own residence 7/8 months ago. But he could not recollect the exact date. In the afternoon of the date of occurrence upon coming to his house he came to learn that deceased victim was killed and police took away deceased's wife in connection with the said killing. Police handed over the key of the P.O house to a relative of deceased victim Ibrahim in his presence. He did not hear anything as to who was involved in the killing of the victim.

At this stage, P.W.6 was declared hostile by the prosecution. This witness denied the prosecution suggestions put to him.

In reply to cross-examination conducted by the accused P.W.6 reiterates that police handed over the custody of P.O house to a relative of the deceased victim in his presence as well as in presence of the local Councilor.

P.W.7 Raju Ahmed is also an inhabitant of Showdagortola vicinity. In his testimony this witness states that the occurrence passed off 5/6 months ago. He came to learn that deceased Ibrahim Khalil had been killed at the P.O house. Police took the wife of the deceased victim to the Police Station in connection with the killing. He heard that the victim was killed by knife. Police handed over the



key of the P.O house to a relative of deceased victim Ibrahim Khalil.

At this stage, this witness was also declared hostile by the prosecution. In reply to cross-examination done by the prosecution P.W.7 states that he came to learn that the deceased victim was killed by his wife with slipper, knife, etc. and further that she confessed to her guilt to a Magistrate.

In reply to cross-examination done by the defence P.W.7 says that on the following day of the occurrence he came from Dhaka as a result he went to the P.O spot after 2/3 days of the incident along with the Councilor.

P.W.8 Constable Md. Delwar Hossain is the relevant police personnel who took the dead body of deceased victim Ibrahim Khalil to the morgue of Osmani Medical College Hospital for post-mortem examination. In his evidence this witness states that on 18-05-2015, he along with S.I. Tarek Md. Masum (P.W.1) went to the P.O. house located at northern bank of Dhopadighir Par and found the bloodstained dead body of deceased victim Ibrahim Khalil. Then S.I. Tarek Masud held inquest of the dead body which he took to the morgue vide challan Exhibit No.2.

In reply to cross-examination P.W.8 says that he was not in siara (দিবাকালীন) duty along with S.I Tarek Md. Masum rather he was summoned from the P.S. In his evidence P.W.9 Constable Moslem Miah divulges that on 18-05-2018 he was on Siara (দিবাকালীন) duty along with S.I. Tarek Md. Masud. On that day he along with S.I. Tarek Masud went to the P.O. house located at Showdagortola and found the bloodstained dead body of deceased victim Ibrahim Khalil with marks of injuries on his neck, head and abdomen. Then S.I of Police prepared a seizure list and obtained his (P.W.9) signature thereto (Exhibit No.4/3). The relevant S.I then took the wife of the deceased victim to the police station and also interrogated her about the incident.

In reply to cross-examination P.W.9 states that the accused and the alams were taken to the police station by the same police van and he (P.W.9) was also present there. They got information while they were on duty at Kumarpara and within 10 to 15 minutes thereof they went to the P.O. house.

In his testimony P.W.10 Constable Abu Naser asserts that on 18-05-2015 he was on Siara duty along with S.I Tarek Masud. Having received information, they (P.W.10) went to the house No.1 Showdagortola located on the bank of Dhopadighi and found the

bloodstained dead body of a male person there with marks of injuries on his neck, head and abdomen. Then S.I. Tarek Masud held inquest of the dead body and prepared seizure list, whereupon they took away the wife of the deceased victim.

In reply to cross-examination P.W.10 states that he along with other 2(two) Constables were on Siara duty and they got information while they were on duty at Noyasorok area. At around 12'O clock, they left the P.O house along with the wife of the deceased victim.

P.W.11 is a canteen boy located in front of the police station. In his evidence this witness says that in the morning of 19-05-2015 at 8.00 am, he went to Kotwali Police Station while a video cassette containing the confession of accused Fatiha was seized. The accused admitted that she killed her husband by inflicting railway slipper blows on the head and also by stabbing with knife on his neck and abdomen. This witness proves the seizure list including his signature appearing thereon as Exhibit Nos.5 and 5/1 respectively. This witness also identified the cassette as Material Exhibit No.7 and recognized the accused in the dock.

In reply to cross-examination P.W.11 avers that he came to the Police Station at 8.30 am and further that he was not present at

the time of video cassette recording. He could say nothing about the contents of the cassette. He put his signature to the seizure list as per instructions of the Daroga.

In his evidence P.W.12 Constable Khalilur Rahman states that on 18-05-2015 he was on Siara duty under the leadership of S.I. Tarek Md. Masud. While they were on duty at Kumarpara new road area, on information, they came to the P.O house and found the bloodstained dead body of deceased victim Ibrahim Khalil with marks of injuries on his head, chest and neck. Thereafter, the concerned S.I held inquest of the dead body. On 19-05-2015, he again went to the P.O house along with S.I Kamal who seized a mat (পাটি). This witness proves the seized mat in the court as Material Exhibit No.VIII. On the first occasion police also took away the wife of the deceased victim.

In reply to cross-examination P.W.12 says that on 19-05-2015 at around 11/11.30 pm, he went to the P.O. house. Probably, the local Councilor became a witness by putting his signature to Exhibit No.6.

P.W.13 Abdul Muhit Javed is a running Councilor of the Pouroshava. In his deposition this witness avers that on 18-05-2015

he was in Dhaka and on that night he came to Sylhet. He heard that deceased victim Ibrahim Khalil was killed in his house at Showdagortola and police in connection with the said killing took away his wife under arrest. On 19-05-2015 at 11.30 am, police seized a mat (পাটি) from the P.O room and obtained his signature (Exhibit No.6/2) thereto. This witness identified the mat (পাটি) in the court.

In reply to cross-examination P.W.13 states that witness Raju (P.W.7) is his personal assistant. He found a cot in the room of the deceased victim. The length of the seized mat (পাটি) was about 5/6 feet.

P.W.14 Foyjul Hasan is an inhabitant of the P.O vicinity. In his evidence this witness says that deceased victim Ibrahim Khalil was killed on 18-05-2015. In the morning of that day at 10.00 am his father after returning from Bazar disclosed that many people and police thronged at the house of deceased victim Ibrahim Khalil. Thereafter, at around 11.00 am, he went to the P.O house and found local people and police personnel present there. He then came to learn that deceased victim Ibrahim Khalil was killed in his own house. In the afternoon he heard that police took away the wife of the deceased to the police station under arrest in connection with

the murder. On 19-05-2015 at around 11.30 am, the Investigating Officer seized a mat (পাটি) from the P.O room in his presence and obtained his signature to the seizure list (Exhibit No.6/3). At the relevant time the local Councilor was present with him.

Nothing contradictory is found in the cross-examination of P.W.14.

P.W.15 Md. Faruk Ahmed divulges that the occurrence came into being on 18.05.2015. On that date at around 11/11.30 am, after returning home from in-laws house he went to the P.O house upon seeing a throng of people there. He came to learn that deceased victim Ibrahim Khalil was killed in his house. Subsequently, he learnt that the deceased victim was killed at the hand of his wife. Police, thereafter, took away the accused under arrest.

In reply to cross-examination P.W.15 says that he is a neighbour of the deceased victim. He was present within the outside crowd of the P.O. house.

P.W.16 Shohel Ahmed is the recording officer of the case. In his evidence this witness states that on 18-05-2015, having received a typed FIR from the informant, he registered the case after filling in the FIR form (Exhibit No.7).

In reply to cross-examination P.W.16 says that since no one had come forward to file a case, the informant lodged the FIR. Before lodgment of the case, they (P.W.16) made search for the relatives of the deceased. P.W.16 denied the defence suggestions that they obtained the confessional statement of the accused on intimidation or that the killing of the deceased is a mysterious one and in order to avoid responsibility police filed the case.

P.W.17 Md. Shahedul Karim is the concerned Magistrate who recorded the confessional statement of accused Fatiha Maskura. In his testimony this witness unfurls that 19-05-2015 while acting as Metropolitan Magistrate, 1<sup>st</sup> Court, Sylhet S.I Md. Kamal Hossain Sarkar produced accused Fatiha Mashkura before him at around 20.30 am, whereupon having complied with all legal formalities he jotted down her confession and thereafter sent her to Sylhet Central Jail at around 4.00 pm. This witness further states that he gave memorandum regarding the truthfulness as well as voluntariness of the confession made by the accused. P.W.17 proves the confession including his signature as well as those of the accused as Exhibit Nos.1, 8/1 series and 8/2 series respectively.

In reply to cross-examination P.W.17 states that the accused was in police custody on 18-05-2015 from 12.30 pm and further

that he started recording her confession at around 2.30/2.45 pm. The accused disclosed in her confession that she did not commit the murder consciously. Nothing abnormal was found in her appearance while the accused was making confession. He did not give assurance to the accused that she would not be given to the police custody if she does not make confession. P.W.17 denied the defence suggestions that the confession of the accused was not voluntary or that the accused made confession due to police fear.

P.W.18 Jannatul Ferdous is the concerned doctor who held autopsy of the cadaver of the deceased victim Ibrahim Khalil on 18-05-2015 at around 1.00 pm, at the identification of Constable Delwar Hossain, and found the following injuries:

1. One incised wound on the right antero lateral aspect of neck measuring 6"x1.5"x bone depth.
- (2) Another incised wound in the right side of the parietal region measuring 2"x 0.5"x bone depth.
- (3) Three stab wounds present on right upper abdomen.
- (4) The liver was found injured and abdomen wall was found injured.



On dissection: right stern cleido mastoid muscle, right carotid artery were found injured. Liquid and clotted blood was found in an around the injuries mentioned above.

In her opinion, the cause of death of Ibrahim Abu Khalil was caused due to hypo-volumic shock resulting from above mentioned throat cut injury and injuries of liver which were ante-mortem and homicidal in nature. P.W.18 proves the post-mortem examination report including her signature appearing thereon as Exhibit Nos.9 and 9/1 series respectively.

In reply to cross-examination P.W.18 discloses that except the injured area no bloodstained was found on the other parts of the body. The skull was intact but the scalp was injured. 5(five) injuries were found on the dead body which were incised wound of which, 3(three) were on the abdomen. She did not find any mark that the hands of the deceased victim were fastened up. Generally, incised wound are caused by sharp cutting weapon and the same could not be done with blunt weapon.

P.W.19 Midhat Abdul Jahir is the nephew (ভাগিনা) of deceased victim Ibrahim Khalil. In his deposition this witness divulges that on 18-05-2015 having received information from his

cousin (খালাত ভাই) Shahidur Rahman over mobile phone, he along with said Shahidur Rahman and others went to the P.O house at around 8.30 am and found that many people thronged there. He also found the dead body of Ibrahim Khalil lying on the floor with a pillow on his head. Thereafter, police appeared at the spot and held inquest of the dead body after turning it upside down. He (P.W.19) found 3(three) marks of injuries on the abdomen of the deceased victim including cut injury on the neck and also found head injuries. A railway plate and a bloodstained knife was also seen beside the dead body. Later, police took away the dead body for post-mortem examination and also took the accused to the police station. Eventually, he came to learn that the accused made confessional statement.

In reply to cross-examination P.W.19 discloses that police came to the spot after his arrival there. After reaching the spot, he found 20/25 persons present there including his cousin (খালাত ভাই) Nadiruzzaman. The son of the deceased victim named Sajid informed him that no altercation took place between the deceased and the accused.

P.W.20 ASI Md. Majedur Rahman is the concerned police personnel who verified the name and addresses of accused Fatiha Mashkura and found the same to be correct.

P.W.21 S.I. Md. Kamal Hossain Sarker is the Investigating Officer of the case. In his deposition this witness asserts that during investigation he interrogated accused Fatiha Mashkura who admitted that she killed her husband Ibrahim Khalil, whereupon he caused the same to be recorded through video. Subsequently, he made necessary arrangement to record the confessional statement of the accused by a Magistrate on 19-05-2015. During investigation, he also prepared sketch map (Exhibit No.10) along with separate index (Exhibit No.11) of the P.O as well as explanation thereof (Exhibit No.12). On 19-05-2015, he also seized a bloodstained mat (পাটি) vide seizure list, examined witnesses and took 4(four) photographs of the deceased victim Ibrahim Khalil. However, having found prima-facie incriminating materials he submitted police report being No.164 dated 24-08-2015 against accused Fatiha Mashkura. This witness identifies the accused in the dock and also proves the audio-video record of the accused, 4(four) photographs of the victim and the mat (পাটি) as Material Exhibit Nos.VII, IX and VIII respectively.

In reply to cross-examination P.W.21 says that in the morning of 19-05-2015 at 07.05 am he took the charge of investigation. During investigation he received the FIR, inquest report, seizure list including a bloodstained steel made knife, a railway pillar tinged with blood, 2(two) bloodstained pillows and a pair of plastic sandal tinged with blood. It was written in the inquest report that on query made to the witnesses as well as on preliminary investigation, it appears that in the night following 17-05-2015 after 12'O clock some unknown terrorists entered into the P.O room and committed murder of the deceased victim with sharp cutting weapon. The inquest report was prepared by informant S.I. Tarek Md. Masud on 18-05-2015 at around 11.00 am and subsequently he lodged the FIR on the same night at around 10.05 pm. after completion of his night duty. On the strength of G.D. No.900 dated 18-05-2015 the inquest report was prepared, seizure list was made and the dead body was sent to the morgue. S.I. Tarek Masud did not provide him (P.W.21) any copy of the said G.D. He made query to the accused in the morning of 19-05-2015 at around 8.40 am in presence of female police. As per instructions of his higher authority, the confession of the accused was video recorded by a constable. He did not make any arrangement for chemical

examination of the seized knife and railway pillar in order to ascertain as to whose finger print was available there. The deceased victim including his son and wife are pious persons and further that at the relevant time the sons of the deceased victim were in Pirojpur. He (P.W.21) came to learn from the 2(two) sons of the victim that the deceased victim Ibrahim Khalil and one Abdul Motin of Zinda Bazar entered into Bangladesh from Benapol Boarder, and thereafter, they went to Kakrail Mosque in Dhaka where from the deceased went to Pirojpur. P.W.21 denied the other suggestions put to him by the defence.

The son both the deceased victim and accused named Hujaiifa Abdullah Al Hafiz deposed in favour of the accused as defence witness. In his evidence D.W.1 states that he is a Madrasha teacher. On 18-05-2015, he along with his brother Tajibur Rahman were in Pirojpur District to attend Tablig Jamat. 4(four) days prior to the incident, his father along with his friend Abdul Motin after coming back from India joined the Tablig Jamat in Pirojpur. Subsequently, after staying there for 2(two) days, his father came to Sylhet. A friend of his father, Golam Mostofa informed him over phone that his father was in live support, whereupon he along with his brother came to Sylhet at around 10.15 pm, and after going to the house of

his uncle at Modhu Shahid they became aware that their father had been killed. In the morning of 19-05-2015 at around 10.00 am, he and his brother went to the Police Station and wanted to file FIR while the officer-in-charge informed that the police had already filed a case. Police also told them that their mother killed their father following which she was detained. His mother was physically ill and as such it was not possible on her part to kill her husband. Moreover, the relationship between his father and mother was healthy. His (D.W.1) mother informed him that she confessed to her guilt as tutored by the police and also due to threat held by the police that they would entangle her 3(three) sons into the case. The seized railway pillar and knife were not present before in their house. His father was not in a habit of sleeping on the floor. After the occurrence, the laptop, diary, passport and mobile phone of his father were found missing. The tin-shed verandah located behind the back of the big room of their house was found open. 1/2 months ago while they were in Pirojpur, his brother (মেব) informed him that the group belonged to Mahbub, previous senior of Tablig Jamat wanted to cause harm to his father.

In reply to cross-examination done by the prosecution D.W.1 states that he is the elder son of the deceased victim. His younger

brother Sajid Abdullah (16) was present in the P.O. house along with his parents on the date of occurrence. They are 3(three) siblings in number and all of them are Hafez in Koran. He could not know whether his father had got married elsewhere or not. Before the occurrence his father was in India for about 2(two) months. D.W.1 denied the prosecution suggestions that his father got married thrice and for that out of wrath her mother killed his father or that he deposed falsely in order to hush up his mother.

These are all about the evidences that had been adduced by the prosecution as well as by the defence in support of their respective cases.

It is indisputable that on the occurrence night deceased victim Ibrahim Abu Khalil had been done to death in a brutal manner while he was asleep in his dwelling house. Albeit, since the offence alleged involved capital punishment in the form of death sentence, we want to take stock of the manner of death of the deceased victim as was found at the initial stage of the case.

Materials on record go to show that P.W.1 S.I. Tareq Mohammad Masud held inquest of the dead body of the deceased victim which has been marked as Exhibit No.1 and sent it to Osmani Medical College Hospital for autopsy. It would be

profitable to have a look at the inquest report (Exhibit No.1) to see for ourselves as to what injury or injuries were found on the person of the victim at the initial stage of the case and what the apparent cause of death.

The relevant portion of Exhibit-1 reads as follows:

“ -----। মাথার উপরে ডান অংশে দেশীয় অস্ত্র দ্বারা আঘাত লম্বা অনুমান  $1\frac{1}{2}$  হইবে। কপালের ডান পাশে চুলের গোঁরায় লালচে আঘাতের চিহ্ন যাহা অনুমান  $\frac{1}{2}$  ইঞ্চি হইবে। চোখ দুটি বন্ধ, নাক-কান স্বাভাবিক। মুখ অর্ধখোলা ডান পাশ বাকা অবস্থায় আছে। দাঁত দেখা যায়। উপরের পাটির ৪টি দাঁত জিহ্বায় কামড় দেয়া আছে। -----গলার ডান পাশে দেশীয় ধারালো অস্ত্র দ্বারা কাটা জখম লম্বা অনুমান ৬ ইঞ্চি হইবে গভীর অনুমান ৩ ইঞ্চি হইবে। -----। ---- পেটের ডান পাশে দেশীয় ধারালো অস্ত্র দ্বারা পাশাপাশি ৩(তিন) টি কাটা জখম। যাহা প্রত্যেকটি অনুমান  $1\frac{1}{2}$  / ২ ইঞ্চি হইবে।”

(Emphasis added).

From the aforesaid narration, it appears palpably that several marks of injuries were found on the right frontal side of the forehead and right side of abdomen as well as on the neck of the deceased victim.

Regarding cause of death, it has been stated in the inquest report that:



“ গত ১৭-০৫-২০১৫ ইং তারিখ দিবাগত রাত্রে অনুমানিক রাত ১২.০০ ঘটিকার পর হইতে যে কোন সময় অজ্ঞাতনামা সন্ত্রাসী কর্তৃক মৃতের রুমে প্রবেশ করিয়া দেশীয় ধারালো অস্ত্র দ্বারা গুরুত্বর কাটা জখম করিয়া মৃত্যু নিশ্চিত করিয়া রুমের মেঝেতে ফেলে রেখে চলে যায়। সকাল অনুমান ০৮.০০ ঘটিকার সময় পরিবারের লোকজন ডাকাডাকি করিলে কোন সাড়া শব্দ না পাইয়া দরজা খুলিয়া দেখতে পান যে মৃত দেহটি রক্তাক্ত অবস্থায় মেঝেতে পড়ে রহিয়াছে। ”

(underlings is ours).

It is, therefore, patent that deceased victim Ibrahim Abu Khalil was brutally killed by some miscreants by inflicting multiple blows with sharp cutting weapon.

It is on record that P.W.18 Dr. Jannatul Ferdous is the concerned doctor who, on 18-05-2015, at the identification of Constable Delowar Hossain (P.W.8), conducted autopsy of the corpse of deceased victim Ibrahim Abu Khalil. We have noticed in the earlier part of the judgment that during post-mortem examination 5(five) injuries were detected on the person of the deceased victim of which, 3(three) stab injuries on the abdomen, one incised wound on the neck and another incised wound on the right side of the parietal region.

In her opinion, the cause of death of deceased Ibrahim Abu Khalil was hypo-volumic shock resulting from above mentioned

throat cut injury and injury of liver which were ante-mortem and homicidal in nature. P.W.18 proves the post-mortem examination report and her signature appearing thereon as Exhibit Nos.9 and 9/1 respectively. P.W.18 has been cross-examined by the defence but nothing as such has come out from her mouth which can corrode her evidence in any manner. From a careful analysis of the evidence of P.W.18 together with the post-mortem examination report furnished by her, we are of the view that deceased victim Ibrahim Abu Khalil has been done to death in a brutal manner by slaughtering as well as by causing abdominal injury which damaged his liver and those injuries were ante-mortem and homicidal in nature. We find nothing on record to hold a different view with that of the medico-legal evidence furnished by P.W.18 so far the cause of death of deceased victim Ibrahim Abu Khalil is concerned which also align with the inquest report as well. In such a backdrop, we have no other option but to hold that the prosecution has successfully been able to prove that deceased victim Ibrahim Abu Khalil was killed in a bestial manner.

Now, the paramount question that calls for our determination is, who is or are the actual assailant/assailants of deceased victim Ibrahim Abu Khalil.

We have already noticed that there is no eye witness of the occurrence leading to the incident of murder of deceased victim Ibrahim Abu Khalil and further that the occurrence was held at dead of night and that too inside the dwelling house of the deceased victim. It is also an admitted position of the case that at the relevant time there was none in the occurrence house except the deceased victim and his wife, Fathia Mashkura (accused) and their younger son and a maid servant. From the evidences and materials on record it did not come to light that anybody else from outside had entered into the occurrence house either by breaking open the door thereof or in any other ways. So, logically it can be inferred that deceased victim Ibrahim Abu Khalil had been killed by someone who at the relevant time was present inside the P.O. house. Out of the 3(three) alive roommates of the P.O house, the younger son of the victim as well as the maid servant did not come before the court to give evidence. However, only accused Fatiha Mashkura, the wife of the deceased victim gave a detailed account of the entire gamut of the incident of killing of the deceased victim by making confessional statement implicating herself in the same. Thus, it appears that the fate of the instant case mainly hinges upon the confessional

statement of accused Fatiha Mashkura regarding which we will ponder over now.

It is by now a settled principle of law that an accused can be found guilty and convicted solely banking upon his or her confessional statement, if the same is found to be true, voluntary and inculpatory in nature. In this context, we may profitably refer the case reported in 73 DLR(AD)(2021) 365 wherein our Appellate Division observed as under:

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

In the case of Md. Islam Uddin alias Din Islam vs. State reported in 27 BLD(AD)37 our Appellate Division has observed as under:-

“It is now the settled principle that judicial confession if it is found true and voluntary form the sole basis of conviction as against the maker of the same. The High Court Division as noticed earlier found the judicial confession of the condemned prisoner true

and voluntary and considering the same, the extra judicial confession and circumstance of the case found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”

Keeping the aforesaid principle in view let us now have a peep at the confession of accused Fatiha Mashkura to see for ourselves whether the same has satisfied all the above criteria or not as has been expounded in the said decisions. For the purpose of finding out the incriminating fact or facts or truth of the charge mounted, it is necessary to examine the relevant confession of the condemned accused Fatiha Mashkura and compare the same with the rest of the prosecution evidence and probability of the case.

The confession of accused Fatiha Mashkura has been marked Exhibit No.8 which reads as underneath:

“২৫ বছর আগে ইব্রাহীম আবু খলিল আল হাফিজ এর সাথে আমার বিয়ে হয়। বিয়ের পর বুঝতে পারি স্বামীর একটু সমস্যা আছে। সে সবসময় আমাকে সন্দেহ করত। মোবাইলে মাসে দেড়মাসে ২০/৩০ টাকা দিত। আমার পরিবারের (পিত্রালয়ের) লোকজনরা আসা যাওয়া করুক তা তিনি বেশী পছন্দ করতেন না। আমাকে চেকে চেকে রাখতেন, কিছুদিন পর পর মোবাইল সিম পাল্টে দিতেন। আমাকে ফ্রেশ লাগুক বা সুন্দর দেখাক তা তিনি পছন্দ করতেন না। এমনকি কোন কাপড়ে আমাকে সুন্দর দেখালে তিনি তা লুকিয়ে ফেলতেন। কাজের মেয়ের সাথে অশোভন অবস্থায় দেখি। কিন্তু ভয়ে তাকে বা আর কাউকে বলিনি।

কাজের মেয়ে বিদায় করে দিই। এরপর থেকে কোন উঠতি বয়েসের বা যুবতী মেয়েকে কাজের জন্য ঘরে রাখিনি। তিনি কুফরী কালাম বিশ্বাস করতেন। আমাকে বিভিন্ন তাবিজ দিতেন যেগুলো দেয়ার পর আমি অসুস্থ মত হয়ে যেতাম। বিয়ের পর থেকেই ছোটখাট বিষয়ে আমাকে খুব বেশী মারধর করত। আমি তাকে খুব ভালবাসতাম তাই এতকিছুর পরও আমি সহ্য করে গেছি। আমার মেঝে ছেলে পেটে থাকাবস্থায় তিনি পেটে লাথি মারেন। অপারেশনের পর কাঁচা সেলাইয়ে আঘাত করতেন। তার মধ্যে একটি প্রবনতা ছিল যে, আমি যাতে অসুস্থ থাকি। অসুস্থ হলে সে আশেপাশের লোকজন ডেকে বলত “ও অসুস্থ। আমার সংসার চলবে কি করে?”। আমি ছাড়াও তিনি আরো চারটি বিয়ে করেছেন বলে জানি। আরো দুয়েকটির কথা লোকমুখে শুনেছি, তবে নিশ্চিত জানিনা। আমার ভাসুরের মৃত্যুর পর তার স্ত্রী মমতাকেও স্বামী বিয়ে করতে চেয়েছিলেন। তিনি সব সময় বলতেন “তুই যদি আরো একশ বছর ও আমার সাথে থাকিস তাইলে কষ্ট বাড়বে কমবে না।” তিনি যখন আমাকে নির্যাতন করতেন তখন আমার ছেলেরা বাঁধা দিতে থাকলে তারাও অনেকবার নির্যাতনের শিকার হয়। শত নির্যাতন মুখ বুঝে সহ্য করে গেছি।

তিনি তবলীগ করতে ২ মাসের জন্য ভারত যান। গত পরশু দিন সকাল বেলা তিনি বাসায় আসেন। আমার দুবার হার্ট সার্জারি হয়েছে। তিনি প্রায় সময় সার্জারীর জায়গায় শোয়া অবস্থায় আঘাত করতেন। যদিও তিনি তা অস্বীকার করতেন আমি মনে করি তিনি ইচ্ছা করেই তা করতেন। তাই তার থেকে বেশী ভাগ সময় আলাদা ঘরে থাকতাম। একইভাবে গত পরশুদিন তিনি এক রুমে, আমি ভিন্ন রুমে ছেলে তার রুমে এবং কাজের মহিলা তার জায়গায় ছিলাম। তাঁর এলার্জি ও ব্যাথা থাকায় ঘুমের ঔষধ খেয়ে ঘুমাতে। ঐদিন ঘুমের ঔষধ খেয়ে ঘুমিয়ে পড়লে রাত গভীর হলে আমি তার রুমে ঢুকি, তিনি ফ্লোরে শোয়া ছিলেন। তার মাথার কাছে রেল লাইনের লোহার স্লিপার রাখা ছিল। সেটি তিনি প্রায় সব সময় তার রুমে রাখতেন

সরতে মানা করতেন। একবার ঐটা দিয়ে আমাকে মারার জন্য তাড়া করেছিলেন। ঐ রুমে তিনি ছোঁড়া করাত, শাবল, হাতুড়ি প্রভৃতি রাখতেন। আমার সমান লম্বা শাবল রাখতেন। এটা দিয়ে আমাকে বেশ কয়েকবার মারধর করেছেন।

স্লিপারটি দেখে আমার মাথা গরম হয়ে যায়। ঐটা তুলে স্বামীর মাথায় জোড়ে আঘাত করি। মাথা ফেটে রক্তাক্ত হয়ে যায়। রক্ত দেখে আমি কেমন জানি হয়ে যাই। রুমে রাখা তার ছুরিটা দিয়ে জবাই করে দেই। এরপর কি হয়েছে মনে নেই। উনি অনেকবার এই ছুরি দিয়ে আমাকে ভয় দেখিয়ে ছিলেন। কখন, কি অবস্থায় ঐ রুম এর দরজা লাগিয়ে বাইরে আসি আমার মনে নেই। সকালবেলা ছেলে “বাবা কই” জিজ্ঞেস করে। আমি সহ গিয়ে দরজা খুলে রক্তে তাঁর লাশ ভাসছে দেখি, খুব খারাপ লাগে, ছেলে অন্যদের খবর দেয়। পুলিশ আসে, দুপুরে আমাকে পুলিশ থানায় নিয়ে আসে।

আমার স্বামীর অত্যাচারে আমি অতিষ্ঠ ছিলাম। তিনি আমাকে জাদু টোনা করে কষ্ট দিতেন। আমি সজ্ঞানে এ কাজ করিনি। এই আমার জবানবন্দি।

সে আমাকে বিভিন্নভাবে ফুসলে একাধিক বিয়ের অনুমতিপত্র আমাকে দিয়ে লিখিয়ে নেয়। ”

(Emphasis added).

On a careful reading of the aforesaid confession, it is apparent that accused Fatiha Mashkura gave a blow by blow account of the entire incident of killing of her husband Ibrahim Abu Khalil including the underlying reason which prompted or induced her to do such a heinous crime. According the confession of the accused, on the fateful night her husband i.e. deceased victim went

to bed after having sleeping pill, whereupon at dead of night she entered into his room and assaulted him on the head with a iron made railway sleeper causing bleeding injury and subsequently, slaughtered her husband with a knife which was kept in the P.O room. Thereafter, she came out of the P.O. room and padlocked the door thereof from outside. On the following morning she entered into the P.O. room along with her younger son after opening the door and found the dead body of her husband lying in a pool of blood. The confession as has been made by accused Fatiha Mashkura comes in agreement in material particulars with that of the prosecution story so far the manner of killing of the deceased victim is concerned and the same is also found to be congruous to the post-mortem and inquest report as well. In the aforesaid premises, the confession of the accused can be regarded as true and inculpatory in nature.

P.W.17 Md. Shahedul Karim is the relevant Magistrate who penned down the confessional statement of accused Fatiha Mashkura. From a combined reading of the evidence of P.W. 17 together with the confession of the accused Exhibit No.8, it is found that the relevant Magistrate undertook genuine effort to find out the real character of the same. It is on record that victim Fatiha



Mashkura was arrested on 18-05-2015 and on the following morning i.e. on 19-05-2015 at 10.30 am she was produced before the relevant Magistrate for jotting down her confessional statement, whereupon the Magistrate concerned afforded her sufficient time for reflection during which she was kept under the custody of the office peon named Md. Aziz Uddin and a female police Aklima. Later, as the accused still expressed her willingness to make confession, P.W.17 asked her necessary questions as set out under column 6 of the confession recording form and having understood each and every question as the accused was adamant to make confession, P.W.17 took down the same and after recording the confession the Magistrate made statement under column 7 of the confession recording form in the following terms:

“আসামী দোষ স্বীকার করতে বাধ্য নন, যদি দোষ স্বীকার করেন তবে বিচারে তা তার বিরুদ্ধে সাক্ষ্য হিসাবে ব্যবহৃত হবে, এতে তার সাজা হতে পারে, আমি পুলিশ নই, ম্যাজিস্ট্রেট স্বীকারোক্তির ফলাফল ব্যাখ্যা করে বুঝিয়ে দেয়ার পর, আসামী কোন চাপ বা প্রলোভনের স্বীকার নন তা নিশ্চিত হয়ে স্বীকারোক্তি লিপিবদ্ধ করা হয়েছে। লিপিবদ্ধ স্বীকারোক্তি পাঠ করে শুনিয়েছি শুদ্ধ স্বীকারে তিনি নিজ নাম স্বাক্ষর করেছেন।”

(Emphasis put).

Under column 8 of Exhibit No.8 P.W.17 gave memorandum as under:

“আসামী কোন নির্যাতনের অভিযোগ করেননি। স্বীকারোক্তির ফলাফল পুংখানুপুংখভাবে বুঝিয়ে দেয়ার পরও সাবলীলভাবে ঘটনার বর্ণনা করেছেন এবং বর্ণনার মধ্যেই কয়েকবার কান্নায় ভেঙ্গে পড়েছেন যাতে অনুভূত হয়ে স্বীকারোক্তি প্রদান করেছেন মনে হয়েছে।”

(Emphasis added)

P.W. 17 avers in his evidence that,

‘আসামীর দোষ স্বীকারোক্তি আমার নিকট সত্য ও স্বেচ্ছা প্রনোদিত প্রতীয়মান হয়েছে এ মর্মে আমি প্রত্যয়ন করিয়াছি।’

From the aforesaid observations it has come to light that during making confession accused Fatiha Mashkura did not raise any objection so far the voluntary nature of the confession, and being satisfied about the true and voluntary character of the same the Magistrate concerned has recorded her confession. P.W. 17 is a Judicial Magistrate and he is not known to either of the parties. We find no earthly reason to discard the evidence of P.W.17 so far the voluntary and true character of the confession is concerned.

It further appears that after penning down the confession, the accused was sent to Sylhet Central Jail on 19-05-2015 at about 4.00 pm. Subsequently, after more than 7(seven) months of making confession, accused Fatiha Mashkura submitted a retraction application directly to the court wherein she claims that the

confession was not voluntary rather it was the product of torture or intimidation. Materials on record further reveal that after about 1(one) year from the date of making confession, the accused again sent a retraction application through jail authority claiming that her confession was not voluntary, rather it was extorted by police by torture and intimidation. But we find nothing tangible on record in support of the alleged torture or intimidation as has been disclosed by the accused in her retraction applications which, in our view, is nothing but an afterthought matter as well as the brain child of the learned engaged Advocate of the accused in the trial Court. We have already found that the confession of the accused was true, voluntary and inculpatory in nature as such the belated retraction application of accused Fatiha Mashkura bears no value in the eye of law.

From the aforementioned discussions, the incriminating circumstances appearing against the accused-appellant may be catalogued as underneath:

1. that admittedly victim Ibrahim Khalil and accused Fatiha Mashkura are husband and wife and further that on the fateful night both of them were present in the P.O. dwelling house;

2. that as per confession, the conjugal life of the accused and her husband was rancorous;
3. that the occurrence passed off at dead hour of night and that too inside the dwelling house of the accused and her husband and except them their one minor child and a minor made servant were also present there who were asleep in 2(two) separate rooms (Exhibit No.12);
4. that no alat was found from the P.O. house to show that someone else entered into the house from outside after breaking open the door thereof or through the rooftop and no sign or symptom was also detected as well by the Investigating Officer;
5. that by making confessional statement the accused admitted to her guilt in the killing incident of her husband by slaughtering as well as by making repeated blows with knife at abdomen which injured his liver as well which comes in agreement with the post-mortem and inquest report in material particulars;
6. that on scrutiny the confession of the accused was found to be true, voluntary and inculpatory in nature;

7. that the blood smeared crime knife and railway slipper were recovered as well as seized from the P.O. room;
8. that the P.O. room was padlocked from outside and on the following morning while her son made query about his father the accused herself opened it up and found the dead body of deceased victim lying in a pool of blood; and
9. that as per medico-legal evidence, the cause of death of the deceased victim was due to hypovolemic shock resulting from cut throat injury and injury of liver which were ante-mortem and homicidal in nature.

All these incriminating circumstances, in our view, are undoubtedly incompatible with the innocence of the condemned-accused. The circumstances of the instant case do form rosary and there is no missing link between one bead and another bead. The chain of circumstances appearing against the accused-appellant is so complete that it does not leave any reasonable doubt for a conclusion consistent with her innocence, and on the other hand, it only points out that within all human probability it is the accused-appellant who is responsible for the killing of her husband, Ibrahim Khalil.

Contention has been pressed into service on behalf of the defence that there is no eye witness of the occurrence leading to the

incident of killing of deceased victim Ibrahim Abu Khalil which creates doubt about the veracity of the prosecution story. But the above contention of the learned defence Advocate appears to be misconceived and untenable in law. It is not expected that in every criminal case the prosecution had to produce eye witness to prove its case. It is common knowledge that an accused person always tries not to leave any eye witness of the crime committed by him. In such circumstances the prosecution had no other option but to rely on circumstantial evidence as well as the attending and surrounding facts and circumstances of the case. It is often said that circumstantial evidence may be and frequently is more cogent than the evidence of eye witness as because it is not difficult to produce false evidence of eye witnesses, whereas it is extremely difficult to produce circumstantial evidence of a convincing nature and therefore, circumstantial evidence, if convincing, is more cogent than the evidences of eye witnesses.

In the instant case at our hand, admittedly the occurrence took place during night time and that too inside the dwelling house of the deceased victim where at the material time none was present except the accused and her ill-fated husband deceased victim Ibrahim Abu Khalil and their one minor child and a minor made

servant. Therefore, there was no scope to get any eye witness to the occurrence. In such view of the matter, the argument put forward by the learned defence Advocate appears to be wide of the mark.

Mr. Khorshed Alam khan next submits that the confession of accused Fatiha Mashkura was not recorded in accordance with the provisions of section 164 and 364 of the Code inasmuch as the recording Magistrate (P.W.17) did not mention in the confessional recording form as to whether he afforded sufficient time for reflection to the accused and further that the accused was not given any assurance that she should not be remanded to police custody even if she did not make any confession. But, in the facts and circumstances of the instant case, we cannot align with the above view of the learned defence Advocate as because from a combined reading of the evidence of the concerned Magistrate (P.W.17) and the confession (Exhibit No.8), it is patent that the accused was given sufficient time for reflection while she was under the custody of a court staff. From the evidences and materials on record, it appears that the accused was produced before the Magistrate Court on 19-05-2015 at around 10.30 am, whereas the Magistrate concerned started to note down her confessional statement at around 2.30/3.00 pm, and after completion of recording confession,

the accused was sent to Sylhet Central Jail at around 4.00 pm on that date. Therefore, it can easily be said that sufficient time has been afforded to accused Fatiha Mashkura for reflection.

On going through Exhibit No.8, it further appears that before recording confession the Magistrate did not inform the accused that she would not be remanded to police custody even if she did not make confession. But for that alone the voluntary character of the confession of the accused cannot be viewed with suspicion as because there is no requirement under the law to inform the accused as above [see 1988 BLD (AD) 109]. It further appears that in order to ascertain whether the accused is making confession of her own free will, the Magistrate concerned asked her that she is not bound to make confession and if she does so, it would be used against him at the trial, and further that whether the accused was subjected to torture, inducement or intimidation to which the accused replied negatively. In such a backdrop, we are inclined to hold that the accused made confession voluntarily. Therefore, the argument of the learned defence Advocate on this count bites the dust.

It has further been argued on behalf of the defence that the description of injuries as was given by the accused in her confession does not come in agreement with that of the post-



mortem examination report. But, upon going through the confession of the accused and the post-mortem examination report of the deceased victim, we find that the descriptions of injuries as was disclosed by the accused in her confessional statement do certainly come in agreement with that of the post-mortem examination report so far the injuries of head, neck and abdomen are concerned. Therefore, we find no force in the argument surge forward by the learned defence Advocate on this count.

Contention has also been raised that the accused was not properly examined under section 342 of the Code since some vital evidences were not brought to her notice and as such she was prejudiced in her defence. But, in the facts and circumstances of the instant case at our hand, we cannot see eye to eye with the aforesaid view of the learned defence Advocate inasmuch as all the prosecution witnesses were examined and cross-examined in presence of the accused who heard all of them attentively. It is true that the learned judge of the court below did not bring all the incriminating evidences to the notice of the accused while she was being examined under section 342 of the Code. But that alone will not cause any prejudiced to the accused as because the main incriminating materials available against the accused is her

confessional statement which was brought to her notice while she was examined under section 342 of the Code. Furthermore, the learned Advocate for the accused petitioner has failed to show as to how the accused was prejudiced in her defence. Materials on record also go to show that the accused neither submitted any document nor did she say anything in her defence while she was examined under section 342 of the Code except adducing a defence witness. We have already observed that the son of both the accused and deceased victim named Hujafa Abdullah Al Hafiz has been examined as D.W.1. This defence witness also admitted in his evidence that his father Ibrahim Khalil had been killed. We found nothing in the evidence of D.W.1 which could show or at least suggest that it is not his mother Fatiha Mashkura, but someone else who had killed his father. Therefore, the submission advanced by the learned defence Advocate on this count also falls to the ground.

Regard being had to the aforementioned discussions and the observations made thereunder, we are of the considered view that the prosecution had been able to bring home the charge brought against the accused to a nicety and the learned Judge of the court below rightly and correctly found her guilty by the impugned judgment and order which warrants no interference by this court.

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

The accused-appellant has put an end the life of her husband in an infernal manner while he lay asleep defenseless and unsuspecting in safety of his own dwelling hut, absolutely unaware of the gory scheme of his wife.

In her confessional statement the accused has given a picture of her rancorous conjugal life. But such unhappy conjugal life cannot give a license to the accused to kill her husband in such a brutal manner. She could have easily severed matrimonial relationship with her husband if she was not satisfied with her conjugal life. But, without taking that opportunity, the accused availed of the most brutal way to finish off the life of her husband who was sleeping in his own house with the hope and aspiration that in the following morning he would see the beautiful air and ambiance of the world again but that did not happen ever. According to the confession of the accused and the evidence of D.W.1 Hujafa Abdullah Al Hafiz, immediately before the occurrence the accused went to India in connection with Tablig Jamat where he stayed for about 2(two) months and after returning into the country he (victim) again went to Pirojpur where he stayed

for 2(two) days and on the very morning of the date of occurrence he returned back to his dwelling house. Therefore, it is patent that immediately before the occurrence there was no scope for the victim husband to perpetrate any sort of torture, either physically or mentally, to his wife (the accused) as he was outside of the country. Furthermore, it manifestly appears from the confessional statement of the accused that on the following morning of the occurrence night the accused herself entered into the occurrence room along with her young son after opening the door thereof from outside. The accused committed the murder of her husband with utmost atrocity and brutality without any immediate provocation and taking advantage of the trust that was imposed upon her by her husband. The deceased victim died a painful death. The accused wife did not even feel a twinge in her conscience in finishing off the life of her husband and that too in a brutal and diabolic manner.

Considering the nature of the crime, we do not find any mitigating circumstances to commute the death sentence of the accused wife. Rather, it is our dispassionate view that justice would best served if the sentence of death of the condemned accused is maintained which will equally commensurate with the brutality of the crime committed by her .

In the result, the death reference is accepted. The sentence of death imposed upon the condemned accused, Fatiha Mashkura is confirmed.

The impugned judgment and order is maintained.

Criminal Appeal No. 5358 of 2016 and Jail Appeal No. 145 of 2016 are dismissed.

Send down the L.C.R along with a copy of the judgment forthwith.

**Md. Akhtaruzzaman, J.**

I agree.