

**Present:**

**Mr. Justice Md. Kamrul Hossain Mollah  
and  
Mr. Justice Mohi Uddin Shamim**

**Death Reference No. 145 of 2017**

The State  
..... Petitioner  
- Vs -  
Md. Shakil and another  
..... Condemned-Prisoners

**with**

**Criminal Appeal No. 14436 of 2017**

Md. Shakil  
..... Convict-appellant  
- Vs -  
The State, represented by the Deputy  
Commissioner, Gazipur  
..... Respondent

**with**

**Criminal Appeal No. 13436 of 2017**

Sonjibon Chandra Moni Das  
..... Convict-appellant  
- Vs -

The State, represented by the Deputy  
Commissioner, Gazipur  
..... Respondent

**With**

**Jail Appeal No. 472 of 2017**

Md. Shakil  
 ..... Convict-appellant

- Vs -

The State  
 ..... Respondent

**With****Jail Appeal No. 473 of 2017**

Sonjibon Chandra Monidas  
 ..... Convict-appellant

- Vs -

The State  
 ..... Respondent

Mr. Bashir Ahmed, DAG with

Mr. Nirmal Kumar Das, AAG with

Mrs. Syeda Shobnum Mustary, AAG with

Mr. Tariqul Islam (Hira), AAG

..... For the State

Mr. A K M Fazlul Huq Khan Farid,

Advocate with

Mr. Md. Hadiul Islam Mollick, Advocate

with

Mr. Mohammad Abul Hasnat Mollick,

Advocate

..... For the Appellant

(In Criminal Appeal No. 14436 of 2017)

Mr. Md. Helal Uddin Mollah, Adv. with

Mr. Jahedul Alam, Advocate with

Ms. Syeda Farah Helal, Advocate

..... For the Appellant

(In Criminal Appeal No.13436 of 2017)

**Heard on: 10.09.2023, 11.09.2023**  
**and Judgment on 17.09.2023**

**Mohi Uddin Shamim, J.**

This Death Reference under section 374 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the Code) has been made by the learned Sessions Judge, Gazipur for confirmation of the death sentence imposed upon the condemned-prisoners namely, **(1) Md. Shakil** and **(2) Sonjibon Chandra Monidas** vide judgment and order of conviction and sentence dated 31.10.2017 in Session Case No. 1219 of 2017 arising out of Kapasia Police Station Case No. 14 dated 19.11.2016 corresponding to G.R. No. 241 of 2016 under sections 302/34 of the Penal Code along with a fine of Tk. 10,000.00 each.

By the said judgment and order of conviction and sentence, the condemned-prisoners were also convicted under sections 201/34 of the Penal Code and sentenced them

to suffer rigorous imprisonment for 05 (five) years with a fine of Tk. 2,000.00 in default to suffer rigorous imprisonment for 01 (one) month more.

Against the said judgment and order of conviction and sentence, condemned-prisoners preferred Jail Appeal Nos. 472 of 2017 and 473 of 2017. Subsequently, they also preferred 2 (two) regular Criminal Appeals being Nos. 14436 of 2017 and 13436 of 2017 respectively against the said judgment and order of conviction and sentence.

Since the Death Reference and the connected Criminal Appeals as well as Jail Appeals have arisen from the same judgment and order, and that the common questions of law and facts involved therein are same, hence those have been heard together and are being disposed of by this common judgment.

The prosecution's case, in brief, is that on 19.11.2016, Uttam Chandra Monidas, as the informant, lodged a First Information Report (F.I.R.) with Kapasia Police Station. He alleged that his younger brother, Ujjal Chandra Monidas, worked as a technician at a grill workshop owned by Atiqul at "Chinaduli Baghia Moor Bazar" under Kapasia Police Station. On 17.11.2016, around 4:00 P.M., Ujjal left home but did not return by night. At approximately 10:30 P.M., the informant called his brother's mobile, only to find it switched off. After informing nearby relatives and local respectable persons, he searched for his brother 'hither and thither' but could not find him. On 19.11.2016, in the afternoon, the informant learned from local sources that the Kapasia Police had discovered a young man's body on the bank of the Shitalakhya River near Junia village and had taken it to the police station. Upon hearing this, he, along with his father,

mother, and close relatives, rushed to the police station and identified the body as that of his deceased brother, Ujjal Chandra Monidas. The police made a General Diary entry (No. 648 dated 19.11.2016) regarding the body, prepared an inquest report, and sent the body to Shahid Tajuddin Ahmed Medical College Hospital, Gazipur, for post-mortem examination. Earlier, on 17.11.2016, around 7:30 P.M., while the informant was at his saloon at Targaon Medical Moor, he had seen his brother Ujjal walking south with his friends, Md. Shakil and Sanjibon Chandra Monidas. Upon inquiry, he found that both Shakil and Sanjibon were also missing from their respective homes. On 19.11.2016, at midday, the informant contacted Ujjal's fiancée, Shanta, who informed him that on 17.11.2016, at around 8:00 P.M., while she was talking to Ujjal over the phone, she suddenly heard his cry, followed by the line being disconnected. His mobile had been

switched off since. On the night of 19.11.2016, the Officer-in-Charge of Kapasia Police Station arrested the accused, Md. Shakil and Sanjibon Chandra Monidas, who confessed at the police station that they had killed Ujjal Chandra Monidas. According to their confession, they had premeditatedly murdered Ujjal by slitting his throat with a sharp weapon and had thrown his body into the Shitalakhya River to conceal the crime. Consequently, the informant lodged the F.I.R., leading to the initiation of Kapasia P.S. Case No. 14 dated 19.11.2016 under Sections 302/201/34 of the Penal Code.

The inquest report of the dead body was prepared by the Kapasia Police Station, Gazipur and on 20.11.2016 the Post Mortem Report was conducted by Dr. Pronoy Bhushan Das of Gazipur Sadar Hospital.

On 21.11.2016 and 22.11.2016, the convict-appellant Md. Shakil and Sonjibon Chandra Monidas made 2 (two)

separate confessional statement respectively before the learned Senior Judicial Magistrate, Gazipur under section 164 of the Code of Criminal Procedure.

The case was investigated by Mr. Moniruzzaman Khan (PW.16), Sub-Inspector, Kapasia Police Station and after completion of investigation submitted charge sheet being No. 138 dated 11.06.2017 under sections 302/201/379/34/411 of the Penal Code against the appellants and another.

Eventually, the case was transmitted to the Court of learned Sessions Judge, Gazipur for holding trial and it was numbered as Session Case No. 1219 of 2017. During trial formal charge was framed under sections 302/201/34 of the Penal Code against the appellants, which was read over and explained to them, who pleaded not guilty and claimed to be tried.



In course of trial the prosecution examined as many as 16 (sixteen) witnesses and the defence examined 02 (two) witnesses (only for convict Shakil) to substantiate their respective cases.

On closure of the evidence of the prosecution, learned sessions Judge examined the condemned prisoners - convict appellants and the acquitted accused under section 342 of the Code of Criminal Procedure, where they pleaded their innocence once again and the Convict Appellant Shakil intended to produce witness on his behalf.

The defence cases, as it appears from the trend of cross examination of the prosecution witnesses and of the examination of the defence witnesses on behalf of condemned prisoner Shakil were that the accused are innocent, and they were compelled to make confessional

statements under section 164 of the Code before the learned Magistrate by torture.

That after conclusion of trial, considering the facts and circumstances of the case and evidences on record, the learned Sessions Judge, Gazipur found the condemned prisoner Md. Shakil and Sonjibon Chandra Monidas guilty for Murdering the victim Ujjal Chandra Monidas and thereby convicted them under sections 302/34 of the Penal Code and sentenced them with death along with a fine of Tk.10,000/- and also convicting them under sections 201/34 of the Penal Code to suffer rigorous imprisonment for 05 (five) years with a fine of tk. 2000/- in default to suffer rigorous imprisonment for 01 (one) month more, by his judgment and order of conviction and sentence dated 31.10.2017. The defence could not prove its plea that the accused are innocent and for physical torture of police they made those confessional

statements under section 164 of the Code of Criminal Procedure.

Mr. Bashir Ahmed, learned Deputy Attorney General with Mr. Nirmal Kumar Das, the learned Assistant Attorney General, appearing on behalf of the State having taken us to the F.I.R, Charge-Sheet, Charge framing order, Inquest Report, Post-Mortem Report, Confessional Statements made under section 164 of the Code, evidences-on-record and the impugned judgment and order of conviction and sentence including all other connected materials available in the Paper Book strongly submits that, the prosecution had been able to prove the charge as brought against the condemned-prisoners in commissioning of the brutal murder of the deceased victim Ujjal Chandra Monidas by adducing cogent, trustworthy and indubitable evidence and accordingly, the learned judge of the Trial Court rightly passed the impugned judgment and order

of conviction and sentence, which warrants no interference by this Hon'ble Court.

Learned DAG further submits that, the accused have made confessional statements voluntarily implicating themselves in the alleged crime of murder of the victim Ujjal Chandra Monidas in corroborating each other in material particulars which, on scrutiny, found true, voluntary and inculpatory in nature, on the basis of which, the judgment and order of conviction and sentence of death is found to be correct. Moreover, the accused did not take the plea of minority at the trial stage of the case and as such plea raised at the time of placing argument and without any document bears no value in the eye of law. In support of his submission, Mr. Bashir Ahmed, the learned Deputy Attorney General has referred to the cases of *Mulakbraj and others Vs. Satish Kumar and others*, reported in (1992) 3 Supreme Court Cases 43; *Khalil Mia*

*Vs. State, reported in 4 BLC (AD) 223; Mahavir Singh Vs. State of Haryana, reported in (2014) 6 Supreme Court Cases 716; Aziz @ Azizul @ Azid and others Vs. State, reported in 73 DLR (AD) 365 and Khorsheed (Md) and another Vs. State, reported in 73 DLR (AD) 83.*

He finally submits that the learned Judge of the trial court rightly passed the impugned judgment and order of conviction and sentence against the condemned prisoners, and therefore, it warrants no interference by this Hon'ble Court. The defence failed to prove its claim that the accused were innocent and that their confessional statements under Section 164 of the Code of Criminal Procedure were made due to police torture. Accordingly, the learned Deputy Attorney General prayed for the acceptance of the death reference and the dismissal of the Criminal Appeals and Jail

Appeals filed by the condemned prisoners against the impugned judgment and order of conviction and sentence.

On the contrary, Mr. A. K. M. Fazlul Huq Khan Farid, the learned Advocate appearing on behalf of condemned-prisoner namely Md. Shakil in Criminal Appeal Nos. 14436 of 2017 has tried to impeach the veracity of the impugned judgment and order of conviction and sentence. At the very outset he submits that, there is no eye-witness in the case and although the accused Md. Shakil confessed to the police about the killing of the deceased Ujjal Chandra Monidas but the prosecution witnesses could not give consistent testimony to corroborate the confessional statement and therefore the testimony of the prosecution witnesses cannot be the basis for awarding punishment to the accused.

The learned Advocate also submits that, the accused Md. Shakil made the confessional statement before the

learned Magistrate under section 164 of the Code of Criminal Procedure but before giving such statement, the accused Md. Shakil was in police custody and he was forced to give the statements before the learned Magistrate due to police torture and as such the statements was not voluntary and also not indicative of the facts. Therefore, it would not be lawful to take any decision in the present case based on the said confession.

The learned Advocate further submits that two defence witnesses, both of whom are very close to the accused Md. Shakil, have clearly stated that Md. Shakil could not have been involved in the murder of the victim, Ujjal.

Mr. Farid, the learned Counsel has referred to the cases of *Sree Ranjit Kumar Pramanik, reported in 1992 BLD (HC) 284; Ismail Sarker @ Sudan Member and others Vs. The State, reported in 33 DLR (1981) 320; Ramreddy Rajeshkhanna Reddy and another*

*Vs. The State of Andhra Pradesh, reported in 2006 Criminal 353 Supreme Court of India; Humayun Kabir (Md) Vs. State, reported in 74 DLR (AD) 91; The State Vs. Mofizuddin and others, reported in 11 MLR (AD) 76; State Vs. Shafique and others, reported in 43 DLR (AD) (1991) 203; Zahirul Islam @ Dipu (Md) Vs. The State, reported in 20 BLC (AD) 129; Habibur Rahman @ Habu and others Vs. The State, reported in 1 CLR (AD) 295 and The State Vs. Abul Basher Tipu and others, reported in 1 CLR (AD) 379.*

Finally, he submits that, the Death Reference be rejected by acquitting the condemned-prisoner Md. Shakil, as well as allowing the Criminal Appeal No. 14436 of 2017 and also the Jail Appeal No. 472 of 2017 as filed against the impugned judgment and order of conviction and sentence dated 31.10.2017.



Mr. Md. Helal Uddin Mollah, the learned Advocate appearing for the condemned prisoner Sonjibon Chandra Monidas in Criminal Appeal No. 13436 of 2017, had strenuously challenged the impugned judgment and order of conviction and sentence. He contends that the prosecution has miserably failed to prove the charges against the accused with neutral, natural, and trustworthy evidence. He further argues that the impugned judgment is flawed, as Sonjibon Chandra Monidas is not named in the F.I.R., and the Post Mortem Report does not corroborate his confessional statement, which he asserts is neither voluntary nor true. Additionally, the learned Magistrate failed to complete columns 8 and 9 of the confessional statement, certifying its voluntariness and truthfulness, and there is no eyewitness to the case.

He finally prays that, the Death Reference be rejected by acquitting the condemned-prisoner Sonjibon Chandra Monidas as well as allowing the Criminal Appeal No. 13436 of 2017 and also the Jail Appeal No. 473 of 2017 as filed against the impugned judgment and order of conviction and sentence dated 31.10.2017.

We have heard the submissions put forward by the learned Deputy Attorney General as well as by the learned Advocates for the accused, perused the impugned judgment and order of conviction and other connected materials available on record and also considered the facts and circumstances of the case.

In a view to arrive at a proper and correct decision in the Death Reference and the connected Criminal Appeals as well as Jail Appeals, let us now sift and weigh the relevant evidences-on-record together with the attending and

surrounding facts and circumstances of the case and the submissions and counter submissions of the learned counsels representing the parties.

The defense case, as inferred from the cross-examination of the prosecution witnesses, was that the accused are innocent, and that their confessions were coerced through torture. Furthermore, they were neither named in the F.I.R. nor were there any eyewitnesses to the incident. In this case, it is an undisputed fact that Ujjal Chandra Monidas, a 24 years old grill worker at Atiqul's Grill Workshop in Chinaduli Baghia Moor, Kapasia, Gazipur, the brother of the informant, was killed.

Now, let us examine the evidence provided by the prosecution witnesses to determine the extent to which the prosecution has succeeded in proving the charges against the accused Md. Shakil and Sonjibon Chandra Monidas.

Before analyzing the testimony of all the prosecution witnesses, it would be prudent to first assess the confessional statements made by the condemned prisoners before the learned Magistrate under Section 164 of the Code of Criminal Procedure.

The condemned prisoner Md. Shakil, as the accused, made a confession before the learned Magistrate under Section 164 of the Code, which is as follows : -

“আমি, সঞ্জীবন ও উজ্জল আমরা ৩ জন বন্ধু ছিলাম। ৩ জন আমরা একই সা-থ চলা-ফরা করতাম। এক সময় আমরা সিদ্ধান্ত নিই ৩ জন মালয়েশিয়া যাব, উজ্জলের সাথে শান্তা না-মর একটি মে-য়র সম্পর্ক ছিল, তার সাথে তার অবৈধ সম্পর্ক ছিল। উজ্জল বিদেশ যেতে চাইলে সেই মেয়ে বাধা দেয়, সে তাকে বিয়ে করে যেতে হবে বলে। উজ্জলের বাবা-মা তারাও চাইতো না যে উজ্জল বিদেশে যাক, যাই হোক এক পর্যায়ে উজ্জল বলে সে বিদেশ যাবে না এবং আমাদেরও যেতে দেবে না এবং কিতা-ব আমরা বি-দশ যাই সে দেখে নেবে বলে জানায়। উজ্জলের ভাতিজী মুক্তার সাথে সঞ্জীবনের প্রেমের সম্পর্ক ছিল। ঐ নিয়ে উজ্জলের সাথে সঞ্জীবনের বিরোধ বাঁধে। উজ্জল তার ভাতিজীকে শাসন ক-র এবং

সঞ্জীবনকে মুক্তার সাথে প্রেম করতে নিষেধ করে। সঞ্জীবন আমাকে বলে উজ্জলকে মেরে ফেলতে হবে, এ লক্ষ্যে সঞ্জীবন একটা চাকু এনে আমা-দর বাড়ী-ত রা-খ। গত ১৭/১১/১৬ ইং বেলা অনুমান ১১টার সময় উজ্জল আমাকে ফোন করে ৫০০/- টাকা চায়। ৩ টার দি-ক ৫০০/- টাকা আমি উজ্জলকে দিই। তারপর ৩ জন ঘোরা-ফরা ক-র তরগাঁও মেডি-কল মো-ড় গি-য় মুড়ি খাই। তারপর ৩ জন হাঁট-ত হাঁট-ত শূশানের দিকে যাই। সঞ্জীবন আমাকে চাকু আনতে বলে, আমি চাকু নিয়ে আসি। চাকু আনার পর সঞ্জীবন আমাকে মারতে বলে। আমি ভয় পাই। ঐ সময় সঞ্জীবন আমার হাত থেকে ছুরি নিয়ে উজ্জলের ঘাড়ে -কাপ -দয়। এরপর সঞ্জীবনের হাত থেকে ছুরি নিয়ে আমি উজ্জলের গলায় পৌঁচ দেই। এরপর উজ্জল মারা যায়। তারপর আমি উজ্জলের হাত এবং সঞ্জীবন উজ্জলের পা ধরে নদীতে ফেলে দেই। চাকুটাও নদীতে ফেলে দেই। উজ্জলের মোবাইলটি নিয়ে কাপাসিয়া বাসস্থানের এক লো-কর কা-ছ ১,৫০০/- টাকা বিক্রি করি।” and

Another condemned prisoner Sonjibon Chandra

Monidas, as accused, also made a separate confession before

the learned Magistrate under section 164 of the Code, which

as : -

“আমি, শাকিল ও উজ্জল ও জন বন্ধু ছিলাম। ও জন সবসময় প্রায় একই সাথে থাকতাম। উজ্জলের ভাতিজী মুক্তার সাথে আমার প্রেম ছিল এটা উজ্জল জেনে আমাকে গালাগালি করে উজ্জল। মুক্তাকেও শাসন করে। আবার শাকিলের সাথে উজ্জলের বিদেশ যাওয়া নিয়ে বিরোধ ছিল। ঐ কারণে আমি ও শাকিল উজ্জলকে মেরে ফেলার সিদ্ধান্ত নেই। গত ১৭/১১/১৬ ইং আমরা ও জন ঘুর-ত বের হই। শাকিল জানায় ওকে আজই শেষ করবো। উজ্জলের প্রেমিকা শান্তার প্রেগন্যান্ট হওয়া নিয়ে উজ্জল ও শাকিলের বিরোধ ছিল। তরগাঁও মেডিকেল মোড় হতে মুড়ি কি-ন ও জন খাই। এরপর আমরা হাঁট-ত হাঁট-ত শ্মশান ঘা-টর দিকে যাই। উজ্জল ফোনে কথা বলতেছিল। ঐ সময় আমি পিছন দিকে থেকে উজ্জলের ঘাড়ে চাকু দিয়ে পৌঁচ মারি। এরপর শাকিল ছুরি চালায় গলায়। উজ্জল পড়ে গেলে শাকিল উজ্জলের পা ধরতে বলে। এরপর শাকিল উজ্জলের মাথা তার হাঁটুর উপর রাখে, আর আমি উজ্জলের পা ধরি তারপর উজ্জলের গলা শাকিল পৌঁচ দিয়ে কেটে ফেলে। উজ্জল মারা যায়। আমরা তার লাশ শীতলক্ষ্যা নদী-ত ফে-ল দেই ছুরিটাও -সখা-ন ফেলে দেই, উজ্জলের মোবাইল নিয়ে ভবতোষের কাছে ১৫০০/- টাকা বিক্রি করি।”

On careful reading of the confessional statement made by the condemned-prisoner Md. Shakil, it appears that

he candidly with unequivocal terms confessed that he along with another condemned-prisoner Sonjibon Chandra Monidas killed the deceased Ujjal Chandra Monidas stating that, “তারপর ৩ জন ঘোরা-ফরা ক-র তরগাঁও মেডি-কল মো-ড় গি-য় মুড়ি খাই। তারপর ৩ জন হাঁটতে হাঁটতে শ্মশানের দিকে যাই। সঞ্জীবন আমাকে চাকু আনতে বলে, আমি চাকু নিয়ে আসি। চাকু আনার পর সঞ্জীবন আমাকে মারতে বলে। আমি ভয় পাই। ঐ সময় সঞ্জীবন আমার হাত থেকে ছুরি নিয়ে উজ্জলের ঘাড়ে কোপ দেয়। এরপর সঞ্জীবনের হাত থেকে ছুরি নিয়ে আমি উজ্জলের গলায় পৌঁচ দেই। এরপর উজ্জল মারা যায়। তারপর আমি উজ্জলের হাত এবং সঞ্জীবন উজ্জলের পা ধ-র নদী-ত ফে-ল দেই।” It also appears from the confessional statement of condemned-prisoner Sonjibon Chandra Monidas that, he along with Md. Shakil killed the deceased Ujjal Chandra Monidas and it shows that, they have narrated the events that took place from the beginning to the end on the date, time and place of occurrence and related matters. Their statements are identical to the incident described in the

F.I.R as well as the description of the charges brought by the prosecution against them which are fully corroborated by other witnesses of the prosecution.

Now, let us assess how far the prosecution has been able to prove the allegations in the F.I.R. through the evidence of the prosecution witnesses. Additionally, we need to determine whether the confessional statements made by the condemned prisoners are corroborated by the evidence of these witnesses.

PW-1, Uttam Chandra Monidas, the informant, stated in his deposition that his brother, Ujjal Chandra Monidas, was missing from 17.11.2016, and on 19.11.2016, he found his brother's dead body at Kapasia Police Station. He mentioned that Ujjal left home around 4:00 P.M. on 17.11.2016 but did not return that night. Despite searching various places, Ujjal was not found. He further testified that



on 17.11.2016, at approximately 7:30 P.M., while sitting at his saloon at Torgaon Medical Moor, he last saw Ujjal with the accused, Md. Shakil and Sonjibon Chandra Monidas, walking south. However, Ujjal did not return that night, and later, the informant learned that both Shakil and Sonjibon were also not at their respective homes that night. He testified that the Officer-in-Charge arrested Shakil and Sonjibon on 19.11.2016, and they confessed at the police station, in front of the informant and others, to killing Ujjal. They also reiterated their confession during Ujjal's cremation, explaining how they killed him and disposed of the body in the Shitalakhya River. He filed the F.I.R. and signed it (marked as Exhibit-1 and 1/1). He also mentioned that Ujjal had a love affair with a girl named Shanta, and when he called her on 19.11.2016, she informed him that she last spoke to Ujjal on 17.11.2016, at around 8:00 P.M., when she suddenly

heard him scream, after which his phone was switched off.

He demanded justice for his brother's murder.

In his cross-examination on behalf of the accused Sonjibon, PW-1 stated that Ujjal was killed sometime between 17.11.2016 and 19.11.2016. He did not file a General Diary (G.D.) entry regarding Ujjal's disappearance. He did not witness the incident but stated that it was not true that Sonjibon did not confess of killing Ujjal in front of him or the public. He denied that his deposition was false. He also stated that Ujjal worked in a grill workshop.

During cross-examination on behalf of the accused Shakil, PW-1 stated that it was not true that he did not see Shakil with Ujjal or that Shakil did not confess to the murder. He denied any conflict between Shakil and Ujjal.

PW-2, Sumon, deposed that he knew both the informant and the accused. He stated that when the accused

Shakil and Sonjibon were brought to the police station, they confessed of killing Ujjal. In his cross-examination on behalf of Sonjibon, PW-2 stated that he did not see the incident but heard that Sonjibon had a dispute with Ujjal about going abroad. He denied that Sonjibon did not confess. In cross-examination on behalf of Shakil, PW-2 stated that he gave a statement to the police but denied giving false testimony.

PW-3, Shree Shyamol Monidas, testified that he knew the informant and the accused. He identified the accused and stated that they confessed during Ujjal's cremation. In his cross-examination on behalf of Shakil, he affirmed the friendship between Shakil, Sonjibon, and Ujjal but denied that Shakil did not confess to the murder. In his cross-examination on behalf of Sonjibon, PW-3 denied that Sonjibon did not admit guilt.

PW-4, Kumar Bishwajit, testified that he was present at Ujjal's cremation, where the accused confessed to the murder in front of the crowd. In cross-examination on behalf of Sonjibon, he denied that the accused did not admit guilt or identify the crime scene. In cross-examination on behalf of Shakil, he denied that Shakil confessed due to police brutality or that his testimony was false.

PW-5, Biplab Monidas, testified that the accused confessed during Ujjal's cremation. In cross-examination on behalf of both Shakil and Sonjibon, he denied that the accused did not confess or that his testimony was false.

PW-6, Mithun Monidas, deposed that he identified Ujjal's body and witnessed the accused confess during the cremation. In cross-examination on behalf of both Shakil and Sonjibon, he denied that the accused were innocent or that they did not confess.

PW-7, Jhantu Monidas, testified that the police prepared a seizure list in front of him, and during Ujjal's cremation, the accused confessed. In cross-examination, he denied that the accused did not admit guilt or that his testimony was false.

PW-8, Dr. Pronoy Bhushan Das, testified that he performed the autopsy and found a sharp weapon injury on Ujjal's neck, which caused his death by excessive bleeding. In cross-examination, he confirmed that the body was decomposed, and no other injuries were found.

PW-9, Mohammad Abdul Hai, the Senior Judicial Magistrate, testified that he recorded the voluntary confessions of Shakil and Sonjibon under Section 164 of the Code of Criminal Procedure. In cross-examination, he denied that the confessions were made due to police torture or that he failed to record the statements properly.

PW-10, Md. Rakib Hossain, testified that he saw the accused at Kapasia Bus Stand attempting to sell a mobile phone. In cross-examination, he stated that he was unaware of any incident related to the case.

PW-11, Sumanta Das, deposed that he saw Ujjal's body and that the accused confessed during the cremation. In cross-examination, he denied giving false testimony.

PW-12, Pintu Chandra Das, deposed that he signed the inquest report and saw Ujjal's body at the pier. In cross-examination, he denied giving false testimony.

PW-13, Md. Nuruzzaman, stated that he signed the inquest report but did not know the informant or the accused.

PW-14, Mamun, testified that he signed the inquest report and seizure list after seeing Ujjal's body.

PW-15, Md. Tariq Khan, testified that he signed the seizure list related to the deceased's clothing but did not know about the incident.

PW-16, Moniruzzaman Khan, the second investigating officer, testified that he submitted the charge sheet after finding prima facie evidence against the accused. In cross-examination, he stated that there were disputes between the accused and Ujjal but denied any flaws in his investigation.

On the other hand, DW-1, Md. Nure Alam, testified on behalf of the accused, Shakil. He stated that he did not know the details of the case but did not believe Shakil could commit murder. He acknowledged that he did not know the date of the incident, though he saw Ujjal's dead body. He also mentioned that Shakil was his paternal cousin and, being an adult, Shakil's whereabouts and actions were beyond his

knowledge. He admitted that parts of his testimony were based on assumptions but denied giving false testimony on behalf of his cousin.

DW-2, Md. Mosharraf Hossain, also testified for the accused Shakil. He knew the informant and described Shakil as a good person but was unaware of the events related to the case. He stated that Shakil was not involved in the murder. In cross-examination, he confirmed that Shakil was his nephew and that he saw Ujjal's body. He denied spending time with Shakil regularly and refuted the suggestion that he gave false testimony.

Thus, the evidence presented by the prosecution witnesses aims to establish the charges against the accused, Md. Shakil and Sonjibon Chandra Monidas, while the defense provided evidence on behalf of condemned prisoner Md. Shakil for his defense.



It appears that PW-1, the informant, in both his examination-in-chief and cross-examination, supported the prosecution's version. PW-3 to PW-7 and PW-11, in their respective depositions, stated that at Ujjal Chandra Monidas's cremation, the police brought both accused to the cremation ground, where they confessed in the presence of thousands of people that they had killed Ujjal. PW-8, the Doctor (RMO), who conducted the post-mortem, gave the opinion that "death was due to shock and hemorrhage resulting from the above-mentioned injuries, which were antemortem and homicidal in nature." The injuries found by PW-8 supported the F.I.R. case.

PW-9, the Magistrate who recorded the statements of both condemned prisoners under Section 164 of the Code of Criminal Procedure, testified that their statements were voluntary, true, and revealed the true facts. He confirmed that

the accused were properly and lawfully informed of the implications of their confessions, including that no police were present, they would not be returned to police custody, they were not obligated to confess, and that their confession could be used against them. He also mentioned that each accused was given over three hours before their respective statements were recorded and that neither had been taken on remand.

It appears from the statement of 164 of the Code of Criminal Procedure that, the learned Magistrate noted that, “স্বীকারোক্তি প্রদানকালে আসামী তার প্রতি কোন জবরদস্তি বা পীড়নের অভিযোগ করেনি। তার শরীরে জখমের কোন চিহ্ন ছিলনা। আমার বিবেচনায় তার স্বীকারোক্তি সম্পূর্ণ স্বেচ্ছাপ্রনোদিত।” PW 12 and 13 are signatories of the inquest report, while PW 14 and 15 are witnesses who signed the seizure list. PW-16, the Investigating Officer, completed the investigation and submitted the charge sheet,

concluding that the evidence supported the allegations of the murder of Ujjal Chandra Monidas by the accused, Md. Shakil and Sonjibon Chandra Monidas, along with another individual. All witnesses provided their respective testimonies, proving their evidence through examination and cross-examination before the trial court.

Admittedly, there were no eyewitnesses to the murder of Ujjal. The prosecution largely relied on the confessions of both condemned prisoners and the recovery of incriminating articles at their instance to establish the charges. PW-1 testified that he last saw his brother at Targaon Upazila Health Complex Moor, Kapasia, with the condemned prisoners, Shakil and Sonjibon, at about 7:00 P.M. on 17.11.2016, the day Ujjal went missing. On 19.11.2016, the police recovered Ujjal's abandoned body from the riverbank of Shitalakhya. PW-3, a seizure list witness, testified about the

recovery of a knife from beneath 15 feet of water near the cremation site in Tragaon, based on information provided by condemned prisoner Shakil (Exhibit 2 and 2/1). The missing mobile phone of the deceased was recovered from co-accused Bhobotosh, as per information from Shakil (seizure list 'Kha'), who stated that the phone had been sold to Bhobotosh (Confessional statements of Shakil and Sonjibon). This evidence was corroborated by PW-7 (Exhibit 3) and PW-16, the Investigating Officer. PW-4 testified that during Ujjal's cremation, the police brought the condemned prisoners to the crime scene, where blood-stained mud was found. These facts of discovery and recovery are strong and sufficient evidence of the prisoners' involvement in Ujjal's murder.

Regarding the witnesses, they are natural and competent, and their testimonies are corroborated by the

Senior Judicial Magistrate, PW-9, and the Investigating Officer, PW-16. There is no reasonable basis to doubt their evidence. The recovery of incriminating articles shortly after the incident would lead a prudent person to infer their involvement in the crime.

A plain reading of the confessional statements of Shakil and Sonjibon clearly shows that they implicated themselves and each other in the murder of Ujjal Chandra Monidas due to minor conflicts. Their confessions appear to be spontaneous, true, voluntary, and inculpatory in nature.

It has been established by our Apex Court, as well as by the High Court Division, in a series of decisions that a confessional statement can serve as the basis for imposing punishment on its maker, provided the confession is true and voluntary in nature. In this regard, Mr. Bashir Ahmed, the learned Deputy Attorney General for the State, referred to

the decision in Aziz @ Azizul @ Azid and others Vs. State, reported in 73 DLR (AD) 365, where their Lordships held that,

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

And also referred a decision in the case of Khalil Mia In 4 BLC (AD) 223, wherein, their lordship’s held to the effect that;

*“After the confession the condemned-prisoner was sent to Munshiganj Sub-Jail. The confession was specially brought to the notice of the condemned-prisoner while examining him under section 342 of the Code of Criminal Procedure; but he did not complain anything regarding the nature of his confession. Both the trial Court and the High Court Division therefore rightly believed the confession to be true and voluntary.”*

In light of the discussions made hereinabove and the case laws cited by the learned Advocates representing the parties, this Court is of the opinion that the prosecution has successfully proven the charges against the condemned prisoners, Md. Shakil and Sonjibon Chandra Moni Das, for the murder of Ujjal under Section 302 of the Penal Code, beyond all reasonable doubt. Therefore, the trial court rightly passed the judgment and order of conviction and sentence dated 31.10.2017, delivered by the learned Sessions Judge, Gazipur, in Session Case No. 1219 of 2017, arising from Kapasia Police Station Case No. 14 (11) 16, dated 19.11.2016, corresponding to G.R. No. 241 of 2016. The appellants were convicted under Sections 302/34 of the Penal Code and sentenced to death with a fine of Tk.10,000.00 each. Additionally, they were convicted under Sections 201/34 of the Penal Code and sentenced to five years of rigorous

imprisonment with a fine of Tk. 2,000.00, with an additional month of rigorous imprisonment in default. This Court finds no reason to interfere with this judgment.

As a result, the **Death Reference No. 145 of 2017 is accepted.**

The judgment and order of conviction and sentence dated 31.10.2017 passed by the learned Sessions Judge, Gazipur in Session Case No. 1219 of 2017 arising out of Kapasia Police Station Case No. 14 (11) 16 dated 19.11.2016 corresponding to G.R. No. 241 of 2016 and the death sentence as awarded to the condemned-prisoners namely **Md. Shakil** and **Sonjibon Chandra Monidas** are hereby upheld and confirmed.

The Criminal Appeal Nos. 14436 of 2017 and Criminal Appeal No. 13436 of 2017 including the Jail Appeal



Nos. 472 of 2017 and Jail Appeal No. 473 of 2017 are hereby dismissed.

Send down the Lower Court Records (LCR) along with a copy of this judgment to the concerned Court below forthwith.

**Md. Kamrul Hossain Mollah, J.**

I agree.