

District: Cumilla.

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr. Justice J.B.M. Hassan

And

Mr. Justice Md. Toufiq Inam

Death Reference No. 05 of 2018.

The State

-Versus-

Md. Sheikh Farid,

----- Condemned-Prisoner.

Mr. Mohammad Osman Chowdhury, D.A.G. with

Mrs. Ayasha Akhter, A.A.G,

Mr. Mir Moniruzzaman, A.A.G and

Mr. Md. Tareq Rahman, A.A.G.

----- For the State.

Mr. Md. Hafizur Rahman Khan, Advocate,

--- State-Defence lawyer for the condemned-prisoner.

With

Jail Appeal No. 30 of 2018.

Md. Sheikh Farid,

----- Condemned-Prisoner-Appellant.

-Versus-

The State,

----- Respondent.

Mr. Md. Hafizur Rahman Khan, Advocate

----- For the Condemned-Prisoner.

(As State-Defence-Lawyer).

Mr. Mohammad Osman Chowdhury, D.A.G. with

Mrs. Ayasha Akhter, A.A.G,

Mr. Mir Moniruzzaman, A.A.G, and

Mr. Md. Tareq Rahman, A.A.G.

----- For the State.

Heard on: 20.10.2024, 21.10.2024,

23.10.2024.

and

Judgment delivered on: 28.10.2024.

Md. Toufiq Inam, J:

Both the Death Reference No.05 of 2018 and the Jail Appeal No. 30 of 2018 have arisen out of the judgment and order of conviction and sentence dated 24.01.2018 passed by the learned Additional Sessions Judge, 4th Court, Cumilla in Sessions Case No. 285 of 2008 convicting the sole accused Md. Sheikh Farid under section 302 of the Penal Code and sentencing him to death along with a fine of Tk. 20,000 (twenty thousand).

The prosecution's brief version of the incident is that accused, Sheikh Farid, worked as a guard alongside his father at Rajarmar Dighi in the village of Kalikapur under Chauddagram Police Station in Comilla District. The informant's two sons, Zakir (10) and Karim (12), were known to associate with the accused. They used to fish in the pond together, cook, and share meals. Approximately a week prior to the incident, Sheikh Farid confined Zakir in his guard room and physically assaulted him, accusing the boy of stealing 100 taka. The informant and his wife intervened and rescued Zakir, and the dispute was resolved locally. However, this event gave rise to a grudge on the part of Sheikh Farid. On 23.02.2008, Sheikh Farid allegedly lured Zakir and Karim away from a milad mahfil (religious gathering) held at the Bijoypur Jame Mosque, situated near the southeast bank of Rajarmar Dighi. He then took the boys to the adjacent graveyard and killed them by strangulation. That night, when the informant could not locate his sons, he began searching for them. Neighbors informed him that his sons were last seen with Sheikh Farid. The following morning, at approximately 7:30 a.m. on 24.02.2008, Sheikh Farid's elder brother discovered the lifeless bodies of Zakir and Karim in a jungle near the graveyard.

Upon hearing the news, the informant rushed to the scene and identified his sons' bodies. Local residents apprehended Sheikh Farid, and during questioning in their presence, the accused confessed to murdering the boys out of previous animosity, strangling them at approximately 9:30 p.m. the previous night. The police subsequently arrived at the scene, and the informant filed this case.

Police arrested the accused Sheikh Farid on 24.02.2008, seized the Alamat's and prepared two inquest reports of the dead bodies and sent those to the morgue for autopsy.

On 25.02.2018 the sole accused made a confessional statement before the magistrate who recorded the same under section 164 Cr.P.C. The said statement runs as under:

“শনিবার রাত অনুমান ১০টায়; তারিখ ২৩.২.২০০৮ খ্রিস্টাব্দ তারিখ আবদুল করিম বয়স ১২ বছর ও তার ছোট ভাই জাকির বয়স ১০; উভয়কে জামার কাপড় গলায় পৈঁচাইয়া মেরে ফেলি। প্রথমে আমি আবদুল করিমকে বিড়ি আনার জন্য দোকানে পাঠাই। তখন রাজারমার দীঘির পাড়ের কবরস্থানে আমি আর জাকির ছিলাম। তখন আমি জাকিরকে করিম আসার আগে মেরে ফেলি। করিম বিড়ি নিয়ে আনলে ম্যাচ জ্বালালে জাকিরের লাশ

দেখে ফেলে। তখন সে পালিয়ে যেতে চাইলে আমি তাকেও (করিম) মেরে ফেলি। দুই ভাইকে মেরে আমি ওয়াজে যাই। ঐ দিন চলছিল। ওয়াজ শেষে বাসায় ঘুমাতে যাই। সকালে উঠে আমাকে ধরে। কারন করিম আর জাকিরকে নিয়ে রাতে কবরস্থানে যাবার সময় অনেকে দেখেছিল। জাকিরকে আমি মারতে চেয়েছিলাম। কিন্তু করিমে দেখে ফেলে। এজন্য করিমকেও মেরে ফেলি।

Sub Inspector- Mostafizur Rahman (PW11) upon investigation found prima-facie case against the accused Sheikh Farid. Later, S.I. Kazi Sukkur submitted Charge Sheet No.74 dated 05.05.2008 against the sole accused under section 302 of the Penal Code.

On perusal of the materials on record and upon hearing the parties the court framed charge under section 302 of the Penal Code on 04.08.2008 against the sole accused Sheikh Farid. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried in accordance with law.

In order to prove the charge leveled against the accused, the prosecution examined as many as 11 witnesses including the Informant, the local witnesses, the concerned Doctor and the

Investigation Officer of the case. All of them except the Doctor were cross-examined by the learned state engaged Defence Counsel.

Upon conclusion of the prosecution evidence, accused Sheikh Farid was examined in accordance with the provision of Section 342 Cr.P.C. and during such examination the accused pleaded not guilty being an innocent person and, however, declined to adduce any evidence in support of his defence.

The defence version of this case, as it transpires from the trend of the cross-examination, is that the accused is totally innocent; he is in no way connected with the alleged double murder and the confessional statement he made before the magistrate is not true and voluntary.

After conclusion of trial, the learned Additional Sessions Judge, 4th Court, Cumilla by the impugned Judgment found the sole accused Sheikh Farid guilty under section 302 of the Penal Code for murdering two full brothers namely-Karim and Zakir and sentenced him to death together with a fine of Tk. 20,000 (twenty thousand).

The trial court referred the matter to this Court under Section 374 Cr.P.C. for confirmation of the death sentence awarded. This reference has been registered as Death Reference No. 05 of 2018. Simultaneously, the convict, Sheikh Farid, preferred Jail Appeal No. 30 of 2018 seeking acquittal of the charge brought against him.

Both the Death Reference and the Jail Appeal have been taken up together for hearing and are being disposed of by this consolidated judgment.

Mr. Mohammad Osman Chowdhury, the learned Deputy Attorney General appearing for the State, at the outset, submits that there were no discrepancies concerning the date, time, place, or manner of the incident. Referring to the testimonies of PWs 1,2,4,5,6,7,8 and 9, who were present at the time the dead bodies were recovered, he highlighted that the bodies were found on the southern bank of the Rajarmar Dighi. He further pointed out that the manner of killing was by manual strangulation. According to him, this version of events, as presented by the prosecution, was corroborated by the confessional statement of the condemned prisoner, Sheikh Farid and the testimonies of PWs 1,2,4,5,6,7,8 and 9, as well as other circumstantial

evidence. Mr. Chowdhury argued that the prosecution had successfully proven the case beyond reasonable doubt.

Conversely, Mr. Md. Hafizur Rahman Khan, the learned state defence counsel, raised concerns about the voluntariness of the confessional statement. He contended that the statement had not been recorded of the prisoner's free will and was therefore not voluntary. He argued that the provisions of Sections 164 and 364 Cr.P.C. had not been properly followed by the recording magistrate. Specifically, he pointed out that the magistrate who recorded the confession was not produced in court as a witness, thereby denying the prisoner's opportunity to cross-examine him. To support his argument, he cited the case of *Babul @ Abdul Mazid Khan and Others v. The State*, reported in 42 DLR (AD)186, which held (in paragraph 8) that even though section 80 of the Evidence Act provides for making certain presumption in respect of a confession by an accused person produced before a Court, taken in accordance with law and purporting to be signed by a magistrate, we are of the view that having regard to the aforesaid facts noticed by the learned Judge it was at least injudicious to rely upon such confession without calling the magistrate as a witness.

By drawing our attention to the confession 'Form No. (M) 84' the defence counsel further submits that the magistrate put a certificate under his own hand on the front page of the confessional statement instead of at the end as required by law. He also submits that the magistrate had failed to affix his signature after paragraph 10 of the confession form. It automatically renders the confession inadmissible or unreliable.

We have meticulously examined the confessional statement of the condemned prisoner from the lower court's record and found that the magistrate made a short memorandum in his own handwriting on the front page of the statement instead of at the end of the statement; the magistrate did not put his signature under paragraph/column No.10 of the form. The memorandum indicates that the magistrate ensured the confession was made voluntarily and without coercion, duress, or undue influence. It is our considered view the absence of the certificate at the designated location and signature under paragraph No. 10 are mere procedural lapses rather than a substantive violation of the law and not fatal for the prosecution or the defence. It does not, in itself, vitiate the confession. This view of ours finds support from the case of *State*

v. Abul Kashem and Others reported in (13 SCOB (2020) HCD 103), which hold that minor procedural lapses, such as the absence of a signature or certificate in a specific place, do not invalidate a confession, provided it is otherwise recorded in substantial compliance with the law. Moreover, the presumption of regularity under Section 80 of the Evidence Act applies to judicial acts performed by a magistrate, including the recording of confessions.

Mr. Chowdhury goes on to refer the case of *Mufti Abdul Hannan Munshi @ Abul Kalam and another - Versus- The State, reported in 69DLR(AD) 490*; wherein it was held that when a deposition or confession is taken by a public servant, there is a degree of sanctity and solemnity which affords a sufficient guarantee for the presumption that everything was formally, correctly and duly done. On the strength of these presumptions, it dispenses with the necessity of formal proof by direct evidence what it would otherwise be necessary to prove. (Paragraph 20). A confession by an accused in accordance with law is admissible without examining the Magistrate who recorded it in view of the fact that the Magistrate was a public servant who recorded the statement in discharge of his official duty provided that it was recorded in accordance with law. (Paragraph 21).

Upon closely analysing Section 533 Cr.P.C., it becomes evident that a magistrate who records a confession or other statement of an accused under Section 164 Cr.P.C. is not required to be examined by the court when such confession or statement is “tendered” or “received in evidence.” The confession or statement is admissible in evidence without requiring the magistrate to testify. However, if the court finds that any provisions of Sections 164 or 364 Cr.P.C. have not been complied with, it may take the evidence of the concerned magistrate.

Before recording the confession, the magistrate followed the mandatory procedure by explaining to the accused-Sheikh Farid that he was not obligated to make the confession and that, if made, it could be used against him as evidence in a court. The accused was given sufficient time for reflection and was not subjected to any external influence or compulsion. Therefore, for any minor procedural lapse or omission this confessional statement will not be rendered inadmissible or unreliable.

Next, let us assess whether the confessional statement was truthful, voluntary, and corroborated by other evidence on record. It is established that two minor full brothers were killed in the dead of night

over a mere suspicion of stealing taka 100. On 25.02.2008, the Investigating Officer sent Sheikh Farid to the magistrate for recording his confessional statement under Section 164 Cr.P.C. In this statement, the accused admitted that he killed Zakir, the first victim, out of a prior grudge over the alleged theft of taka 100. He also admitted that he killed Karim, aged 12, and his younger brother Zakir, aged 10, by strangling them with pieces of cloth twisted around their necks. The next morning, he was apprehended because many people had seen him with Zakir and Karim the previous night, heading towards the graveyard.

The magistrate inquired into the circumstances under which the accused was brought before the court to confirm that no coercion, torture, or undue pressure was exerted. Furthermore, the confession demonstrates that he was fully aware that his confession could result in his conviction. Despite this knowledge, he proceeded to make the statement, which underscores its voluntary and truthful nature.

Moreover, the absence of any subsequent retraction or complaint of coercion, torture, or duress during his examination under Section 342 Cr.P.C. further reinforces the presumption that the confession was

made knowingly, voluntarily, and in full awareness of its legal ramifications.

The evidence of PWs 1, 2, 4, 5, 7, 8 and 9 corroborates this account. Their testimonies reveal that, on the following morning (on 24.02.2008) of the incident, Sheikh Farid confessed to them that he had killed the victims. This extra judicial confession was consistent with the statement he made before the magistrate on 25.02.2008. Notably, this statement was made immediately after the occurrence, enhancing its credibility compared to a statement given after prolonged interrogation.

Both the confessional statement recorded by the magistrate and the statements made to the prosecution witnesses align consistently. This consistency indicates that the confession was made voluntarily, without any external compulsion; rather it reflects his expression of remorse. Consequently, it stands as both truthful and voluntary. By now, it is well settled that confession alone can be the basis of awarding conviction if it corroborates with other evidence.

However, a thorough evaluation of the testimonies of the prosecution witnesses is necessary for the proper

adjudication of the Death Reference and the connected Jail Appeal:

PW1 Md. Seru Mia, the informant and the father of the two deceased boys deposes that on 23.02.2008 at about 8.00 p.m. the accused called upon his two sons from a religious gathering (milad-mahfil) to the adjacent graveyard. The accused Sheikh Farid sent his son Karim to the shop for bringing cigarette; by this time, he killed his other son Zakir by strangulation. Subsequently Karim came back with cigarette and asked him about his brother Zakir. Then he saw the dead body of the Zakir and tried to flee away. However, the accused Sheikh Farid fastened the neck of Karim by his shirt, broke his hands and killed him too by strangulation. On the next morning, the elder brother of the accused Sheikh Farid informed the Imam of the nearby mosque about two dead bodies. Then, the local people rushed there and saw the dead bodies. They said that they saw the deceased boys with the accused last night before the occurrence. They apprehended the accused Sheikh Farid who was found with a blood-stained dress and several bites in various parts of his body. At the time of murder his sons put those bite marks on his body to escape from him. The accused himself admitted his guilt in

presence of all the local people to the effect that he killed the boys by strangulation with a shirt. The accused also killed Zakir as he stole his 100 taka earlier. Out of that grudge he killed his two sons. PW1 also states that police came to the place of occurrence and prepared two inquest reports. He identified the accused Sheikh Farid in the dock. PW1 in his cross-examination states that he did not see the occurrence; he heard it from the local people that accused Farid called his sons from the mahafil. This witness denies the defence suggestion that accused Sheikh Farid did not commit this double murder.

PW2 Mannan states that the informant is his father and both the deceased Zakir and Karim are his younger brothers. He is a rickshaw puller. On 23.02.08 at about 8.00 p.m. a mahafil was going on in the mosque adjacent to the western bank of Rajarmar Dighi. His two brothers Karim and Zakir went to the mahafil. Accused Sheikh Farid was a guard of Rajarmar Dighi. Accused Farid called his brothers from the mahafil and brought them to the graveyard adjacent to the south bank of Rajarmar Dighi. Subsequently, the accused sent his brother Karim to the shop for bringing cigarette and by this time he killed his brother Zakir by strangulation. When Karim came back with cigarette and did not

find Zakir there, the accused Sheikh Farid fastened his neck with the shirt. The accused left the dead bodies in the jungle. His brothers Zakir and Karim were found missing. On the next day, the elder brother of the accused informed the Imam of the mosque about two dead bodies in the jungle. After hearing the news, he went to the spot and saw the dead bodies of his brothers. The local people apprehended the accused Sheikh Farid, though he tried to flee away. On interrogation, the accused Sheikh Farid admitted, in presence of all the people, that he himself killed his two brothers by strangulation upon fastening the necks. The accused confessed that he killed his brothers suspecting that Zakir stole his 100 taka. Few days ago, the accused confined his brother Zakir in the mosque and beat him. The local people subsequently rescued him. The accused committed this occurrence in consequence of this fact of theft.

PW3 Mantaj Mia deposes that on 24.02.08 at about 13.35 hours from the bank of Rajarmar Dighi police recovered a round cap, 3 broken bricks, a note of two taka and a note of one taka. The money was recovered from the pocket of deceased Zakir. He put his signature in the seizure list.

PW4 Abdul Hasem states that the informant is his neighbour. On 23.02.2008 a milad mahfil was going in Bijoypur Jame Mosque situated on the western bank of Rajarmar Dighi and it continued up to 11.00 p.m. On 24.02.2008 at about 7.00 a.m. he heard that two dead bodies were found in the west-south corner of Rajarmar Dighi. He rushed there along with the informant and others and saw the dead bodies of Zakir and Karim. He saw marks in the necks of both dead bodies and found that the tongues of the dead bodies were coming out. On the spot, he heard that the accused Sheikh Farid called the deceased's from the milad mahfil and they were roaming around together on that night. Then they apprehended the accused who disclosed that he killed Karim and Zakir as they stole his 100 taka. The accused also told that he sent Karim to the shop for bringing biri, cigarette and by this time he killed Zakir by strangulation. When Karim came back and saw the fact of murder, he also killed Karim. They informed the matter to the police who prepared a seizure list on 13.35 p.m. In that seizure list he put his signature. He also identifies a yellow cap, three packets of pea, notes of a two and a one taka. PW4 further states that on 25.02.2008 at about 9.00 a.m. police seized an ash coloured half shirt and prepared another seizure list in his presence; on that seizure

list he also put his signature. He further indentifies the ash coloured half shirt.

During cross-examination, PW4 states that he did not see the occurrence; the elder brother of the accused told the fact to them and initially about 30/35 people were gathered there on the place of occurrence. Later, almost all the people of the village rushed there. He denies the defence suggestion that the accused did not commit the murder and Farid is in no way connected of this murder.

PW5 Md. Abdur Rashid states that he was the member of Ward No.1 of Kalikapur Union Parishad at the time of occurrence. The occurrence took place on 23.02.2008 at about 9.00 to 9.30 p.m. He got the news of murder on the next morning, on 24.02.2008 at 7.00-7.30 a.m. He heard that two sons of the informant were found dead in the south-west-corner of Rajarmar Dighi. He went to the place of occurrence and saw the dead bodies of Zakir and Karim. He saw that the tongues were coming out of the dead bodies. Victims were killed by tying the necks. The people were telling that the victims were seen with the accused Sheikh Farid on 23.02.2008 during mahfil. The accused was apprehended and in presence of all the people the accused admitted that he killed the

victims out of grudge of stealing taka 100. He also identifies the accused Sheikh Farid in the dock.

PW6-Gias Uddin deposes that the occurrence took place on 23.02.18 at night. On the date of occurrence at about 8.00-12.00 p.m. a milad mahafil was going on in the mosque of Rajarmar Dighi. He attended the milad mahfil. The mosque is locked behind his residence. He came out from the mosque for having tea and saw Zakir and Karim were moving around with the accused Sheikh Farid.

PW5 further deposes that on the next morning, he heard that two dead bodies were lying in the jungle of the Rajarmar Dighi. Then, he went there and saw the dead bodies of Zakir and Karim. He saw the marks of injuries on the neck of the dead bodies. He also saw that tongues of both dead bodies were coming out of the mouths. The local people apprehended the accused Sheikh Farid. On interrogation, in presence of the local people, the accused Sheikh Farid admitted that he killed these two children. Accused Sheikh Farid admitted the fact of killing. He identifies the accused in the dock. He also states that on 25.02.2008 at about 9.00 p.m. police seized an ash coloured half shirt of the accused by which he killed the deceased boys. In his cross-examination,

he states that he did not see the occurrence. He also gave statement to police. PW6 denies the defence suggestion that the accused is not connected with this occurrence.

PW7-Khandakar Harun-Or-Rashid states that his residence is in the southern bank of Rajarmanr Dighi. He has a stationary shop in the western corner of Rajarmanr Dighi. He heard abouts the occurrence in the morning on 23.02.08 at about 7.00-7.30 a.m. The elder brother of accused Sheikh Farid informed him that two dead bodies were lying in the graveyard of the southern side of Rajarmanr Dighi. He rushed to the place of occurrence and saw two dead bodies. There were marks of injuries in the neck of the dead bodies, who are the sons of Seru Mia. All of them, who were present there, told that these boys were seen with Sehikh Farid last night. Then, Sheikh Farid was apprehended from the school; his body was found blood stained and there were several bite marks in his body and hands. Local people beat the accused Sheikh Farid who confessed that he killed Zakir and Karim as they stole taka 100 from him. PW7 also states that on the previous night of occurrence a mahafil was held in his locality. From that mahafil the accused Farid called the deceased Zakir and Karim. He identifies the accused in the

dock. During cross-examination, PW7 states that he was not present at the time of occurrence; he did not see the occurrence. He also states that he gave statement to the police. He denies the defence suggestion that the accused was not involved with the alleged murder and the accused Farid did not commit the murder of Zakir and Karim.

PW8-Abdur Rahaman in his chief states that his residence is in the western side of the Rajarmar Dighi. He knows the informant and the accused. Accused is not a resident of his locality. He worked as a night guard of Rajarmar Dighi. On 23.02.2008 about 7.00 hours he heard the news that two dead bodies were lying in the graveyard of the southern side of Dighi. The elder brother of accused Farid gave this news. After getting the news, they went to the graveyard and saw two dead bodies were lying there. Several marks of injuries were seen on the dead bodies. He found that the hand of the deceased Karim was broken. He also saw marks of injuries in the neck of both dead bodies. Many people came there and the local people apprehended the accused Sheikh Farid. The wearing shirt of Sheikh Farid was found blood stained and bite marks were seen in his body. The local people beat the accused Sheikh Farid and then the accused disclosed that he killed these

two boys. He also disclosed that he killed these two boys as they stole his 100 taka.

PW8 also states that on previous night of occurrence a mahfil was held in the mosque of Dighirpar and from that mahfil the accused Sheikh Farid called these two boys. Sheikh Farid also disclosed that a boy was sent to the shop for bringing cigarette and Chickpea; Karim came back from the shop and saw the accused is sitting on the dead body of Zakir. Karim tried to flee away, but accused Sheikh Farid caught him, broke his hands and finally killed him. He identifies accused in the dock. In his cross-examination, he states that he did not see the occurrence. The brother of accused told him the fact. Many people came to the place of occurrence on hearing the news of double murder. He denies the defence suggestion that accused Sheikh Farid did not kill these two boys.

PW9-Bachchu Mia deposes that he knows the accused and the informant. The occurrence took place on 23.02.08 at about 8.00-8.30 p.m. At that time he came out of the mosque and saw the accused Sheikh Farid was going to the eastern direction along with the deceased Zakir and Karim. Sheikh Farid is a night-guard of that Dighi. Father of Sheikh Farid is

also a guard of that Dighi. On the next morning, he heard that Zakir and Karim were missing from last night. He saw the dead bodies of Zakir and Karim in the graveyard at the western side of Dighi. Many people came there. The local people apprehended the accused Sheikh Farid and on interrogation, in presence of the local people, the accused Sheikh Farid disclosed that he killed the deceased Zakir and Karim by strangulation. Thereafter police came to the place of occurrence and prepared inquest reports of two dead bodies. He put his signature in the inquest reports. He lastly states that the witness Jashim now resides abroad. In his cross- examination, he states that he did not see the occurrence. He denies the defence suggestion that accused Sheikh Farid did not kill Zakir and Karim.

PW10-Azizur Rahman Siddiq, Junior Consultant, Chuddagram Health Complex, Cumilla states that on 25.02.2008 he was working in Forensic Medicine Department of Cumilla Medical College Hospital. On that date Constable 921 Dhiman Roy Sarker identified a dead body named Zakir Hossain aged about 10 years and he found the following injuries:

1. An old scar measuring 1½" x 1" at left chest with bruise measuring 3" x 1½" at left chest.

2. Bruise present at both side of the anterior aspect of neck measuring 2½"x1½" at right side and 2"x1½" at left side.

He opined that the death was due to asphyxia as a result of manual strangulation which was ante-mortem and homicidal in nature.

PW10 also states that on that date constable 921 Dhiman Roy Sarker identified another dead body named Karim aged about 12 years and he also found the following injuries:

1. Fracture of left elbow Jt Mud in nose, mouth and in trachea.
3. Bruise present at both side of anterior neck measuring 2"x1½" at right side and 2½" x ½" at left side.

He gave opinion that death in my opinion was due to asphyxia as a result of manual strangulation which was ante mortem and homicidal in nature.

PW11-S.I. Mostafizur Rahman, the Investigation Officer of this case deposes that, on 24.02.2008 while he was working as OC in Chuddagram Police Station Cumilla, the informant Seru Mia lodged an ejahar and he filled up the F.I.R form. He identifies the F.I.R. form and his signature thereon, marked as exhibit-8 series. He himself took the case for

investigation. He also states that during investigation, he went to the place of occurrence physically. He prepared Sketch map and index of the place of occurrence in separate sheets. He identifies the sketch map and index and his signatures thereon which are marked as exhibit-9 and 10 series. The informant identifies two dead bodies of his sons. He has prepared an inquest report of deceased Abdul Karim identified by of the informant. He identifies the inquest report and his signature thereon marked as exhibit-3/4. On 24.02.2008 he also prepared another inquest report of deceased Zakir Hossain who was identified by the informant. He identifies both the inquest report and his signature thereon.

PW11 states that on 24.02.08 at about 13.35 hour he prepared a seizure list in respect of a yellow-colored round cap, a packet of pea, a two taka note and one taka note. He identifies the seizure list and signature thereon. He further deposes that on 25.02.2008 at about 9.00 hour he prepared a seizure list in respect of an ash-colored half shirt of accused Sheikh Farid. He identifies the seizure list and his signature thereon.

PW11 also states that on 25.02.2008 at about 17.35 p.m he prepared a seizure list in respect of a part of sweater, a part of vest, part of lungi, a part of red

colour Sweater, a portion of old pant, a portion of lungi which were the wearing cloths of the deceased Karim and Zakir. He identifies that seizure list and his signature thereon. He also states that he arrested the accused who admitted the alleged murder of Zakir and Karim. He further states that the accused was sent before the learned magistrate, 1st class for recording his confessional statement. Subsequently, the learned magistrate recorded the confessional statement of the accused. At that stage, he went to Singapore for training and handed over the C.D. to the concerned authority. Subsequently S.I. Kazi Sukkur has submitted charge No. 74 dated 05.05.2008. The Investigation Officer Sukkur Ali died; he used to work under his command. He identifies the accused Sheikh Farid in the dock. He denies the defence suggestion that he did not visit the place of occurrence or he did not investigate the case properly.

The defence counsel finally contends that all incriminating evidence were not explicitly put to the accused, and thus the examination of accused under section 342 Cr.P.C. stands defective. It is true that the duty of the court to put to the accused, in a clear and comprehensible manner, the material circumstances appearing against the accused in

evidence to enable him to offer an explanation. What is essential is that the accused is given a fair opportunity to explain the substance of the allegations and the evidence against him.

In the present case, it appears that the gist of the allegations, including the fact of the confession and other key incriminating evidence, were brought to the notice of the accused during their examination under Section 342 Cr.P.C. The accused had the opportunity to deny, explain, or comment on the evidence. It is our considered view that the purpose of Section 342 Cr.P.C. is not to provide a detailed analysis of all the evidence but to ensure that the accused understands the material allegations and has a fair chance to respond. The test is whether the accused was misled or prejudiced. In this case, the accused did not raise any objections at the time of examination or during trial, nor is there any indication that the omission, if any, affected the fairness of the proceedings or caused a miscarriage of justice.

Besides, since the accused was present at the time of taking evidence of the prosecution witnesses and heard their testimonies, he got the opportunity to address the core allegations and evidence during his examination under section 342 Cr.P.C. and it did not

prejudice him in any substantive manner. Thus, the examination under section 342 was done properly. In this connection reliance can be put in the case of *Munir Hossain alias Suruj v the State reported in 1BLC (AD) 82*.

Admittedly there is no eye witness of this rootless occurrence. The date, time place and manner of occurrence of this unfortunate incident are almost unchallenged. No discrepancy is found from the testimonies of the prosecution witnesses. Rather, all the witnesses have categorically stated that the occurrence took place on 23.02.2008 from 8.00 p.m. onwards of the night in the jungle of graveyard, adjacent to the southern bank of Rajarmar Dighi. They have further stated that at that time a mahfil was going on in the mosque. The deceased boys namely Zakir (10) and Karim(12), the two sons of the Informant, were missing from that night.

PW1-Md. Seru Mia, the Informant, disclosed the fact that accused, Sheikh Farid, worked as a guard alongside his father at Rajarmar Dighi. His two sons, Zakir (10) and Karim (12), were known to associate with the accused. They used to fish in the pond together, cook, and share meals. Approximately a week prior to the incident, Sheikh Farid confined

Zakir in his guard room and physically assaulted him, accusing the boy of stealing 100 taka. The informant and his wife intervened and rescued Zakir, and the dispute was resolved locally. However, this event gave rise to a grudge on the part of Sheikh Farid. On 23.02.2008, Sheikh Farid allegedly lured Zakir and Karim away from a milad mahfil (religious gathering) held at the Bijoypur Jame Mosque, situated near the southeast bank of Rajarmar Dighi. He then took the boys to the adjacent graveyard and killed them by strangulation. When the informant could not locate his sons, he began searching for them. Out of the previous grudge, on 23.02.2008 the accused Sheikh Farid called his two sons Karim and Zakir from the mahfil held in the mosque. He took the victims to the jungle of the graveyard and killed them by strangulation.

During search, people informed that his two sons were last seen with the accused Sheikh Farid last night. On the next morning i.e. on 24.02.2008 at about 7.30 a.m. the elder brother of Sheikh Farid saw the two dead bodies in the jungle of graveyard. Hearing the news, PW1 rushed to the spot and saw the dead bodies of his two sons. The local people apprehended the accused and, on interrogation, he admitted to them the fact of killing. PW1 while

making his testimony corroborated with his ejahar by line to line.

The deposition of PW 1 has been corroborated by the testimonies of PW 2, 4, 5, 6, 7, 8 and 9. All these local PWs heard the news and rushed to the place of occurrence and saw the dead bodies. They have further deposed that the accused was apprehended by them and in their presence, he confessed his guilt of commission of double murder out of previous grudge. Thus, it appears that the accused also made an extra-judicial confessional statement to the PW1 to PW9. Among them, PW7-Harun-Ur-Rashid and PW8-Abdur Rahman have deposed that they saw blood marks the accused's body and dress. PW6-Gias Uddin has stated that he saw the accused Sheikh Farid with the victims at that night in the mahfil while he went out of the mosque for having tea. PW9-Bacchu Mia also saw the deceased boys on that night with the accused Sheikh Farid moving together to the eastern direction. PW5-Abdur Rashid, the member of the concerned Union Parishad, stated that he heard from the local people that the deceased boys were last seen alive with the accused Sheikh Farid at that night.

In cases where there are no eyewitnesses, the prosecution must rely on circumstantial evidence alongside oral testimony. Circumstantial evidence hinges on two critical factors: the 'motive' and the 'opportunity to commit the crime'.

In the present case, the informant stated in his deposition that approximately a week before the incident, the accused, Sheikh Farid, had apprehended the deceased Zakir, suspecting him of stealing 100 taka. Sheikh Farid confined Zakir in a guard room and subjected him to a severe beating. The informant, with the help of local residents, managed to rescue Zakir, and the dispute was resolved locally. However, Sheikh Farid harboured a grudge and ultimately murdered Zakir to exact revenge. He subsequently killed Zakir's brother, Karim, as Karim had witnessed Zakir's dead body. Thus, the motive behind the crime was Sheikh Farid's desire for retribution.

The next consideration is whether Sheikh Farid had the opportunity to commit the crime. Evidence on record reveals that on the night of the incident, both the accused and the victims were present at a milad mahfil (religious gathering). PW6 (Gias Uddin) and PW9 (Bacchu Mia) testified that they saw the accused

in the company of the victims during the gathering. The boys went missing that night, and their lifeless bodies were discovered on the following morning in a nearby graveyard.

When the local people apprehended Sheikh Farid, witnesses noticed his bloodstained clothing and body. Furthermore, the accused confessed the crime in front of the assembled crowd, including PWs 1,2,4,5,7, 8 and 9. As a night guard of the dighi, Sheikh Farid had complete control over the desolate location, providing him with the opportunity to commit this heinous double murder.

The PWs 1,2,4,5,7, 8 and 9 have deposed that on the next morning i.e. on 24.02.2008 at about 7-7.30 a.m., on hearing the news of double murder, they rushed to the place of occurrence and saw the dead bodies. When the accused was questioned, he made admission in presence of assembled crowd including the PW 1, 2, 4, 5, 7, 8 and 9 that he killed those two boys out of previous grudge of stealing taka 100. While PW6 and 9 have stated that these two boys were 'lastly seen' alive with the accused Sheikh Farid at that fateful night and in the vicinity of crime scene. As both the victims were later found dead, onus lies upon the sole accused to explain what

happened thereafter. As a result, a presumption was created against the accused that he could be involved with the murder. Proximity in time and place between when the victims were last seen with the accused and discovery of the crime is minimal. The accused-Sheikh Farid could not even try to rebut this presumption; rather he confessed his involvement with the double murder.

Juxtaposing both the extra-judicial confession and the circumstantial evidence, let us now examine whether they are convincing and cogent evidence to maintain the conviction and sentence awarded by the trial court. Although the extra-judicial confession is evidence of weak in nature but if this corroborates with circumstantial evidence, as provided under Section 24 of the Evidence Act, it can be considered admissible and can form the basis of conviction.

PWs 1, 2, 4, 5, 7, 8 and 9 unequivocally deposed that on the following morning of the incident when the fact came to light, accused- Sheikh Farid confessed in front of them that he killed both the victims by way of manual strangulation and the I.O. seized the shirt of the accused by which necks of the victims were fastened. This version as to mode of killing has

also been supported by the medical evidence as well as the accused's own confession to the magistrate.

While PW6 and PW9 gave their testimonies stating that they saw the accused with the victims together at that relevant night and on the eve of occurrence took place and this 'last seen' theory establishes link between the accused and the crime. The evidence of prosecution witnesses of this case is found credible and the circumstances under which it was made does not appear to be suspicious. Rather, it directly relates to the crime and provides substantive details that align with other evidence on record. It presented an unbroken chain of circumstances as well. In this regard, reliance can be put to the case of *State-Versus- Moslem reported in 55DLR(HCD) 116*, wherein it was observed that the prosecution case was based on circumstantial evidence and prosecution presented chain of circumstances through evidence and circumstantial evidence stood corroborated by extra-judicial confession and judicial confession. Circumstantial evidence may be and frequently is more cogent than the evidence of eye-witnesses.

On a close assessment, we find that the extra-judicial confession, the judicial confession of the sole accused-Sheikh Farid and testimonies of PWs

supported each other in terms of commission of killing by the accused. In view of the discussion made above, we find that the prosecution has successfully proven the charge against the sole accused, Sheikh Farid, beyond all reasonable doubt. Accordingly, we see no reason to interfere with the conviction of the accused, Sheikh Farid, as awarded by the trial court under Section 302 of the Penal Code.

In criminal sentencing, an 'early confession' by an accused can serve as a mitigating factor, provided it satisfies specific legal and evidentiary conditions. Such a confession must be voluntary, truthful, and corroborated by other evidence to be admissible. When an accused makes an inculpatory confessional statement with the knowledge that this could result in his conviction, it usually reflects acknowledgment of his guilt, willingness to cooperate with the judicial process, and an expression of repentance and remorse. This acknowledgment may justify a lenient view during sentencing, though it must remain within the permissible range of judicial discretion. Nonetheless, the mitigating impact of an 'early confession' depends on the nature and gravity of the offence, the timing of the confession, and the circumstances under which it was made. The earlier

the confession (such as- immediately after arrest or surrender, during the investigation, or before the trial), the more likely it is to be considered a mitigating factor in favour of its maker. In cases involving heinous crimes, such as-murder, rape etc., the mitigating effect of an early confession must be carefully balanced to ensure justice and fairness.

In the present case, the accused, Sheikh Farid, made his confession voluntarily and at the earliest opportunity—just a day after the offence—fulfilling the criteria as outlined above. Consequently, this court deems it appropriate to consider the confession as a mitigating factor within the bounds of justice.

To weigh against the aggravating circumstances, we have taken into account the following mitigating factors of the accused:

- (a) He admitted his guilt at the earliest opportunity;
- (b) He has no prior record of criminal activity;
- (c) As the accused was tender aged, he lacked full maturity and judgment at the time of committing the offence; and
- (d) He has remained in continuous custody since his arrest on 24.02.2008, amounting to a period of sixteen years, including nearly seven years in the condemned cell, during which time he has endured

the mental agony of living under the shadow of a death sentence.

Considering the mitigating circumstances alongside the severity of his acts, we believe that the accused deserves an opportunity for rehabilitation after serving a long period of imprisonment. Accordingly, we are inclined to commute his sentence from death to imprisonment for life.

In the result:

(1) The Death reference No.05 of 2018 of the convict Md. Sheikh Farid son of Abul Hasem, Village-Hesarah, P.O. Banggodda Bazar, Police Station-Nangalkot, District-Cumilla, is rejected;

(2) The Jail Appeal No. 30 of 2018 preferred by the convict, is dismissed with modification of sentence. The sentence of death as imposed upon him under Section 302 of the Penal Code by the learned Additional Sessions Judge, 4th Court, Cumilla in Session Case no. 285 of 2008 is commuted to imprisonment for life together with a fine of taka 10,000 (ten thousand) in default to suffer rigorous imprisonment for 3(three) months more;

(3) The authorities concerned, including the jail authority are hereby directed to transfer the convict Md. Sheikh Farid, son of Abul Hasem from the condemned cell to the general prison at once; and

(4) The convict shall get benefit of the provisions of Section 35A Cr.P.C. The authority shall deduct the custody period from the sentence of imprisonment for life awarded to him.

The Office is directed to send down the records together with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

J.B.M. Hassan, J:

I agree.

(Justice J.B.M. Hassan)

Sayed. B.O.
Ashraf/ABO.