

Present:

Justice Shahidul Karim
and
Justice Md. Mostafizur Rahman

Death Reference No.154 of 2016

with
Criminal Appeal No. 11620 of 2016.
With
Jail Appeal No. 396 of 2016
With
Jail Appeal No. 397 of 2016

The State.

..... Petitioner.

-VERSUS-

Md. Sayed Howlader and another

..... Condemned-Prisoners.

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

Mr. Md. Helal Uddin Mollah, Advocate
..... For the Appellant.

Mr. S.M. Shafiqul Islam, Advocate
..... For the State Defence Lawyer.

Heard on 20-07-2022, 21-07-2022, 31-08-2022, 17-10-2022 and Judgment on 26-10-2022.

Shahidul Karim, J.

The condemned accused namely, Md. Sayed Howlader and Md. Reaj Nagrali alias Reaj were put on trial before the Druto Bichar Tribunal No.4, Dhaka to answer charge under sections

302/34 of the Penal Code. By the impugned judgment and order dated 22-11-2016, the learned Bicharok of the Tribunal below found them guilty under the aforesaid sections of law and sentenced them to death in Special Sessions Case No.182 of 2015, arising out of Jatrabari P.S. Case No.51 dated 25-03-2015, corresponding to G.R. No.175 of 2015, and thereafter, submitted the entire proceedings of the case under section 374 of the Code of Criminal Procedure (briefly, the Code) for confirmation of the sentence of death awarded to the accused vide his office memo No. Druto Bichar Tribunal 4/4369/16 dated 27-11-2016. Against the aforesaid judgment and order, the condemned accused have preferred 2(two) Jail Appeal Nos.396 of 2016 and 397 of 2016 followed by a regular Criminal Appeal being No.11620 of 2016 preferred by accused Md. Reaj Nagrali alias Reaj. It is to be noted that no regular criminal appeal has been filed by accused Md. Sayed Howlader as such a state defence Advocate was appointed to represent him.

Since the death reference and the connected jail as well as criminal appeal sprouted from the same judgment and order of conviction and sentence, they have been heard together and are being disposed of by this consolidated judgment.

The prosecution case originated from an horrendous incident in which 2(two) forlorn victims named Rowshanara Begum (63) and her maid servant's daughter, Kalpona Akhter (12) were brutally done to death by slaughtering at the residential flat of the former.

The prosecution case finds its initiation from the FIR lodged by P.W.1 Md. Mozammel Hossain, the brother of deceased victim Rowshanara Begum. On 25-03-2015 at 11.15 hours, P.W.1 Md. Mozammel Hossain, being informant, lodged an FIR with Jatrabari P.S. alleging, inter alia, that his elder sister Rowshanara Begum (63) used to live on the first floor of her 3(three) storied building at 56, North Jatrabari, Kalapatti vicinity along with her maid servant Lucky Begum including her daughter victim Kalpona Akhter (12) since her son and daughter used to reside in America and Canada. In the evening of 24-03-2015 at 6.00 pm, the informant got information that some unknown persons killed his sister at her own house by slaughtering following which he along with other relatives rushed to the P.O. house and found the dead body of his sister lying on the bed with slit throat. The informant also found the dead body of victim Kalpona Akhter (12) in the adjacent drawing room with cut throat injury and also found the furniture of the P.O. house in a mess. It has further been mentioned in the FIR that victim

Rowshanara Begum used to maintain her with the rent received from the tenants of the P.O. house and sometimes her son and daughter used to send money to her. Subsequently, on information, police appeared at the spot and sent the dead body of both the victims to Salimullah Medical College Mitford Hospital for autopsy. Following the incident, P.W.1, being informant, lodged the FIR which gave rise to Jatrabari P.S. Case No.51 dated 25-03-2015.

After lodgment of the case, police of the relevant Police Station took up investigation of the same during which condemned accused Md. Sayed Howlader and Md. Reaj Nagrali alias Reaj were arrested and some of the looted articles including cash money were also recovered at the instance of the former. Thereafter, on quizzing, both the accused admitted their guilt and expressed their willingness to make confession, whereupon the Investigating Officer took necessary measures for recording their confessions by a competent Magistrate. However, having found prima facie incriminating materials, the Investigating Officer submitted police report recommending for trial of the accused under sections 302/34 of the Penal Code.

At the commencement of trial, charge was framed against the aforesaid 2(two) accused under sections 302/34 of the Penal Code and the charge so framed was read over and explained to them who pleaded not guilty and claimed to be tried as per law.

In support of the charge, the prosecution had adduced 11(eleven) witnesses out of 29 witnesses cited in the charge sheet, who were aptly cross-examined by the defence.

After closure of the prosecution witnesses, the accused were called upon to enter into their defence under section 342 of the code while they repeated their innocence and also declined to adduce any evidence in their defence.

The defence case, that could be gathered from the trend of the cross-examination of the prosecution witnesses, is of complete innocence and false implication. The further case of the defence is that the confessions of the accused are not voluntary in nature, rather those were extracted by torture and intimidation.

Eventually, the learned Bicharok of the Tribunal below, upon taking hearing 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 the charge to the door of the

accused to the core and accordingly, convicted and sentenced them by the impugned judgment and order in the manner as noted at the incept.

Feeling aggrieved thereby, the condemned-accused have preferred the instant Jail as well as Criminal Appeal. As we have already observed, the learned Bicharok of the Tribunal below has also submitted the entire proceedings of the case for confirmation of the death sentence imposed upon the condemned-accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General appearing with Mr. Md. Tariqul Islam Hira, the learned Assistant Attorney General at the outset has taken us through the FIR, charge sheet, charge, inquest as well as post-mortem reports of the deceased victims, confessions of both the accused, impugned judgment and order including other connected materials available in the paper book and then submits with vehemence that the prosecution has successfully been able to prove the charge mounted against the accused by adducing some impeccable, cogent and trustworthy evidence. He further submits that P.W.2 Parveen Akhter found both accused Sayed and his friend Reaj Nagrali alias Reaj in the P.O. flat just before the occurrence and thereafter, the dead bodies of deceased victim Rowshanara and Kalpona were

detected by her in the P.O. flat. This evidence of P.W.2 was seconded by P.W.4 Md. Mostafa and P.W.10 Md. Nayem Hossain who came to the P.O. house just after the occurrence and heard that accused Md. Sayed Howlader and Md. Reaj Nagrali alias Reaj came to the P.O. flat at noon and killed the victims, Mr. Ahmed further added. Moreover, the looted mobile phone and laptop were recovered as per disclosure made by accused Sayed and Tk. 14,400/- was also recovered from his possession, Mr. Ahmed also yoked. Furthermore, both the accused confessed to their guilt by making judicial confessions which, on scrutiny, were found to be true, voluntary and inculpatory in nature. Mr. Ahmed finally submits that the learned Bicharok of the Tribunal below rightly and correctly found the culpability of accused Md. Sayed Howlader and Md. Reaj Nagrali alias Reaj in the killing incident of the 2(two) unfortunate victims and accordingly convicted and sentenced them by the impugned judgment and order, which being well founded both in law and facts, does not warrant any interference by this court.

In order to bolster up his submission, Mr. Ahmed has referred to the decisions reported in 69 DLR (AD) 490, AIR 1936 page 253(2), 21 BLC (AD) 155, 40 DLR(AD) 139.

Having refuted the aforesaid submission, Mr. Md. Helal Uddin Mollah, the learned Advocate appearing for condemned-accused Md. Reaj Nagrali alias Reaj in Criminal Appeal No.11620 of 2016 submitted that the prosecution has failed to prove the charge brought against the accused beyond reasonable doubt by adducing some indubitable and impregnable evidence. He has tried to impeach the veracity of the impugned judgment and order on the following scores:

- (1) that there is no eye witness of the occurrence leading to the incident of killing of the 2(two) victims;
- (2) that no witness gave evidence connecting the accused with the incident of murder in any manner;
- (3) that the alleged mobile phone of co-accused Syed Howlader was not seized and the call list of the same was also not called for as well as produced before the court;
- (4) that the confession recording Magistrate of accused Reaj Nagrali named Md. Hasibul Hoque has not been examined in the case as such the said confession bears no value in the eye of law; and

(5) that P.W.6 did not record the confession of accused Sayed Howlader in compliance with the provisions of sections 164 and 364 of the Code.

In a last ditch attempt, Mr. Helal submits that the sentence of death imposed upon accused Reaj Nagrali may be commuted to life imprisonment in consideration of his young age and long custody in death cell.

On the other hand, having adopted the submission made by Mr. Helal Uddin Mollah, Mr. Shafiqul Islam, the learned State Defence Advocate representing condemned-accused Md. Sayed Howlader has assailed the veracity of the impugned judgment and order critically submitting that the name of the relevant accused did not find place in the FIR and further that as per police report, the PCPR of the accused is also found nil as well. He next contends that there is no eye witnesses of the occurrence and further that the FIR was lodged after $17\frac{1}{2}$ hours of the incident which has made the prosecution case shaky and doubtful. Moreover, the confession of the accused is not voluntary as it was extracted by police on intimidation and that the alleged recovered knife was not chemical examined and no finger print expert opinion was obtained in order

to show that it contained the finger print of the accused, Mr. Islam further added. He also submits that the Police Officer who held inquest of the dead body was not examined in the case which creates dent in the prosecution story.

In support of his submission, Mr. Shafiqul Islam has referred to the decision reported in 17 BLC (AD) 204.

Heard both the parties at length, perused the impugned judgment and order including other connected materials available on record and also considered the facts and circumstances of the case exhaustively.

With a view to arriving at a correct decision in the Death Reference and the connected Criminal as well as Jail appeals, we are now called upon to scrutinize and weigh the relevant evidences available on record together with the surrounding facts and circumstances of the case.

P.W.1 Md. Mozammel Hossain is the informant as well as the full brother of deceased victim Rowshanara. In his testimony this witness gives out that in the evening of 24-03-2015 at around 6.00 pm, he came to learn that some miscreants had killed his sister Rowshanara (victim). Upon receiving such news, he went to the

P.O. flat and found the blood smeared dead body of his sister with slit throat. Thereafter, he went to the next room of the P.O. flat and found the throat cut dead body of maid servant Kalpona and also found the furniture of the P.O. flat in a mess. The son and daughters of his (P.W.1) sister used to live abroad and his sister used to stay at her flat along with maid servant. Thereafter, police took away the 2(two) dead bodies of the victims and after completion of autopsy returned back those. Police seized a bloodstained bed sheet and a sofa cover vide seizure list Exhibit No.2 to which he (P.W.1) put his signature. Later, he filed the case. Subsequently, the accused were nabbed. He heard that accused Sayed Howlader and Reaj Nagrali killed both the victims. This witness proves his signature appearing on the FIR as (Exhibit No.1) and also identified both the accused in the dock.

In reply to cross-examination P.W.1 states that the house of his sister is 3/4 km off from that of his own. He got the death news of the victim over phone made by his son after 6.00 pm. Having gone to the P.O. house he found the same surrounded by police and after disclosing his identity, police took him to the P.O. flat located on the 1st floor. After going to the spot he found the cut throat dead body of his sister and in the next room thereof he also saw the dead

body of the maid servant. One Parveen (P.W.2) used to stay as tenant on the ground floor. He came to learn from the confession of the accused that they had killed the victims. He did not witness the incident, rather he heard about the same. P.W.1 denied the defence suggestion that the accused are not concerned in the killing incident.

In her evidence P.W.2 Parveen Akhter avers that she used to stay as a tenant on the ground floor of the P.O. building of which victim Rowshanara was the owner. On 24-03-2015, she went to the P.O. flat and found accused Sayed along with his friend present there. Accused Sayed visited the P.O. flat frequently. At 2.30 pm she came back to their (P.W.2) flat on the ground floor. In the afternoon at 5.30 pm, she again went to the flat of the owner on the 1st floor with betel-leaf and found the doors thereof a little bit open. She called out the name of the owner saying 'নানু নানু' and also called the name of maid servant Kalpona, but did not get any response. After entering the room of the owner, she found the clothings kept in the Almirah in a mess and also found the dead body of the victim owner on the cot which was kept upside down and it was covered with various clothes. Being frightened, she came out of the P.O. flat and started crying. After coming to the ground floor, she informed

the matter to others, whereupon police along with others came to the spot and went to the P.O. flat and found the dead bodies of the owner of the flat including that of maid servant Kalpona. Subsequently, the brother of the victim, Mozammel Hossain filed the case. She came to learn that accused Sayed and Reaj killed the victims. This witness identified both the accused in the dock.

In reply to cross-examination P.W.2 says that they had been residing in the P.O. house as tenant for about 30(thirty) years. She is a student of BBA second year. The occurrence came into existence on Tuesday when she had no class. On the date of occurrence at around 2/2.30 pm, she went to the flat of her 'নানু' located on the 1st floor. The son and daughters of her 'নানু' did not stay in the country. At 5.30 pm of the date of occurrence, she went to the P.O. flat with betel-nuts and having entered the drawing room she first found the dead body of victim Kalpona and also found blood on the sofa. Thereafter, she went to the room of her 'নানু' and found her body covered with clothes. Having seen that she got frightened and came out of the P.O. flat without removing the cloths. She then raised alarm following which her mother Nurjahan and another tenant Mostofa (P.W.4) came to the P.O. spot. The neighbouring people brought the matter to the notice of the police,

whereupon police appeared at the spot. Except the door, there was no other way to enter the P.O. flat.

This witness further states that she did not witness the incident. Rather, she came to learn that the accused killed the victims. She also found accused Reaj at the spot. P.W.2 denied the defence suggestion that the accused are not connected with the killing incident.

P.W.3 Dr. Amitunnessa is the concerned doctor who, on 25-03-2015, held autopsy of the cadavers of deceased victim Kalpona Akhter (12) and Rowshanara(65), at the identification of constable Tajjul Islam and submitted post-mortem examination reports. According to her, the cause of death of both the victims was due to heamorrhage and shock resulting from cut throat injuries which were ante-mortem and homicidal in nature. P.W.3 proves the post-mortem reports as Exhibit Nos.3 & 4 including her signature appearing thereon as Exhibit Nos.3/1 & 4/1 respectively.

In reply to cross-examination P.W. No. 3 says that at 1.15 pm the 2(two) dead bodies were brought to the hospital and she started the task of post-mortem examination at 1.30 pm. She found both the victims with slit throat which was done by sharp cutting

weapon. She did not send any part of the dead body of the victims for examinations as she did not find it necessary. P.W.3 denied the defence suggestion that without holding post-mortem examination properly she submitted the reports.

P.W.4 Md. Mostofa is a tenant on the ground floor of the P.O. house. In his deposition this witness asserts that in the evening of 24-03-2014 at around 6.00 pm, having heard sound of crying of Parveen (P.W.2), he (P.W.4) went to the 1st floor and found the slit throat dead body of victim Rowshanara in her bedroom. Thereafter, he went to the drawing room of the P.O. flat and also saw the cut throat dead body of victim Kalpona lying on the sofa. He came to learn from Parveen (P.W.4) and Lucky Begum, mother of (accused Sayed) that at noon of the occurrence day accused Sayed along with his friend Reaj visited the P.O. flat and committed the murder. Subsequently, the informant lodged the case. A knife measuring 12"/14" was recovered from a room of the P.O. flat which was seized by the police vide seizure list (Exhibit No.5) to which he put his (P.W.4) signature (Exhibit No.5/1). This witness identified both the accused in the dock.

In reply to cross-examination P.W.4 states that he has been residing at the P.O. house for about 7/8 years. At the time of outcry,

he was present at his rented flat. He did not see the incident, rather he heard about the same. The accused frequently visited the P.O. flat. At 7.00 pm of the occurrence night the knife was found in clean position. This witness denied the defence suggestion that he deposed falsely in favour of the informant.

P.W.5 Md. Rajon is a mobile phone businessman at stadium market. In his deposition this witness claims that in the afternoon of 24-03-2015, he was at his business establishment at stadium market while a person came to him and sold out a mobile phone at a price of Tk. 400/-. There was no SIM card in the mobile phone. In the afternoon of the following day, the said person was brought before him while he (P.W.5) identified him whose name is Sayed (accused). Later, he came to learn that at the time of committing double murder the relevant accused took away a mobile phone and sold the same to him. After the incident, he made statement (Exhibit No.6) to the Magistrate. This witness proves his signature appearing of the said statement as Exhibit No.6/1.

In reply to cross-examination P.W.5 divulges that he has a shop at stadium, Gulistan. The accused demanded Tk.700/- for the mobile, but after bargaining the price was settled at Tk.400/-. The accused sold a Nokia mobile phone, but he could not recollect the

model number thereof. In the afternoon of the following day at around 5.00 pm, police came to him along with the accused. He heard the name of accused from the police. This witness denied the defence suggestions that he did not purchase any mobile phone from accused Sayed or that he deposed falsely.

P.W.6 Md. Emdadul Hoque is the relevant Magistrate who jotted down the confession of accused Sayed Howlader. In his testimony this witness unfurls that on 26-03-2015, the Investigating Officer produced accused Sayed Howlader before him with a prayer for recording his confession, whereupon having complied with all legal formalities, he recorded the confessional statement of the accused. Thereafter, he read it over to the concerned accused who put his thump impression thereto admitting the contents thereof to be true.

In reply to cross-examination P.W.6 says that he did not inform the accused that he would not again be sent to police custody if he does not make any confession. P.W.6 denied the defence suggestion that the confession of the accused was not voluntary and true, rather it was extracted by police on intimidation.

P.W.7 Md. Waez Kuruni Khan Chowdhury is another Magistrate who recorded the 164 statement of witness Lucky Akhter. In his evidence this witness says that on 27-03-2015, the Investigating Officer produced witness Lucky Akhter before him, whereupon he got her statement recorded under section 164 of the Code. P.W.7 further states that witness Lucky Akhter gave statement voluntarily.

In reply to cross-examination P.W.7 states that he could not recollect the name of the Investigating Officer who produced witness Lucky Akhter before him. The witness was produced before him at 1.45 pm and he got his statement recorded at 5.00 pm. P.W.7 denied the defence suggestion that he did not record the statement after complying with all necessary formalities.

In his evidence P.W.8 Md. Idris Ali discloses that he heard that police recovered cash money amounting Tk.14,400/- from accused Sayed at around 5.10 pm. Police obtained his signature to the seizure list. This witness proves the seizure list including his signature appearing thereon as Exhibit Nos.10 & 10/1 respectively. P.W.8 also identified accused Sayed in the dock.

In reply to cross-examination P.W.8 says that he did not witness the incident of recovery of money, rather he heard about the same.

In his testimony P.W.9 Md. Nizam Khan divulges that in the afternoon of 25-03-2015 at around 5.10 pm, police recovered cash money amounting Tk.14,400/- from accused Sayed. This witness proves his signature appearing on the seizure list as Exhibit No.10/2 and also identified accused Sayed in the dock.

In reply to cross-examination P.W.9 states that police informed him that they recovered cash money amounting 14,400/-, but he (P.W.9) did not witness the same.

In his deposition P.W.10 Md. Naim Hossain gives out that on 24-03-2015 at around 6.00 pm, Parveen (P.W.2), a ground floor tenant of the P.O. building made a phone call to him, whereupon within 15 to 20 minutes he (P.W.10) went to the P.O. flat and found the door thereof open. Upon entering the P.O. flat, he saw the cut throat dead body of Rowshanara and also found the slit throat dead body of Kalpona in the drawing room. After a while, police appeared at the spot. He heard that the maid servant of the P.O. flat went to see doctor leaving Rowshanara, her (maid servant)

daughter Kalpona and son Sayed (accused) including his friend Reaj (accused) in the P.O. flat. Police held inquest of the dead body and obtained his signature thereto. This witness proves the inquest reports including his signatures appearing thereon as Exhibit Nos.11 & 11/1 and also identified both the accused in the dock.

In reply to cross-examination P.W.10 states that he is a student of Dhaka University and it takes 15 minutes to go to the University from his house on foot. At around 6.00 pm, he came to learn about the incident. He heard that accused Sayed was arrested on the night of the occurrence and his friend was nabbed 3(three) days later. He heard that the maid servant of the P.O. flat went to visit doctor.

P.W.11 S.I. Md. Iqbal Hossain Khan is the Investigating Officer of the case. In his deposition this witness claims that having entrusted with the task of investigation on 25-03-2015, he visited the place of occurrence and prepared sketch map along with separate index and also seized an old bed sheet and a sofa cover vide seizure list. He also recovered Tk.14,400/- from accused Sayed and seized the same vide seizure list. He recovered the mobile phone of victim Rowshanara from a footpath shopkeeper named Rajon (P.W.5) and seized the same vide seizure list Exhibit

No.15. Accused Sayed sold out the above mobile of the victim. He also seized the crime weapon by which the victims were slaughtered vide seizure list. He also seized the blood stained wearing apparels of both the victims vide seizure list Exhibit No.16 and further that he recovered the laptop sold out by accused Sayed and seized the same by dint of a seizure list Exhibit No.17.

P.W.11 further states that during investigation, he arrested both the accused who, on quizzing, admitted their guilt, whereupon he made necessary arrangements for recording their confessional statements by a competent Magistrate. He also took necessary steps to get the statements of witnesses Rajon, Lucky Akhter and Mostofa Bepari recorded by a competent Magistrate. However, having found prima-facie incriminating materials, he submitted police report against the accused recommending their trial under sections 302/34/380/411 of the Penal Code.

In reply to cross-examination P.W.11 discloses that he arrested accused Sayed on 25-03-2015 at around 17.00 hours, while accused Reaj was nabbed on 05-04-2015. Accused Sayed is the full brother of victim Kalpona. He did not find any blood in the knife as it was washed off. Moreover, he did not examine the seized knife by an expert. P.W.11 denied the defence suggestions that the

confessions of the accused were not voluntary and true, rather those were obtained by applying force or he did not recover any money, mobile and knife or that the alleged murder was not committed by the recovered knife or that he filed charge sheet whimsically without holding proper investigation in the case.

These are all about the evidences that had been adduced by the prosecution in order to prove the charge brought against the accused.

It is indisputable that deceased victim Rowshanara Begum used to live on the first floor of her 3(three) storied building at 56, Jatrabari Kalapatti along with her maid servant Lucky Begum including her daughter victim Kalpona Akhter (12). There is no dispute about the fact that on 24-03-2015 the dead bodies of victim Rowshanara Begum and Kalpona Akhter were found in the P.O flat with slit throat and both the cadavers were besmeared with blood. In this context, it would be profitable to have a look at the inquest reports of both the deceased victims in order to see for ourselves as to what injury or injuries were found on the person of the deceased victims at the initial stage of the case and what the apparent cause of death.

The inquest report of the cadaver of deceased victim Rowshanara Begum has been marked as Exhibit No.11. The relevant portion of the said inquest report runs as follows:

“আমি এস. আই. পরিমল চন্দ্র দাস সঙ্গীয় কং/১৫৩০৭ তাজুল ইসলাম উভয়ে যাত্রাবাড়ী থানা, ডিএমপি, ঢাকা অদ্য ইং ২৪.০৩.১৫ তারিখ রাত্রী ১৯.১৫ ঘটিকা পার্শ্ব লিখিত স্বাক্ষীদের সনাক্ত ও মোকাবেলায় ভিকটিমের বাসার ২য় তলার বেডরুমে খাটের বিছানার উপর মৃতের লাশ চিং অবস্থায় পাইয়া পর্যাপ্ত বিদ্যুৎ এর আলোতে লাশের সুরতহাল প্রতিবেদন প্রস্তুত করিতে শুরু করিলাম। মৃতের নাম রওশন আরা বেগম। বয়স অনুমান ৬৫ বছর হইবে। মৃত দেহটি লম্বা অনুমান ৫ ফুট ১ ইঞ্চি হইবে। মাথার চুল কালো ও পাকা লম্বা অনুমান ১ ফুট। দুই চোখ অর্ধ মুদিত। মুখ সামান্য খোলা দাত দেখা যায়। মুখ মন্ডল গোলাকৃতি। মুখে নাকে ও কানে রক্তলাগানো। গলার সামনে গভীর ক্ষত ও লম্বা অনুমান ০৭ ইঞ্চি রক্তাক্ত গুরুতর জখম। মৃতের দুই হাত শরীরের দুই পাশে। বাম হাত উপরের দিকে বাকানো এবং ডান হাত শরীরের ডান পাশে। ডান হাতে আঙ্গুল বাঁকানো। মৃতের দুই পা সোজাসুজি। পায়ের পাতা উপরের দিকে। মৃতের গায়ের রং ফর্সা। পরনে প্রিন্টের কামিজ যাহাতে রক্ত মাখা এবং লাল রংয়ের সেলোয়ার মৃতের আত্মীয় শামীমা নাসির এর দ্বারা উলট পালট করিয়া শরীরের অন্য কোথাও দৃশ্যমান কোন আঘাতের চিহ্ন পাওয়া যায় নাই। মৃতের মলদ্বার ও যোনি পথ স্বাভাবিক।”

Thus, it appears that blood was found in the nostril and ear of deceased victim Rowshanara Begum and her neck was found deeply cut.

Regarding cause of death, it has been stated in Exhibit No. 11 that,

“প্রাথমিক তদন্তে জানা যায় যে, অদ্য ইং ২৪/০৩/১৫ তারিখ সন্ধ্যা অনুমান ০৬.০০ ঘটিকার পূর্বে যে কোন সময় কে বা কাহারো ভিকটিমের গলা কেটে রক্তাক্ত জখম করতঃ হত্যা করিয়াছে। তথাপি মৃতের মৃত্যুর সঠিক কারন নির্ণয় ও কি দ্বারা ভিকটিম কে হত্যা করা হইয়াছে এবং তাহা বিসদভাবে জানার প্রয়োজনীয় কাগজ পত্রাদীসহ বিভাগীয় প্রধান ফরেনসিক মেডিসিন বিভাগ, স্যার সলিমুল্লাহ মেডিকেল কলেজ মিটফোর্ড হাসপাতাল মর্গে ভ্যান যোগে প্রেরন করা হইল।”

From the aforesaid narration, it is apparent that on preliminary investigation, it was found that the above named deceased victim was killed by slaughtering.

The inquest report of the corpse of deceased victim Kalpona has been marked as Exhibit No. 12 wherein it has been stated as follows:

“আমি এস. আই. পরিমল চন্দ্র দাস সঙ্গীয় কং/১৫৩০৭ তাজুল ইসলাম উভয়ে যাত্রাবাড়ী থানা, ডিএমপি, ঢাকা অদ্য ইং ২৪/০৩/১৫

তারিখ রাত্রী ১৯.২৫ ঘটিকার সময় স্বাক্ষী শামীমা নাসিরের সনাক্ত মতে মৃত কল্পনা আক্তার এর মৃতদেহটি ২য় তলার উত্তর পাশের ড্রয়িং রুমে কার্পেট উপর পূর্ব সিহরী চিৎ অবস্থায় পাইয়া পর্যাপ্ত বিদ্যুৎ এর আলোতে লাশের সুরতহাল প্রস্তুত করিতে আরম্ভ করিলাম।

মৃতের নাম কল্পনা আক্তার। বয়স অনুমান ১২ বছর হইবে। গায়ের রং শ্যামলা মুখ মডল গোলাকার। পরনে ০১টি পুরাতন হলুদ রং এর ফ্রগ ও গোলাপী রংয়ের পুরাতন সেলোয়ার। মৃতার মাথার চুল লম্বা অনুমান ১০ ইঞ্চি কালো। চোখ সামান্য খোলা, নাক ও কান স্বাভাবিক। মুখ সামান্য খোলা দাঁত দেখা যায়। মৃতার গলায় বামপাশ হইতে ডানপাশ পর্যন্ত অনুমান ০৭ ইঞ্চি কাটা রক্তাক্ত জখম। দুই হাত শরীরের লম্বালান্বি অবস্থায় এবং আঙ্গুল অর্ধমুষ্টি নখ স্বাভাবিক। দুই পা লম্বালান্বি অবস্থায় যায়। দুই পায়ের পাতা নিচের দিকে বাঁকানো। মৃত দেহ শামীমা নাসির দ্বারা তাহার মালদ্বার ও যোনীপথ পরীক্ষা করিয়া স্বাভাবিক পাওয়া যায়। স্বাক্ষীর দ্বারা মৃত দেহটি উলট পালট করিয়া শরীরের অন্য কোথাও দৃশমান আঘাতের চিহ্ন পাওয়া যায় নাই।”

From the aforesaid discussion, it is patent that the dead body of deceased victim Kalpona was found in the drawing room of the P.O. flat with slit throat.

Regarding cause of death, it has been stated in Exhibit No. 12 that,

“প্রাথমিক তদন্তে জানা যায় যে, ইং ২৪/৩/১৫ তারিখ সন্ধ্যা অনুমান ০৬.০০ ঘটিকার পূর্বে যে কোন সময় কে বা কাহারো ভিকটিমের গলাকেটে রক্তাক্ত জখম করতঃ হত্যা করিয়াছে। তথাপি মৃত্যুর মৃত্যুর সঠিক কারণ নির্ণয় ও ভিকটিম কে কি দ্বারা হত্যা করা হইয়াছে এবং তাহা বিসদভাবে জানার প্রয়োজন বিধায় ভিকটিমের লাশ কং/১৫৩০৭ তাজুল ইসলাম এর মাধ্যমে প্রয়োজনীয় কাগজ পত্রাদিসহ বিভাগীয় প্রধান ফরেনসিক মেডিসিন বিভাগ স্যার সলিমুল্লাহ মেডিকেল কলেজ মিডফোর্ড হাসপাতাল মর্গে ভ্যান যোগে প্রেরণ করা হইল।”

From the aforesaid text, it appears that, on preliminary investigation, it was found that deceased victim Kalpona was also killed by slaughtering.

It is on record that P.W.3 Dr. Amitun Nessa, on 25-03-2015, carried out post-mortem examinations of both the deceased victims Kalpona Akhter (12) and Rowshanara (65), at the identification of constable Tajul Islam. According to her, the cause of death of both the deceased victims was due to heamorrhage and shock resulting from cut throat injury which was ante-mortem and homicidal in nature. P.W.3 proves the relevant post-mortem reports as Exhibit Nos.3 and 4 including her signatures appearing thereon as Exhibit Nos.3/1 and 4/1. This witness was cross-examined by the defence but nothing as such has come out from her mouth which could

belittle her testimony so far the cause of death of the 2(two) victims is concerned which also comes in agreement with the inquest-reports in material particulars. In such a backdrop; we are left with no other option but to hold that deceased victim Rowshanara Begum and her maid servant's daughter victim Kalpona Akhter were brutally done to death by slaughtering. Needless to mention that the defence did not also try to dispute the cause of death of both the victims.

From the aforesaid discussions, it manifestly appears that the prosecution has successfully been able to prove that deceased victims Rowshanara Begum and Kalpona Akhter were killed in a barbaric manner by slaughtering.

Now, the primal question that calls for our determination is, who is or are the actual perpetrator or perpetrators of the gruesome murder of victim Rowshanara Begum and Kalpona Akhter.

Admittedly, there is no eye witness of the occurrence leading to the incident of murder of deceased victim Rowshanara Begum and Kalpona Akhter. The mainstay of embroiling both the accused in the killing incident of the 2(two) victims are their confessional statements.

Materials on record reveal that after apprehension accused Md. Sayed Howlader and Reaj Nagrali alias Reaj admitted their guilt by making judicial confessions.

P.W.11 S.I. Md. Iqbal Hossain Khan is the Investigating Officer of the case from whose evidence it appears that after apprehension of both the accused as they expressed their willingness to admit their guilt in the killing incident of the victims, he made necessary arrangements for recording their confessions by competent Magistrates.

It is by now a well settled principle of law that an accused can be found guilty and convicted solely banking on his confessional statement if the same, on scrutiny, is found to be true, voluntary and inculpatory in nature.

In this context, we may profitably refer the case of Md. Islam Uddin @ Din Islam Vs. The State reported in 27 BLD (AD) 37 wherein our Appellate Division has observed as under:

“7. It is now the settled principle of Law that judicial confession if it is found to be true and voluntary can 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 circumstances of the case found the condemned prisoner guilty and accordingly imposed the sentence of death upon him.”

In the case of Aziz vs. State reported in 73 DLR (AD) (2021) 365 it has been 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 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 is true and was voluntarily made.”

Let us now find out whether the confessions of accused Md. Sayed Howlader and Md. Reaj Nagrali alias Reaj have satisfied all the aforesaid criteria or not and for that matter, it would be profitable to have a peep at the same with a searching eye.

The confession of accused Md. Sayed Howlader has been marked as Exhibit No. 7 which reads as underneath.

“আমি শাহজাহানপুর নাজিম মিস্ত্রির গ্যারেজে কাজ করি। আমি যাত্রাবাড়ী আমার ওস্তাদ কালিমের বিয়ের দাওয়াত দিতে আসছিলাম। সাথে আমার বন্ধু রিয়াজ ছিলো। আমি যাত্রাবাড়ী এসে বন্ধু রিয়াজের মোবাইল দিয়ে আমার আন্সুকে ফোন দেই। যিনি মারা গেছে তার বাড়িতেই আমার আন্সু কাজ করে। যে বাসায় আমার মা কাজ করে ঐ বাসার মহিলাকে আমি নানু বলে ডাকি। এই নানুর স্বামী অনেক আগেই মারা গেছে। সন্তানরা আমেরিকায় থাকে বলে আমি জানি। ঘটনার দিন নানুর কাছে (যে মারা গেছে) দশ হাজার টাকা চেয়েছিলাম কাচামালের ব্যবসা করার জন্য। আমি আগেও তার নিকট টাকা চেয়েছিলাম। নানু আমাকে বকাবকি করতেছিলো। ড্রয়িং রুমে আমার বন্ধু রিয়াজ এসেছিলো। নানুকে ধাককা দিয়ে খাটের উপর ফেলে দিলাম। বন্ধু রিয়াজ নানুর হাত পা ধরে রাখে। আমি তাকে ছুরি দিয়ে জবাই করে ফেলি। আমার বোন কল্পনা ঐ বাসায় থাকত। সে ঘটনা দেখে ফেলে আমি তখন তাকে ঘটনা কাউকে বলতে নিষেধ করি। সে চিৎকার দিলে রিয়াজ বলে তাকেও মেরে ফেল। আমার বন্ধু রিয়াজ কল্পনার হাত পা ধরলে আমি তাকেও গলায় পোচ দিয়ে মেরে ফেলি। আলমারী খুলে টাকা নেই তবে কত টাকা নেই গুনি নাই। নানুর মোবাইল নেই পাশের রুম থেকে ল্যাপটপ নেই। এগুলো গুলিস্তান নিয়ে বিক্রি করে ফেলি। মোবাইল চারশত টাকা এবং ল্যাপটপ তিন হাজার টাকা।”

(Emphasis added)

Materials on record further go to show that Magistrate Hasibul Haque penned down the confessional statement of accused Reaj Nagrali alias Reaj. Though, Magistrate Md. Hasibul Haque has not been examined in the case by the prosecution, yet by virtue of section 80 of the Evidence Act we are authorized to take judicial notice of the confession made by accused Reaj Nagrali which is reproduced below.

“আমার নাম মোঃ রিয়াজ। আমি সাঈদের সাথে একই গ্যারেজে কাজ করতাম। সাঈদের মা অত্র মামলার ঘটনায় মারা যাওয়া রওশনারা বেগমের বাসায় কাজ করতো। সাঈদের মায়ের সাথে সাঈদের ছোট বোন কল্পনা ঐ বাসায় থাকতো। ঘটনার দিন গত ২৪/৩/১৫ তারিখ সাঈদ আমাকে ফোন দিয়ে তার সাথে যাত্রাবাড়ী যেতে বলে। আমি সাঈদের সাথে যাত্রাবাড়ী যাই। সাঈদ তার মাকে ফোন দিলে তার মা তাকে বাসায় যেতে বলে। আমরা সাঈদের মায়ের মালিকের বাসায় গেলে সাঈদের মা ডিম ভেজে খেতে দেয়। আমরা ড্রইং রুমে বসে খাবার খেতে খেতে সাঈদের মা ডাক্তার দেখাতে চলে যায়। খাওয়া শেষ হলে আমি দেখি সাঈদ নেই। আমি গিয়ে দেখি বাড়িওয়ালার মহিলা যে রুমে ঘুমাচ্ছিলো সেই রুমে সাঈদ আলমারি খুলছে। সাঈদের বোন কল্পনা পাশের ঘরে ছিল। আলমারি খোলার শব্দে বাড়িওয়ালার ঘুম ভেঙ্গে যায়। তিনি সাঈদকে দেখে বকাঝকা করলে সাঈদ তাকে ধাককা দিয়ে বিছানায় ফেলে দেয়। আমাকে বলে মহিলার হাত-পা চেপে ধরতে। আমি মহিলার হাত-

পা চেপে ধরলে সাঈদ কোথা থেকে একটা ছুরি নিয়ে এসে মহিলাকে জবাই করে। সাঈদের বোন কল্পনা বাড়িওয়ালা মহিলাকে জবাই করা দেখতে পায় এবং সে চিৎকার করে। তখন সাঈদ তার মুখ চেপে ধরে ড্রইং রুমে নিয়ে যায়। কল্পনা ঘটনার কথা অন্যদের বলে দেবে এই আশংকায় সাঈদ আমাকে কল্পনার হাত পা ধরতে বলে। কল্পনাকে সাঈদ সোফা সেটের উপর জবাই করে। আমি কল্পনার হাত-পা ধরে রাখি। দুইজনকে মারা শেষ হলে সাঈদ রান্নাঘরে গিয়ে ছোরাটি ধুয়ে ফেলে। এরপর সে আলমারি খুলে টাকা পয়সা, ল্যাপটপ মোবাইল ফোন এগুলো নেয়। যখন খুন করা হয় তখন সময় অনুমান সাড়ে তিনটা থেকে চারটা বাজে। যাত্রাবাড়ি থেকে জিনিসপত্র নিয়ে গুলিস্তান আসি, সাঈদ মোবাইল ও ল্যাপটপ বিক্রি করে দেয়। এরপর আমরা দুজন একসাথে শাহজাহানপুর যাই। সেখান থেকে আমরা আলাদা হয়ে যাই। সাঈদ আমাকে কোন টাকা পয়সা দেয়নি। পরে পুলিশ আমাকে গ্রেপ্তার করে। এই আমার বক্তব্য।”

(Underlining is ours)

From the aforesaid confessional statements of both the accused, it is patent that they have given a blow by blow account of the incident of killing of victim Rowshanara Begum and Kalpona Akhter implicating themselves with the same. According to the confessions of both the accused, they went to the flat of deceased victim Rowshanara Begum where accused Syed Howlader's mother

used to work as maid servant, whereupon Sayed's mother gave them fried egg to eat. Thereupon, the mother of accused Sayed went to visit a doctor. Thereafter, accused Sayed demanded Tk.10,000/- from deceased victim Rowshanara Begum but she refused, whereupon he along with his friend co-accused Reaj slaughtered her after pressing her down on the cot and since victim Kalpona Akhter raised alarm having witnessed the incident, both of them (accused) also killed her by slaughtering and took away cash money, mobile phone and a laptop of deceased victim Rowshanara Begum and sold the mobile phone at Tk.400 and laptop at Tk. 3000/- in Gulistan area.

P.W.2 Parveen Akhter was a tenant of the P.O. building who on the date of occurrence went to the flat of Rowshanara Begum at noon where she found accused Sayed and his friend. Subsequently, in the afternoon, P.W.2 went to flat of deceased victim Rowshanara Begum and found the slaughtered dead body of both the victims. From the evidence of P.W.4 Md. Mostofa and P.W.10 Md. Nayeem Hossain it has come to light that after going to the occurrence flat they came to learn from Parveen (P.W.2) and maid servant Lucky Begum that accused Sayed and his friend Reaj came to the P.O. flat at noon.

Keeping the aforesaid matter in view, we are of the view that the confession of both the accused can be regarded as true and inculpatory in nature.

Now, we can consider the voluntary character of the confessions of both the accused.

Materials and evidences on record go to show that accused Syed Howlader was arrested on 25-03-2015 and accused Reaj Nagrali was arrested on 05-04-2015 and thereafter, they were produced before the court of Magistrate on 26-03-2015 and 06-04-2015 respectively for recording their confessions. On going through the evidence of the concerned Magistrate Md. Emdadul Hoque (P.W.6) together with the confessions of accused Syed Howlader and Reaj Nagrali, it reveals clearly that after production of the aforesaid accused before the concerned Magistrate Court, they were given sufficient time for reflection during which they were kept under the custody of court peon and further that the concerned Magistrates made to understand the accused the necessary questions as set forth under column 5 and 6 of the confessional recording form and as still the aforesaid 2(two) accused expressed their willingness to make confession, the relevant Magistrates, penned down those. It further appears that after recording the

confessional statement of both the accused, those were read over and explained to the accused who put their thumb impression and signature thereto admitting the contents thereof to be true and correct account of the incident.

Exhibit No.7 is a confession of accused Syed Howlader. Under column 8 of Exhibit No.7, the concerned Magistrate gave certificate to the following effect:

“আসামীর শরীরে কোন আঘাতের চিহ্ন নাই এবং সে নিজেও কোন নির্যাতনের অভিযোগ আনে নাই।”

Under column 9 of Exhibit-7, the relevant Magistrate gave memorandum in the following language:

“আসামী স্বৈচ্ছায় দোষ স্বীকার করিয়াছে।”

Similarly, on going through the confession of accused Reaj Nagrali by virtue of section 80 of the Evidence Act, it transpires that under column 8 the concerned Magistrate gave memorandum to the following effect:

“আসামীকে স্বীকারোক্তি নেবার পূর্বে তাকে আইনানুগ সময় প্রদান করা হয়। স্বীকারোক্তি নেবার সময় তার শরীরে কোন আঘাতের চিহ্ন ছিল না এবং তার দৃষ্টিসীমায় কোন পুলিশ ছিল না। সার্বিক বিবেচনায় আসামী স্বৈচ্ছায় স্বীকারোক্তি করেছে মর্মে আমার বিশ্বাস।”

Furthermore, after recording the confessions, the concerned accused were sent to jail hazat in the afternoon of the same date of their production before the court. On perusal of the record, it further appears that even after coming out of the clutches of police, the accused did not file any retraction application. Even, the accused persons did not dispute the voluntary character of their confessions while they were being asked under section 342 of the Code though their attentions were drawn to their respective confessions. In such view of the matter, the confession of both the accused can be termed as voluntary in nature.

From the evidence of the Investigation Officer (P.W.11), it reveals that as per disclosure made by accused Sayed, he recovered the looted mobile phone of victim Rowshanara from a shopkeeper named Md. Rajon (P.W.5).

P.W.5 Md. Rajon also seconded the aforesaid statement of P.W.11. To comprehend the matter in its true perspective, we would like to quote the relevant evidence of P.W.5 in vernacular;

“গত ২৪/৩/১৫ তারিখ স্টেডিয়ামে মোবাইলের ব্যবসা করা অবস্থায় বিকাল ৫.১৫ মিনিটে একটি লোক এসে একটি মোবাইল ৪০০/- টাকায় বিক্রি করে। মোবাইলে সিম ছিল না। পরের দিন বিকালে ঐ

লোকটাকে আমার কাছে নিয়ে আসলে আমি সনাক্ত করি এবং দেখি সেই লোকটি আসামী সাঈদ। পরে জানি ডাবল মার্জারের সময় আসামী মোবাইল এনে আমার কাছে বিক্রি করে। আসামী সাঈদ ডকে আছে। ম্যাজিস্ট্রেটের নিকট জবানবন্দি করলে এই আমার স্বাক্ষর। প্রদর্শনী- ৬,৬/১।”

(Emphasis put).

From the aforesaid narration, it appears that accused Sayed sold a mobile phone to P.W.5 at a price of Tk. 400/- which was seized by the Investigation Officer. This P.W.5 also gave statement under section 164 to the Magistrate wherein he made similar statement that accused Sayed sold a Nokia mobile phone to him at a price of Tk.400/-. From the evidence of P.W.8 and P.W.9, it appears that police recovered Tk.14,400/- from the possession of accused Sayed.

From the above mentioned discussions, the incriminating circumstances appearing against the accused may be catalogued as under:

1. that admittedly accused Md. Sayed Howlader's mother, Lucky Begum was a maid servant at the house of

- deceased victim Rawshanara Begum, who used to stay there along with her minor daughter Kalpona Akhter (12);
2. that accused Sayed Howlader frequently visited the P.O. flat in order to see his mother;
 3. that on the date of occurrence preceding the killing of the deceased victims, accused Sayed Howlader and his friend accused Md. Reaj Nagrali alias Reaj came to the P.O. flat and further that after their departure therefrom the 2(two) dead bodies of the victims were found at the P.O. flat;
 4. that immediately after the occurrence it was circulated in the P.O. house that accused Sayed Howlader and Reaj Nagrali killed the 2(two) victims of the case;
 5. that the looted mobile from the P.O. flat was recovered by the Investigating Officer at the instance of accused Sayed Ali from the shop of P.W.5 Md. Rajon while he identified accused Sayed as the seller of the recovered mobile phone;
 6. that Tk.14,4000/- was recovered from the possession of accused Sayed Howlader vide seizure list Exhibit No.10;

7. that as per medico-legal evidence, both the victims were done to death by slaughtering which was ante-mortem and homicidal in nature;
8. that a blood-smearred old bed-sheet and a bloodstained sofa cover, the wearing apparels of the 2(two) deceased victims including the crime knife were seized from the P.O. flat vide seizure lists which were brought before the court and marked as Material Exhibit Nos.II, XVI & V respectively; and
9. that both accused Sayed Howlader and Reaj Nagrali alias Reaj admitted their guilt in the infernal killing incident of both the victims by making judicial confession which, on scrutiny, were found to be true, voluntary and inculpatory 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 his innocence, and on the other hand, it

only points out that within all human probability it is the accused-appellant who are responsible for the killing of victim Rowshanara Begum and Kalpona Akhter.

It was argued on behalf of the defence that there is no eye witness of the occurrence leading to the incident of killing of the 2(two) victims which makes the prosecution case shaky and doubtful.

It is true that in the instant case at our hand the prosecution did not adduce any eye witness leading to the incident of killing of the 2(two) forlorn victims. But, in the facts and circumstances of the instant case, that alone will not create any dent in the prosecution story inasmuch as there is no hard and fast rule that a criminal case must fail in the absence of any direct evidence. In such a situation, the prosecution had no other option but to rely on circumstantial evidences including 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 witnesses 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 evidence of eye witnesses.

In the instant case at our hand it is found from the evidences and materials on record that, the occurrence took place at the P.O. flat where there was none except the 2(two) accused and the deceased victims Rawshanara Begum and Kalpona as such it was impossible on the part of the prosecution to adduce any ocular witness of the incident. Rather, from the evidence of P.W.2 Parveen Akhter and P.W.4 Md. Mostofa (both are tenants of the P.O. building) it is found that at noon of the day of occurrence they found accused Sayed Howlader and his friend Reaj Nagrali alias Reaj on the P.O. flat and after their departure therefrom the dead bodies of the 2(two) victims were found by P.W.2, whereupon she raised alarm following which the other tenants of the P.O. building came to the P.O. flat. It further appears that immediately after the discovery of the dead bodies of the 2(two) victims, it was circulated in the locality that accused Sayed Howlader and his friend Reaj Nagrali alias Reaj committed murder of the 2(two) victims. Moreover, both the aforesaid accused admitted their guilt in the killing incident of the deceased victims by making judicial confession which, on scrutiny, were found to be true, voluntary and

inculpatory in nature. The time, place and manner of occurrence as has been disclosed by the aforesaid 2(two) accused in their confessional statements come in agreement with that of the prosecution story in material particulars. In such a backdrop, the argument advanced by the learned Defence Advocate appears to be wide of the mark.

Contention has further been raised on behalf of the defence that the alleged mobile phones of accused Sayed Howlader and Reaj Nagrali were not seized and the call lists thereof were also not called for as well as produced before the court which creates doubt about the veracity of the prosecution story. It is true that the alleged mobile phones of accused Sayed Howlader and Reaj Nagrali were not seized as well as produced before the court, but that alone will not create any doubt in the prosecution story inasmuch as the looted mobile phone of deceased victim Rawshanara Begum was recovered at the instance of accused Sayed Howlader from the shop of P.W.5 Md. Rajon who also identifies accused Sayed Howlader at the time of recovery of the mobile phone by the police from his shop. Moreover, the looted laptop was also recovered at the instance of accused Syed Howlader as well seized in the case vide

Exhibit No.17. In the aforesaid premises, the argument put forward by the learned Defence Advocate is untenable in law.

Contention has also been raised that the confession recording Magistrate, Md. Hasibul Hoque who recorded the confession of accused Reaj Nagrali alias Reaj has not been examined in the case as such his confession should have been left out of consideration. But, this argument of the learned Advocate cannot also be countenanced as because under section 80 of the Evidence Act it can be presumed that the concerned Magistrate jotted down the confession of the relevant accused in compliance with all necessary provisions of law. Moreover, we have found from the materials on record that the confession of accused Reaj Nagrali was found to be true, voluntary and inculpatory in nature regarding which we have noticed earlier.

Having devoted our anxious consideration to the facts and circumstances of the case including the evidences on record, we are of the dispassionate view that the learned Bicharok of the Tribunal below rightly and correctly found the guilt of the accused in the commission of murder of deceased victim Rowshanara Begum and Kalpona Akhter and accordingly convicted them for the same 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 both the accused.

Deceased victim Rowshanara Begum was an old lady of 65 years and the other deceased victim Kalpona Akhter was a child of only 12 years. These 2(two) victims had no animosity with the accused. These, accused Sayed Howlader's mother, Lucky Begum used to work as a maid servant at the residence of deceased victim Rowshanara Begum, who used to live there along with her child, Kalpona Akhter. Admittedly, deceased victim Kalpona Akhter was the younger sister of accused Sayed Hawlader. Even then, the accused did not feel a twinge in their conscience in finishing off the life of an old lady and the younger sister of accused Sayed named Kalpona in a barbaric and brutal manner which needs to be dealt with a heavy hand so far the sentence is concerned. It is our dispassionate view that death penalty would be the only appropriate punishment for the ruthless accused which will equally commensurate with the magnitude of the crime committed by them.

Accordingly, the Death Reference is accepted. The sentence of death imposed upon accused Sayed Hawlader and Reaj Nagrali alias Reaj is hereby confirmed.

The impugned judgment and order of conviction and sentence is maintained.

The connected Criminal as well as the Jail Appeals are dismissed being devoid of merit.

Send down the L.C Records along with a copy of the judgment at once.

Md. Mostafizur Rahman. J.

I agree.