

Present:

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

Death Reference No.08 of 2017.

The State

..... The petitioner

-Versus-

Asfak Ahmed Shihab and others.

..... The condemned-Prisoners.

with

Criminal Appeal No.788 of 2017.

Ruhul Amin @ Rubel.

..... The appellant.

-Versus-

The State

..... The respondent.

with

Criminal Appeal No.1025 of 2017.

Asfak Ahmed Shihab.

..... The appellant.

-Versus-

The State

..... The respondent.

with

Jail Appeal No. 403 of 2016

Al-Amin Islam Pintu.

..... The appellant.

-Versus-

The State

..... The respondent.

with

Jail Appeal No. 404 of 2016

Asfak Ahmed Shihab.

..... The appellant.

-Versus-

The State

..... The respondent.

Mr. Md. Rezaul Karim, D.A.G with
 Mr. Mizanur Rahman Khan (Shaheen), A.A.G with
 Mr. Ashikuzzaman Bablu, A.A.G with
 Ms. Shovana Banu, A.A.G with
 Ms. Rawsan Ara Rahman (Moni), A.A.G
 for the State.
 (In the reference and respondents of all the appeals)
 Ms. Momotaz Begum, Advocate
 the State defence Lawyer.
 Mr. Md. Safayet Hossain Sajib, Advocate
 for the appellant
 (in Criminal Appeal No. 788 of 2017)
 Mr. S.M. Shafiqul Islam, Advocate with
 Mr. S.M. Rezaul Islam, Advocate
 for the appellant.
 (in Criminal Appeal No. 1025 of 2017 and Jail Appeal No. 404 of 2016)

Heard on: 30.10.2022, 06.11.2022, 07.11.2022,
08.11.2022, 13.11.2022, 14.11.2022, 15.11.2022,
20.11.2022 and Judgment on: 06.12.2022.

S.M. Emdadul Hoque, J:

The learned Special Sessions Judge and Druto Bichar Tribunal No.1, Dhaka has made this death reference under Section 374 of the Code of Criminal Procedure for confirmation of the sentence of death awarded upon the condemned-prisoners namely (1) Asfak Ahmed Shihab son of late Mostofa Shafi and (2) Al-Amin Islam Pintu son of late Abdus Satter under Sections 302/34 (read with sections 394/411 of the Penal Code) in Special Sessions Case No. 03 of 2013, arising out of Pallabi Police Station Case No.51 dated 22.11.2012, corresponding to G.R. Case No. 858 of 2012, sentencing them

to death by its judgment and order of conviction dated 15.12.2016.

By the same judgment the learned Tribunal also convicted the condemned prisoner Ruhul Amin @ Rubel under sections 302/34 of the Penal Code and sentencing him to imprisonment for life and to pay fine of Tk. 10,000/- in default to sentence him rigorous imprisonment for 1 (one) year more. The learned Tribunal also convicted those accused persons under section 394/34 of the Penal Code and sentencing them to imprisonment for life with a fine of Tk. 50,000/- (fifty thousand) in default to suffer them imprisonment for 6 months more.

The learned tribunal also convicted those three accused persons under sections 411/34 of the Penal Code and sentencing them to rigorous imprisonment for 3 (three) years and a fine of Tk. 10,000/- each and in default to rigorous imprisonment for 3 (three) months more.

The prosecution's case as made out by the informant Shamol Chandra Bhuiyan, the P.W-1, father of the deceased Amit Saha, in short, is that on 04.11.2012, he along with his

family went to India for treatment and on 10.11.2012, his elder son Amit Saha returned to Bangladesh alone for his examination. Thereafter, on 21.11.2012, his brother-in-law, Trishan Saha, called him over mobile phone and informed him that his son, Amit Saha, has been murdered. Having been informed, the police came to place of occurrence and discovered that on 21.11.2012, between 12:30 P.M. and 14:30 P.M. the accused namely Asfak Ahmed Shihab, Al-Amin Islam Pintu and Md. Ruhul Amin, according to their premeditated plan, killed the deceased by suffocation him in his rented house and to stole items worth Tk. 8,91,500/-.

Further case of the prosecution is that after receiving the phone call from the brother-in-law of the informant, P.W.15, the informant returned from India the next morning. After completing all immigration formalities he rushed to the house and then to the Pallabi Police Station, where he saw and identified the dead body of the deceased and found some visible injuries on the body of the deceased and after completing necessary procedures, the police sent the dead body to the morgue for post mortem and he also went to the

Dhaka Medical College Hospital and after receiving the dead body, he lodged an Ejaher. Subsequently, he brought the dead body to his village for funeral and after completing the funeral he returned to the police station and saw three accused persons, where they disclosed the facts that how they killed the deceased, Amit Saha. In the Ejaher, the informant stated that the facts that after returning from India, he came to know from a close relative that on 21.11.2012, around 1:00 P.M, the condemned prisoner, Asfak Ahmed Shihab, the resident of the next flat of the informant, with the help of his two friends, accused Al-Amin Islam Pintu and accused Ruhul Amin Rubel, entered his apartment and killed the victim and looted valuables and ornaments from the house. It was further revealed that, based on the information provided by Asfak Ahmed Shihab, the police recovered some materials from the house of accused Ruhul Amin @ Rubel, but at one stage in his deposition he also added some facts that: আমার ছেলের বান্ধবী অনামিকাদেব

দুলালের কাছ থেকে ঘটনা জেনে আমার ছোট ভাই বাবুল, চন্দ্র সাহা, আমার ভাগ্নি জামাই প্রার্থ প্রতীম সাহা, বন্ধু আনোয়ারুল হক ফারুক, বন্ধু দুজন প্রতিবেশীদের কাছ থেকে ঘটনা শুনে আমি পল্লবী থানায় যাই উপরোক্ত সাক্ষীদের সাথে নিয়ে। তখন সময় আনুমানিক বিকাল ৫:০০ মিনিট থানায় গিয়ে থানার দোতলার একটি কক্ষে হ্যান্ডকাফ পরিহিত আমার বিন্ডিং এর চতুর্থ তলার দক্ষিণ পার্শ্বের ক্যাটের বসবাসকারী আশফাক আহমেদ শিহাব

তার সাথে তার দুই সহযোগী আলআমিন ইসলাম পিন্টু ও রুহুল আমিন রুবেলকে পল্লবী থানার এস. আই. জনাব শেখ মতিয়ার রহমান কর্তৃক আমার বড় ছেলে অমিত সাহার হত্যার বিষয়ে জিজ্ঞাসাবাদ করতে দেখি• আমার ও আমার উল্লেখিত সাফীদের সম্মুখে আসামী আশফাক আহমেদ শিহাব, আল আমিন ইসলাম পিন্টু ও রুহুল আমিন রুবেল আমার ছেলেকে হত্যার বিষয় স্বীকা ও হত্যার বর্ণনা প্রদান করে• Hence the case.

The case was initially investigated by Sheikh Motiur Rahman, S.I. of Pallabi Police Station (P.W.21). After perusal of the record, it is found that initially after receiving the information, S.I. Al-Mamun of Pallabi Police Station rushed to the house of the informant and saw the dead body and prepared the inquest report of the dead body and also seized some materials from the said house of the informant where the dead body was lying on the bed. Subsequently S.I. Sheikh Motiur Rahman along with his senior officer, the Assistant Commissioner of Pallabi Police Station, the Officer-In-charge of Pallabi Police Station and other police officers of Pallabi Police Station reached to the house of the deceased.

Subsequently, they arrested the condemned prisoner Asfak Ahmed Shihab from the adjacent flat of the informant and taken to the Pallabi police station. During interrogation, he disclosed details of the murder and on his discloser and identification of the seized materials, specially the materials

listed in seizure list No. Umma, were recovered from the house of the accused Ruhul Amin @ Rubel and subsequently Al Amin Islam Pintu was also arrested. The following day, the said S.I. Motiur Rahman interrogated the three accused persons, who vividly narrated the details of the case. S.I. Al-Mamun sent the dead body to the morgue via challan No. Pallabi PS, PCC-3890/12 dated 21.11.2012 through Constable No. 19883, Md. Saidur Rahman, P.W.11. After completing the post mortem, the dead body was handed over to the informant. Thereafter, on 22.11.2012, at around 8:30 pm, the informant lodged the Ejaher and the case was formally entrusted to S.I. Sheikh Motiur Rahman for investigation.

S.I. Sheikh Motiur Rahman, after the entrustment of the investigation, he subsequently visited the place of occurrence, prepared the sketch map along with separate index, seized some alamats, examined the witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. After arresting the accused-persons, they were produced before the Magistrate for recording the confessional statements in accordance with section 164 of the Code of

Criminal Procedure, 1898 and after completing all the formalities of the investigation, he found a *prima-facie* case against the accused-persons and submitted the charge-sheet being No.171 dated 29.04.2013 under Sections 302/201/394/411/34 of the Penal Code.

The case record ultimately came to the file of the learned Metropolitan Sessions Judge, Dhaka, who sent the case to the Druto Bichar Tribunal, Dhaka for trial, who took cognizance of the offence and on 24.07.2013, the court framed charges against the accused-persons under sections 302/201/394/411/34 of the Panel Code. The charges were read over to the accused persons, who were in the dock of the court, to which they pleaded not guilty and claimed to be tried.

During the trial among 32 (thirty two) charge sheeted witnesses, the prosecution examined as many as 21 (twenty one) witnesses and they were duly cross examined by the defence. But the defence examined none.

After the closing of the prosecution's witnesses, the three accused examined under section 342 of the Code of Criminal Procedure, which was read over to them to which

they reiterated their innocence again. In their statements under section 342, one accused claimed that his confessional statement under section 164 was not voluntary but was made under duress and threats from the investigating officer, compelling him to confess.

The Special Public Prosecutor filed an application under section 540 of the Code of Criminal Procedure to recall the witness, P.W.19, Babul Chandra Saha, on 01.10.2015 and the court allowed the said application and the said P.W.19 again deposed before the court on 07.10.2015, 01.11.2015 and 08.11.2015 and the defence cross examined the said witness. Thereafter, the Druto Bichar Tribunal again examined the accused persons under section 342 of the Code of Criminal Procedure on 11.12.2015, which was again read over to them to which they reiterated their innocence again.

The defence case, inferred from the trend of the cross examination of the prosecution witnesses and the examination under section 342, is total denial of the prosecution's case.

After closing the trial, the learned Tribunal, after considering the circumstances of the case and the evidence on

record found the accused persons guilty of the charge leveled against them and convicted and sentenced them as aforesaid.

Thereafter, the learned tribunal, made this death reference under section 374 of the Code of Criminal Procedure for confirmation of the sentence of death and sent all the records to this court.

Against the impugned judgment and order of conviction and sentence, the condemned-prisoner Asfak Ahmed Shihab initially filed Jail Appeal being No. 404 of 2016 and subsequently preferred Criminal Appeal No. 1025 of 2017. Against the said judgment and order of conviction and sentence the condemned convict Ruhul Amin Rubel also preferred Criminal Appeal No. 788 of 2017 and against the impugned judgment and order of conviction and sentence, the condemned prisoner Al-Amin Islam Pintu filed Jail Appeal being No. 403 of 2016 through the Jail authority. But did not prefer any fresh appeal.

The Criminal Appeal No. 788 of 2017, Criminal Appeal No. 1025 of 2017, Jail Appeal No. 403 of 2016 and Jail Appeal No. 404 of 2016 as arising out of the same judgment and order

of conviction and sentence were heard analogously along with the Death Reference and disposed of through this single judgment.

Mr. Ashikuzzaman Bablu, the learned Assistant Attorney General takes us through the Ejahar, the charges, the inquest report, the post mortem report, the seizure list, depositions of the witnesses, the impugned judgment and the papers and documents as available on the record.

Mr. Md. Rezaul Karim, the learned Deputy Attorney General, supporting the death reference and submits that the prosecution succeeded to prove the case with reliable and sufficient evidence. Based on this evidence, the tribunal found the condemned prisoners, including Ruhul Amin alias Rubel, guilty and sentenced them accordingly. He acknowledges the absence of eyewitnesses but argues that the circumstantial evidence is strong enough to establish the case.

He further states that the date and place of occurrence were clearly established by the witnesses. After the disclosure of facts, the police, acting on the information from P.W.19,

Babul Chandra Saha and arrested the condemned prisoner Asfak Ahmed Shihab. During interrogation, Shihab admitted to the crime and based on his disclosure and identification, incriminating materials such as stolen ornaments and articles were recovered from accused Ruhul Amin alias Rubel's house. The same day, Al-Amin Islam Pintu was also arrested based on Shihab's disclosure. Key incriminating items, including the informant's ID card, the victim's mother's ATM cards from two banks, the deceased Amit Saha's TID card, a laptop, and two mobile phones, were recovered from the accused, particularly from Ruhul Amin alias Rubel's house. These items constitute vital and substantial evidence linking the three accused to the murder of Amit Saha and the looting of valuables from the informant's house.

His next argument is that P.W.2, Anamika Deb Dulal Popy, visited the deceased Amit Saha's house on 21.11.2012 at noon after receiving a phone call from him. There, she saw the three accused persons. She later found Amit Saha's phone switched off and, after learning of his alleged suicide, informed P.W.13, Shawon Saha, a cousin of the deceased, about seeing

the accused at the house. P.W.13 relayed this information to his maternal uncle. Subsequently, the informant after getting the information of the murder of his son, contacted P.W.10, Md. Faruque, a colleague of the informant, via mobile from India. P.W.10, upon arriving at the informant's house, reported the matter to the police.

The police subsequently arrested condemned prisoner Asfak Ahmed Shihab, who, during interrogation, admitted to the killing and disclosed detailed facts of the case. The prosecution's witnesses consistently narrated these facts, and despite cross-examination, the defense failed to refute the evidence. The prosecution has established beyond all reasonable doubt that the condemned prisoners Asfak Ahmed Shihab, Al-Amin Islam Pintu, and Ruhul Amin Rubel were last seen at the crime scene.

He further submits that the accused, during interrogation, confessed and provided details of the crime, including admitting that P.W.2, Anamika Dev Dulal Popy, had visited the house before the murder. This confession, coupled

with the "last seen" evidence, clearly proved their involvement. The inquest and medical reports further corroborated the prosecution's case and the manner of the killing. Given these circumstances, he argues that the prosecution has successfully proved the case beyond all reasonable doubt, and the tribunal rightly convicted the accused. Therefore, he prayed for acceptance of the death reference and dismissal of the appeals.

On the contrary, Mr. S.M. Shafiqul Islam, the learned Senior Counsel, along with Mr. S.M. Rezaul Islam, learned Advocate for the appellants, argues that the prosecution failed to prove the charges brought against the condemned prisoners. He contends that the prosecution could not establish that the accused were present in the said room before the occurrence. He further notes that there are no eyewitnesses in this case, and P.W.2, Anamika Deb Dulal Popy, is the sole witness who claimed to have seen the three accused in the room of the deceased, Amit Saha, before the incident but provided nothing more. He argues that her testimony

cannot be accepted as credible since the prosecution failed to prove her presence in the house.

He also submits that P.W.2 mentioned sharing the information with friends, including Sayem, who was not examined, even though she claimed to have heard about Amit Saha's alleged suicide from Sayem at around 12:30 AM. P.W.2 also stated that her friend Mitul called her at 1:00 AM, informing her of the incident, but none of these individuals were examined by the prosecution.

Additionally, P.W.2 claimed to have informed P.W.13, Shawon, the nephew of the informant, about visiting Amit Saha's house at around 02:00 PM on the day of the incident. Shawon, in turn, informed P.W.19, Babul Chandra Saha, over the phone. However, the prosecution failed to prove any such conversations occurred and under these circumstances, he contends that the prosecution has not established the "last seen" evidence beyond all reasonable doubt.

His further submission is that P.W.19, Babul Chandra Saha, informed P.W.10, Faruque, a colleague of the informant,

who then handed over the mobile phone to S.I. Sheikh Motiur Rahman (P.W.21). However, the prosecution failed to prove these facts, despite witnesses such as P.W.10 and others claiming to have informed about the matter. Ultimately, P.W.21 did not corroborate the facts disclosed by P.W.2, Anamika Deb Dulal Popy. Moreover, the evidence provided by P.W.21, Sheikh Motiur Rahman, and Constable P.W.18 contradicted the testimonies of P.W.2, P.W.10, P.W.13 and P.W.19, which creates inconsistencies in the prosecution's case.

He further submits that the facts presented by P.W.2 were not corroborated by P.W.5, Shojon Saha, and P.W.14, Partho Protim Saha. This creates serious doubt about the claim that P.W.2 visited the deceased's house and subsequently informed P.W.13, Shawon Saha, who then allegedly communicated this to P.W.19. The prosecution has failed to prove this chain of events, and there is a contradiction between the evidence provided by P.W.18 and P.W.21. In light of these inconsistencies, he argues that the "last seen" testimony and the information provided by P.W.2 that the

accused were present at the house of the informant with the deceased has not been proved beyond all reasonable doubt.

He further submits that it raises doubt that initially, P.W.19 was tendered by the prosecution, but during the argument hearing, upon an application by the Special P.P. under Section 540 of the Code of Criminal Procedure, P.W.19 was recalled. He then narrated the facts that were previously disclosed by P.W.2 and P.W.10, which cast serious doubt on the prosecution's case.

He further submits that at one point in his deposition, P.W.1 stated that he learned the facts from Anamika Deb Dulal Popy (P.W.2), which is a significant departure from the F.I.R. In the F.I.R., these details were not disclosed, nor was the presence of Anamika Deb Dulal mentioned. This discrepancy suggests that her presence at the place of occurrence on the date of the occurrence was an embellishment added later to the F.I.R. story. Since the F.I.R. serves as the foundation of the case, any departure from its contents raises doubts about the prosecution's credibility.

He further submits that the confessional statements of the condemned prisoners, Asfak Ahmed Shihab and Al-Amin Islam Pintu, were neither true nor voluntary. He points out that Asfak Ahmed Shihab was picked up by the contingent force in the middle of the night while he was sleeping in his room. All the witnesses testified that they were interrogated at the police station while handcuffed, and the presence of these witnesses suggests that there was a possibility of threat and torture by the police officers. Given these circumstances, the confessional statements made by the accused cannot be considered true or voluntary. Therefore, the conviction based solely on these confessions cannot be sustained.

Mr. Mamun Mahbub, the learned Advocate, in Criminal Appeal No. 1025 of 2017, raised additional points and submitted that the seizure list, based on the disclosure of condemned prisoner Asfak Ahmed Shihab, was not proven by any independent witnesses. The seized materials were recovered the following morning, and Shihab was in police custody for more than four hours before the recovery. In such circumstances, Section 103 of the Code of Criminal Procedure

should have been strictly followed during the search. Since none of the independent witnesses corroborated the seizure list, and the list itself serves as the only incriminating material and since the said seizure list is not proved, the prosecution has failed to prove the charges against the condemned prisoner.

He further submits that the claim of "last seen" by P.W.2 has not been proved beyond reasonable doubt. In support of his argument, the learned Advocate cited the case of ***Rafiqul Islam alias Shafique vs. The State***, reported in **27 BLC (AD) 163**, which elaborates on the requirements for establishing circumstantial evidence. Considering this decision, he argues that the prosecution in the instant case has failed to prove the essential elements of circumstantial evidence.

He further submits that the condemned prisoner, in his retraction of the confessional statement, detailed that he was severely tortured by the police and forced to confess under threat. He reiterated these claims in his examination under Section 342 of the Code of Criminal Procedure. Under such

circumstances, the confessional statement cannot be considered true or voluntary, and a conviction based solely on such coerced statements is not sustainable.

Mr. Mamun Mahbub cited an unreported decision in Criminal Misc. No. 47257 of 2019, emphasizing that the police should have prevented a media trial.

Mr. Golam Abbas Chowdhury, the learned Advocate, along with Safayet Sajib, Advocate, appearing on behalf of the accused Ruhul Amin @ Rubel in Criminal Appeal No. 788 of 2017, submits that the prosecution failed to prove the case against the appellant beyond all reasonable doubt. He argues that the conviction was solely based on the confessional statements of the other two accused, while the appellant's confessional statement was purely exculpatory. He contends that a conviction cannot be based on the confession of a co-accused, especially since neither co-accused mentioned the appellant's involvement. Furthermore, condemned prisoner Asfak Ahmed Shihab, in his confessional statement, admitted to keeping the seized materials in the appellant's house but

did not specify whether those materials were looted. In such circumstances, the conviction and sentence of the appellant cannot be upheld. He also submits that the seizure, being a vital element, was improperly attributed to this appellant, as his confessional statement clearly indicated that the materials were kept by Asfak Ahmed Shihab. Thus, the ingredients of Section 411 are unproven.

The learned Advocate further submits that the tribunal convicted the appellant without any basis of evidence. He adopted the argument made by the learned Advocate Mr. Shafiqul Islam that the presence of this accused in the house of the victim has not been proved beyond all reasonable doubt. He prayed for allowing the appeal and rejection of the death reference.

Ms. Momotaz Begum, the learned State Defence Lawyer, representing the condemned prisoner Al-Amin Islam Pintu, submits that no incriminating materials were recovered from his custody. The seized material, listed in seizure list No. "Gha" was recovered from his house on 24.11.2012 while he

was in jail custody. Neither P.W.16 nor P.W.17 stated that the said material was recovered from the house of the condemned prisoner. She argues that the CPU, recovered long after the incident and was seized without following the strict procedure of Section 103 of the Code of Criminal Procedure. Moreover, the prosecution has failed to prove that the CPU was looted from the house of victim, Amit Saha. In such circumstances, seizure list No. "Gha" cannot be regarded as substantial evidence to convict the accused. She adopts the arguments of Mr. S.M. Shafiqul Islam and Mr. Mamun Mahbub, Advocates, regarding the claim of "last seen" by P.W.2. Additionally, she submits that the accused's confessional statement was neither true nor voluntary, as it was made under police custody and in the presence of witnesses, raising the possibility of coercion. She contends that though the Exhibit No. 17 may be considered incriminating but it was not recovered in the presence of this accused, who was arrested later.

Lastly, she makes an alternative submission, highlighting mitigating circumstances. She states that the accused was only 24 years old at the time of the occurrence, had been in a death

cell for over six years, and was in jail custody for more than seven years. Under these circumstances, she prayed for the jail appeal to be allowed, the death reference rejected and the initiating circumstances considered.

Let us discuss the evidence of the prosecution witnesses.

P.W-1, Shyamal Chandra Bhuiyan (father of deceased), the informant in his statement stated that the occurrence took place on 21.11.12 around 1:00-2:30 PM in his rented house. House no-02, road no 15, fourth floor (south side flat), in Block-C, Section-6, Pallabi Police Station, Dhaka.

He was renting the house where the incident occurred from the time of the incident until 5 years ago. He was living with his wife Rikta Saha, his elder son Amit Saha, his younger son Anshu Saha, and his younger brother-in-law Trishan Saha for 6 months before the incident.

On 04.11.12 the informant along with his wife Rikta Saha, his elder son Amit Saha, and younger son Anshu Saha went to India for pilgrimage, and on 10.11.12 his elder son Amit Saha returned to Bangladesh alone due to his university examination. At the time of the incident on 21.11.12 at around

11:30 PM, his younger brother-in-law Trishan Saha told him on his mobile phone that someone killed his elder son Amit Saha and looted the valuable ornaments from the house and requested that he come to Bangladesh soon. As he was out of the country in India, he informed this matter to his office authorities Mr. Taj Uddin Mahmood, friend Anwarul Haque Farooq, friend Sujan, mother of the accused No.1 Shihab, relatives, and other neighbors of the building and requested them to take immediate action.

The next day i.e. on 22.11.12 at about 7:00 a.m. the informant returned to Dhaka with his wife and younger son on a Jet Airlines flight. After completing the immigration work at the airport, he left the airport and moved to his home i.e. the place of occurrence. When he came home, he saw the house's belongings turned upside down, steel cupboard doors had been opened. There were various ornaments in steel almirah, such as 22 imitation churi, 2 imitation chains, 4 imitation necklaces, 5 pairs of imitation earrings, cash amount of Tk. 10,000/-, 1 gold necklace weighing approximately 2.5 vori, two gold bangles weighing approximately 4 vori, 2 gold bangles

weighing approximately 2 vori, 5 gold rings approximately weight 2.5 vori and 1 gold necklace weighing approximately 1.5 vori, 5 bangles approximately 3 vori, Nokia C-300 mobile set one, Nokia XI one mobile set was not available and one XP Compact laptop, one Micromax Tab from his table and his son's computer's CPU was not available. One Bank's ATM card, Dutch Bangla Bank's ATM card, National ID card of the informant and his wife, the university ID card of his eldest son the deceased Amit were not found. One pair of full pants and a black synthetic bag of his son were not found and the estimated price of the mentioned goods was about Tk. 8,91,500/-. The informant quickly left the house in the office car and went to Pallabi police station. He identified the dead body of his elder son Amit Saha lying in the pick-up van in front of the police station. The body was found with bruises on the left eye, deep skin lacerations and bruises on the neck, and needle wounds on the knee. He went to the Dhaka Medical College Mortuary with the body at approximately 10:30 am.

After the postmortem was completed, he received the body and brought it to his house, where it was later cremated.

He then inquired with the neighbors. Upon speaking with his brother-in-law Trishan Saha and hearing about the incident from the deceased's girlfriend Anamika Deb Dulal, the informant, his younger brother Babul Chandra Saha, his niece's son-in-law Partha Hath Saha, his friends Anowarul Haque Faruk and Sujon, and other neighbors, he learned more details. Around 5:00 pm, he went to the police station, where he found that Ashfaq Ahmed Shihab and his two associates, Alamin Islam Pintu and Ruhul Amin Rubel, were arrested by S.I. of Pallabi Police Station, Mr. Sheikh Motiar Rahman. He also witnessed the police interrogating Al Amin Islam Pintu and Ruhul Amin @ Rubel about the murder of his elder son, Amit Saha.

Accused Ashfaq Ahmed Shihab, Al Amin Islam Pintu, and Ruhul Amin Rubel confessed to the killing of the deceased in the presence of the informant and the mentioned witnesses and they narrated the killing.

Accused Ashfaq Ahmed Shihab said that on the day of the incident on 21.11.12 at approximately 12:30 PM, the accused Ashfaq Ahmed Shihab, Al Amin Pintu, and Ruhul Amin

Rubel entered the house as per the previous plan. Amit Saha, the son of the informant was alone at home at that time. Accused Ashfaq Ahmed Shihab fed intoxicated juice brought by himself to Amit Saha, son of the informant. After a while, the deceased's girlfriend, Anamika Deb Dulal, a former acquaintance and girlfriend of the accused, Anamika Deb Dulal, called Amit's mobile phone. Amit asks her to come home on the spot. Later, Anamika Dev Dulal came in front of the informant's house and called Amit's mobile phone. Then the accused Ashfaq Ahmed opened the gate of the house and brought Anamika to the house on the spot. Ashfak Ahmed Shihab came back to the scene. Anamika came home and found the deceased sitting on the Sofa. Amit seemed to be intoxicated to Anamika and found the accused, Al Amin Islam Pintu and Ruhul Amin Rubel, sitting on the cot in the informant's bedroom. Anamika screamed and left the spot after about 15 minutes. Later, the deceased Amit Saha became intoxicated and lay down on the bed. Accused Ashfaq Ahmed Shihab held the throat of the deceased Amit, accused Rubel held both legs, and accused Al-Amin Islam Pintu held the nose

of the deceased Amit. Then the accused Ashfaq Ahmed Shihab and Al Amin Islam Pintu wrapped a necktie around the neck of the informant's son Amit, pulled both ends, and strangled him to death. Amit's dead body was hung from the ceiling fan with a necktie in an attempt to stage the murder as a suicide, and to avoid suspicion from the police. However, due to the weight of the body, the tie broke, causing the body to fall onto the bed from the ceiling fan. Later, Ashfaq Ahmed Shihab, accused Ruhul Amin Rubel and Al Amin Islam Pintu looted the above-mentioned substances from the cupboard and different places in the house of the informant. Later, part of the looted goods was recovered by the police from the house of accused Rubel and the informant identified the said materials in the police station. The matter of the incident was typed, read, and signed by a policeman in the police station in the related form. Later, the informant filed the Ejaher in the police station which was marked as **Exhibit-1**, and the signature was also marked as **Exhibit-1/1**.

Later, S.I. Pallabi Police Station, Sheikh Matiar Rahman came to the place of occurrence and inspected the spot. S.I.

Matiar Rahman seized the steel cupboard of the informant's house, from which the accused looted the goods. A seizure list was prepared at 10:30 PM. The same was marked as 'Exhibit-2'. The informant signed the same and his signature was marked as 'Exhibit-2/1'. Brother-in-law, Trishan Saha, also signed on the seizure list. The steel cupboard was entrusted to the informant with the preparation of an undertaking. The 'Jimma Nama' was marked as 'Exhibit-3', signed by the informant, which was marked as 'Exhibit-3/1'. Later, the informant went to Noakhali, from the place of the incident.

The next day, on 23.11.12, in the morning, the deceased's body was cremated in the family's house and returned to Dhaka and went to Pallabi police station at about 9:00 PM. The turquoise-colored full shirt worn by the deceased was torn, cut, and bloodstained, as were the white and black checkered half pants, which were also torn, cut, and bloodstained. Constable Saidur Rahman presented these items, and the informant identified them. S.I. Sheikh Motiar Rahman seized the clothing. A seizure list was prepared which was marked as seizure 'Exhibit-4' and the signature of the

informant was marked as 'Exhibit-4/1' and the seized pant and shirt were marked in Court as material 'Exhibit-I & II'.

The next day, on 24.11.12 the informant went to Pallabi Police Station with Anamika Dev Dulal. According to the order of the court, 16 items of goods recovered from the house of accused Rubel and from the house of accused Pintu were returned to the informant on 09.01.13. The 'Jimma Nama' was marked as 'Exhibit-5' and the signature of the informant was marked as 'Exhibit-5/1'. The informant identified the accused Shihab, Pintu, and Rubel in the court docket.

In his cross-examination, he deposed that before filing the case, he spoke to witnesses Trishan Saha, Anamika Deb Dulal, Tajuddin Mahmud Polash, Anwarul Hoque Faruk, Sujon, and Sojon Shah, and other relatives. As he said, a police officer at the police station typed up the complaint. But he did not mention the name of Anamika Deb in the Ejahar. He deposed that he mentioned in the Ejahar that after arrival in Bangladesh, he had learned about the details of the incident but did not mention in the Ejahar from whom he learned it. He mentioned in the Ejahar that on 21.11.12 at 11:30 PM, his

wife's brother Trishan told him over the phone that someone had killed his eldest son. The accused were arrested before the case was filed and he went to the police station and saw the accused. He deposed that Accused Ruhul Amin Rubel confessed to killing his son in front of him and witnesses, but he didn't mention the same in the Ejahar. He further deposed that he did not mention the name of the person in the Ejahar who saw Rubel in the place of occurrence. He also did not mention in Ejahar that Anamika saw Rubel on the bed before the incident and Rubel, during the incident, grabbed the legs of the deceased. He further deposed that the investigating officer never showed him the accused's confessional statement. He also deposed that some Alamats were recovered before the case was filed. He further mentioned that while the incident was occurring, he was out of the country. After arrival in Bangladesh, he rushed to the house. He did not know the accused Al Amin Islam Pintu. He did not mention in the Ejahar that the accused Al Amin Islam Pintu held the deceased's hands and feet. He further deposed that he did not mention in the Ejahar the names of Anamika Deb Dulal, Babul Chandra

Saha, Partho Protim Saha, Anwarul Hoque and others. He did not mention in the Ejahar that during the interrogation of the accused in the police station he was present there. Trishan Saha was his younger Brother-In-Law. Sujon Saha is his relative, Sajjad Hossain is his friend, Punendu Saha is his son's friend, Shawon Saha is his nephew.

He didn't mention in the Ejahar that Trishan informed him about the incident.

He forgot that when the police arrived, he didn't know whether the police recorded the statement of the accused. He mentioned in his deposition that in addition to the people mentioned in the statement, his neighbors also came. Neighbor Master Porimol Babu and other neighbors were there, but he forgot the names of the others.

My son Amit had a long-term relationship with Anamik, and she used to visit his house.

He denied the suggestions of the defense that the statement made in the Ejahar was false and fabricated, the accused did not enter his house in a premeditated manner, and Ruhul was accused based on suspicion, no incriminating

materials were recovered from the accused Al Amin Islam Pintu and the accused was innocent, all the three accused did not confess their guilt in front of the witnesses in the Police Station, the accused Asfak did not provide juice to the deceased and made him intoxicated, all the three accused did not kill his son, his son was addicted and Anamika left the place of occurrence angrily and due to that his son was mentally unstable and no such incident occurred mentioned in the Ejahar.

P.W-2 Anamika Dev Dulal, is a student, she stated in her deposition that the date of incident was 21/11/2012 between 12:30 PM and 2:30 PM and at that time of the incident she was at Wisdom women's hostel. On the date of incident, on 21.11.12 at approximately 11:45 AM, Amit called her and asked her to go to their house and she left the mobile phone saying ok. Later, at approximately 12:45, she called Amit and told him that she was coming to Amit's house. At approximately 2:00 PM she reached Amit's residence at Mirpur Section-6, Road No. 15, House No. 02, Block C Pallabi. She reached the bottom of the house and called Amit. Amit smiles

on the phone and says he is coming down. After that, she stood under the house for about 8/10 minutes, and accused Shihab came down and opened the gate. She climbed the stairs to Amit's house on the fourth floor. Shihab came up behind him and found that Amit was sitting on the sofa in the house. Seeing her, Amit tried to stand but could not, and sat down. Then she asked Amit what happened to him, whether he was drunk. While saying this, the accused Shihab asked her why she was talking like that, adding that the boy was sick. Later, when she went to Amit's bedroom, and found Amit's father's room door closed. Knocked the door and saw two boys were sitting on the bed. After asking who they are, accused Shihab replied that they are Shihab's friends Rubel and Pintu.

Later, she went to the drawing room. Shihab, Rubel and Pintu also came and sat in the drawing room. Then Shihab requested Amit to come clean. Then Amit talked about bathing with hot water. This witness asked Shihab why Amit would take a bath now and replied that after she leaves, he will take a bath. Accused Shihab was not allowed to talk to Amit. At one point, she stormed out of the house in anger. Accused Shihab

got down behind P.W-2. Then accused Shihab says that she is leaving like this, what will she do if Amit commits suicide? Then the present witness tells Shihab why Amit will commit suicide, he does not dare to commit suicide. The witness stated that she did not have change and demanded ten rupees from Shihab. Initially, Shihab was reluctant to pay the amount, but eventually, he handed over the ten rupees.

Later the present witness came to the hostel by bus. The present witness did not give any call to Amit. Amit also did not give her a phone. In the evening, she called Amit's friend Arafat and told him how much Amit had changed, Amit did not give her a call even after leaving angrily. Arafat then said that he would talk to Amit on the phone and inform her. After some time, Arafat called her and told her that Amit's mobile was switched off. After that, all the mobile numbers of Amit's house were found switched off. T&T phone at home was called but no one answered. Later, she called Amit's friend Mitul on his mobile phone and asked if Amit had talked to him on the phone or met him. Mitul said that he did not meet Amit or talk on the mobile phone that day. Later, Mitul said he went to

Amit's house in the afternoon. She then told Mitul about seeing Shihab and his two friends at Amit's house and asked Mitul to look for Amit. At 11:30 PM, Mitul informed on the mobile phone that Amit had committed suicide.

Later, not believing this, the present witness called Amit's friend Sayem. Sayem informed her that she also had come to know about Amit's suicide, saying that he was going to Amit's house. Later, at 12:30 PM, Sayem informed the present witness on the mobile phone that Amit had committed suicide. After some time, at around 01:00 AM, Mitul called her to inform her that Amit did not seem to have committed suicide because many things in his house were missing. Later the present witness called Shawon (Amit's cousin) and told him the events of the day.

The next day, at approximately 9:00 AM, the present witness went to Amit's residence to tell all the events to Amit's relatives. At approximately 5:00 PM, the present witness went to Pallabi Police Station along with Amit's father. He recognized the accused Shihab, Rubel, and Pintu in a room of the police station, handcuffed.

She then left for Noakhali with Amit's dead body. Returned from Noakhali on Saturday 24.11.12 with Amit's father and again went to Pallabi police station. He went and saw the police was interrogating accused Shihab, Rubel, and Pintu. The accused disclosed that they had premeditatedly strangled Amit to death and looted the goods.

On 02.12.12 the witness gave his statement under section 164 of the Code of Criminal Procedure before the learned Magistrate. The statement was marked as 'Exhibit-6'; the statement bears a total of 4 signatures of the present witness which were marked as 'Exhibit 6/1 to 6/4'. The present witness identified the three accused in the court docket.

In her cross-examination, she deposed that she completed her H.S.C. from Dhaka City College, she had known the deceased Amit for one and a half to two years and she was in a relationship with him. She further deposed that after Amit's father returned from India, she met Amit's father on 22.11.12 at approximately 03:30 PM. She went to Amit's house on 22.11.12 at around 09:00 AM, then she saw Amit's mother, his aunt Moon Saha and Tultul Saha, and other relatives.

Others meant the aunts and cousins. She further deposed that the collapsible gate at Amit's house was always closed, there was no doorman at the gate, and there was a system to drop the house key down.

She further deposed in her cross-examination that the IO had interrogated her before, and she said to the IO that she found Amit intoxicated, the parents and relatives of the deceased Amit knew about Amit and her love affair. She used to visit Amit's house.

She also mentioned in her cross that Amit deeply loved her. On 21.11.2012 between 12:30 PM and 2:30 PM, she went to Amit's house and back to the hostel from there. Police once called her to the Pallabi Police Station on 02.12.2012. She went there alone, and a policeman brought her from the police station to the court. Before the incident, she used to meet Amit frequently. She knew that on 21.11.12, the parents of the deceased were not at home on the day of the incident and she went there alone, the IO did not ask her why she went to the deceased house alone. The first day she went to the Police Station with the father of the deceased on 22.11.2012, she

met first with the father of the deceased on that day, she disclosed the events of the incident to the father of the deceased, also disclosed the matter to the relatives of the deceased.

She also mentioned that the deceased was not her classmate and she had some of the phone numbers of Amit's friends and they were also friends of hers. She went to the Police Station on 22.11.2012, 24.11.2012, and 02.12.2012, and on 24.11.2012, she went to the Police Station with the father of the deceased, and that day, the IO did not ask her anything. She also deposed that accused Rubel was not a friend of Amit and she did not even know him. She also denied that her statement in her deposition was false and fabricated, to the effect that she saw the two accused sitting on the bed, and Shihab told her that those two, Rubel and Pintu, were his friends, after that, they came to the drawing room by following her. She also denied that she said nothing about the accused, Rubel, to the informant before filing the case.

P.W.-3, Amit Kumar Dey was working as Metropolitan Magistrate in Dhaka on 28-11-12. He recorded the

confessional statement under section 164 of the accused, Al Amin Islam Pintu. The statement was marked as 'Exhibit-7' and two signatures of the accused were marked as 'Exhibit-7/1-7/2'. The present witness, after recording the deposition, issued a certificate. He gave a total of 6 signatures in the deposition. The signatures of the present witness were marked as 'Exhibits 7/3-7/8'. On the same date on 28.11.12, he recorded the confessional statement under section 164 of the accused Md. Ruhul Amin Rubel, which was marked as 'Exhibit-8', and the signature of the accused was marked as 'Exhibit 8/1'. He gave the certificate after recording the statement. A total of 5 signatures of the present witness were marked as 'Exhibit 8/2 to 8/6'.

In his cross-examination, he deposed that he did not ask the accused where he was between 28.11.2012 and 22.11.2012 and whether the accused was on remand. As he did not find any sign of torture, he did not put a note to the effect that he gave the accused three hours for reflection. The accused was produced before him at 12:30 PM by Inspector Sheikh Motiar Rahman, and after the production, the accused,

Al Amin Pintu, was in the custody of MLSS Ali Ajom. The confessional statement was recorded three hours after 12:30 PM and it was completed at 04:30 PM. He denied the suggestions of the defense that the accused were tortured by the police, He was bound to record the confessional statement by the S.I. Sheikh Motiar Rahamn, the accused were coerced into giving confessional statements under threat, and had no involvement in committing the offence. He also denied that the accused had injury marks on their bodies, the confessional statements were recorded in front of the IO, and the accused was not explained properly what could happen to him if he gave a confessional statement.

P.W-4, Md. Mostafizur Rahman, Metropolitan Magistrate, Dhaka, deposed that on 28.11.12, according to the instructions of the learned CMM, he recorded the statement of accused Asfak Ahmed Shihab under section 164 of the Code of Criminal Procedure. Explain the rules and regulations to the accused before giving his statement and give him sufficient time to reflect. The present witness took his statement in his 'Khas Kamra'. After his statement was recorded, the written

version was read over to him for confirmation. The accused signed the written statement in full acceptance. In addition to the original document, two additional pages were included, recording the statement of the accused under Section 164 of the Code of Criminal Procedure, the statement was marked as 'Exhibit-9' and 6 signatures of the witness were marked as 'Exhibit- 9/1-9/6' and 3 signatures of the accused were marked as 'Exhibit- 9/7-9/9'. After recording the statement, he issued a certificate.

In his cross-examination, he deposed that Since the accused informed him that the police had not subjected him to any torture, he did not consider it necessary to include a note indicating that the police had tortured him. The police brought the accused at 11.30 AM before him; he started to record the statement at 02:30 PM. Before recording the confessional statement, the accused was under the custody of MLSS Masum. He denied the suggestions of the defense that the accused was tortured by the police, He was bound to record the confessional statement by the police, the accused was coerced into giving confessional statements under threat, and

he was informed of the matter. He also denied that the accused was unlawfully detained in police custody before being presented to the Magistrate, and no note regarding this issue was made, the accused was not explained properly what could happen to him if he gave a confessional statement.

P.W-5, Sujon Saha, in his deposition deposed that the date of the incident was 21.11.12. On the date of the incident at 11:30 PM, the informant, while he was in India, called him on his mobile phone and informed him that someone had killed his son Amit in his rented house, fourth floor, Sector 6/C, Road No-15, House No-2, under Pallabi Police Station, Dhaka. He was asked to rush to the said address and take necessary legal action. The present witness left immediately from his residence in Paltan. Reached the informant's home at 12:15 PM i.e. 22.11.12. He went home and saw that the informant's brother-in-law, Tishan Saha, the informant's nephew, Partha Pratim Saha, and the informant's two friends, Farooq Saheb and Sujon Saheb, and Mahmud Saheb were there. The present witness went inside the house and saw the dead body of the deceased Amit lying on the floor. He saw blood pouring from

his nose to his mouth. A part of the tie was tied around the neck and the other part of the tie was tied to the fan. No one present at the house could say who killed Amit Saha.

After some time, the Pallabi Thana police reached the house of the informant and saw everything. S.I. Al Mamun prepared the inquest report at 12:25/12:30 PM. The present witnesses, Tishan Saha, Partha Pratim Saha, Farooq, Sujan, and Mahmud Saheb signed the report. The report was marked as 'Exhibit-10' and the signature was marked as 'Exhibit-10/1'. He saw the deceased's left eye open. He saw blood in his nose and mouth. He saw the tie around the neck and some parts of the tongue were enlarged, and he saw the marks of the neck tie.

At approximately 1:00/1:15 AM, S.I. Al Mamun seized the blood-stained bed sheet, the neck part of the tie, and the fan part. A seizure list was prepared. The present witness and Mr. Farooq signed the seizure list as witnesses. The seizure list was marked as 'Exhibit-11, and the signature of the present witness was marked as 'Exhibit-11/1'. The seized blood-stained sheet was marked as 'Exhibit-I', and two parts of the tie were marked as material 'Exhibit-II, II/a'.

Later a phone call came. The brother of the informant, Babul Saha, called witness Farooq Saheb that the neighboring flat Shihab might be involved in the murder. On receiving this call, S.I. Sheikh Motiar Rahman knocked on the door of the neighboring flat and Shihab was called, and interrogated him. Later, they went to the house of his accomplices Pintu and Rubel to look for them. He took them to the police station. The next day, the informant left India on 22.11.12 and reached Pallabi police station at 08:45 AM and broke into tears after seeing Amit's dead body in the police van. The post-mortem of the body was done, and cremation of the body was done in the afternoon. After that, he accompanied the informant to the Pallabi police station. S.I. Motiar Rahman interrogated the accused Shihab, Pintu, and Rubel in a room on the second floor of the police station. They admitted that they killed the deceased Amit. It was known from their words that the accused Rubel grabbed his legs, the accused Shihab sat on Amit's chest and choked him, and the accused Pintu killed Amit by pressing his nose to his mouth. At one point, accused Shihab and Pintu confirmed the murder of Amit by hanging

him. The accused also confirmed the murder and looted the goods from the house of the informant. This witness identified Shihab, Pintu, and Rasel in the courtroom dock.

In his cross-examination, he deposed that on 22.11.2012, police recorded his statement. The informant is his relative. He was employed in a Private Firm. He rushed to the informant's house along with Rejaur Rahman. After arrival, people from the neighborhood and two police personnel came. The IO interrogated him in the informant's house. The informant was his elder brother's brother-in-law. The investigating officer interrogated him on the next day of the incident on 22.11.2012 at around 09:00/09:30 minutes. The IO did not interrogate him at the Police station. On 21.11.2012, at around 11:45 PM, he rushed to the informant's house after learning about the incident. The police officers asked him about the incident while preparing the inquest report, but couldn't say anything as he didn't know anything about the occurrence.

He denied the suggestions of the defence that he came to the court with the informant and deposed as the informant

dictated, he didn't see blood coming out of the victim's mouth, he didn't see Partho Praotim Saha, Trishan, Faruk Shaheb, Mahmud Shaheb on the scene. He also denied that he didn't see the broken part of the tie on the neck of the deceased, police did not seize anything from the place of occurrence, and no property was looted from the complainant's house.

P.W. 6, Md. Mustafa Shahriar Khan, Metropolitan Magistrate, Dhaka, on 02.12.12, while working as a Metropolitan Magistrate in the learned CMM Court, Dhaka, on the instructions of the learned CMM, recorded the confessional statement of witness Anamika Deb Dulal Popy under section 164 of the Code of Criminal Procedure. The signature of the present witness was marked as 'Exhibit-6/5' in the statement of 4 pages and the 4 signatures of witness Anamika Dev Dulal were present in the said statement.

In his cross-examination, he deposed that the police had produced the witness before him. He did not put a note to the effect that after the statement was recorded the same was read to the witness, and then she signed it. But after the statement was read to the witness, her signature was taken.

He denied the suggestions by the defense that the witness was scared when she was produced before him, the witness disclosed to him that she was forced to state to him to survive, and he did not follow the procedure under section 164 during the recording of the statement.

P.W-7 Al Mamun, S.I. of Police. He was working at Pallabi Police Station on 21.11.12. On that date, accompanied by CC No. 3890/12 dated 21.11.12, the force was engaged in night mobile duty in the Pallabi police station area. A little moment before at 12:00 AM, the police station reported what happened at Section-6, Block-C, Road No. 15, House No. 2 under Pallabi Police Station. The present witness went to the spot at the said address. It was then 22.11.12. It was around 12:15 AM in the night. Went to the flat on the north side of the 4th floor. After entering the room on the left side, the room was a mess. A dead body was found lying on the floor of the right-hand room. The body was Amit Saha's body, who was killed at 12:25 PM and according to his uncle Trishan Saha's identification, the inquest report was prepared in the presence of the witnesses. The body of the deceased was wearing a

turquoise color shirt and a black and white check half pant. A red Rakhi was tied in his right hand. A maroon stripe around the neck was partially tied and knotted. His left eye was open and his nose was bleeding. The mouth was open. The tongue was partially attached and the throat was injured. There was a scar on the neck. There was a minor injury on the knee of the left leg and a minor injury below the knee of the right leg. The preliminary investigation opined that the victim was strangled to death by drinking intoxicants, tied to the ceiling fan with a tie, and then the dead body placed on the bed with the tie.

The signature of the present witness in the inquest report was marked as 'Exhibit 10/2'. The other witnesses signed in front of the present witness. On 22/11/12 at 01:15 AM, in the presence of witnesses Anwarul Haque and Sojon Saha, a check bed sheet with bloodstains, a necktie one part tied to the ceiling fan and the other part tied around the neck of the deceased, and red coloured underwear was recovered and seized. The signature of the present witness on the seizure list was marked as 'Exhibit-11/2'. Later, higher authorities were informed and the body was taken to the police station.

On 22/11/12 at about 8:30 AM, CC NO 1/12 dated 22/11/12, the body was sent to the Forensic Medicine Department of Dhaka Medical College for autopsy through Constable Saidur Rahman. The challan was marked as 'Exhibit-12' and the signature of the present witness was marked as 'Exhibit 12/1'. Through the consignment, the seized Alamat turquoise color shirt, black check half pants, two pieces of gray color, and one undergarment were sent to the court and those were present in the court.

In his cross-examination, he deposed that the names of the witnesses mentioned in the inquest report were Tishan Saha, Partho Protim Saha, Anwarul Hoque Faruk, Md. Taj Uddin Mahmud, Shojon Saha. He provided initial opinions by writing a column in the inquest report. He went to the scene and questioned the witnesses from the inquest report and seizure list, but since they could not narrate any incident, I became suspicious and gave my initial opinion based on assumptions. He did not try to find out whose panties the girl had. He found the body dead. After reviewing the environmental situation, the initial report stated that the

deceased was given drugs to drink. No intoxicants were consumed with the corpse. He went to the spot and found Trishan Saha, Partha Protim, Anwarul Hoque, Sojon Saha, and Taj Uddin. He found the witnesses at the place of occurrence. He did not know how long the witnesses were at the scene. In addition to the aforementioned witnesses, he found many others were at the scene. He denied the suggestions of the defense that his submitted opinion on the inquest report was not true, that the injury at the right eye mentioned in the inquest report was not true.

P.W-8 Dr. Mohammad Hossain, Lecturer, Department of Forensic Medicine, Dhaka Medical College, Dhaka. According to Constable No. 19883 Md. Saidur Rahman on 21/11/12, the dead body of deceased Amit Saha aged 20 years was received and postmortem was conducted at approximately 12:30. Rigor mortis was present in the dead body, and blood was in the nose of the dead body. The post-mortem doctor found the following injuries on the body:

(1) Abrasion on neck measuring 6 x 4 in dimension.

(2) There are 6 (six) minor abrasions on the neck.

(3) bruise on neck 3" x 2" in dimension.

(4) Laceration on left eye measuring 2" x 1" in dimension.

On dissection there was bruise on neck and trachea was congested and there was no internal injury and viscera kept and sent for chemical analysis.

Opinion kept pending for chemical analysis report.

The post-mortem report was marked as 'Exhibit-13', the signature of the present witness was marked as 'Exhibit-13/1', the signature of Challan was marked as 'Exhibit-12/2', and the signature on the inquest report was marked as 'Exhibit-10/3'.

After receiving the chemical analysis report, the present witness gave the final opinion after seeing the report as follows:

"As per autopsy findings and chemical analysis, I am of the opinion that the death was due to report, asphyxia caused by suffocation which antemortem and homicidal in nature."

The chemical analysis report was marked as 'Exhibit-14' and the signature of the present witness was marked as 'Exhibit-14/1'.

In his cross-examination, he deposed that he joined Dhaka Medical College as a lecturer in the Department of Forensic Medicine on 15/07/2011.

The body was received by the Forensic Medicine Department through Constable Saidur Rahman. No relatives came with the constable. The post-mortem examination was conducted at 12:00. The duty register stated that he was authorized to conduct the post-mortem. It took approximately half an hour to conduct the post-mortem. The report did not explain the blood injury on the nose of the deceased. There was no column to explain in the form.

No other doctor was with him during the autopsy. The autopsy of the deceased was not conducted by any board.

He denied the suggestions of the defence that a doctor relative of the deceased was with him during the autopsy, it would have been correct if the post-mortem had been conducted through a medical board, the injuries mentioned in the autopsy were not accurate, the autopsy report did not mention the issue of violation of injury, he did not explain suffocation in the report, it is not mentioned in the report that

suffocation was caused by injury. He also denied that if the post-mortem report had been submitted through a medical board, the correct report would have been submitted.

P.W-9 Abdul Latif Shaikh, Inspector of Police, was working as Officer-in-Charge of Pallabi Police Station on 22.11.12. On the said date at 20:30, he lodged the case based on the typed statement of informant, Shyamal Chandra Bhuiyan. Pallabi Police Station Case No-51 dated 21/11/12 Section 302/380/411 and 34. The present witness completed the statement form, the statement form was marked as 'Exhibit-15', the signature of the present witness was marked as 'Exhibit-15/1' and the counter-signature was marked as 'Exhibit-15/2'. He signed along with notes on the Ejaher, his signature was marked as 'Exhibit-1/2'. He was not cross-examined by the defence.

P.W-10 Md. Anwarul Hoque Farooq, a friend of the informant, said in the statement that the date of the incident was 21/11/2012. The informant went to India on 04/11/12 with his wife and 2 sons for a pilgrimage. Before going and giving news of their arrival in India, his son Amit Saha returned

to Dhaka on 10/11/12 due to an examination. After reaching Dhaka deceased, Amit, informed the present witness by phone. On 21/11/12 at 11:20/11:25 PM, informant Shyamal Chandra Bhuiyan told the present witness over the phone from India that someone had killed his son and left him at home, and requested him to go to his flat in Section No-6, Block-C, Road No-15, House No-2, Fourth Floor, North Side, under Pallabi police station. The present witness rushed to the said house at 11:40/11:45 PM and saw three police constables, one Ansar, and one S.I. named Al Mamun were present there. The deceased was being taken care of. Amit's dead body was found lying on the floor. He was seen wearing a half-shirt and short pants. His fingers were bent. He saw black bruises on his neck and below his knees. He noticed one end of the tie around the neck and the other attached to the ceiling fan hook.

The inquest was prepared at around 12:00, the signature of the present witness was taken and his signature was marked as Exhibit- 10/4'. The signatures of the other witnesses were taken on the inquest report. A checked blood-stained bedsheet, two pieces of the tie, and red-colored underwear

were seized. The signature of the present witness was marked as 'Exhibit-11/3'. The said Alamats were identified in court. The police officials were present on the spot. At approximately 01:20 AM the informant's brother, Babul Saha, called the present witness and said that on 21.11.12 at 2:00 PM, Anamika Deb, the girlfriend of the deceased Amit, came to the residence of the deceased Amit. Babul Saha told the present witness that the deceased's neighbor Shihab and his two friends found Pintu and Rubel at the deceased's house. Babul Saha asked the police officials to inform the said matters. The present witness told the incident to S.I. Sheikh Motiar Rahman. Motiar Rahman consulted with the Officer-in-Charge and A.C. Shihab was called from the neighboring house to the house of the deceased Amit. Various questions were asked about the murder. It's inconsistent. After some time, the police took Amit's dead body to the police station. The present witness came home early in the night. The next day on 22.11.12, he came to know that the informant Shyamal Chandra Bhuiyan had come to Dhaka from India. The body was taken to Dhaka Medical College for autopsy. After the postmortem, the body

was taken in front of the Pallabi house of the informant. After observing the religious rituals, the dead body was taken to Noakhali village house. Police officials were suspicious of the conversation. Later, the present witness, the informant, the officer of the informant's office Tajuddin Ahmed Palash, Hafizur Rahman Sabuj, Anamika Dev, and others went to the police station at 5:00 PM. He saw Shihab, Pintu, and Rubel detained on the second floor of the police station. The accused were interrogated in various ways regarding the murder by S.I. Sheikh Motiar Rahman. At one point the three accused confessed to having strangled the deceased Amit. They said that accused Rubel held the leg of the dead Amit, Shihab sat on the chest of the dead Amit and held his throat, and accused Pintu held his nose and face. Accused Pintu and Shihab choked the victim by twisting his neck with a tie. The corpse was hung from the fan with a tie to make the murder flow in a different direction. The tie was torn and the body fell. The accused broke the cupboards and showcases and took gold ornaments, cash, mobiles, laptop computer CPUs which were kept in the house of Pintu. According to the confession, some goods were

recovered from Pintu's house. The present witness identified that the accused Shihab, Pintu, and Rubel were in the court's docket.

During cross-examination, he stated that he was very close to the informant, who occasionally discussed family matters with him, though not all of them. The distance between his house and the informant's house would be 8/10 kilometers. He returned from the scene around 4:30/5:00 AM. Police recorded his statement on 23.11.12, he said to the police what he knows or believes to be true. Police took his signature on the inquest report. He did not see the Alamat's being seized. He went to the police station and saw the accused under arrest. He saw the accused in a room at the police station. The IO went to the house where he was present on the night of the incident, at approximately 01:00 or 01:20 at night. SI Al Mamun prepared the seizure list. He didn't remember when or where the informant filed the case. When they were at the police station then they saw the accused were interrogated. He did not see the Ejahar. He did not tell the informant before filing the complaint that the accused

Rubel had held the leg of the deceased Amit. He didn't ask the names of the accused.

He denied the suggestions of the defence that he didn't rush to the informant's house on 21.11.2012, he didn't see the dead body, the inquest report wasn't made in front of him, the accused didn't confess in front of SI Sheikh Motiar Rahman, accused Shihab didn't sit on the chest of the deceased Amit, strangle him and twist his neck with a tie, The accused did not break into the cupboard and take any gold ornaments, cash, mobile phones, laptops, or computer CPUs, and according to their confessions, no items were recovered. He also denied that he wasn't present at the time of making the inquest report and at that time he was at his residence, he was the informant's close friend so he signed the documents and gave a false statement, Rubel did not hold the deceased's feet, Bablu Saha did not call him to inform that on 21.11.12, around 02:00 PM, Anamika Deb was at Amit's house and saw the accused, Shihab, Pintu, and Rubel, there, he implicated the accused Rubel despite knowing that he was innocent as he was

a close friend of the informant, he didn't go to the police station, he deposed as dictated by the informant.

P.W-11 Md. Saidur Rahman, Police Constable was working in Pallabi Police Station on 22/11/12. Through PCC No. 3890 dated 21/11/12, the dead body of one Amit Saha on 22/11/12 at 08:35 AM from Pallabi Police Station was taken to Dhaka Medical College Mortuary. The body was accompanied by a full shade of turquoise color and black and white check shorts. After the post-mortem, the body was handed over to the father of the deceased Shyamal Chandra Bhuiya. The seized evidence was identified in the court. He handed over the body and seized Alamats to SI Matiur Rahman on 23.11.2012 at 09:05 PM. The signature of the present witness on the challan was marked as 'Exhibit-12/3'. The defence did not cross-examine him.

P.W-12 Md. Hafizur Rahman Sujan deposed in his deposition that the date of the incident was 21/11/12. On 04.11.12 the informant Shyamal Chandra Bhuiyan was told by his friend that he, his wife, and two sons would go to India for

pilgrimage. After that, the deceased Amit Saha returned to the country for his examination on 10.11.12 and met the present witness. He said that his parents and brother would return home after a few days. On the date of the incident on 21.11.12 at about 11:45 PM, the informant informed the present witness over the phone that someone or some people had killed his son, Amit, and left the dead body at home and asked him to go to the spot and take legal action. The present witness rushed to the house of the informant. It was around 12:00 at night. He saw more people, along with the police, observe the house.

He entered the house and saw the deceased Amit Saha lying on the bed in a bloody state. He saw a cloth tie tied around his neck. He saw the other part of the tie with the ceiling fan of the room twisted. The police found the body and various items. Ask different people. No one could answer. After some time A.C. and O.C. of Pallabi police station came. They asked different people how it happened. In the meantime, Md. Farooq had received a call on the phone from the informant's brother, Babul Saha. He told Farooq Saheb over the phone that

Anamika, the girlfriend of deceased Amit Saha, came to the informant's house around noon. Anamika found Amit Saha and his 3 friends Shihab, Rubel, and Pintu inside the house. Anamika assumed that Shihab, Rubel, and Pintu were taking drugs. Anamika then left angrily with the deceased Amit. Anamika narrated the incident to Babul Saha on the phone. Babul Saha asked why there was no one at home at noon so he went to that house. Anamika says she spoke to Amit in the morning and he said he is sick and won't go to university. Anamika came to Amit's house after hearing about Amit's ill health and left the house of Amit angrily. Farooq said these events to the police officers present at the scene. Anamika told Babul Saha that the accused Shihab resided in the flat next to Amit's. Babul Saheb informed Farooq Saheb. Mr. Farooq informed the people present at the spot and the police officers about the said matters. Then the present witness and others saw the accused Shihab's flat was locked from inside. When the police knocked on Shihab's flat, a woman came and opened the door. The police searched Shihab's flat. The police wanted to know the identity of Shihab, the woman said that

Shihab was her son. When Police asked about Shihab, the woman said that Shihab was sleeping in the inner room. The police officers asked to call the accused Shihab. The woman went and called Shihab. Shihab's room was searched. Then police summoned Shihab and took him to the home of the deceased, Amit.

A.C. sir interrogated Shihab and wanted to know whether Shihab knew Amit. Shihab said he knew and also said he met Amit in the afternoon. The police took the accused Shihab to the police station.

The police seized the goods from the house of the informant, prepared the seizure list, and obtained the signatures of witnesses. The informant came from India on 22.11.12. Then the present witness and others all went to the police station. He went to the police station and sent the body to the hospital for autopsy. When the body returned after the investigation, he took the body to the village house for cremation. At 5:00 PM the informant and other friends Farooq, office people, and the present witness went to Pallabi Police Station. Go to the investigating officer's room on the second

floor. He saw the accused Shihab, Rubel, and Pintu were there. The police were interrogating them. Media people were present. They described the murder. Accused Shihab was saying that in the morning Amit told Shihab that he was unwell. Shihab told Amit to stay at home, and he came. Accused Shihab was saying that he went out and bought a packet of milk.

He mixed sleeping pills into the milk and gave it to Amit. Shihab went to Amit's house with Pintu and Rubel. Anamika came while they were talking. Anamika saw Amit was fainted. Anamika left angrily. At one point, Shihab sat on Amit's chest and held him by the throat. The accused grabbed Rubel by both legs. Pintu held his nose and mouth. They then took a tie and wrapped it around Amit's neck and killed Amit by suffocating him. They hang the body from a fan to make it look like an unnatural death and the body is immediately torn apart. In that situation, the deceased left Amit on the bed and left the house with various items. Kept some items in Rubel's house. Police arrested Rubel and Pintu along with the goods.

Later the informant filed the Ejaher. Three accused were identified in the court docket.

In his cross-examination, he deposed that the IO interrogated him on 23.11.12, the accused confessed that he mixed sleeping pills into the milk and gave it to Amit.

He denied the suggestions of the defense that as he was the close friend of the informant, his whole statements deposed in the deposition were false and dictated by the informant. He also denied that the deceased Amit had gone to India for treatment due to drug addiction.

P.W-13, Shaon Saha said in his deposition that the date of the incident was 21.11.12. On the day of the incident, at 11:30 PM, his uncle Babul Chandra Saha made a mobile phone call to their house and said that someone had strangled his cousin Amit Saha to death in his own house in Dhaka and left the body on the bed. Then on the night of 21.11.12 at about 12:45 AM, the girlfriend of the deceased, Amit Saha, namely Anamika Deb Dulal told the present witness on his mobile phone that the date of the incident on 21.11.12, at

approximately 02:00 PM, she went to meet Amit at Amit's house. While meeting, Amit seemed to be intoxicated and Shihab and his two friends Pintu and Rubel were sitting next to him. Anamika gets angry seeing Amit in an inebriated state and stormed out of the house. The present witness immediately informed his uncle Babul Chandra Saha on the mobile phone. On 22.11.2012, he came to know from his uncle Babul Chandra Saha and others that the police were arresting Shihab on suspicious grounds. After questioning about Amit's death, Shihab and his friends Pintu and Rubel confess to having strangled Amit to death in his own house and looted the valuables. According to Shihab's confession, the police arrested the accused Pintu and Rubel. When they were asked about the murder, they confessed to the murder. The police of Pallabi police station seized some stolen goods from Rubel's house.

Police arrested 3 killers of Amit's murder. Later, the accused Shihab, Rubel, and Pintu confessed to killing Amit in a planned manner and looted the goods from Amit's house after the murder.

In his cross-examination, he deposed that the informant was his maternal uncle, and his home district was Noakhali. He lived there and on the day of the incident, he was in Noakhali. Witness Anamika was not his friend and everyone knew about Anamika, but she never visited Noakhali. He was working in Noakhali. He arrived in Dhaka long before 21.11.2012. He didn't know the accused from the past.

He denied the suggestion made by the defence that the statement given by him was false and the informant, being his maternal uncle, gave false testimony in his words.

P.W-14, Parth Pratim Saha, stated in his deposition that the date of incident was 21/11/12. On the said date at about 11.30 PM, his maternal father-in-law, Shamol Saha's younger brother, Babul Chandra Saha called him on his mobile phone and said that someone or some people had killed Shyamal Saha's son Amit Saha and left the dead body at the spot. He was asked to go to the place. The present witness went to the spot at 12:15 AM i.e. 22/11/12 and found many people and Tishan Saha in the bedroom of Amit and saw the dead body of Amit. A partially tied necktie was visible around the deceased's

neck, along with facial bleeding, neck markings, and dark discoloration on the face and forehead. Find half of the tie was attached to the ceiling fan. Tishan Saha says that at 8:00 AM he left Amit at home and went to the office. He returned home at 11:30 PM. The house was looked in a state of disrepair. He saw Amit Saha's body lying on the bed covered in blood. After some time, the police came. The police arrived and prepared an inquest report of Amit Saha at approximately 12:25 AM. The present witness is a witness to the inquest report. The inquest report bearded the signature of the present witness marked as Exhibit-10/5'. Two pieces of ties and a blood-stained bed sheet were recovered from the scene. After some time, Babul Chandra Saha made a phone call to Farooq Saheb. Later, the police arrested Shihab from the house next to the scene. Later, the police took Shihab and the dead body of the deceased to Pallabi police station.

He heard that on 22.11.12, the next morning, according to Shihab's confession, Pintu and Rubel were arrested. Recovery of looted laptop and other things were recovered from the accused Rubel's house. Later the informant identified

the dead body at Pallabi Police Station. The body was taken for post-mortem. He along with the present witness Shyamal Chandra went to the police station at 5.30. In a room at the police station, the police interrogated Pintu, Shihab, and Rubel. Then they disclosed that as per the previous plan on 21/11/12, approximately 12.30 to 02.45 PM, they killed the deceased. Amit became intoxicated when he was given an intoxicating juice to kill. At around 02.00 PM, Amit's friend Anamika went to Amit's house at the scene of the incident. Anamika found Amit drunk. Accused Shihab, Rubel, and Pintu were with him. Then she got angry and left after 10-15 minutes. Rubel held down both legs to kill Amit, Shihab climbed on his chest and strangled Amit's throat. Accused Pintu pinched Amit's nose and mouth and strung Amit's neck with a tie to ensure his death. The body was hung from a fan to make it look like a suicide. The body's ties broke and it fell down.

He also deposed that Trishan Saha was his uncle's father-in-law's brother-in-law and he was a computer engineer. He didn't know the office hours of Trishan Saha. My office hours were from 9:30 AM to 6:30 PM. He was employed

in a private office. The other private office in Dhaka maintained the same office hours as them. Trishan Saha only had one job. The distance from his house to the place of occurrence was 3/4 kilometers.

He denied the suggestions of the defence that he did not go to the police station with the informant, he did not hear in the investigating officer's room that the accused Rubel held down both legs to kill Amit, Shihab climbed on Amit's chest, and grabbed his throat, while the accused Pintu grabbed Amit's nose and mouth, and strangled him with a tie, ensuring his death and the informant, being his maternal uncle's father-in-law, gave false testimony without knowing the incident.

P.W. 15, Tishan Saha, a software engineer of a private firm, said in his deposition that the date of the incident was 21/11/2012. He resided at that time in Section-6 Block-C, Road No-15, House No.-2, 4th floor under Pallabi Police Station. The informant Shyamal Chandra Bhuiyan is his sister's husband. The deceased Amit Saha is his nephew. He used to go to the place of work from the house of the incident. Before the incident, on 04/11/12 the informant, along with his wife Rikta

Saha, sister of the present witness, and two children Amit Saha and Anshu Saha went to India for a religious pilgrimage. Deceased Amit Saha was studying B.B.A in Dhanmondi Eastern University. Amit returned from India on 10/11/12 due to his semester final examinations. From 10/11/12, he used to work from the house where the incident took place and the deceased Amit used to go to university from that house. Accused Shihab, a tenant of the neighboring flat of the house where the incident took place, often came to their flat. The day before the incident on 20/11/12 at approximately 10:30 and 10:45 PM accused Shihab came to their house and asked if Amit was at home. The present witness said Amit went downstairs and would be back shortly. On the day of the incident, 21/11/12, at approximately 8:00 AM, the present witness left home for office. Amit had neither class nor exam that day. That is why the present witness did not take the house key. Amit was at home on the said date. After finishing office at around 9:00 PM when he came under the building and called Amit's mobile number, gets hung up. Then he reached the flat and rang the bell. No response was received.

Later, he called the apartment's T&T phone. The phone was also not received. The present witness roamed on the streets thinking that Amit had gone out. At about 11:30 PM, a tenant in the lower flat unlocked the lower gate, and the present witness entered and went to the 4th floor. Before reaching the 4th floor, he found the door of the flat was open. He entered the house and turned the lights on in Amit's room, he found Amit lying dead on the bed. The present witness immediately grabbed him. Seeing blood rising from his mouth and nose. He found half of a tie around his neck. He saw bloodstain on the bed sheet. The rest of the tie was hanging from the ceiling fan. When he screamed, the mother of the accused Shihab from the neighboring flat came first. After that more people came. He immediately informed Shyamal Saha, who was in India, by mobile phone. He asked the present witness to report the incident to the Pallabi police station. The present witness reported the incident to the police station. At around 12:20 AM on 22/11/12 A.S.I. Al Mamun came to the spot with a contingent force. Approximately at 12:25, the inquest report was prepared. The signature of the present witness was

marked as 'Exhibit-10/6' in the inquest report. 4 more witnesses had signed in the inquest report. After some time at approximately 01:05, the Commissioner of Police, Officer-in-Charge Pallabi police station, and other police forces came to the spot. A seizure list was prepared at approximately 01:15 AM by ASI Al Mamun. He seized the blood-stained bed sheet, two pieces of tie, and underwear lying on the bed. At approximately 01:30 AM, the informant's younger brother Babul Saha called Anwarul Haque Farooq on his mobile phone. He said that on the day of the incident, 21/11/12 at 2:00 PM Amit's girlfriend Anamika came to meet Amit at the place of the incident. Anamika finds Amit drunk. She saw the neighbor Shihab next to Amit. She also said that she saw Shihab's friends Rubel and Pintu in Amit's father's house. Anwarul Haque Farooq informed the police officers present, after learning about the whole incident, over the phone. Based on this information, S.I. Sheikh Motiar Rahman arrested Shihab from a neighboring flat and took him to the police station. On 22/11/12 i.e. the next day at approximately 9:00 AM the informant Shyamal Saha along with the present witness's sister

and nephew came back from India and went to Pallabi police station. Identified the dead body of Amit. The body was sent to Dhaka Medical College for post-mortem. After the postmortem, the body was brought to the place of occurrence at 3:30 PM and the preliminary cremation was done at approximately 5:00 PM. The informant, present witness, Babul Saha, Suman Saha, Anamika Dev, Anwarul Haque Farooq, and other relatives went to Pallabi police station. The arrested accused Shihab was found in a room on the second floor of Pallabi police station. Accused Shihab had the name "Mastermind of the Murder" written on his chest, and there were two others next to him, one with the name "Killer Rubel" written on his chest and the other with the name "Killer Pintu" written on his chest. Accused Shihab, Rubel, and Pintu admitted the guilt in their confession that on 21/11/12 at 11:00 AM when Shihab knocked on the door of the Apartment, deceased Amit opened the door. Amit was at home alone and when he asked Amit, he replied, he was feeling sick. Accused Shihab suggested Amit to have some juice. Amit gave Tk.500/- to Shihab for bringing the juice, and accordingly, Shihab was

downstairs. Then Shihab contacted his friends Pintu and Rubel. Shihab, Pintu, and Rubel mixed the juice with drugs and returned home at approximately 12:30. Shihab fed Amit mixed juice. Amit gradually became intoxicated. At this time Amit's girlfriend Anamika calls Amit on his mobile phone. Anamika was asked to come home by Amit and at about 02:00 PM Anamika came to Amit's house i.e. the incident flat. Anamika came to the scene and found Amit intoxicated. Shihab told Anamika that Amit was sick when she asked whether Amit was intoxicated. Then Anamika saw two more people in Amit's father's bedroom and Anamika asked their identity. Shihab said that they were his friends Rubel and Pintu. After about 15 minutes, Anamika came out of the house. Shihab brought Anamika forward. Amit lay down on the bed intoxicated. Then the accused Shihab, Rubel, and Pintu attacked Amit as per their plan to kill him. Accused Rubel held Amit's legs tightly, Shihab sat on Amit's chest and squeezed Amit's throat with both hands. Accused Pintu held Amit's nose and face with both hands. At one point, when the deceased Amit became unconscious, while the accused Rubel was holding his feet,

Shihab and Pintu tied Amit's neck with a tie and two men pulled him from both sides to confirm the murder. So that the police wouldn't suspect Shihab, Rubel, and Pintu, they hung the dead body from the ceiling fan with a tie and staged it like a suicide. Later Amit tore the tie as his body was heavy and Amit's fell on the bed. Later, the accused Shihab, Rubel, and Pintu opened the steel cupboards of the flat and took gold ornaments, money, laptops, mobile sets, and a computer's CPU. Later they contacted and kept the looted goods at the house of accused Rubel.

According to the confession of the accused Shihab, some Alamats were recovered from the houses of the accused Pintu and Rubel. Later, after hearing from the present witness and others, the informant Shyamal Chandra Bhuiyan filed a written Ejaher at the Pallabi police station.

On 22/11/12 at 9:45 PM S.I. Motiar Rahman came to the Apartment of the place of occurrence. A steel cupboard was seized at 10:30 PM. The signature of the present witness was marked as 'Exhibit-2/2'. Steel cupboards were originally handed over to the informant through a 'Jimma Nama'. On

23/11/12, at approximately 9:00 PM, he went to Pallabi police station along with the informant. A cut and torn shirt stained with blood; white and black blood-stained shorts presented by Constable Saidur Rahman. The seizure list was prepared in the police station and the signature of the witness was marked as 'Exhibit-4/2'. The present witness identified the accused Shihab, Rubel, and Pintu in the court docket.

In his cross-examination, he deposed that they were two brothers and he was the younger. The older brother of the witness was employed at Beximco Pharma. They didn't have their own house in Dhaka. He lives in a rented house in Mirpur. Their home district is in Noakhali. He talked to the informant before lodging the Ejahar. He didn't read the draft copy of the Ejahar. His office hours were from 9:00 AM to 6:30 PM. On the day of the incident, he started for home from the office at 08:00 PM and reached home at 09:00 PM. It was not mentioned in the Ejahar that he resided at the informant's house. He gave a statement to the Investigating officer.

He denied the suggestions of the defense that he didn't depose to the investigating officer, he didn't see the dead

body of the deceased Amit on the bed, he didn't see the body was lying on the bed covered by blood, he didn't see the half of the tie around his neck, he didn't see the blood on the deceased's nose or mouth, he didn't see the blood-stained sheet and he didn't see the rest of the tie on the ceiling fan. He also denied the suggestions of the defence that he didn't go to the Pallabi Police Station with the informant, didn't see the accused Shihab in the Police Station, and all the three accused didn't confess in front of them to the effect that, according to their pre-plan, they came to Amit's apartment and when asked Amit about himself, he replied that he was sick, then the accused Shihab didn't give him juice with intoxicant and they killed Amit, and after that they looted valuables. He also denied the suggestions of the defence that the inquest report was not prepared in front of him, and being the informant's brother-in-law, he stated as instructed by the informant.

P.W-16 Md. Anwar Hossain said in his statement, that on 24/11/12 at 11:30, a computer's CPU was recovered from accused Pintu. The police officer prepared the seizure list. The signatures of the present witness and signature of Aman Ullah

were taken on the seizure list. The seizure list was marked as 'Exhibit-16' and the signature of the present witness was marked as 'Exhibit-16/1'.

In his cross-examination, he deposed that at the time of preparing the seizure list, he was going to the market from his residence. They prepared a seizure list and told him that the CPU had been recovered. When he was asked to sign the seizure list, he signed it. The CPU was not recovered in front of him. He saw the CPU inside the vehicle of the police.

He denied the suggestion that he colluded with the informant and gave false testimony.

P.W. 17, Md. Aman Ullah, said in his deposition that on 24/11/12 at 11:30, a computer's CPU was recovered from the address of the accused Pintu's house No. 223/24, Road No-18, Block-C, Section-6 Pallabi Mirpur. The Investigating Officer prepared a seizure list and took the signatures of the witnesses. He took the signature of the present witness. Anwar Hossain along with the present witness signed the seizure list. The signature of the present witness was marked as 'Exhibit-16/2'. The present witness had heard about the recovery of

the CPU from the house of the accused Pintu but he didn't not know the accused Pintu.

In his cross-examination, he denied that the CPU was not recovered from house No. 223/24, and He gave false testimony at the informant's request.

P. W. 18, Mahfuzur Rahman, police constable said in his statement, that the date of the incident was 22/11/12. He was working at the Pallabi police station on the said date. On 21/11/12 at Pallabi Police Station PCC No.-3887, in charge A.S.I. Md. Motiar Rahman, A.S.I. Kamrul Islam, Constable Nazrul, Constable Golam Anwarul, and the present witness, while they were on Gemini-73 duty, at approximately 12:30 AM, it was informed by the Pallabi police station through radio that there was a murder in Section 6/C, Building No. 15/2, Fourth Floor Flat under Pallabi Police Station. Reached the spot at 12:35 AM i.e. 22/11/12. After arriving, A.S.I. Al Mamun found the dead body of a man and prepared an inquest report. OC Pallavi, A/C of Pallabi Zone, and relatives of the deceased were present there. By asking the people present, it was found that the deceased's name was Amit Saha. He was 20 (twenty)

years old. His uncle Trishan Saha was present. He (Trishan) informed the present witness that the deceased's parents were in India. He said that someone killed Amit and looted the property from the house. Meanwhile, A.C. of Police got a call and A.C. of Police asked A.S.I. Motiar that who is Shihab. The deceased's uncle Trishan told the present witness and others that Shihab lives in the south flat of the deceased's house. The present witness and others quickly went to Shihab's house. Got Shihab at home. They caught him and brought him to the car. When Shihab was asked about the death of Amit, Shihab kept talking about other things rather than the murder. Shihab was immediately taken to Pallabi police station as per the instructions of A.C. After leaving, when they asked Shihab about the murder, at one point Shihab told them the incident. He said that he along with Rubel and Pintu tried to kill Amit by intoxicating him. Later they killed Amit by suffocation. After the murder, he tried to tie the body to the ceiling fan with a tie around the neck. Later, the tie was torn and the dead body fell down. One part of the tie was on the fan and the other part was on the victim's neck. Shihab was asked about Ruble's

address. After knowing the address, the police went to Rubel's residence within the jurisdiction of Pallabi Thana, Mirpur, Section-7 Road No-2, House No-381, Ground Floor at 6:30 AM. He went to Rubel's home and called Rubel. The landlord Mizan and Amjad were taken with the present witness. After interrogating the accused Rubel the police recovered from his residence a laptop, two mobile sets, a white pant, 22 hand imitation bangles, five pairs of earrings, two chains, 4 necklaces, Amit's varsity card, Amit's father's national identity card. The letter, two ATM cards, and another small black bag were recovered inside the bag. The seizure list was prepared at 6:30 AM. The seizure list was marked as 'Exhibit-17', and the signature of the present witness was marked as 'Exhibit-17/1'. Later, the accused Pintu came to house no-823/24, road no-18 of Pallabi police station, found Pintu, and brought him to the police station. Accused Rubel, Shihab, and Pintu were identified in the court docket.

In his cross-examination, he deposed that he forgot the joining date at the Pallabi Police Station. But it had been approximately 2 (two) years. He was with IO Motiar Rahman at

the time of the incident. He was present at the place of occurrence as a member of the contingent force. The IO had interrogated me at the Police Station on 20.01.2013 at 08:00 PM. There were 05 people on the aforementioned GEMINI-73 duty. They were informed about the incident over the radio. But he deposed that they were informed by the In Charge. They reached the place of occurrence at around 01:30 AM on 22.11.12. He forgot the name of the A.C. of the Police. He mentioned the name of the Officer in charge's name as Abdul Latif. All 05 members of the contingent force reached the place of occurrence together and after reaching the place of occurrence they found the A.C. and OC of the Police Station there. He stated to the Investigating Officer (IO) that, in addition to the police, other people were also present at the scene. Whether the other people present there were the owners of the other flats, he didn't know. When A.C. and OC asked about the accused Shihab then Trishan told them that Shihab resided on the south side of the flat of the place of occurrence. He didn't call the other owners of the surrounding flats not even the other owners of the other buildings. He tried

to call the caretaker of the building. He didn't know how tall the house at the scene was, so he climbed up to the fourth floor, the building was a residential one.

He denied the suggestions of the defence that the IO had started the investigation after consulting with him, he didn't go to the place of occurrence, as he was always on duty with the IO, therefore he stated as instructed by the investigating officer. He also denied that there was nothing recovered from the accused Rubel.

P.W. 19, Babul Chandra Saha, manager of a private company, said in his deposition that the date of the incident was 21/11/12. On 04/11/12 the elder brother of the present witness Shyamal Chandra Bhuiyan along with his wife Rikta Saha and his two sons Amit Saha and Angshu Saha went to India for pilgrimage. Later, on 10/11/12 Amit Saha, the eldest son of his elder brother, Amit Saha, returned to Dhaka due to his examination. His elder brother, along with his wife and younger son stayed in India for pilgrimage. 21/11/12 i.e. the incident date at approximately 10:30 PM, Trishan Saha, the brother-in-law of the informant, told him on the mobile phone

that someone had killed Amit Saha and looted the valuables of the house. Meanwhile, the present witness requested his niece-in-law, Partha Pratim Saha, through mobile phone to go to the place of occurrence, House No-2, Road No-15, Section-6, Block-C, Pallabi, Mirpur, and requested him to inform the present witness of the details of the incident. After some time, his niece-in-law, Partha Pratim Saha, informed him through mobile phone that the incident was true and asked him to come to Dhaka as soon as possible. The present witness and his wife Ruma Saha also left for Dhaka. On the midnight of 21/11/12 i.e. on 22/11/12 at approximately 01:00 AM Shawon Saha, the present witness's nephew informed him through his mobile phone that Anamika Dev, who is Amit's girlfriend, at noon on 21/11/12 At 2:00 PM went to Amit's house to meet Amit. Anamika Dev found Amit intoxicated and also found Amit's next-door neighbor Shihab and his two friends Pintu and Rubel in the house. The present witness immediately reported the incident to his elder brother Shyamal Chandra Bhuiyan's friend Mr. Farooq through mobile phone and asked him where he was at that moment. Mr. Farooq told this

witness that he was at the spot and immediately informed the police officer present at the place about Shawon's information given to the present witness.

Immediately, the police officer asked him to know about the incident through his mobile phone. The present witness narrated the statement given by Anamika Dev and the information given by Shawon to the police officer. On 22/11/12 at approximately 7:00 AM, the present witness appeared at the scene. He saw his elder brother's brother-in-law Trishan Saha crying. He saw the people around him. He found the house contents in a state of disarray. Amit's body has been taken to Pallabi police station by police officials. Immediately go to Pallabi police station. He found Amit Saha's dead body in the police van. After some time, the elder brother of the present witness Shyamal Chandra Bhuiyan came to Bangladesh from India and went to Pallabi police station. The informant identified Amit's body in the police van. Later the body was taken to Dhaka Medical College Hospital morgue for post-mortem examination. After the post-mortem, they took Amit's body and brought it to the house at Pallabi. The

present witness and others took the dead body to the Noakhali Maizdi Sadar after performing some religious ceremonies according to the scriptures. On 22/11/12 PM at about 5:00 PM, the present witness along with his elder brother Shyamal Chandra, his brother-in-law Trishan Saha, Anamika Dev, his elder brother's friend Farooq, Sojon Saha, and elder brother's family and relatives went to Pallabi police station. The present witness went to the police station and found S.I. Sheikh Matiar Rahman, interrogated the accused Shihab, Rubel, and Pintu about the incident in a room on the second floor. He saw Journalists from various television channels there. Accused Shihab and Pintu said that they had planned to assault Amit by feeding him juice laced with drugs. Later, the accused Shihab climbed on the chest of the deceased Amit Saha and held Amit Saha's throat with both his hands and Rubel held Amit's legs with both his hands so that Amit Saha could not move. Accused Pintu held Amit Saha's face and nose with both hands. When Amit Saha became unconscious, accused Shihab and Pintu strangled Amit Saha's neck with a tie and pulled him from both sides to confirm the murder. Accused Shihab, Pintu,

and Rubel broke the steel cupboard on the spot and took valuable jewelry and other gold ornaments. The accused strangled Amit Saha's throat with a tie and then hung his dead body with the tie from the ceiling fan so that the Police and neighbors thought he had committed suicide. But due to the weight of the dead body, Amit's dead body fell on the bed after tearing the tie. Accused Shihab, Pintu and Rubel brought the looted goods to the house of accused Rubel. According to Shihab's confession, the police officer recovered part of the looted goods from Rubel's house, seized them, and brought them to the police station. Later his elder brother Shyamal Chandra Bhuiyan filed an affidavit. The present witness identified the accused Shihab, Rubel, and Pintu in the courtroom.

In his cross-examination, he stated that he was working in a private company. He posted in Noakhali. The informant is his elder brother. He had visited the scene of the incident multiple times before. He didn't witness the murder but heard the incident on his mobile phone. The IO of the case interrogated him via mobile phone on 21.11.12 for around 2-3

minutes. He gave his testimony before the court on 07.19.15. But previously he was not cross-examined by the defence.

In his cross-examination, he denied that on 21.11.12, he was not informed by Shawon Saha that Anamika Deb did not visit Amit Saha's house on 21.11.12 at around 02:00 PM. He also denied that after reaching Amit's house, he did not find the house contents in a state of disarray. He denied that there was nothing recovered from the house of the accused Rubel and nothing was recovered according to the confession of the accused Shihab. He also denied that there was no character named Anamika Deb until the offense occurred and the character of Anamika Dev was later created to file a case.

P. W. 20, Md. Nurul Amin said in his testimony that the date of the incident was 21/11/12. The time is around 11:30 PM. Lived in the said building for 1 year before the incident. Shyamal Babu, father of the deceased lived in the said house on the 4th floor on the north side, and accused Shihab lived on the same floor on the south side.

On the day of the incident, he came from the shop and heard the sound of crying. He came out of his flat. The other resident of the flat, Kamrul Sahib, also came out from his flat. While going upstairs, he saw Shihab's mother shouting that Amit had put a noose around his neck, and everyone was asked to come. Going upstairs to Shyamal-Babu's flat and saw Amit's maternal uncle was crying in front of the dead body of Amit. Amit was seen with blood on his nose and mouth, half of his neck tied with a tie. The other half was tied to the ceiling fan. Then the police came. People from the neighborhood came to the flat on the spot. The present witness had been present from 2:00-2:30 AM. Everyone in the flat leaves. He woke up in the morning and heard that Shihab was taken away by the police. He listened to the matter that the police, along with Shihab's two friends, recovered the goods. On the night of 22/11/12 Shihab and his two friends were shown as murderers on TV. It is also said that they strangled Amit to death.

On 25/11/12 the police of Pallabi police station came and interrogated the present witness about the incident. The

present witness identified the accused Shihab in the courtroom. He could not identify the other accused.

In his cross-examination, he deposed that he lived in a rented house on the spot and didn't have any agreement with the house's owner. He worked in the tailoring shop from morning to night. There were eight flats in the building. Everyone lived with their family. He didn't know how many people lived there. Later it was said that there would be 32/33 people. He heard the sound of crying and went upstairs. He doesn't remember how many people he saw.

He also denied that on 22.11.12, at around 11:30 PM, he was not at the place of occurrence.

He denied the suggestions of the defence that he did not tell the investigating officer that he knew or heard any other incident other than the news he heard on TV on 22.11.12. He also denied that he gave the false statement as he had a good relationship with the informant.

P.W. 21 Sheikh Matiar Rahman, S.I. of Police (Retd) said in his deposition that on 21/11/12 he was working as S.I. in D.M.P. at Pallabi Police Station. He along with one A.S.I and 3

constables were on Gemini-73 duty on the said date. On 22/11/12 at 12:30 AM from Pallabi Police Station, a message was sent from Pallabi Police Station, Section No. 6, House No. 25, Road No. 15, Block-C, a robbery, and murder took place at that place of occurrence. The O.C. requested the present witness to go there. The present witness reached the spot at 12:35 AM and saw that a boy was killed in a flat on the 4th floor of the house. His name was Amit Saha. S.I. Al Mamun had already prepared the inquest report.

In the meantime, a relative of the informant informed over the telephone to A.C. and O.C. that on 21/11/12 between 01:00 PM and 1:30 PM, Anamika Deb, the girlfriend of the deceased, came to the said flat. She found the next-door neighbor Shihab in Amit Saha's house along with his two friends Pintu and Rubel. Based on the said information, the informant's relative suspected Shihab's involvement in the incident. Later, A.C. and O.C. both went to the house of accused Shihab. After finding Shihab at home, Shihab was taken into custody and the interrogation started. As Shihab's speech was not satisfactory, they became suspicious. Later the

present witness was called by A.C. and O.C. He also interrogated the accused Shihab with them. On their orders, he brought the accused Shihab to the police station. He was interrogated on 22/11/12. Shihab admitted that he and his two friends were involved in the incident. He said that he knew the addresses of the houses of his two friends. The A.C. and O.C. were well informed of the said matter. They immediately made an order for the arrest of the accused and the seizure of evidence. The present witness along with Shihab and the force arrested his accomplice Ruhul Amin Rubel as shown and identified by accused Shihab from a room on the ground floor of house No. 381, Road No. 2, Section No. 7, Mirpur.

According to Rubel's possession, the looted goods from the deceased's house, such as a computer laptop, a micro tab, two Nokia mobiles, a white cotton full pants, a black bag, 22 different imitation bangles, two imitation chains, and 4 imitation necklaces. , 5 pairs of imitation earrings, a small black bag, an ID card of Amit Saha's Eastern University, an ID card of informant Shyamal Chandra Bhuiyan, an ID card of Rikta Saha, an ATM card of One Bank, an ATM card of Dutch Bangla Bank

were recovered and seized at 6:30 AM. Evidence was seized in front of the witnesses present. He took the signatures of the witnesses on the seizure list. The signature of the present witness was marked as 'Exhibit-17/2' in the seizure list. Later he along with the accused and the other accomplice also along with recovered and seized goods, went to the accused Pintu's house and his address was house No-223, Road No-14, Block-C, Section-6 Thana Pallabi. After arrival there, Pintu was arrested. Then took all of them to the police station. At one stage of interrogation, the accused admitted that Shihab had told them at various times that there was money and gold in the spot house. The deceased's father and his wife went to India for treatment. He said that since Amit lives alone at home, he can be drugged and brought back valuables from home. In the interrogation, they also said that they went to the house of the accused Rubel. They went and planned to mix different drugs in a juice bottle and came to the deceased Amit's house at noon on 21/11/12. They fed the deceased intoxicated juice but the accused consumed different juices. After drinking, Amit began feeling unwell and called his

girlfriend, Anamika Dev, asking her to come to his house. When Anamika arrived and knocked on the door, Shihab, the accused, brought her inside. After arrival, Anamika asked Amit why he was sick. The deceased Amit could not say anything well. Anamika asked accused Shihab if Amit had taken anything intoxicating. Accused Shihab denied. Meanwhile, Anamika saw accused Rubel and Pintu on the bed inside the house. Anamika asked the accused Shihab who they were. Accused Shihab said they were his two friends Rubel and Pintu. Later, Anamika got angry with Amit and left the house. Later, as Amit was not fully unconscious, accused Rubel, Pintu, and Shihab hung Amit around his neck with a tie. The deceased Amit was bleeding from his nose and mouth. Later, Amit's dead body was hung from the ceiling fan with a tie to show that Amit had committed suicide. But Amit's body fell after tearing the tie. Without noticing that the accused took valuables, gold, and money from the house and left the flat's door open. The informant came to Bangladesh from India after receiving the news. After cremating his son, he came to the police station, saw the recovered and seized goods, saw the accused, and

later filed the Ejahar. The accused admitted the facts in front of the informant and others. Under the instructions of the officer in charge, he took charge of the investigation of the case. He reviewed the statement of the Ejahar, the inquest report of the deceased, and the seizure lists, and visited the scene. Prepared draft map and plot index of the scene. The draft Map and plot index were marked as 'Exhibit-18', the signature of the present witness was marked as 'Exhibit-18/1', the description of the index sheet was marked as 'Exhibit-19', and the signature of the present witness was marked as 'Exhibit-19/1'. On 22/11/12 at about 22:30 at the spot in the presence of the informant, the goods mentioned in column 4 of the seizure list were seized. The signature of the present witness was marked as 'Exhibit-2/3' in the seizure list. Alamats were handed over to the informant with a 'Jimma Nama'. The signature of the present witness on the 'Jimma Nama' was marked as 'Exhibit-3/2'. On 23/11/12 at 21:05, the clothes worn by the deceased Amit Saha were seized by the investigating officer in the office room on the second floor of Pallabi Police Station, as per the presentation of Constable

19883 Md. Saidur Rahman. The Alamat were mentioned in column 4 of the seizure list. The signature of the present witness in the seizure list was marked as 'Exhibit-4/3'. During the interrogation of the arrested accused Al Amin Islam Pintu admitted that he had a CPU looted from the house of Amit in his house. The accused Shihab allowed to keep the CPU with him. On 24/11/12 at 11:30 AM, the computer CPU was recovered in front of the witnesses from accused Al Amin Islam Pintu's house, which was situated in Section-6, Block-C, Road No-18, House No-223/224 within Pallabi police station. Seizure is prepared. The signatures of the witnesses are taken. The signature of the present witness was marked as 'Exhibit-16/3' in the seizure list. The accused at one point confessed to the incident. When the accused were taken to the court, the accused Asfaq Ahmed Shihab, Ruhul Amin Rubel, and Al Amin Islam Pintu gave confessional statements in the court.

Witness Anamika Dev expressed her willingness to testify under Section 164 of the Code of Criminal Procedure before the learned Court and she was sent to the court. She testified in court. During the investigation of the case, the

statements of the witnesses were recorded under section 161 of the Code of Criminal Procedure. He collected the post-mortem report and report of the chemical examination. After completing the investigation, he found a prima facie case against the accused Asfak Ahmed Shihab, Al Amin Islam Pintu, and Ruhul Amin Rubel and submitted a charge sheet No. 171 dated 29/04/13 under section 302/201/394/411/34. The accused were present in the court docket and seized Alamats were also before the court.

In cross-examination, he deposed that he was assigned to investigate the case on 22/11/12 at 20:35. After receiving the charge of the investigation of the case, on 22/11/12 at 21:45, he visited the place of occurrence. On 22/11/12, he interrogated the informant and other 4 witnesses and recorded their statements under section 161 of the Code of Criminal Procedure. He further deposed that he did not examine the Dean of Faculty members of the University, Where the deceased studied, as he did not think it was necessary. During the investigation, he examined 24/25 witnesses. He examined 10 witnesses on the place of

occurrence. Among the witnesses, he examined some of them in the police station.

He further deposed in his cross-examination that on 22/11/12, in the morning, he was on duty in the police station. But after the incident immediately he was assigned to investigate the case. When he was assigned, he was then in the police station. He visited the place of occurrence but did not recall the names of the tenants of the house then. He did not put any sign to identify the floors from bottom to top of the building nor mention the entrance gate of the building in the sketch map. There was no doorman to open or close the main gate. It was done by the tenants. He didn't find out that on the day of the incident who opened the gate. He deposed that during the day the door was open. On questioning the witnesses, he found that on the day of the incident, the main gate was closed at 02:30 PM. There were a total of 08 (eight) families living in the place of occurrence building. On the day of the incident, nobody could tell who was entering and leaving the house. He didn't know who owned the house marked as 'ग', 'घ', and 'ङ' on the draft map. He examined the

people who resided in that building but he didn't mention the same in his case diary. He marked the 'Hafeziya Madrasha' as '২' but he didn't mention in the case docket that he examined anyone from the Madrasha. The houses marked as the '৭' and '৮' in the sketch map were adjacent to the north and east sides of the scene, respectively. He saw the witness Anamika Deb first time in the police station after the case was filed on 22/11/12. He didn't record her statement on that day. Later met Anamika Dev on 02/12/12. The red color panty or underwear and a bloodstained bedsheet were recovered from the place of occurrence room but he didn't send those alams for chemical examination. It was not mentioned in the chemical examination report that there was any intoxicated drug found in the stomach of the deceased nor anything like milk. He arrested the accused Rubel on 22.11.12 at 06:25 AM. He didn't mention in his confessional statement that he was present in the deceased house at the time of occurrence. Accused Ruhul Amin Rubel confessed on 24.11.12. Accused Al Amin Islam Pintu didn't mention the name of Ruhul Amin Rubel in his confessional statement.

He also deposed that on the day of the occurrence, he was on duty with ASI Kamrul Islam, Constable Mahfuzur Rahman, Nazrul Islam, and Golam Anarul Hoque. He recorded the statement of Constable Mahfuzur Rahman under section 161 of the Code of Criminal Procedure, Mahfuzur Rahman stated that on 22.11.12, at 01:30 AM, they reached the place of occurrence house. In the plot index the six-storied building was marked as 'ग', which was situated on the north side of the scene, the other six-storied building was marked as 'घ' and was situated on the east side of the place of occurrence. The 'ङ' marked building was situated on the south side of the scene house. During the occurrence, there were 03 senior officers and 20 same ranked officers were there at the Pallabi Police Station.

He further deposed that he prepared the sketch map and index on the paper. He didn't mark the road situated on the north side of the place of occurrence in the sketch map. In addition to the house at the scene, there were other houses and shops. He didn't mention the people of the north and south-sided houses as witnesses in the charge sheet as they

weren't able to provide any information regarding the occurrence. He did not examine any person in the houses to the east and south of the house marked as 'छ' on the sketch map. He did not examine any person in the houses to the east of the house marked as 'ब' on the sketch map. He didn't examine any shopkeeper in the area surrounding the place of occurrence. He didn't collect any Data of Anamika Deb's mobile. He didn't think that it was necessary to collect the Call List Data of Anamika's mobile phone or that any measures had been taken to determine the location of Anamika's mobile or others' mobile phone. He did not consider it necessary to investigate whether the informant had gone to India with his wife and children.

He denied the suggestions of the defence that the confessional statements were not found to be true and voluntary and nothing was recovered from the possession of the accused Pintu and Rubel. He denied that Anamika Deb didn't know anything about the occurrence so he didn't record her statement early when he met her, Anamika Dev's statement was recorded by threatening her. He also deposed

that if an investigation had been conducted into the family's trip to India, Amit's drug addiction would have come to light.

He further denied that he mentally and physically tortured the accused Ashfaq Ahmed Shihab, and the accused gave the confessional statements as per his dictation.

He further deposed that he took over the investigation of the case under the influence of the informant and to further his interests and he submitted the charge sheet under the influence of the informant.

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

We have heard the learned Deputy Attorney General and the learned Advocate of the appellants and the learned State Defence lawyer, perused the Ejaher, the charge sheet, the inquest report, the seizure list, the post mortem report, the confessional statements, the impugned judgment and the papers and documents as available on the record.

To consider the entire material facts of the case let us discussed the 164 statement of the condemned prisoner Al

Amin Hossain Pintu as under: “আসফাক আহমেদ শিহাব আমাকে বলে কিছু টাকা পয়সা দরকার চল আমিও এর বাসায় গিয়া দেখি কিছু পাই কিনা। ২১ তারিখ বেলা ১২ টার দিকে শিহাব এসে আমিও এর বাসায় নিয়া যায়। কনিং বেল দিলে আমিও গেট খুলে দেয়। আমরা আমিও এর বাসায় গিয়ে মুক্তি দেখতে থাকি আমিও এর সাথে। আমিও শিহাবকে ৫০০ টাকা দেয়। শিহাব বাইরে চলে যায়। কিছুক্ষণ পর জুস নিয়া আসে। আমরা ৩ জনই খাই ৩ Juice শিহাব smoke করার কথা বলে। বারান্দায় গিয়া ৩ জনে ১ টা সিগারেট খেয়ে এসে আবার মুক্তি দেখা শুরু করি। আমিও এর একটা ফোন আসে। আমিও বলে যে, গেস্ট আসবে অনামিকা ওর girl friend. অনামিকা নিচে এসে ফোন দেয় আমিওকে কিন্তু আমিও তখন মাতাল অবস্থায়। শিহাব নিচে যেয়ে অনামিকাকে নিয়ে আসে। আমিও অনামিকার হাত ধরে। অনামিকা জিজ্ঞাসা করে তুমি কি খাইছো। অনামিকা রাগ করে আমিও এর মোবাইল নম্বর delete করে কান্না শুরু করে। আমি আর শিহাব অনামিকাকে বুঝাই। শিহাব অনামিকাকে নামাইয়া দিয়া চলে আসে। আমিও পুরা মাতাল হয়ে পড়ে, তখন শিহাব আমিও এর গলা টিপে ধরে, শিহাবের কথামত আমিও আমিওকে ধরি। শিহাব একটা টাই দিয়া আমিও এর গলায় বাঁধে। একটা ফ্যানের সাথে বাঁধি আমরা আমিওকে, টাইটা ছিঁড়ে পড়ে যায়। আলমারি খুলে শিহাব। একটা ব্যাগে কিছু স্বর্ণালঙ্কার, ১০টাকার বাউন্স, ৫ টাকার কিছু নোট নেয়। আমি C.P.U. খুলি। ১ টা Laptop, ১ টা I-pad, ২ টা মোবাইল নিয়া বের হয়ে নিচে আসি আমরা। শিহাব আমাকে C.P.U. টা আমার বাসায় রাখতে বলে। আমি আমার বাসায় C.P.U. রেখে এসে বুবেল এর বাসায় এসে শিহাবকে দেখি। ব্যাগটা খুলে দেখি ওখানে বসে। বাসায় চলে যাই যে যার মত। পরের দিন ভোরে আমার বাসায় police গিয়ে আমাকে ধরে। ”

The confessional statement of condemned prisoner

Ruhul Amin Rubel as under: ২১/১১/১২ তাং আমি মিরপুর বাসায় শূয়ে ছিলাম। আসফাক আহমেদ শিহাব আমার বাসায় এসে ১ টা ব্যাগ রাখে বলে ব্যাগটা রাখ একটু পরে আমি আসছি, এর মধ্যেই আল-আমিন পিন্টু আসে। ওরা ব্যাগটা খুলে দেবে বলে আমার বাড়ী (শিহাব বলে) থেকে পাঠাইছে পরে এতে দেখবো। পরে দিন সকাল police এসে আমাকে নিয়ে খানায় যায়। শিহাব আমার সাথে একসাথে diploma করেছিল। আমি এখন Peoples University Textile engineering করছি।

The confessional statement of condemned prisoner

Asfak Ahmed Shihab as under: আমিও ও আমি পাশাপাশি ক্যাডে থাকি। প্রায়ই বাসায়

যাওয়া আসা করতাম। একদিন অমিতকে জানাই এক ধরনের জুস রয়েছে যাতে হালকা ফিলিংস হয়। ২১/১১/১২ তারিখ বেলা ১২.৩০ ঘটিকা আমি ও পিন্টু অমিতের বাসায় যাই। দুধের মধ্যে ঔষধ সিডিল, সিভিট, আয়রনের ঔষধ মিশিয়ে জুস তৈরী করে বোতলে ভরে অমিতের বাসায় নিয়ে যাই। আমাদের উদ্দেশ্য ছিল ঐ বাসা থেকে টাকা পয়সা, স্বর্ণালংকার নিয়ে আসা। পিন্টু, আমি ও অমিত উক্ত তৈরীকৃত জুস খাই। এর পর পরই অমিতের প্রেমিকা অনামিকা অমিতকে ফোন করে। যেহেতু অমিত নেশাগ্রস্ত হয়েছে তাই আমরা অমিতকে বলেছি অনামিকাকে পরে আসতে বলতে। অমিত সমস্যা নেই বলে অনামিকাকে আসতে বলে। অমিত নেশাগ্রস্ত দেখে অনামিকা অমিতের সাথে ঝগড়া করে বের হয়ে যায়। আমি অনামিকাকে মিরপুর ১১ নম্বর বাসষ্ট্যান্ড পর্যন্ত এগিয়ে দেই এবং তাকে না যেতে বলি। আমি অমিতের বাসায় ফিরে আসি। এসে সবাই মিলে মুভি দেখি এবং একপর্যায় অমিত মাতাল হয়ে বিছানায় শুয়ে পড়ে। আমি ও পিন্টু ২ জনে মিলে অমিতের গলা চেপে ধরি। আমাদের অমিতকে মারার কোন প্লান ছিলনা। জিনিসপত্র নিলে অমিত আমাদের ধরিয়ে দিবে এই ভেবে কোন কিছু চিন্তা না করে আমরা কিছুটা ব্রাভির মধ্যে অমিতের গলা চেপে ধরি। অমিতকে এরপর আমি ও পিন্টু টাই দিয়ে গলা বেঁধে ফেলি। এতে অমিত মারা যায় তার নাক মুখ দিয়ে রক্ত বের হয়ে যায়। তার নিশ্বাস না থাকায় আমরা কি করবো ভেবে পাচ্ছিলাম না। পুলিশ যাতে এটি আত্মহত্যা মনে করে, আমাদের যাতে সন্দেহ না করে সে কারণে অমিতকে টাই দ্বারা ফ্যানের সাথে ঝুলিয়ে দেই। কিন্তু ভার রাখতে না পেরে অমিতের মৃতদেহ বিছানায় পরে যায়। আমি এরপর আলমারি খুলি। সেখানে চুড়ি, কয়েকটা কানের দুল, মালা পাই যা গ্র্যামিটেশনের, স্বর্ণ নয়, ১০ টাকার ১ টি বান্ডিল ও ৫ টাকার কয়েকটি নোট একটি ব্যাগের মধ্যে অমিতের ল্যাপটপ, আই প্যাড ও মোবাইল সহ মালামাল চুকাই, পিন্টু অমিতের কম্পিউটারের সি পি ইউ নিয়ে তার বাসায় নিয়ে যায় এবং আমি ব্যাগটা নিয়ে আমার বন্ধু রুবেলের বাসায় রাখি। সেখানে পিন্টু আসলে ব্যাগ খুলি এবং জিনিসপত্র দেখি। সেগুলো স্বর্ণ নয় তা বুঝতে পারি। কবেলকে মালামাল রাখতে বলি এবং আমি বাসায় চলে আসি। আমরা ঐ সময়ে অমিতের লাশ ঐ ভাবে ফেলে রাখি এবং দরজা খুলেই বের হয়ে আসি। ঘটনা ঘটে লাঞ্চার সময়। পরে ২২/১১/১২ তারিখ রাত ৩ টায় আমাকে থানায় নিয়ে আসে। আমি পরে মালামালের কথা বলি। এবং আমার কথিত মতে রুবেলের বাসায় ভোর ৫ টায় যাই এবং রুবেলকে নিয়ে আসে, মালামাল উদ্ধার করে। আমাকে ও রুবেলকে নিয়ে পিন্টুর বাসায় গিয়ে আমাকে গ্রেফতার করে। আমি এই ঘটনায় অনুতপ্ত এবং ক্ষমাপ্রার্থী। এই আমার জবানবন্দি।

The prosecution's case is that Amit Saha, son of the informant P.W.1 Shamol Chandra, was killed sometime

between 8:00 AM and 02:30 PM on 21.11.2012 in the informant's apartment at House No. 2, Road No. 15, Section 6, Pallabi, Mirpur, Dhaka. The incident came to light when P.W.15 Trishan Saha entered the apartment after 11:30 PM and discovered Amit Saha's dead body. Trishan immediately informed the victim's father, who was in India, and the informant and his brother Babul Chandra Saha notified close relatives, including P.W.5, P.W.10, P.W.12, and P.W.14. These witnesses rushed to the scene and found Amit Saha's body lying in his bedroom.

Upon receiving information, S.I. Md. Al Mamun (P.W.7) and constable Md. Saidur Rahman (P.W.11) arrived at the scene, prepared an inquest report, seized some materials and transported the body to the police station. According to the depositions of P.W.18, P.W.11, and P.W.21, senior police officers, including the Assistant Commissioner and Officer-in-Charge of Pallabi Police Station, also visited the scene. Subsequently, police interrogated condemned prisoner Asfak Ahmed Shihab at his residence but found nothing incriminating at that time. S.I. Sheikh Motiur Rahman (P.W.21) then brought

Asfak Ahmed Shihab to the police station for further questioning.

The prosecution further stated that P.W.19, Babul Chandra Saha made a phone call to P.W.10 while in the house and handed over the phone to P.W.21, Sheikh Motiur Rahman, informing him that condemned prisoner Asfak Ahmed Shihab, along with two friends, was in the house between 8:00 AM and 1:30 PM, as relayed by P.W.2 Anamika Deb Dulal Popy. According to the prosecution, P.W.2 initially called the victim but found his phone switched off. She then contacted her friend Arafat (not examined), who also found the victim's phone off. Later, P.W.2 contacted another friend, Mitul (not examined but listed as Witness No. 17 in the charge sheet), and informed her that she saw Asfak Ahmed Shihab and his two friends in the house. At 11:30 AM, Mitul informed P.W.2 that Amit had allegedly committed suicide.

Subsequently, P.W.2 called another friend, Sayem who also mentioned hearing about the alleged suicide and heading to the victim's house. Around 1:00 AM, Mitul called P.W.2

again, suggesting that Amit might not have committed suicide and some valuables were missing from the house of the victim. P.W.2 then informed P.W.13 Shawon Saha, the victim's cousin and then the next morning P.W. 2 went to the victim's house around 9:00 AM and disclosed the situation to relatives.

In her deposition, P.W.2 also stated that at approximately 5:00 PM, she, along with the informant, visited Pallabi Police Station, where they saw condemned prisoners Asfak Ahmed Shihab, Al-Amin Islam Pintu, and accused Ruhul Amin @ Rubel handcuffed in a room and recognized them.

As per the deposition of P.W.1, the informant lodged the *Ejhar* on 22.11.2012. After completing formalities, the police sent the deceased's body to the morgue for a post-mortem with Constable Saidur Rahman (P.W.11). After the autopsy, P.W.1 received the corpse, took it to his village in Noakhali, performed the funeral, and returned. The following morning, he visited the police station again, where he saw the accused. In the presence of witnesses, the accused admitted to killing the victim, looting valuables from the house, and on the

disclosure of the accused some items were recovered from the house of Ruhul Amin @ Rubel. The accused later made confessional statements. These are the main facts of the case.

The prosecution examined 21 witnesses out of 33. P.W.3, P.W.4, and P.W.6 were Magistrates who recorded the confessional statements of the condemned prisoners and the statement of P.W.2, Anamika Deb Dulal Popy. P.W.7, S.I. Md. Al Mamun prepared the inquest report, sent the body for post-mortem, and seized some *Alamats* from the victim's house. P.W.9, Inspector Abdul Latif Sheikh, filled up the F.I.R. form. P.W.11, Constable Md. Saidur Rahman transported the body along with the belongings to the morgue. P.W.18, Constable Md. Mahfuzur Rahman was a seizure list witness for **Ext. 17**, a vital one which mentions important documents of the informant, was recovered from accused Ruhul Amin @ Rubel's house under the guidance of condemned prisoner Asfak Ahmed Shihab. P.W.8, Dr. Mohammad Hossain, conducted the autopsy. P.W.15, Trishan Saha, a key witness, stated that he stayed with the victim when the informant was abroad. He deposed that he reached the victim's house around 9:00 PM

after office hours but was not able to enter the house as he lacked the keys. At around 11:30 PM, he along with a tenant entered the house and discovered the victim's body. Then he informed the informant over the phone. Then the informant, his brother and P.W.15 informed the said matter to their friends P.W.10 and P.W.12, close relatives P.W.5, P.W.14, and P.W.19.

P.W.16 and P.W.17 were seizure list witnesses for **Ext. 16**, which was prepared at the house of condemned prisoner Al-Amin Islam Pintu. The vital document, **Exhibit No. 17**, containing materials allegedly looted from the informant's house, was recovered from the house of the accused Ruhul Amin @ Rubel. However, no local witnesses, such as Mizan and Amzad, were examined to prove the said **Exhibit No. 17**. Instead, Constable Mahfuzur Rahman (P.W.18) proved it, and this is a significant piece of evidence, as the items Nos. 12-16 listed in the seizure list, belonging to the informant, his wife, and the victim, were included.

In the F.I.R. the P.W.1 disclosed that after getting information from P.W.15 Trishan Saha, he then informed other relatives and closed one such as P.W.5, P.W.10, P.W.12, and P.W.14 and accordingly they rushed to the said house within 12:30 AM and they saw the dead body of the victim.

In this case, there were admittedly no eyewitnesses to the murder. The prosecution presented witnesses, particularly P.W.2, who stated that she arrived at the informant's house at 02:00 AM on 21.11.2012 and left the place of occurrence after sometime had passed. She testified that she saw condemned prisoner Asfak Ahmed Shihab upon arrival and later saw two other accused, Al-Amin and Ruhul Amin @ Rubel, sitting in the victim's parents' bedroom. However, this detail was not mentioned in the F.I.R. P.W.2 also stated that she went to the police station with the informant, where she saw Asfak Ahmed Shihab, Al-Amin Islam Pintu and Ruhul Amin @ Rubel, who reportedly admitted their guilt.

We have carefully examined the evidence of P.W.2, P.W.5, P.W.10, P.W.12, P.W.13, P.W.14, P.W.15, and P.W.19.

After perusal it appears that P.W.2 claimed to have arrived at the victim's house before the incident on the day of the occurrence and stated that she informed P.W.13, a nephew of the informant, about the matter. P.W.13 then relayed the information to his maternal uncle, P.W.19 Babul Chandra Saha, who allegedly informed P.W.10, who was then present at the place of occurrence when the police arrived and prepared the inquest report. While most witnesses corroborated these facts, P.W.5 and P.W.14 did not specifically mention that Babul Chandra Saha had called P.W.10 to convey the information that P.W.2 had seen the three accused before the occurrence in the victim's house. Upon reviewing the evidence of P.W.11, P.W.18, and P.W.21, it is noted that they did not mention in their depositions that P.W.19 called P.W.10 or that P.W.10 passed the mobile phone to P.W.21. However, the evidence indicates that the Assistant Commissioner of Police, the Officer-in-Charge, and other police contingents arrived at the scene, entered the house of condemned prisoner, Asfak Ahmed Shihab, and interrogated him. Initially, Shihab did not disclose any information but later, during police station

interrogation, admitted to committing the offence and stated that looted items were stored in the house of accused Ruhul Amin @ Rubel. Subsequently, the police seized the materials from Rubel's house at around 6:00 AM. These facts raise some doubt about whether P.W.2 visited the house before the occurrence and saw the three accused, as there are contradictions between the evidence of P.W.21, P.W.18, P.W.11, and those of P.W.10, P.W.15, and P.W.12.

Mr. Shafiqul Islam, the learned Advocate, argued that key witnesses, including Arafat (P.W.2's friend), Sayem, and Mitul, were not examined. Notably, Sayem and Mitul are listed as witnesses No. 16 and 17 in the charge sheet, respectively. He contended that the omission of these witnesses undermined the prosecution's case, especially concerning the last-seen evidence under Section 114(g).

We have already noted certain contradictions in the evidence of P.W.18, P.W.19, and P.W.11, indicating that P.W.10 did not hand over the mobile set to P.W.21. Furthermore, these witnesses revealed that the Assistant

Commissioner of Police and the Officer-in-Charge entered the house of the condemned prisoner, Asfak Ahmed Shihab, and took him to the police station, as he did not disclose any information during interrogation regarding the case.

Considering the overall evidence, we cannot accept P.W.2's claim of last seeing the accused persons due to contradictions in the witnesses' testimonies. However, the 164 statements of the condemned prisoners, Asfak Ahmed Shihab and Al-Amin Islam Pintu, reveal that Anamika Deb Dulal Popy came to the house while they were there. Notably, their 164 statements do not mention the accused Ruhul Amin @ Rubel being present during the commission of the offense.

In this case, as there are no eyewitnesses to the occurrence, relying solely on circumstantial evidence is insufficient. Additionally, the 164 statements of all three accused persons should also be taken into account.

The principles of circumstantial evidence settled by several decisions of our Apex Court such as:

- (1) The accused has involved in the offence.

- (2) The chain of event must be such that the possibility of the innocent of the accused is wholly excluded and such facts are incapable of explanation of any other reasonable hypothesis other than the guilt of the accused.
- (3) If the circumstances do not provide any conclusive proof of the evidence of the accused, he cannot be convicted merely on the ground that such circumstances provided from ground from suspicion against the accused.
- (4) If the theory of guilt in which of him innocence and actually probable then the theory that several accused must be accepted.
- (5) If circumstances reliance upon by the prosecution must be established by adducing sufficient and reliable evidence. And
- (6) All the proved circumstances must be pointed to the guilt of the accused and excluded any hypothesis inconsistent with the innocence of the accused.

We have also considered the decision of the case of The State Vs. Arman Ali and others, reported in 42 DLR (AD)-50, 47

DLR (HCD)-486 and 8 BLD (HCD)-344, wherein some principle has already been settled by our Apex court which as under: *“In a case based on circumstantial evidence before any hypothesis of guilt is drawn up on circumstances, the legal requirement, is to prove the circumstances themselves like any other fact beyond reasonable doubt”*

In this case, it is undisputed that the victim was killed in the informant's house **between 12:30 PM and 14:45 AM** on 21.11.2012. Considering the circumstantial evidence, certain items were looted from the informant's house, as specifically mentioned in the F.I.R. The manner of death is supported by the inquest report and post-mortem findings. Although the doctor initially could not determine the cause of death and sent the viscera for chemical analysis, the final opinion of the doctor as stated:

“As per autopsy findings and chemical analysis report, I am of the opinion that the death was due to asphyxia caused by suffocation, which was ante-mortem and homicidal in nature.”

Thus, the cause and manner of death are proved based on the inquest report, post-mortem report, chemical examination, and the doctor's opinion.

Another important fact is that several items were seized from the informant's house, particularly those listed in Seizure List No. "Ka," which was marked as Exhibit No. 2, prepared on 22.11.2012 at 10:30 PM, the day after the occurrence. From where the materials were taken by the person who committed the offence. Additionally, Seizure List No. "Kha", which was marked as Exhibit No. 4, contains the clothing of the deceased, seized on 23.11.2012, while Seizure List No. "Ga" which was marked as Exhibit No. 11, includes items recovered from the informant's house at approximately 1:15 AM on 22.11.2012. These items included bloodstained bedsheets, two parts of a tie, and red underwear, all found near the deceased's body. These three crucial pieces of evidence were recovered from the informant's house, establishing that the incident occurred there.

Following the interrogation of condemned prisoner Asfak Ahmed Shihab, he admitted to committing the offense along with his accomplice, condemned prisoner Al-Amin Islam Pintu. He revealed that the looted materials were kept at the house of another friend, accused Ruhul Amin @ Rubel. These materials were subsequently seized from Ruhul Amin's house, as evidenced by Seizure List No. Uma, which was marked as Exhibit. No. 17. The recovered items include important documents, such as the victim Amit Saha's T.I. card, the informant Shamol Chandra Bhuiyan's N.I.D. card, the N.I.D. card of the informant's wife, Rikta Saha, and two bank ATM cards. These items were found in the house of Ruhul Amin @ Rubel, based on the disclosure made by Asfak Ahmed Shihab.

The seizure was conducted in the presence of local witnesses Md. Mizan and Amzad, along with Constable No. 2261 Md. Mahfuzur Rahman. However, the two local witnesses did not testify, instead Constable Md. Mahfuzur Rahman (P.W.18) provided the testimony. After considering the evidence, including the deposition of P.W.18 and P.W.21, we find no inconsistencies in the recovery of the materials

from the house of accused Ruhul Amin @ Rubel, based on Asfak Ahmed Shihab's confession. The materials were recovered promptly after the occurrence, at 6:00 AM. We have also considered the vital items, especially those listed as items Nos. 12 to 16, which included cards belonging to the informant, victim and his mother.

The defense did not give any suggestion during the cross-examination of the witnesses to this effect that the said seized materials were not recovered from the house of accused Ruhul Amin @ Rubel based on the identification and disclosure by condemned prisoner Asfak Ahmed Shihab. Despite the learned Advocates for the defense claim that the police did not follow the procedure under Section 103 of the Code of Criminal Procedure or the police regulations. We have already considered and discussed these points and found no anomaly in the recovery of the materials from the house of accused Ruhul Amin @ Rubel based on the identification by Asfak Ahmed Shihab. Therefore, these vital pieces of evidence remain a key part of the circumstantial evidence linking the offence.

Additionally, materials were recovered from the house of condemned prisoner Al-Amin Islam Pintu, including a CPU allegedly taken from the victim's house and kept in Pintu's house. This seizure took place on 24.11.2012 at around 11:30 AM. However, it is important to note that before this seizure, Al-Amin Islam Pintu had already made a confessional statement and was in police custody. The material was recovered from his house after this fact. Based on the testimonies of P.W.16 and P.W.17, who stated that they saw the item in the police's possession and signed at the police's request, as a result, we find that this material should not be considered circumstantial evidence linking the offence. Since the material was recovered when the accused were already in police custody, they do not contribute to establishing the chain of evidence for the offence.

Now the question of confessional statement it is found that the confessional statements of two condemned prisoners Asfak Ahmed Shihab and Al-Amin Islam Pintu recorded by the Metropolitan Magistrate Amit Kumar Dey, the P.W.3. We have considered the said confessional statements of the two

condemned prisoners and it is found that the Magistrate fulfilled all the column of the confessional statement forms and in the column No.7 the Magistrate written as under:

“আসামীকে পড়ে শুনানো হলো আসামী বুঝে স্বাক্ষর করলেন”

But the Magistrate did not make any certificate in the said column but it appears that in column No. 8 the Magistrate specifically mentioned to the effect: সেচ্ছায় প্রনোদিতভাবে আসামী পক্ষ স্বাক্ষর করেন।

And the confessional statement of condemned prisoner Al-Amin Islam Pintu was also recorded by the said Magistrate and it is found that the Magistrate did not certify the said matter in column No. 7 but subsequently the Magistrate stated to the effect: অভিযুক্তকে স্বীকারোক্তিমূলক জবানবন্দি প্রদান করার নিয়ম কানুন বুঝিয়ে দিয়ে তাকে চিন্তা ভাবনার জন্য ৩ ঘন্টা অবধি সময় দেয়া হয়। তার শরীরে জখমের কোন চিহ্ন পরিলক্ষিত হয়নি। সর্বোপরি সে সেচ্ছায় এবং স্বজ্ঞানে জবানবন্দি প্রদান করেছেন মর্মে আমার নিকট প্রতীয়মান হয়েছে।

And on considering the evidence of P.W.3 it is found that P.W.3 proved the said confessional statement as Exhibit No. 8 and his signatures as Exhibit Nos. 8/2-8/6.

The defense cross-examined him but found nothing contradictory to his evidence. During the cross-examination, this witness only mentioned that he did not ask where the accused had been from 22.11.2012 to 28.11.2012. However, it was established that the accused was in police custody on remand during that period.

From the perusal of the record, it is also evident that the condemned prisoner, Asfak Ahmed Shihab, retracted his confessional statement and claimed during his examination under section 342 that he was tortured by the police before being presented to the Magistrate. However, upon close examination, it is our view that the confessional statement, particularly regarding the manner of the killing and retrieving materials from the house, should be deemed true and voluntary.

We have only considered the 164 statements, though it is established in some cases that a confession made after three days in police custody is highly suspicious, as noted in *Safar Ali and Others vs. The State* 36 DLR (HCD)-185, 70 DLR (AD)-1, 16

BLD (HCD)-350, and 11 MLR (AD)-76). However, in this case, vital evidence was recovered from the house of condemned prisoner Al-Amin Islam Pintu based on the disclosure and identification by condemned prisoner Asfak Ahmed Shihab, so, given the facts, it seems unlikely that the police could have planted such materials immediately after the incident. Therefore, it is our view that the two condemned prisoners committed the offense and admitted these facts to the police, even while in custody for five days on remand.

The question now arises whether accused Ruhul Amin @ Rubel was involved in the murder. Upon reviewing the evidence of P.W.2 and others, certain doubts emerge regarding the last sighting of the two accused. In such circumstances, the confessional statements of the two condemned prisoners, Asfak Ahmed Shihab and Al-Amin Islam Pintu, hold significance. Notably, these two accused did not implicate Ruhul Amin @ Rubel in their confessions. Furthermore, from the 164 statement of condemned prisoner Asfak Ahmed Shihab, he stated:

পিন্টু অমিতের কম্পিউটারের সিপিইউ নিয়ে তার বাসায় নিয়ে যায় এবং আমি ব্যাগটা নিয়ে আমার বন্ধু রুবেলের বাসায় রাখি। সেখানে পিন্টু আসলে ব্যাগ খুলি এবং জিনিসপত্র দেখি। সেগুলো স্বর্ণ নয় তা বুঝতে পারি। রুবেলকে মালামাল রাখতে বলি এবং আমি বাসায় চলে আসি।

He did not disclose anything further about accused Ruhul Amin @ Rubel being with them.

We have also considered the 164 statement of condemned prisoner Al-Amin Islam Pintu. He stated to the effect that: শিহাব আমাকে সিপিইউটা আমার বাসায় রাখতে বলে আমি আমার বাসায় সিপিইউ রেখে রুবেলের বাসায় এসে শিহাবকে দেখি। ব্যাগটা খুলে দেখি ওখানে বসে। বাসায় চলে যাই। পরদিন পুলিশ এস আমাকে ধরে নিয়ে যায়।

In his statement, he did not mention accused Ruhul Amin @ Rubel as being involved, present in the house, or participating in the incident. Similarly, the statement of condemned prisoner Asfak Ahmed Shihab does not disclose any information about Ruhul Amin @ Rubel being present or involved in the crime.

We have also reviewed the 164 statement of accused Ruhul Amin @ Rubel, which reveals that he only received the

bag handed to him by condemned prisoner Asfak Ahmed Shihab. His confessional statement is purely exculpatory and additionally, the earlier statement of Anamika Deb Dulal Popy regarding his presence was not substantiated, as material contradictions were found in the witnesses' evidence. Based on these facts, it is our view that the prosecution has failed to prove the case against Ruhul Amin @ Rubel beyond all reasonable doubt.

Considering the aforesaid facts it is our view that the conviction against the accused Ruhul Amin @ Rubel should not be sustained.

Now we have considered the material facts, including circumstantial evidence and the 164 statements, which establish that the prosecution has proved the case against the condemned prisoners Asfak Ahmed Shihab and Al-Amin Islam Pintu beyond all reasonable doubt.

Mr. Mamun Mahbub the learned Advocate cited the decision unreported case of Criminal Misc. Case No. 47253 of 2019, Ayesha Siddiqa Minni Vs. The State, judgment and order

of the High court Division dated 29.08.2019, wherein a division bench of this court took view to the effect: ইদানিং প্রায়শঃ লক্ষ করা যায় যে, বিভিন্ন আলোচিত অপরাধের তদন্ত চলাকালীন সময়ে পুলিশ-র্যাব সহ বিভিন্ন আইনশৃঙ্খলাবাহিনী কর্তৃক গ্রেফতারকৃত অভিযুক্ত ব্যক্তিদের সংশ্লিষ্ট আদালতে হাজির করার পূর্বেই বিভিন্নভাবে গণমাধ্যমের সামনে উপস্থাপন করা হয়, যা অনেক সময় মানবাধিকারের দৃষ্টিভঙ্গি থেকে অমর্যাদাকর এবং অ- অনুমোদনযোগ্য, এবং বিভিন্ন মামলার তদন্ত সম্পর্কে অতি উৎসাহী নিয়ে গণমাধ্যমের সামনে রিফিং করা হয়ে থাকে। আমাদের সকলকে স্মরণ রাখতে হবে যে, যতক্ষণ পর্যন্ত আদালতে একজন অভিযুক্ত বিচার প্রক্রিয়া শেষে সাক্ষ্য প্রমাণের ভিত্তিতে দোষী সাব্যস্ত না হচ্ছেন ততক্ষণ পর্যন্ত চূড়ান্তভাবে বলা যাবে না যে তিনি প্রকৃত অপরাধী বা তাঁর দ্বারাই অপরাধটি সংঘটিত হয়েছে। গণমাধ্যমের সামনে গ্রেফতারকৃত কোন ব্যক্তিকে এমন ভাবে উপস্থাপন করা সংগত নয় যে, তাঁর মর্যাদা ও সম্মান হানি হয় এবং তদন্ত চলাকালে অর্থাৎ পুলিশ রিপোর্ট দাখিলের পূর্বে গণমাধ্যমে গ্রেফতারকৃত কোন ব্যক্তি বা মামলার তদন্ত কার্যক্রম সম্পর্কে এমন কোন বক্তব্য উপস্থাপন সমিচীন নয়, যা তদন্তের নিরপেক্ষতা নিয়ে জনমনে বিভ্রান্ত বা প্রশ্ন সৃষ্টি করতে পারে। আমাদের আরো স্মরণ রাখা প্রয়োজন যে, নামলার তদন্ত এবং বিচার পর্যায়ে একজন অভিযুক্তের প্রাপ্ত আইনী অধিকার নিশ্চিত করা সংশ্লিষ্ট সকলের দায়িত্বের মধ্যে পড়ে।

Considering the above, we hold the view that during the investigation, the police should have adhered to proper procedures, maintained confidentiality, and avoided any media trial while the case was under investigation.

In light of the aforementioned facts and several decisions of our apex court, particularly the mitigating circumstances that the two condemned prisoners are approximately 24 years old, have been in the death cell for

about 6 years, and have been in custody since the date of the occurrence, we find these factors to be significant.

Considering the facts and circumstances of the case, along with the decisions of our apex court, we are of the view that the condemned prisoners, taking into account their age, the duration of their custody, and their time in the death cell, should not be subjected to the death penalty. We believe that justice will be best served by commuting the sentence of condemned prisoners Asfak Ahmed Shihab and Al-Amin Islam Pintu to life imprisonment instead of death.

In light of the facts, circumstances, and discussions outlined above, we find no merit in the appeal preferred by the condemned prisoner **Asfaq Ahmed Sihab** and Jail Appeal filed by the condemned prisoner **Al-Amin Islam Pintu**.

In the result, the death reference is rejected. The impugned judgment and order of conviction and sentence so far as relates to the convict Ruhul Amin @ Rubel is hereby set-aside.

The Criminal Appeal No. 1025 of 2017 preferred by the condemned prisoner **Asfaq Ahmed Sihab**, is hereby dismissed

with modification of sentence and he is sentenced to suffer rigorous imprisonment for life instead of death.

Jail Appeal No. 403 of 2016 preferred by the condemned prisoner **Al-Amin Islam Pintu**, is dismissed with modification of sentence and he is sentenced to suffer rigorous imprisonment for life instead of death.

Criminal Appeal No. 788 of 2017 preferred by the condemned prisoner **Ruhul Amin @ Rubel**, is allowed. The condemned prisoner **Ruhul Amin @ Rubel**, son of Abul Hossain, is not found guilty of the charge leveled against him and be set at liberty at once if not wanted in connection with any other cases.

Consequently, The Jail Appeal No. 404 of 2016 is hereby disposed of.

Communicate the judgment and transmit the lower Court records at once.

K M Zahid Sarwar, J:

I agree.

M.R.