

**In the Supreme Court of Bangladesh**  
**High Court Division**  
[Criminal Appellate Jurisdiction]

**Present:**

**Mr. Justice Jahangir Hossain**  
**And**  
**Mr. Justice Md. Bashir Ullah**

**Death Reference No. 42 of 2017**

The State  
---Petitioner.  
-Vs-  
Shafi Uddin (absconding)  
--- Convict.

Ms. Samira Tarannum Rabeya (Miti), D.A.G  
with  
Ms. Anjuman Ara Begum, A.A.G with  
Ms. Kazi Samsun Nahar, A.A.G with  
Mr. Sayem Mohammad Murad, A.A.G with  
... For the State  
Ms. Nargis Akter, State Defense Lawyer  
... For the absconding-condemned person

**Heard on 25.09.2022 & 26.09.2022**

**Judgment on 26.09.2022**

**Md. Bashir Ullah, J**

This Reference under Section 374 of the Code of Criminal Procedure (“Code”) has been filed for confirmation of the death sentence of the convict-accused Shafi Uddin passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Rangpur in Sessions Case No. 105 of 2002 arising out of

Mithapukur Police Station Case No. 10 dated 13.07.1995 corresponding to G.R. No.667/95 (Mithapukur) convicting the aforesaid absconded accused Shafi Uddin under Section 302 of the Penal Code and sentencing him to death and also sentencing him to suffer rigorous imprisonment for life and to pay a fine of Tk. 10,000/- in default to suffer rigorous imprisonment for 01(one) year under Section 326 of the Penal Code.

The prosecution case, in brief, is that P.W-1, Md. Solaiman Miah on 13.07.1995 at 11.15 hours lodged a First Information Report (F.I.R.) with Mithapukur Police Station alleging *inter alia* that there was a long-standing land dispute between the informant and the accused. In this regard, a village arbitration (Shalish) was held in 1987. At that time, Mohimuddin threatened the informant to the effect that if they would come to possess land then he would kill them. Thereafter, Mohimuddin invited his nephew, accused Shafi Uddin to harass the informant. Shafi Uddin threatened the informant to kill him if he would go to the disputed land. On 12.07.1995 at about 7.00 pm, (1) Shafi Uddin, (2) Kafil Uddin, (3) Shahidul, (4) Rafikul and (5) Mohimuddin entered

the house of the informant and looked for him, but since he was out of home, his life was saved. At that time, the informant's wife namely Ashma Khatun and niece Ambiya Khatun (since deceased) asked them not to enter the house. Then accused Shafi Uddin stabbed in the abdomen of Ambiya Khatun with a knife and her intestines came out. As a result, 13-year-old Ambiya died instantly. When the wife of the informant came forward to save and rescue Ambiya then Shafi Uddin dealt a knife blow in the abdomen of Ashma. As a result, her intestines came out. The informant's relatives took her to Rangpur Medical College Hospital. Hearing the incident, the informant rushed to the hospital. After hearing details from Shamsul Haque, Sultan Ahmed, Mariam, Hasina Khatun and Jarina Khatun, he lodged the First Information Report (F.I.R.) on 13.07.1995.

A Sub-inspector of Mithapukur Police Station Md. Israil Hossain as investigating officer started an investigation. He visited the place of occurrence, prepared an inquest report and sent the dead body of Ambiya to the morgue for post-mortem examination. He also prepared a sketch map of the place of occurrence and recorded

statements of the witnesses under section 161 of the Code of Criminal Procedure. He also took necessary steps to record the dying declaration of the victim Ashma Khatun. Subsequently, another Sub-inspector, namely Md. Mofizuddin (PW-12) conducted further investigation. He recorded statements of a few witnesses. Eventually, he submitted charge sheet against the aforesaid convict accused under Sections 302/326 and 307 of the Penal Code.

Thereafter, observing all legal formalities learned Judge of the Trial Court framed charge against accused Shafi Uddin under Sections 302/326 of the Penal Code on 10.4.2002. The accused was tried in absentia as he did not appear before the Court. However, the trial Court appointed a State Defence Lawyer for the absconding accused person.

At the time of trial, the prosecution examined as many as 12 (twelve) witnesses and the defence adduced none. Learned Judge of the trial Court on consideration of the evidence on record, convicted the accused under Sections 302 and 326 and sentenced him to death and life imprisonment along with a penalty of Tk. 10,000/-.

We will now proceed to discuss the evidence.

P.W-1, Md. Solaiman Miah is the uncle of the deceased Ambiya Khatun and the informant of the case. He is also the husband of victim Ashma. He narrated the prosecution case that there was a long-standing land dispute between the accused and the informant party. He stated that in 1987 an arbitration was held where he demanded land but the accused Mohim Uddin refused to give the land. Then in 1995 another arbitration was held and the arbitrators decided in his favour and ordered the accused to provide him with the land but the accused threatened the informant. On 12.07.1995, Shamsul and Sultan informed him that Shafi Uddin and others had killed his wife and niece. Then he rushed to his house and found that the dead body of his niece Ambiya was lying in front of his room. Somebody sent his spouse Ashma to the Rangpur Medical Hospital. Jarina Khatun informed him that Shafi Uddin searched for him to kill. Hasina told him that Shafi Uddin had stabbed Ambiya with a knife and when Ashma moved forward, she was also stabbed. He visited the hospital and took steps for the treatment of his wife. He rushed to Mithapukur Police Station and lodged the First Information Report. He proved

the F.I.R. which was marked as Exhibit-I. In cross examination he denied the suggestion that he lodged a false case.

P.W-2, Most. Jarina Begum is the mother of the victim Ambiya Khatun and an eyewitness of the occurrence. She received an injury on her elbow of the hand by the accused Shafi Uddin. She stated that the occurrence took place on 12.07.1995 at 7.00 pm. She saw that accused Shafi Uddin had stabbed her daughter Ambiya. She also saw Shafi Uddin stabbing the lower abdomen of her sister-in-law Ashma. As a result, intestines came out. She stated that she knew Shafi Uddin as his house is next to her home.

P.W-3, Ayesha Siddiqua is a student of class 10 of Salmara High School. She is an eyewitness of the occurrence. She is the first cousin of the deceased Ambiya. She stated that the occurrence took place on 12.07.1995 at 7.00 P.M. She saw that accused Shafi Uddin had entered their house suddenly and stabbed at the abdomen of Ambiya. When the mother of Ambiya, namely Jarina Begum (PW-2) advanced then accused Shafi Uddin injured her elbow. She further stated that while her mother moved forward to save

Ambiya and Jarina then her mother Ashma was also stabbed by Shafi Uddin. Shafi Uddin also threatened her. She fled away. She denied the suggestion that the case was lodged due to a long-standing land dispute and hostility between the accused and the informant party.

P.W-4, Shamsul Haque is the informant's neighbour. He visited the place of occurrence immediately after the incident. She saw the dead body of Ambiya and found Ashma in an injured condition. He proved his signature contained in the seizure list.

P.W-5, Md. Sultan Miah is the uncle of the victim Ambiya Khatun. He narrated that the occurrence took place on 12.07.1995 at 7.00 P.M. He stated that at the time of occurrence, he was walking beside the place of occurrence. He went to the spot after hearing the scream and saw the dead body of Ambiya and found that Ashma was sitting with a blood-covered abdomen.

P.W-6, Most. Ashma Khatun is the wife of the informant and an eyewitness to the occurrence. She stated that she had seen the occurrence with her own eyes. She was

cooking rice. At that time, the deceased AMBIYA was tying her slipper (Sandal). Then Shafi Uddin inflicted knife blow on the abdomen of AMBIYA. As a result, her intestines came out. While she forwarded, the accused inflicted a knife blow at the lower abdomen. AMBIYA died instantly. P.W.6 was sent to Rangpur Medical College Hospital, where she was treated for 14 days.

In cross-examination, she stated that the accused Shafi is her relative. She does not know whether the accused was drunk at the time of occurrence. She stated that the Magistrate recorded her statement at the hospital.

P.W-7, Most. Ashiya Begum is an eyewitness to the occurrence. She stated that AMBIYA was a student of class six. At the time of occurrence, AMBIYA was tying her slipper (Sandel). Shafi entered the house and stabbed AMBIYA with a knife. As a result, her intestines came out. Upon hearing the scream, her aunt, namely Ashma moved forward and then the accused also stabbed her. Seeing the brutal scene, she and her cousin fled away.



P.W-8, Most. Hasina Begum is the aunt of the deceased. She stated that hearing the scream, she went to the place of occurrence immediately after the incident which took place on 12.07.1995 at 7.00 pm. She saw Ashma was brutally injured and her intestines came out. She had tried to save Ashma. She also saw that the dead body of Ambiya was lying and her intestines also came out from her abdomen.

P.W-9, Md. Israil Hossain is the first Investigating Officer. He stated that he prepared the inquest report and sent the dead body to the morgue for post-mortem report. He stated that he took the necessary steps to record the dying declaration of victim Ashma Khatun. He proved the inquest report and seizure list (Exhibit-2 and 4).

P.W-10, Md. Motiur Rahman stated that on 13.07.1995, he worked as a Magistrate, 1<sup>st</sup> Class in Rangpur. He recorded the dying declaration made by the victim Ashma Khatun. He saw that Ashma Khatun was seriously injured. He proved the statement and his signature as exhibit 5, 5(1) and 5(2).

The State Defense Lawyer declined to cross-examine P.W.10.

P.W-11, Dr. Amirul Hossain Chowdhury was a Lecturer in the Forensic Medicine Department at Rangpur Medical College Hospital. He prepared the post-mortem report. He examined the dead body of Ambiya Khatun. During the post-mortem examination, he found the following injuries on the dead body. The said report is as follows:-

(1) A penetrating wound on the right chest in the anterior axillary line at the level of 2<sup>nd</sup> inter-costal space measuring 2" X  $\frac{1}{2}$ " X 7" .

(2) A penetrating wound on right flank in mid axillary line measuring 3" X  $\frac{1}{2}$ ". Abdominal wall as a result intestine comes out through this injury.

On dissection-

- i) Anterior surface and border was found out in right lung.

- ii) A small perforating injury was found on the right surface of the heart measuring  $\frac{1}{2}$ " X  $\frac{1}{2}$ " X  $\frac{1}{2}$ ".
- iii) Right pleural cavity and chest cavity contains bright red coloured blood.
- iv) Abdominal cavity also contains red clotted blood.

He opined that death was due to shock and hemorrhage as a result of the above injuries, which were antemortem and homicidal in nature.

P.W-12, Alhaj Md. Mofiz Uddin is the investigating officer of the case. He stated that the 1<sup>st</sup> investigating officer, Israil Hossain was transferred; hence, further investigation of this case was conferred upon him on 22.12.1995. He stated that he visited the place of occurrence and recorded statements of witnesses under Section 161 of the Code. He submitted charge sheet bearing No. 124, dated 19.7.1996. He proved the sketch map and index as Exhibits 6 and 7.

Ms. Samira Tarannum Rabeya (Miti), learned Deputy Attorney General with Ms. Anjuman Ara Begum, learned Assistant Attorney General with Ms. Kazi Samsun Nahar, learned Assistant Attorney General with Mr. Sayem Mohammad Murad, learned Assistant Attorney General appearing on behalf of the State placed before us the FIR, charge sheet, statements of the witnesses recorded under Section 161 of the Code, post mortem report, seizure lists, inquest report, statement of the victim recorded by learned Magistrate under Section 164 of the Code, judgment of the learned Judge of the trial Court and other relevant materials on record. Ms. Samira Tarannum Rabeya (Miti), learned Deputy Attorney General submits that the learned Judge of the trial Court rightly passed the impugned judgment relying upon the statements of eyewitnesses PW-6 Ashma Khatun, PW-2 Jarina Begum, PW-3 Ayesha Siddika and PW-7 Ashiya Begum.

Learned DAG further submits that the prosecution case was proved by the witnesses and it is not necessary to examine all the witnesses who are named in the charge sheet. She submits that the prosecution proved the date, time, place

and manner of occurrence. The evidence on record, in particular, the depositions of the eyewitnesses proved beyond reasonable doubt that the convict accused Shafi Uddin inflicted fatal blows on Ambiya and Ashma at the time of occurrence. In support of her contention, the learned Deputy Attorney General referred to the cases of *Abdul Quddus Vs. The State*, reported in 43 DLR (AD) (1991) 234 and *Milon Vs. State*, reported in 53 DLR (2001) 464.

On the other hand, learned State Defense Lawyer Ms. Nargis Akter submits that the injured person did not submit medical certificate and as such the commission of the offence under Section 326 of the Code of Criminal Procedure was not proved.

She further contends that the knife and blood stained earth were not recovered and Shafi Uddin was falsely implicated in this case out of previous enmity and grudge.

She next submits that vital witnesses namely Aina, Sufia, Rahima Khatun, Khetabuddin, Azibur Rahman, Abul Hossain, Mariam and Abdul Jalil were not examined. She next submits that the investigating officer submitted charge sheet without conducting a proper investigation.

She also submits that the learned Judge of the trial Court misdirected himself in finding Shafi Uddin guilty of the offence of committing murder. In support of her contention, she has referred to the cases of *The State Vs. Md. Yousuf Ali and others* reported in [2020] 19 ALR 335, *Abu Taher and others Vs. The State*, reported in 2019(3) 17 ALR (AD) 6 and *Abu Taher Chowdhury and ors. Vs. State* case, reported in 42 DLR (AD) (1990) 253.

She prays for rejecting the death reference and setting aside the impugned judgment and order. She also prays for the acquittal of the convict-accused.

Now, in view of the submissions and counter submissions of the learned State Defense Lawyer for the convict-absconded- Shafi Uddin and learned Advocates for the State, let us review the relevant evidence, materials on record and scan the attending circumstances of the case to arrive at a correct decision as to whether the learned Judge was justified in passing the impugned judgment and order of conviction and sentence against the convict Shafi Uddin (absconding).

In this case, 4(four) eyewitnesses proved the prosecution case. The relevant portion of their depositions is stated below.

PW-2, Most. Jorina Begum, the mother of the deceased, is a vital witness in this case. She saw Shafi Uddin penetrating knife blow in the abdomen of her daughter Ambiya. When she tried to rescue her daughter then Shafi Uddin injured at her elbow. In her deposition she stated:

“আমি বাড়ির খুটিতে একটা গাভী বেঁধে রেখে কেবলই ভিতর  
আগিনায় এসেই দেখি আসামী সফিউদ্দিন আমার মেয়ে আন্সিয়াকে  
ছুরি মারিতেছে পেটে। আমি তাকে রক্ষার জন্য আগাইয়া আসলে  
আসামী ঐ ছোরা দিয়া আমার কনুইতে আঘাত করে এবং আমাকে  
জিজ্ঞেস করে যে বড় খাসী (আমার বড় মেয়ে আছিয়া) কোথায়?  
এই কথা শুনে আছিয়া বেড়া ভাঙ্গিয়া উত্তর পার্শ্বের বাড়িতে পালায়।  
ঐ সময় আমার ছোট জা আছমা আগাইয়া আসিলে তাকেও আসামী  
সফিউদ্দিন ঐ ছুরি তার পেটে মারে।”

PW-3, Most. Aysha Siddiqa is the first cousin of the deceased. She is also an eyewitness in the case. She saw Shafi Uddin penetrating knife blow in the abdomen of the deceased Ambiya. In her deposition, she clearly stated:

“মৃত আশিয়া আমার জ্যাঠাতো বোন। সে তার ঘরের দরজার সামনে বসে ছিল। সে সময় হঠাৎ দেখি আসামী সফিউদ্দিন আমাদের বাড়ির মধ্যে ঢোকে এবং আমার জ্যাঠাতো বোন আশিয়ার পেটে ছুরি ঢুকাইয়া দেয়। এমন সময় আশিয়ার মাতা জরিলা বেগম আগাইয়া আসিলে তাকেও আসামী ছোরা দিয়া তার কনুইতে আঘাত করে। ঐ সময় আমার মাতা আছমা বেগম জরিলা ও আশিয়াকে রক্ষার জন্য আগাইয়া গেলে আসামী সফিউদ্দিন আমার মাতার পেটে ছুরি ঢুকাইয়া দেয়। এতে আমার মাতার পেট কেটে সামান্য ভুঁড়ি বের হয়। সে সময় আমার মাতাকে রক্ষার জন্য আমি আগাইয়া গেলে আসামী আমাকে তাড়াইয়া আসে।”

PW-6, Most. Ashma Khatun is also an eyewitness in the case. She was seriously injured by the convict and was admitted to the hospital for 14 days. In her deposition, she stated:

“আমি তো স্বচক্ষে দেখেছি। আমি ভাত রান্না করছিলাম। ঐ সময় ভতিজী আশিয়া দুয়ারে বসে সেভেলের ফিতা লাগাচ্ছিল। ঐ সময় সফিউদ্দিন ছোরাসহ এসে কোন বাক্য ব্যয় না করেই আশিয়ার পেটে ছোরা ঢুকিয়ে দেয়। সাথে সাথে পেটের ভুঁড়ি বের হয়ে আসে। আমি চিক্কারে এগিয়ে এসেছি। আমার নাভীর নীচে তলপেটে ছোরা ঢুকিয়ে দেয়। আমি পড়ে যাই।”



PW-7, Most. Ashia Begum is also an eyewitness. She also saw that Shafi had stabbed a knife blow on the abdomen of Ambiya and as a result, her intestine came out. In her deposition, she stated:

“ছোট আশিয়া তখন সিক্কে পড়তো। বসত ঘরের সামনের দরজায় বসে সেভেলের ফিতা লাগাচ্ছিল। সফি ভাই বাড়িতে এসেই আশিয়াকে ছোঁরা মেরে দিয়েছে। নাড়ী-ভুড়ি বের হয়। তার চিৎকারে আমার চাচী আসমা আগাইয়া যায়। তখন চাচীর পেটে আসামী ছোঁরা মেরে চলে যায়।”

PW-8, Most. Hasina Begum went to the place of occurrence immediately after the occurrence. In her deposition, she stated:

“আমি চিৎকার শুনে তাদের বাড়িতে গিয়েছি। আছমার পেটের নাড়ী-ভুড়ি বের হয়েছে রক্ত পড়ছে। আমি ঐগুলো পেটে ঢুকিয়ে দেই। তখন দেখি আশিয়ার নাড়ী-ভুড়ি বেড়িয়ে পড়ে গেছে-মারা গেছে।”

On scrutiny of the evidence of eyewitnesses, namely PW-2, PW-3, PW-6 and PW-7, we find they categorically mentioned that Shafi Uddin stabbed Ambiya with a knife and killed her. Their examination-in-chief could not be shaken in cross-examination by the defence. PW-1, PW-4, PW-5 and

PW-8 corroborated the deposition of the eyewitnesses. We find their evidence is ocular and unimpeachable.

The accused Shafi Uddin also dealt with a knife blow at the lower abdomen of PW-6, Ashma Khatun. She was sent to Rangpur Medical College Hospital. When she was on the brink of death, PW-10 Md. Motiur Rahman, Magistrate recorded her statement under Section 164 of the Code of Criminal Procedure as a dying declaration. After treatment, the life of Ashma Khatun was saved. Hence, the said statement is not considered as dying declaration. However, the said statement was marked before the trial Court by PW-10 as Exhibit-5. The deposition of PW-10 corroborated the evidence of eyewitness PW-6.

Learned State Defence Lawyer cited a decision in the case of *Abu Taher and others Vs. The State*, reported in (2019) 17 ALR (AD) 6, which is not applicable in the present case. The facts of the reported case are distinct and different. In Abu Taher case (Supra), the trial court convicted and sentenced the accused based on circumstantial evidence since there was no eyewitness. In the present case, there are many eye witnesses. In Abu Taher case (Supra), the convict faced

trial, preferred appeal before the High Court Division and filed a Criminal Appeal before the Appellate Division, but in the present case, the convict has been absconding from the beginning to till date. The record shows that immediately after the occurrence, the convict Shafi Uddin disappeared from the locality indicating his guilt which is relevant under Sections 8 and 9 of the Evidence Act.

Section 8 of the Evidence Act, 1872 provides as under:

**“Motive, preparation and previous or subsequent conduct-**Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue

or relevant fact, and whether it was previous or subsequent thereto.”

Section 9 of the Evidence Act, 1872 provides as under:

**“Fact necessary to explain or introduce relevant facts-** Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.”

In the case of *Mobarak Hossain Vs. State*, reported in 33 DLR 274 this Division held:

“...In this case, the police failed to find the accused appellant Mobarak and submitted

charge sheet on 1.6.74 showing accused appellant Mobarak as absconding and it is undisputed that the accused appellant Mobarak remained absconding for more than a year after the occurrence and surrendered before the committing Court on 28.10.74, Section 8 read with section 9 of the Evidence Act makes this fact that accused appellant Mobarak remained absconding after the commission of the crime for more than a year a relevant fact and in the absence of a plausible explanation such circumstances along with the aforesaid other circumstances indicate that he was concerned in the murder.”

There is sufficient evidence on record showing that there was a land dispute between the accused and the informant. It is evident that prior to the occurrence the accused threatened the informant. The First Information Report was correctly lodged. Medical evidence also corroborated the date, time and manner of occurrence. The

presence of witnesses at the spot was not doubtful. The testimonies of ocular witnesses were corroborated. So, we find that the prosecution has proved its case beyond reasonable doubt.

The learned State Defense Lawyer argued that the vital witnesses and all charge sheet witnesses were not examined and as such, the impugned judgment is liable to be set aside, but this argument is not acceptable. In this regard, in *Milon Vs. State*, reported in 53 DLR (2001) 464, it was held:

“...Mere non-examination of nearby shopkeepers or a neighbour cannot be held to be fatal to the prosecution case if there are eye-witnesses of the alleged occurrence. It is a sound principle of law that it is not the quantity of witnesses but quality of evidence that matters much to convict an accused in a grave offence of murder. In criminal law there is no impediment in convicting an offender on the basis of testimony of single witness if his evidence is found by the Court to be honest and trustworthy and if fully corroborated by the

circumstances of the case and medical evidence.”

In *Zahed Ali Foreman Vs State*, reported in 56 DLR (AD) (2004) 29, it was held by Apex Court:

“The learned Counsel for the petitioner submits that although in the prosecution report as many as 37 witnesses including 5 police personnel were cited but at the time of trial it examined only 9 witnesses including 3 police personnel and the Doctor who held post mortem examination of the victim. The exception taken by the learned Counsel for non-examination of all or reasonable number of witnesses cited in the prosecution report is of no merit since it is for the prosecution to decide amongst the cited witnesses in the prosecution report how many it will examine for establishing its case against the accused persons placed on trial...”

In *Abdul Hai Sikder Vs. State*, reported in 43 DLR (AD) (1991) 95, the Appellate Division held:

“His evidence remains unshaken by cross-examination and it appears that the High Court Division was well-founded in its finding that the conviction of the appellants can safely be based on the solitary evidence of the eye-witness PW1.”

In view of the decisions mentioned above, we hold that the law does not require a particular number of witnesses to prove a case. Hence, we find no substance in the argument raised by the State Defense Lawyer regarding the number of prosecution witnesses.

The learned State Defense Lawyer further contends that no knife and blood-stained earth was recovered and hence, the conviction and sentence imposed upon the accused is liable to be set aside. The Indian Supreme Court held in *Yogesh Singh Vs. Mahabeer Singh*, reported in (2017) 11 Supreme Court Cases 195 :

“In any case, it is an established proposition of law that mere non-recovery of weapon does not falsify prosecution case where there is impel unimpeachable ocular evidence.”



So, the contention taken by the learned State Defense Lawyer regarding the nonrecovery of the knife and blood-stained earth is not acceptable.

Clearly, the prosecution's evidence was consistent with the medical evidence and therefore, the trial court rightly relied on such evidence.

So, considering the facts, circumstances, and evidence on record, we find that the prosecution has been able to prove the charge against convict Shafi Uddin (absconding) beyond reasonable doubt, and the learned Judge of the trial Court rightly and legally passed the judgment and convicted the accused under Section 302 of the Penal Code and sentenced him to death by the judgment dated 09.03.2017 which calls for no interference and as such, the death sentence against the convict Shafi Uddin (absconding) is confirmed and affirmed.

It appears from the records that the convict Shafi Uddin stabbed Ashma Khatun and as a result, her intestines came out. The victim was sent to Rangpur Medical Hospital for treatment. She deposed as PW-6 that she took treatment at Rangpur Medical Hospital. However, no medical certificate or injury certificate was produced by any witness

before the trial Court in support of her injury. Therefore, we find him guilty under Section 325 of the Penal Code, not under Section 326 and he deserves to be sentenced to 3(three) years and to pay Tk. 500/- fine. Hence, the conviction imposed upon the convict under Section 326 is altered to Section 325 of the Penal Code and he is sentenced to suffer 3(three) years imprisonment and to pay a fine of Tk. 500/-.

The absconding convict Shafi Uddin, son of late Kofil Uddin, Khamar Kursha, Mithapukur, Rangpur is found guilty under Sections 302 and 325 of the Penal Code. In the result, the death reference No. 42 of 2017 is confirmed and accepted. Conviction under Section 326 is altered to Section 325 of the Penal Code and he is sentenced to suffer 03(three) years imprisonment with a fine of Tk. 500/- for the offence of Section 325 of the Penal Code.

Send down the lower Court's record with a copy of this judgment at once for necessary action in accordance with the law.

**Jahangir Hossain, J:**

I agree.