

**In the Supreme Court of Bangladesh
High Court Division**

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Biswajit Debnath

Death Reference No.77 of 2017

The State

Vs.

Md. Abul Kalam (Absconding).

...Condemned-Convict.

With

Criminal Revision No. 582 of 2018

Md. Abul Kalam Howlader

.. Informant-petitioner.

Vs.

The State and others

.....Opposite parties.

Mr. M. Bulbul Abu Saiyed, Advocate

...For the informant-petitioner in
Criminal Revision No. 582 of 2018.

Mr. Muhammad Hasibur Rahman,
Advocate

.....For the Opposite Party Nos.
4, 5, 6, 7, 10, 11 and 12 in
Criminal Revision No. 582 of
2018.

Mr. Md. Hafizur Rahman Khan with
Mr. S.M. Shafiqul Islam, State Defence
Advocate

...for the convict Md. Abul Kalam
(Absconding).

Mr. Shaheen Ahmed Khan, D.A.G. with
Mr. Mohammad Jahangir Alam, A.A.G.
with

Mr. Zahid Ahammad (Hero), A.A.G. with
Mr. Mohammad Humayun Kabir, A.A.G.

.....For the State.

**Heard on 14.03.2023, 14.05.2023,
15.05.2023, 21.05.2023, 22.05.2023,
28.05.2023, 29.05.2023, 30.05.23.
04.06.2023 and 05.06.2023**
**Judgment on 11.06.2023, 12.06.2023
and 13.06.2023.**

SHEIKH HASSAN ARIF, J:

1. The aforesaid Death Reference No.77 of 2017 and Criminal Revision No.582 of 2018 have arisen out of same incident. When this bench was hearing the death reference, the existence of aforesaid criminal revision, pending before the High Court Division, came to our attention. The same was filed by the convict-Md. Abul Kalam against judgment of acquittal in the case filed by him as informant out of the same incident of killing his wife and a lodging master in his house.

2. **Background Facts:**

2.1 Short background facts are that convict-Md. Abul Kalam, initially, lodged an FIR on 04.10.2001 alleging murder of his wife and a lodging master

in his house by 13 (thirteen) FIR named accuseds and others on the night following 03.10.2001. Accordingly, the same was registered as Morelgonj P.S. Case No. 4 dated 04.10.2001, corresponding to G.R. Case No. 279 of 2001, under Sections 302/34 of the Penal Code. However, on the first day of the investigation, the FIR story of Kalam's case took a u-turn as his child-daughter, Nupur (aged 3 years and six months at that time), disclosed that her father (Md. Abul Kalam) had killed the victims. Subsequently, on 07.10.2001, the father of the deceased lodging master (Md. Moshiur Rahman) lodged another FIR, being Morelgonj P.S. Case No. 12 dated 07.10.2001, alleging that Md. Abul Kalam had killed his own wife and the son of the informant. The case filed by Kalam ended up with final report, being Final Report No.57 dated 28.11.2001. However, the

subsequent case, as filed by victim-Moshiur's father, ended up with charge-sheet against Kalam, being Charge-Sheet No. 290 dated 10.12.2001 under Section 302 of the Penal Code, which ultimately went for trial and numbered as Sessions Case No.14 of 2002. On the other hand, Kalam filed naraji petition etc. against final report in his case which, ultimately, ended-up with Criminal Misc. Case No. 1672 of 2008 before the High Court Division, and, with the interference of the High Court Division, Kalam's case was also made ready for trial and numbered as Sessions Case No.361 of 2013. However, the said case filed by Kalam ultimately ended up with acquittal of all the 13 (thirteen) accuseds. The case against Kalam, namely, Sessions Case No. 14 of 2002, ended up with conviction and death sentence against him, which gave rise to the aforesaid death reference before this Court.

2.2 As stated above, Kalam filed aforesaid Criminal Revision before the High Court Division against the order of acquittal in the case filed by him and obtained Rule. Therefore, by the order of the Hon'ble Chief Justice, the said criminal revision has also come up before this Court for hearing along with the aforesaid death reference. Thus, both the matters have been heard together and the same are to be disposed of by this Common judgment.

3. **Cross Case:**

3.1 At the outset, it may be noted that this case is one of few unique examples of cross-cases, namely that the informant himself became an accused in the cross-case filed by the father of one of the victims. Mr. Mohammad Jahangir Alam, learned Assistant Attorney General, has cited two decisions of our superior Courts wherein some guidelines have been given for

simultaneous trial of cross cases. In this regard, the case cited by him, namely **Nur Elahi Case [18 DLR (SC)-474]** is pertinent to be mentioned here as because the best procedure for disposal of cross cases has been given in the judgment therein. In this regard, paragraph Nos. 7, 8 and 9 of the judgment delivered by his Lordship Mr. Justice S.A. Rahman may be reproduced here:

“7. The question how the two cases should be proceeded with so as to cause no prejudice to either party, is one of difficulty in the circumstances mentioned and this caused us some concern. The learned Advocates General suggested that we might issue directions similar to those embodied by the Lahore High Court in the unreported case cited above. The learned Judges observed therein that it would be desirable, should the trial Judge decide to hear first the case based on the Police version, to summon the witnesses supporting the counter version as Court witnesses under section 540 A of the Code of Criminal Procedure, so that the

record contains all the relevant evidence. Similar procedure was directed to be adopted during the trial of the complaint case. After considering all aspects of the matter, we hold that a fair procedure would be for the learned trial Judge to take up the complaint case first for trial. During that case the learned trial Judge may call the witnesses mentioned in the Police chalan, if they were not already examined on behalf of the complaint, as Court witnesses under Section 540 A of the Criminal Procedure Code, so that they can be cross-examined by both the parties. This will enable the Court to have the whole relevant evidence included in one trial and a decision could be arrived at after a proper consideration of the entire material relied on by the parties. The accused persons would in addition obviously have the right to adduce defence evidence if they so choose. If that trial results in a conviction, it will be for the Public Prosecutor to consider whether or not he should withdraw from the prosecution, with the permission of the Court, under section 494 of the Code of Criminal Procedure, in the police chalan case. It would be easy for him to take such a decision after the

whole evidence has been thrashed out in the first trial. If the first case ends in an acquittal, he might still have to consider whether the Police version has not been so seriously damaged by what has been brought out in the first trial, as to justify withdrawal of the prosecution. Otherwise the second trial would be allowed to proceed to its normal conclusion and the parties would have the advantage of utilizing the material placed on the record at the earlier trial, by way of cross-examination of the relevant witnesses, as permitted by law.

8. *This procedure is being suggested to avoid a difficulty that might otherwise confront the complainant. If the Police chalan is taken up first for trial, the complainant would be under a handicap in so far as he would not be in a position to cross-examination the witnesses for the prosecution.*
9. *Another difficulty may arise in respect of conducting the case on behalf of the complainant in the first trial. Normally, of course, under the law, the Public Prosecutor is to be in charge of the case, even if the trial is based on a private*

complaint. The Public Prosecutor, however, in the special circumstances of the case, could permit the complainant's Counsel to conduct the proceedings on his behalf under his direction. Alternatively and that may meet the situation more adequately, Government in the interest of justice, could notify the complainant's Counsel, as a special Public Prosecutor, for the conduct of that case alone. This would ensure full justice to the complainant and he would not be left with any sense of grievance. He is at present challenging the bona fide of the Police investigation. We, therefore, allow the appeal and direct that the trials will now be taken up by the trial Judge in accordance with the observations made above”.

3.2 However, in the above **Nur Elahi's Case**, the matter came up before the Supreme Court of Pakistan during continuation of the trial and as such it was possible for their Lordships to declare such guidelines, in particular to dispose of the complaint case first followed by the police

case. But in the cross-cases in hand, such procedure was not possible at the relevant time as because interference by the High Court Division in the above mentioned criminal miscellaneous case came up at the fag-end of the trial of the case against Kalam, although, from that stage, both the cases were tried simultaneously to some extent.

3.3 In disposing of the aforesaid cases, we will first take up the case filed by Kalam, namely, the Criminal Revision filed by Kalam before the High Court Division against the order of acquittal inasmuch as that if it is found that the said criminal revision has merit, it will have serious impact on the disposal of the death reference. Accordingly, we will determine the merit of the said criminal revision first followed by the said death reference.

4. **Md. Abul Kalam's Case:**

4.1 As stated above, Kalam's case started with lodging of the aforesaid FIR on 04.10.2001, being Morelgonj P.S. Case No. 4 dated 04.10.2001, corresponding to G.R. Case No.279 of 2001, under Sections 302/34 of the Penal Code naming 13 (Thirteen) accuseds alleging, inter alia, that he had enmity and previous case against the FIR named accuseds and, in such case, his wife Sultana Yeasmin was informant. That since the said case was charge-sheeted against the accuseds, the said accuseds broke into his house on 03.10.2001 at 11 pm being armed with Da, stick, Chinese axe, iron rod etc. and asked him to open the door of the western side of the house. Since he did not open the door, they broke the grill of window, entered the house and started beating him and his wife. He then ascended to the upper store of the house

(পাটাতন) to save his life. That on the order of accused No.6 (Abdur Rahman), accused No. 1 (Delower) chopped his wife with 'Da' (a sharp house-hold chopping device) on the forehead and caused severe injury. That accused No.2 gave a blow with Chinese axe on the left side of the head of his wife and caused bleeding injury. That accused No.3-Sarwar gave a blow on the front side of his wife's head with 'Da', and other accuseds gave indiscriminate beating on his wife causing with hematoma injuries. As a result, his wife fell on the floor unconscious. That when his lodging master, Moshiur Rahman (14), requested the accuseds not to beat his wife as such, accused No.7 gave him a blow on the left side by a 'Da' and accused No.5 (Yakub) gave another blow on his head by a 'Da' and caused bleeding injury. That, as a result, his wife and lodging master died instantly at the place of

occurrence and, thereafter, accused Nos. 4 and 8 to 13 looted away some articles from his house. That he saw the incident through the hole from upper store (পাটাতন). As he started screaming, the nearby people came with haricane and torchlights, but the accuseds fled away to different directions. That while the said accuseds were leaving, witness Abul Hossain, Abdul Latif Howlader, Harunur Rashid, Lal Miah and some others saw them in the light of haricane and torchlight. That at the time of occurrence, the haricane was switched on in his house and he identified the accuseds in the light of the said haricane.

4.2 As his case took u-turn on the disclosure by his daughter during investigation, the investigating officer submitted final report No. 57 dated 28.10.2001 stating therein that the case was a

false one mainly relying on the disclosure of Kalam's daughter Nupur and Kalam's extra judicial confession. Being aggrieved by such Final Report, Kalam filed naraji application. Accordingly, the learned Magistrate directed O.C. concerned to conduct enquiry and report. The report of Officer-in-charge also ended up against Kalam with the view that Kalam's case was a false story. Kalam then filed second naraji application, but the same was rejected by the Magistrate and final report filed by police in his case was accepted. Kalam then preferred criminal revision before the learned Sessions Judge concerned, being Criminal Revision No. 29 of 2003, and the said criminal revision was allowed. Thereupon, the learned Sessions Judge gave direction for holding judicial enquiry. Accordingly, Judicial Magistrate, Khandaker Nazmul Huda Shamim, was entrusted with the

said enquiry, who filed similar report holding the view that Kalam's case was a false one. Accordingly, the same was 'kept filed' (নথিজাত). Being aggrieved, Kalam again preferred criminal revision before the Sessions Judge, but the same was rejected. Kalam then approached the High Court Division with Criminal Miscellaneous Case No. 1672 of 2008, wherein, a Division Bench of the High Court Division, vide judgment and order dated 16.06.2008, quashed the judgment of the learned Sessions Judge dated 28.10.2007 in Criminal Revision No. 196 of 2006 upon making the Rule absolute and gave the following direction:

“The learned Magistrate, first Class, ‘Ga’ Anchal, Bagerhat, is directed to dispose of the judicial enquiry report dated 28.08.2006 afresh, in presence of the contending parties, in accordance with law and in the light of observation made above and to pass an appropriate legal order.”

4.3 Pursuant to the said High Court order, another judicial enquiry was ordered by the Magistracy concerned and, accordingly, one First Class Magistrate, Muntasim Billah, was entrusted with the said judicial enquiry who also recorded some statements of the witnesses. But before any report in the said second judicial enquiry, the Senior Judicial Magistrate concerned took cognizance of the case by referring to the High Court judgment in the above mentioned miscellaneous case and sent the case to the Sessions Judge upon making the case ready for trial. Thereafter, Kalam's case was registered as Sessions Case No. 361 of 2013 before the learned Sessions Judge and was sent to the same Court, namely, Additional Sessions Judge, Second Court, Bagerhat, before which the case against him was pending at the fag-end of the trial.

Depositions of the Witnesses (Kalam's Case):

4.4 During trial of Kalam's case, nine witnesses (P.W.1 to P.W.9) were produced on behalf of the prosecution side, who were, accordingly, examined and cross-examined by the parties. Interestingly, accused No.7 in Kalam's case deposed therein as P.W.1. After recording of evidence, all the accuseds were examined under Section 342 of the Code of Criminal Procedure and they claimed themselves innocent and refused to give any witness in their defence. After completion of the trial, the Second Court of Additional Sessions Judge, Bagerhat passed the impugned judgment and order dated 07.05.2017, thereby, acquitting all the 13 (thirteen) accuseds. Being aggrieved by the said judgment of acquittal, Kalam preferred the aforesaid Criminal Revision before the High Court Division of the

Supreme Court of Bangladesh and obtained the aforesaid Rule.

4.5 Before addressing Kalam's case on merit, let us first describe, in short, the material parts of the depositions of prosecution witnesses (P.W.1 to P.W.9) in his case.

P.W.1 (Md. Jalil Howlader): As stated above, although this witness was accused No.7, he deposed as P.W.1 mysteriously. According to his deposition, Kalam was his full brother and victim Sultana Yeasmin was his sister-in-law (wife of Kalam) and the name of his niece was Nupur Akter, who was aged three years, six months and twenty three days during the occurrence. That his brother was in police job, but he was at Kustia at the time of occurrence and used to say that he had retired. That on the day of occurrence on 03.10.2001, his brother was at his house and this witness was at his work in

his maternal uncle's trawler. That after 5/6 years, his brother asked him to depose as per his instruction so that he and his maternal uncles could be saved. Accordingly, he deposed before the Magistrate that he, along with his maternal uncles and cousins, broke into the house of Kalam and chopped his sister-in-law and that his brother resisted and they beat his brother as well. But, according to him, the real incident was that his brother wanted to have the entire land, which his father asked to give to this witness. That his maternal uncles divided half of the property in favour of this witness which prompted his brother to kill his wife out of anger and, consequently, his brother went to police station in the early morning with his daughter Nupur and filed the said case against this witness, his father and maternal uncles, in total thirteen. That when the police came for investigation, Nupur said that her father had killed her mother and threw the Da (local

cutting device) into a pond. That the said Da was recovered and police filed case against Kalam upon filing final report against this witness and others. That during continuation of the case, the maternal uncles had beaten this witness and broke his four teeth. That this witness then gave false deposition on the instruction of his brother. This witness was not cross-examined by the accused as the learned advocate for them was absent.

P.W. 2 (Abul Hossen Bashar): This witness was the father of the lodging master (victim). According to his deposition, he got the news of incident on 04.10.2001 at 8 am. Accordingly, he rushed to the place of occurrence and, on his way there, he saw many people. That his son was a lodging master at Kalam's house. That at about 10-10 $\frac{1}{2}$, police came along with Kalam and the said Nupur (daughter of Kalam aged three years) on the lap of Kalam. That

people entered the house along with police and found the dead body of Moshiur lying up-side-down with chopping injuries on the head and also found victim Sultana Yeasmin lying on the floor. That police then started investigation and asked the said daughter-Nupur in front of all and, upon being asked two/three times, she disclosed that her father had chopped her mother and brother (ভাইয়া). When asked as to by what materials the chopping was done, she answered that it was done by a Da. Police then asked Kalam about it, who, after long gap, admitted that he had committed the killing because of his quarrel with his parents over the house. That when asked as to what he did with the said Da, he said that it was thrown into the pond in front of the house. Accordingly, men named Awal, Harun and someone else got into the pond and Awal recovered the Da and, at that time, about 300/400 people were present. That the police then detained Kalam, sent

the bodies for post mortem and, after burial of the dead body of his son, this witness filed the case against Abul Kalam.

In cross-examination by the accuseds, he deposed that he filed separate case for the killing of his son and, accordingly, he disclosed the number of the said case and deposed that the said case was pending in Court as Sessions Case No. 14 of 2002. That in that case he implicated Kalam as accused. This witness also confirmed that he made the said statement during investigation of the same case as he has made before the Court.

P.W. 3 (Hazi A. Latif Howlader) was a neighbouring witness. He deposed that on 03.10.2001, the incident took place. That on that day, at about 10:30/11:00, the informant (Kalam) called him and told him that his wife and lodging master were killed. When this witness asked as to who did it, Kalam replied that his father and brother did it. That Kalam

then asked for a trawler from him to go to Morelgonj which he refused to give. That in the next morning, many people came, but no one entered the house of Kalam. That at about 10-10 $\frac{1}{2}$, people entered the house with police. That after entering the house, police asked Kalam's daughter-Nupur as to who killed her mother. Nupur then replied that her father did it. That she was again asked as to who killed the lodging master. She then replied that her father did it by chopping with a Da and that her father threw away the said Da in the pond. That police then asked some people to search for the Da and the said Da was recovered. That being asked, Kalam confessed that he had killed his wife and lodging master by chopping with the said Da. Police then took the said two dead bodies to Bagerhat and arrested Kalam. That Police, subsequently, recovered and seized one read coloured petticoat, one piece of blood stained green blouse, one stripe

lungi and one black genji by seizure list. This witness then identified the photocopy of the said seizure list as Exhibit-1 and his signature thereon as Exhibit1/1. He also identified the seized materials as Material Exhibit-I series.

In cross-examination by accuseds, this witness confirmed that when the daughter of Kalam disclosed about the killing of her mother and lodging master by her father, this witness was present. That this witness was also present when, after recovery of Da, Kalam admitted that he had killed his wife and lodging master and, at that time, some other village people were also present. That at that time, the father of lodging master was also present who came after learning about the death of his son.

Lal Miah (P.W.4): This witness was also a neighbouring witness. He deposed that the incident took place on 3.10.2001 at night when Abul Kalam

called him through window. According to him, Kalam told him that his wife and lodging master were chopped by his brother and father. That in the next morning, he saw people going there and this witness followed them, but no one dared to enter the house. He then heard that police came and with police, he entered the house along with other people. That police then asked Kalam's daughter- Nupur as to who killed her mother. In reply, she said that her father had chopped her mother and lodging master with a Da and that the said Da was thrown away in the pond. When asked by police, Kalam admitted that he had chopped his wife and lodging master with Da because of the dispute with his father and mother. That, thereafter, as per Kalam's information, police recovered the said Da from pond and sent the said dead bodies for post mortem followed by arrest of Kalam.

In cross-examination, this witness deposed that when police asked Kalam's daughter and Kalam, this witness, along with some others including P.W.2 and P.W.3, were present. That when Kalam's daughter disclosed that her father had killed her mother and lodging master, this witness was present at that time. That when after disclosure by Kalam's daughter, Kalam admitted the crime and this witness was present there.

Md. Abul Kalam Howlader (P.W.5): This witness was the informant of the case. According to him, the incident took place on 03.10.2001 at 11 O'clock at night. That Delower, Sarwar, Saleh Talukder, Yakub, Bazlur Rahman, Jalil Howlader, Jabber Howlader, Rezaul Mridha, Kamrul Islam, Jahangir Rahman Howlader and Rejaul, in total 13 people (two absconding, one had died), are the accuseds. That on the date and time of the occurrence, accused Saleh Talukder asked him to open the door, but

when he refused, the said accused broke the window by a Crowbar (Shabol). That accused Jalil opened the door of western house and all the accuseds entered the house. That this witness then ascended to the upper store (পাটাতন) with his child daughter-Nupur for safety. That two days before the occurrence, accused Jalil and Delower had beaten his wife and broke the knee and because of that she could not ascend to the upper store. That he started screaming 'dacoit...' 'dacoit...' from the upper store. That on the order of accused Rahman, accused Delower put pistol on the head of Jalil and asked him to chop the wife of this witness. That accused Jalil then chopped his wife below the right elbow. Then accused Sarwar chopped his wife on the right side of the head with a Da. That at that time, lodging master Moshiur was present and when the said lodging master requested accused Talukder by grabbing his leg not to do further chopping, accused

Yakub chopped him on the head with a Da. That as Moshiur fell on the floor, accused Bazlur Rahman chopped him on the right side of the forehead. That when his wife begged mercy for life, accused Saleh Talukder took a Da from the hand of accused Sarwar and chopped his wife on the right hand and cut her five fingers. Then accused Kamrul took the Da from accused Yakub and chopped on the back of Moshiur's head. That on hue and cry of this informant, his sister Ranjida Yeasmin, Rubi Sultana, P.W.3, P.W.4 and other people rushed to the spot. That with the help of these witnesses, the informant went to the Morelgonj Police Station and lodged the said FIR. He, accordingly, proved the said FIR as Exhibit -2 and his signature thereon as Exhibit-2/1. That before going to the police station, he visited Latif's (P.W.3) house in order to borrow the trawler so that he could take his wife and Moshiur to the hospital, but Latif refused to give trawler. That he

then went to the police station along with his daughter on foot, whereupon at about 7/8 in the morning, officer-in-charge asked him to write the FIR. That, thereafter, police visited his house at about 11 in the morning, recovered the dead bodies of his wife and Moshiur, prepared surathal report and sent the dead bodies to hospital for post mortem. That when he visited the police station on 05.10.2001 at 5.50 in the afternoon to bring the dead body, the O.C. of police station attested him under Section 54 vide G.D. No. 134 dated 05.10.2001 and produced him in Court. That, thereafter, he was in jail for eleven months and twenty two days and was released on bail. That subsequently, he was made accused in another case filed by the wife of accused Saleh Takukder and he was in jail for about one year and the said case was Nari Shishu Case No. 429 of 2005. That being released on bail, when he visited his house, he was again made accused by a relative

of accused Sarwar on the allegation of possession of counterfeit notes, being G.D. No. 68/03, and he was arrested again and remained in jail for 27 months. That after bail, when he went to High Court, accused Delower and Nannu had kidnapped him and took him to Tongi Police Station of Gazipur and then he was beaten there at the house of one Delower, the nephew of accused Bozlu, and they broke his hand and leg. That accused Bozlu also had him arrested in a case filed at the instance of his niece Nurunnahar and he was in jail for 2 months 26 days. That while in custody, he made application to the Magistrate and, on his such application, one Magistrate Enamul Huda Shamim had recorded statement of his daughter Nupur and, in her such statement, her daughter disclosed the names of the accuseds as the killers of his wife and Moshiur. This witness then identified accuseds Jalil and others. According to him, the brother of accused Delower

was O.C. of Khulna Navel Camp and the aforesaid cases against him were filed at his instance. That they threatened witnesses of Kalam so that they could not give any evidence.

In cross-examination from all accuseds, he admitted that he was in police job and because of this case, he was forcefully retired. He further admitted that all the accuseds in his case were his relatives. He again deposed that he filed the case at 9.15 on 04.10.2001 and the F.I.R was computerized one. That he computer-composed the FIR before going to the police station, but he could not say as to by whom he did it. He admitted that the houses of one Goni, Rashid, Hemed, Rafique, Shakayet, Abul Kalam, Nuru Sarder, Saleh Munshi and Jamal were on the western side of his house and that there was no house on the eastern side and there was a canal on the southern side and after the canal, the houses of Al Amin and others were situated. That on

the north side of his house, there was vacant land and after that there were some houses. According to him, he read the FIR after computer typing. He, however, admitted that he did not mention in the FIR that accuses Jalal and Delower broke the knee of his wife two days before the occurrence, but he mentioned about the case as G.R. 175 of 2001 filed by his wife. That he also did not mention in the FIR that his wife could not ascend to the upper store because of her broken knee and that he could not mention that he screamed dacoit..., dacoit.... In cross-examination, he further admitted that he did not mention in the FIR that after taking Da from accused Sarwar, accused Delower chopped his wife and cut three fingers or that by taking da from accuses Kamrul, gave a da blow on Moshiur's head or that on his screaming, his sister Ranjida Yeasmin and other people rushed to the spot or that pistol was put on Jalil's head on the order of

accused Rahman or that Jalil chopped his wife below the elbow of right hand. However, he deposed that he mentioned in the FIR that Sarwar had chopped on the head of his wife and that Moshiur grabbed the leg of accused Saleh Talukder and requested him not to chop anybody. He, however, admitted that his house did not have electricity, but he mentioned in the FIR that he had identified the accuseds in the light of haricane. He also deposed that since he closed the door of upper floor, the accuseds could not ascend to the upper floor and he also deposed that his three years old daughter Nupur was with him on the upper store. He also deposed that on his screaming, neighbours Latif (P.W.3), Abul Hossen, Sultan Gani, Ranjida Begum, Rubi and others rushed to the spot and he mentioned it in the FIR. He further deposed that the father of Moshiur filed case against him in respect of killing of Moshiur, being Sessions Case No. 14/02,

and the said case was pending. But according to him, the said case was filed on the instruction given by one Aziz Military, brother-in-law of accused Delower. He also admitted that he went to the police station to file case along with his daughter and that the police station was 10 km away and he went there on foot and at that time there was no people on the road. According to him, he went to the police station after writing the FIR, and, after lodging of the FIR, police came to his house along with him and his daughter. However, according to him, police did not ask him anything and police also did not ask anything from his daughter. He denied the defence suggestion that when police asked his daughter politely, his daughter disclosed that he had killed her mother and Moshiur and threw away the da in the pond or that the said da was recovered from pond or that he pressurized his father to write off all the land in his favour or that his father refused to give him

entire land depriving his brother or that since his maternal uncles were not in his favour and they supported his father, he filed this false case against them or that he killed his wife being revengeful or that not to keep any witness of such killing. This witness then became angry with this question. He, however, admitted that Nurunnahar (meaning victim -wife) was his cousin and that he married her and, after two years, Nurunnahar filed a kidnapping case against him in Gazipur and the said case was compromised on condition of separation of marriage. He denied the defence suggestion that the accuseds were not at all involved in the incident.

Nupur Akter (P.W.6) was the child-daughter of the informant. At the time of deposition, she was shown to be 17 years of age. She deposed that the incident took place on 03.10.2001 at 11.00 o'clock at night. That two days before the incident, accused Jalil, Jabbar, Delower broke the knee of her mother by

beating with the backside of a da and Jalil pressed down his father in water and at that time accused Delower and Jabbar grabbed her. That on the day of occurrence at 11.00 at night, accused Abdul Jalil asked his father to open the door, but since his father refused, the accuseds broke the window. That at that time her father went to upper store along with her. That since her mother's leg was broken, she could not move to the upper store. That accuseds searched for his father in the house and accused Delower put a pistol on the head of accused Jalil and asked him to beat her mother. Accused Jalil then put a chopping blow on the right hand of her mother. That accused Sarwar, Sahel, Shahidul, Mohidul, Yeakub, Nannu, Jabbar and other 12/13 people then came. That the lodging Master Moshiur approached on the screaming of her mother and asked not to hit her mother, but accused Delower and others started chopping her mother

indiscriminately. When victim Moshiur resisted, they chopped him as well. That this witness and her father (P.W.5) saw the incident through the hole of the upper store. That her father started screaming the words 'dakat', 'dakat', by hitting the tin-roof, at which the neighbouring people approached, but stood beside the house and they did not approach further upon seeing the accuseds. That the accuseds left after chopping her mother and Moshiur and, thereafter, the neighbouring people put her father and herself down from the upper store. That after descending, she found Moshiur and her mother dead. Then she, along with her father, went to the police station and police took the case at 9/9 $\frac{1}{2}$. That police visited their house and took the dead bodies of her mother and Moshiur on the trawler. That before that, some people told police that there was a Da in the pond. That police then recovered the Da by Awal from the pond. That on 05.10.2001, she,

along with her father, visited police station when police arrested her father and she was taken to the house of police. That on 06.10.2001, she was again taken to the police station and, on that day, her maternal grandfather took her along with the dead body of her mother. That when police took her to the Court, she was accompanied by her maternal grandfather. According to her, she gave deposition before the Court two times. She further deposed that on 17.09.2015, accused Jalil and Delower offered her taka fifty thousands in front of her college and proposed to arrange her marriage if she deposed against her father. That the said accused further said that they gave taka fifty thousand to each accused.

In cross-examination by all accuseds, she deposed that she gave statement before two Magistrates. She, however, denied that she was produced before Magistrate on 07.10.2001 immediately after the

occurrence or that she heard from accused Delower and Jalil that she would have to give evidence on this day. She deposed that she was staying at his maternal grandfather's house under Razapur police station of Jhalokhati District and that she was studying at Razapur College. She admitted that at the time of killing of her mother, she was aged three years and six months. She deposed that she came to Court from Razapur in bad weather at 9.30/10.00 and met her father after coming to Court. However, she could not disclose the date as to when she gave her first statement to Magistrate and she could not say the date of her second statement to Magistrate as well. She denied the defence suggestion that while she gave second statement to the second Magistrate, she stated that she, along with other, had slept after the accuseds left or that she and her father identified the accuseds by their voices or that at the time of occurrence, no witness came or that

police asked her as to where the 'da' was thrown away or that she disclosed that the 'da' was thrown away in the pond. However, she admitted that she stated to Magistrate Muntasim Billah that her father was present on the bank of the pond when the 'da' was recovered. She again denied that she did not tell the Magistrate that accused Jalil asked her father to open the door or that the accuseds entered the house through the southern window or what was done with the door of the upper floor after ascending to the upper floor or that accused Delower put pistol on Jalil and asked him to chop her mother or that Jalil chopped her mother first or that after hearing the screaming of her mother and the accuseds, victim Moshiur grabbed the leg and requested not to chop her mother or that accuseds and others continued chopping her mother or when Moshiur resisted, they chopped him as well or that she and her father saw everything through the hole of the

upper floor or that her father was beating the tin and the people rushed to the spot and after the people came, she and her father descended from the upper store. She deposed that on the next morning of the occurrence, she was at home and went to police station from home. She deposed that apart from her father and she, no other people was there while they were going to police station and that her father took her to police station straight away. That upon reaching police station, her father told police about the incident and thereafter the police wrote down about the incident. That, thereafter, S.I., along with two police, visited the place of occurrence and at that time their house was not locked. That they reached the house at about 12 noon and within $\frac{1}{2}$ / 1 hour, the said 'da' was recovered from the pond. She deposed that she did not meet her father while he was in jail and that she met her father while she gave statement to the First Magistrate and,

thereafter, she met her father on the day of deposition before the Court. She further deposed that her father did not take information about her after being released on bail. She denied the defence suggestion that it was her father who had killed her mother and Moshiur. She, however, expressed her ignorance as to whether Moshiur's father had filed a case against her father. She again denied the defence suggestion that she gave false evidence to save her father or that no such incident took place as per her deposition.

Khandoker Nazmul Huda Shamim (P.W.7) was the first Judicial Magistrate, who conducted first judicial enquiry after repeated naraji filed by the informant (P.W.5). He, accordingly, deposed that he conducted the said judicial enquiry while he was the first class Magistrate at Bagerhat district. That he started judicial enquiry on 28.06.2006 after receipt of the order from Cognizance Court, 'Ga' Anchol.

Accordingly, he fixed 18.07.2006 at 9.30 for such enquiry and issued notices upon the informant and others. That the informant made prayer on that fixed date seeking adjournment to bring evidence and, accordingly, 14.08.2006 was fixed as next date. That on the next date, he recorded the statements of six witnesses and confessional statement of one accused. That the said six witnesses were Md. Abul Kalam, Abdus Salam, A. Jalil Howlader, Razida Begum, Rubi and Rejaul Islam. That accused No.7, A. Jalil, gave confessional statement. That he recorded the statements of independent witnesses on 19.08.2006 and recorded witness Nupur's statement on 24.08.2006. That on 18.06.2006, two witnesses gave statements that Kalam had chopped his wife. That in his detailed enquiry, he found that Kalam himself had killed his wife and the lodging master as the said lodging master saw the occurrence. Accordingly, he submitted report. In

cross-examination, he deposed that he conducted enquiry upon visiting the place of occurrence.

Azizur Rahman (P.W.8) was another neighbouring witness. He deposed that the occurrence took place on 3.10.2001. That at night, the wife of Kalam and the lodging master boy were killed. That in the next morning, he visited the place of occurrence and saw the police interrogating Abul Kalam. That the daughter of Abul Kalam disclosed, in presence of all, that her father had chopped her mother. Being asked as to the whereabouts of the 'Da', she replied that it was thrown in the pond. That, subsequently, one Awal recovered the said 'Da' from the pond. That police then took Abul Kalam away after arrest. That this witness, accordingly, gave statement before the Magistrate. He proved his such statement as Exhibits-3 and 3/1. This witness was not cross-examined by the accused.

Sohrab Kha (P.W.9) was another neighbouring witness. According to his deposition, the occurrence took place on 03.10.2001 at 11 O'clock at night. That in the next morning, when he saw the quick movement of people, he asked as to what happen. They said that the wife of Kalam and another were killed. This witness then rushed to the place of occurrence and saw many people. That after 2/3 minutes, police came when the daughter of Abul Kalam was on the lap of her father. That being asked by police, the daughter of Abul Kalam disclosed that her father had chopped her mother and lodging master with the 'da' and that the 'da' was thrown away in the pond. That four people then jumped into the pond and one Awal Mistry recovered the 'da'. That he, accordingly, gave statement before the Magistrate and he proved his such statement as Exhibit-4 and his signature thereon as Exhibit-4/1.

That the accused declined to cross-examine this witness as well.

Submissions in Kalam's case:
(Criminal Revision No. 582 of 2018)

4.6. Mr. M. Bulbul Abu Saiyed, learned advocate appearing for the petitioner (Kalam), has made the following submissions:

- a) That P.W.5 (Kalam) and her daughter, P.W.6 (Nupur), supported the prosecution case as stated in the FIR lodged by Kalam. But P.W.1 (accused No.7) changed his earlier version as stated by him before the Judicial Magistrate. However, according to him, the trial judge did not discredit the depositions of P.W.5 and 6 at all and reached the conclusion of acquittal without discrediting such depositions. Therefore, according to him, the impugned judgment is not only a non-speaking judgment,

but also not a judgment delivered by the trial Court upon proper assessment of evidences on record.

b) That only eye witnesses to the occurrence, namely P.W.5 and P.W.6, categorically proved the case through their depositions before the trial Court and the same could not be shaken by the extensive cross-examination of the accuseds. In spite of that, the trial Court concluded that the prosecution case was a false case and, accordingly, acquitted all the accuseds most illegally without considering the deposition of material witnesses and evidences on record. This being so, according to him, the impugned judgment should be set aside and the case should be sent on remand to the Trial Court for delivery of judgment afresh after further assessment of the

evidences, in particular the depositions of P.W.5 and P.W.6.

4.7. As against above submissions, Mr. Muhammad Hasibur Rahman, learned advocate appearing for the Opposite Party Nos. 4-7 and 10-12, have made the following submissions:

- (i) That some of the prosecution witnesses in this case were mostly neutral neighbouring witnesses inasmuch as that the names of some of them were even cited by the informant in the FIR as neighbouring witnesses who allegedly rushed to the spot upon hearing hue and cry raised by Kalam. By referring to the depositions of such witnesses, in particular, the depositions of P.W.2 and 3, he submits that these witnesses were not declared hostile and their depositions were not even challenged, particularly when they categorically

deposed that they themselves heard Nupur saying that her father had chopped her mother and Moshiur with 'da' and threw the 'da' in the pond.

- (ii) By referring to depositions of two other neutral witnesses, namely P.W. 8 and P.W. 9, he submits that these witnesses also categorically deposed that the daughter of Kalam disclosed in their presence and in presence of other people that it was her father-Kalam who had killed her mother and the lodging master by chopping with the 'da' and the 'da' was thrown away in the pond and that the said da was recovered on such information. Therefore, according to him, these depositions having not been challenged by any quarter, they remain as valid parts of evidence and, accordingly, the trial judge had no option but to acquit the

opposite parties and other accuseds on the basis of such reliable depositions.

(iii) By referring to the depositions of P.W.1 (accused No.7), he submits that although this witness supported Kalam's version of the case during enquiry by the Judicial Magistrate, he took u-turn during the trial and categorically deposed that he made false statement before the Judicial Magistrate on the instruction of the informant- Kalam.

(iv) By referring to the depositions of informant Kalam (P.W.5) and Nupur (P.W.6), he submits that it is apparent from the said depositions that their depositions were hugely inconsistent with the FIR version of the case and their earlier statements made before the Judicial Magistrate and, in the

cross-examination, they admitted that they gave some new statements in the depositions which they did not mention in their earlier statements. Therefore, according to him, the depositions of P.W.5 and P.W.6 were rightly disbelieved by the trial judge as the same were apparently false statements.

- (v) That although the impugned judgment was not that much elaborate as to the assessment of the evidences on record, the conclusion reached by the trial judge as to the acquittal of the opposite parties and others should not be interfered with by this Court in criminal revisional jurisdiction inasmuch as that if the evidences on record are reassessed by this Court or examined by this Court in exercise of its revisional jurisdiction, it will be evident that

the prosecution has totally failed to prove the charge against the opposite parties and others and it has turned out that the prosecution case was totally a false case just manufactured in order to avoid the consequence of investigation and trial of the case filed by the father of the deceased Moshiur. This being so, according to him, the criminal revision does not have any merit at all and as such the same should be rejected by this Court upon discharging the Rule.

5. Death Reference (case against Kalam):

As stated above, the father of one of the victims, namely Moshiur, lodged a separate FIR in respect of the same incident on 07.10.2001 i.e., on the 4th day of the occurrence, and the said FIR was registered as Morelgonj Case No.

12 dated 07.10.2001 under Section 302 of the Penal Code.

5.1. The informant (P.W.1) lodged the said FIR naming only convict-Kalam as accused alleging, inter alia, that his son, Md. Moshiur Rahman (12), was a hafizi student of Gurishakhali Hafizia Madrasha. Since his residence was four kilometers away from the said Madrasha, he put his son as a lodging master at the house of Kalam six months before the date of occurrence and his son was attending Madrasha from the said house. That on 03.10.2001 at 11 o'clock, at night, after meal, when his said son was asleep in the said house, accused Kalam started chopping his wife-Sultana Yeasmin (25) to kill her. As Moshiur woke up hearing screaming and resisted Kalam and tried to come out of the house, Kalam chopped his son on the left side

of the face along with ear and back and top of the head with a 'da' causing serious incised injuries. Victim then fell on the ground. That because of such chopping, Kalam's wife, Sultana Yeasmin, and his son, Moshiur, died on the spot. That after such killing, Kalam, along with his child daughter (three years and five months), came out and threw the 'da' in the pond in front of the house and went to the police station and filed a case against 13 people including his father, brother and maternal uncles. That, thereafter, police came to the place of occurrence. That being asked by police, Kalam, in presence of witnesses, namely Azizur Rahman (P.W.14), Md. Nurul Islam (P.W.9), Md. Sohrab Hossain (P.W.4), A. Awal (P.W.5), Md. Harun (P.W.6), Md. Ali and others, confessed that he himself did the killing in order to trap his brother, father and maternal

uncles out of a land dispute as because the said people had beaten him and took his signatures on two 150 Tk stamps. When the daughter of Kalam was asked, she also disclosed to the police in presence of witnesses that her father had chopped her mother- Sultana Yeasmin (25) and Moshiur (12), and threw away the 'da' in the pond. That, thereafter, as per confession of Kalam, the said 'da' was recovered from the pond situated on the southern side of the house. That police then took Kalam into custody. That upon learning and seeing the dead bodies of Kalam's wife and his son Moshiur, and because of ritual of his dead son, some delay took place in lodging the F.I.R.

5.2.It may be noted that on the basis of the FIR lodged by Kalam, being Morelgonj P.S. Case No.04 dated 04.10.2001, the investigating officer

(P.W.12) visited the place of occurrence, prepared surathal report on the dead bodies of victim Yeasmin and Moshiur, sent the dead bodies for post mortem report. However, at the fag-end of the investigation in the instant case, P.W.12 handed over the charge of investigation to one S.I. Enamul Hoque (second investigation officer) (P.W.8) upon his transfer. P.W.8 then, after re-examining the investigation materials of the first investigating officer and agreeing thereto, submitted the charge-sheet, being Charge-Sheet No. 290 dated 10.12.2001 under Section 302 of the Penal Code against Kalam only. Thereafter, the case, being ready for trial, was sent to the Court of Sessions Judge, Bagerhat and the same was numbered as Sessions Case No. 14 of 2002. The learned Sessions Judge then took cognizance of the

case and transferred the same for trial to the Additional Sessions Judge, Bagerhat.

5.3. The trial Court then framed charge against accused Kalam vide order dated 08.09.2002 under Section 302 of the Penal Code and the charge was read over to him, but he denied the charge and prayed for trial. Initially, the prosecution produced 13 witnesses to prove the charge and the said witnesses were examined and cross-examined by the parties. Thereafter, accused Kalam was examined by the trial Court under Section 342 of the Code of Criminal Procedure, wherein he again denied the charge and proposed to give evidence in support of defence, and on that ground, took various adjournments. Subsequently, accused Kalam filed application under Section 540A of the Code in order to produce some witnesses and the said application was allowed by the trial Court.

However, accused Kalam ultimately failed to produce any witness even after issuance of summons by the Court upon his proposed witnesses. The trial Court then fixed the case for argument hearing. Thereupon, accused Kalam filed application under Section 344 of the Code seeking stay of further proceedings of the case. However, the said application was rejected by the Trial Court vide order dated 19.06.2004 after hearing the parties on the ground that similar application filed by accused Kalam was rejected earlier. However, at this stage, while the case was fixed for argument hearing and furnishing stay order from the High Court on behalf of accused Kalam, the trial Judge felt embarrassed. Subsequently, on an application filed by the accused seeking transfer, the record of the case was sent by the trial judge to the learned Sessions Judge. Accused Kalam filed another

application for recalling some witnesses and the same was allowed vide order dated 30.11.2004. Thereafter, further proceedings of the trial was stayed by the High Court Division in a criminal revision filed by accused Kalam, being Criminal Revision No. 1377 of 2004. However, the Rule therein was discharged as being not pressed.

5.4. In the meantime, accused Kalam preferred Criminal Miscellaneous Case No. 1672 of 2008 before the High Court Division under Section 561A of the Code of Criminal Procedure against the rejection order of his criminal revision, being Criminal Revision No. 196 of 2006, as passed by the learned Sessions Judge, Bagerhat vide judgment and order dated 28.10.2007, thereby, affirming the order dated 10.10.2006 passed by the Magistrate First Class, 'Ga' Anchal, Bagerhat accepting the final report by which the learned Magistrate (cognizance) accepted the judicial

enquiry report and filed the case (নথিজাত) of Kalam. A division bench of the High Court Division, thereafter, made the Rule absolute in the said criminal miscellaneous case vide judgment and order dated 16.06.2008 and expressed the opinion that both the cases, by Kalam and against him, should be disposed of simultaneously. However, since Kalam's case was yet to be ready for trial, the trial of the case against him was adjourned. Pursuant to the High Court Judgment in the aforesaid criminal miscellaneous case, the learned Magistrate concerned took cognizance in the case filed by Kalam and sent the same for trial upon making it ready for trial. Accordingly, Kalam's case was registered as Sessions Case No.361 of 2013. Thereafter, vide order dated 20.09.2015, the Sessions Judge, Bagerhat transferred Kalam's case to the Second Court of Additional Sessions

Judge for quick disposal of the same. Thereafter, the case being received by the Second Court of Additional Sessions Judge, the instant case was withdrawn from argument hearing on the application of accused Kalam for recalling the investigating officer and FIR recording officer of the case. Accordingly, the said application was allowed and N.B.W.W. was issued in respect of the said witnesses vide order dated 25.10.2015. The case was then fixed for recalling the witnesses, but one of the said witnesses (second investigating officer) did not turn up in spite of issuance of NBWW on several occasions. Subsequently, accused Kalam was granted bail vide order dated 29.02.2016 by the Second Court of Additional Sessions Judge, but he later absconded and, accordingly, warrant of arrest was issued against him vide order dated 18.08.2016. He has remained absconding as

such till today. Thereafter, the case was again fixed for witness and P.W.14 was produced by the prosecution and he was, accordingly, examined, but cross-examined by the State Defence lawyer on behalf of absconding accused Kalam. However, since Kalam was absconding, he could not be examined under Section 342 of the Code again. The trial Court then fixed the case for argument hearing and after hearing the submissions of the learned advocates, delivered the impugned judgment and order dated 04.04.2007, thereby, convicting Kalam under Section 302 of the Penal Code and sentencing him to death with a fine of Tk. 20,000/-. The trial Court then sent the case records to the High Court Division in view of Section 374 of the Code seeking confirmation of death sentence. Subsequently, the said case was registered as Death Reference No. 77 of

2017 and sent to this bench of the High Court Division for disposal on merit.

Depositions of the Witnesses (Case Against Kalam:

5.5. In the same way, as has been done in Kalam's case, let us first describe, in short, the depositions of witnesses (P.W. 1- 14) in the case against Kalam:

Md. Abul Bashar Howladar (P.W.1) was the father of one of the victims (Moshiur Rahman) and informant of the case against Kalam. He deposed that his son, Moshiur Rahman, aged 12, was a student of Gulishakhali Hafizia Madrasha and that the said Madrasha was 4 km away from his house. That since it was difficult for his son to attend Madrasha regularly, his son was kept at the house of Abul Kalam six months before the occurrence as a lodging master. That Moshiur Rahman died on 03.10.2001, Wednesday, at night, and the killing

took place after dinner at lodging house (Kalam's house). That Abul Kalam chopped his wife with 'da' at night, and, when his son woke up at the screaming and tried to resist, Kalam chopped him on the back of the head and face around eyes and ears. That Kalam's wife and Moshiur both died in such chopping by accused Kalam. According to him, Kalam lodged an FIR on 4th October and police came to the place of occurrence along with many people. During investigation, the daughter of Kalam (3 years and 5 months old) was asked by police and she disclosed that her father gave the chopping. That the said daughter said that Kalam chopped with bangla dao. When asked by police, Kalam admitted it. His daughter also said that Kalam threw the dao in the pond, which Kalam admitted. That the said dao was recovered by one Abdul Awal (P.W.5) from the pond. That being asked, Kalam said that he caused the occurrence because of his dispute with

his father and brother over land and that the day before the incident, he had a quarrel with 13 accuseds in his case. According to this witness, his son's body was buried on 6th October and he filed application (meaning FIR) on 7th October. He, accordingly, proved his such application (meaning FIR) as Exhibit-1 and his signature thereon as Exhibit-1/1.

In cross-examination, he admitted that he did not see the occurrence. He further deposed that Kalam's house was 2 km away from his house, and that Kalam's wife and the son of this witness were killed at the same time and that he heard about the incident in the early morning on 04.10.2001 as he reached the place of occurrence at 10 o'clock. But he could not remember as to who he had heard it from, but confirmed that he had heard it from village people. That one lady came to give the information, but he could not remember the name. He further

confirmed that the FIR was written at the police station and it was written by police, but he could not remember the name and identity of the said police. He again confirmed that the FIR was written at 10/11 on 7th October and that he reached police station at 10 O'clock in the morning and he was accompanied by his maternal cousin, Md. Harun, and the former chairman, Azizur Rahman (P.W.14). He again confirmed that before his FIR, Kalam had filed another FIR, and he heard it on the next day and the said FIR was lodged on 04.10.2001, being G.R. No. 279 of 2001, and, in that case, 13 people were made accuseds including Delower. He deposed that Delowar came to Court and he saw him; That his brother Bashir also came to Court and he was also sitting inside the Court. He again deposed that one daughter of Kalam (in the womb of victim) also died. However, he expressed his ignorance as to whether Kalam's wife had filed any case earlier. He deposed

that he was not regular visitor of Kalam's house and that he never visited Kalam's house. He, however, confirmed that he knew the daughter of Kalam, who was 3 years and 6 months old only, and, at the time of deposition, she became 14 years of age. He also confirmed that he met the said daughter twice before and she came to his house two times and her name was Nupur. He further deposed in cross examination that he met Kalam on the next day of the occurrence i.e. on 04.10.2001, at about 10/11 in the morning when there were 4/5 hundred people present. But he did not have any conversation with him and, subsequently, he came across him at different places casually. He confirmed that he came across Kalam after about 01 year of the occurrence for the first time. He further confirmed that he had 4 sons including the deceased and 1 daughter. He, accordingly, disclosed the names of those sons including deceased Moshiur Rahman. He deposed

that chairman Azizur Rahman (P.W.14) told him that he would have to file an FIR. That as because he was not very much acquainted with the cases, he lodged the FIR in consultation with him (P.W-14). He again deposed that he did not hear anything about the relationship between Kalam and the chairman before filing of the case. He again confirmed that he got the information about the incident from Kalam's daughter Nupur, who was capable of understanding bad and good. He, however, expressed his ignorance as to whether Nupur was still alive. He again deposed that at the time of receiving information from Nupur, there were 4/5 hundred people present along with police and, amongst them, there were respectable people of the locality who were Motahar, Cholil, Gaffar Howlader and two chairmen. In cross-examination, he further confirmed that he saw witnesses Abdul Awal (P.W.5) and Abdul Ali recovering the 'da' from the pond and one

of them found the 'da'. According to him, those people searched for the 'da' for about 15/20 minutes and at that time 25/30 people including 4/5 police were present. He confirmed that the pond was within the house premise and after the barbed wiring, and there was a way beside the pond. He, however, admitted that articles could be thrown in the pond while walking on that day. He also confirmed that he did not see as to who recovered the 'da'. He denied the defence suggestion that they were influential people and one of their brothers was daroga (S.I) and that they were people of different wards and that the relationship of Kalam with them was not very good. He denied further defence suggestion that the disclosure of the incident of killing of his son and wife of Kalam was not given by Nupur or that the 'dao' was not recovered on the disclosure given by Kalam and Nupur. He further denied the defence suggestion that no incident took place as stated by

him or that he filed the case being influenced by the accuseds in Kalam's case and police in order to save Kalam's accuseds or that he filed a false case or that he gave false statements in the ejhar prepared by them by computer composition or that he was tutored to tell lies as per the false FIR or that he was deposing as per their instructions or that he gave false statements.

Abdul Latif Hawlader (P.W.2) was one of the neighbours of Kalam. He, accordingly, identified Kalam on the dock. He deposed that his house was two houses away from Kalam's house. He confirmed that the occurrence took place at 11 o'clock at night, following the day of 03.10.2001. He deposed that on that night, at about 12-12 $\frac{1}{2}$, Kalam came to his house and informed that some people had chopped his wife and that he would go to police station. Accordingly, Kalam sought to borrow a trawler from

this witness, but this witness asked him to go away and refused to give trawler, and Kalam left. That in the next morning, many people came to Kalam's house at 7 o'clock and Kalam came with police at 11 o'clock; That when police entered the house, this witness and others followed them and saw the dead body of the lodging student Moshiur lying in front of the staircase with upside down followed by the dead body of Kalam's wife lying on the floor inside the house on the southern side, and those bodies were lying blood stained. He further deposed that when police asked, the $3\frac{1}{2}$ years old daughter of Kalam disclosed that her father had caused chopping injuries on her mother and the lodging student. When asked as to by what article such chopping was done, she disclosed that her father chopped by a 'da' and told in front of all that the said 'da' was thrown away in the pond. That along with Harun and Awal, $\frac{3}{4}$ people then jumped into the pond and

found the 'da'. That Kalam also told in front of all that he himself had chopped his wife and lodging master. He deposed that police seized some articles on 05.10.2001 at 11 o'clock at night in the police, namely, a piece of red colour petticoat of woman, a piece of green blouse, the wearing lungi of the said student and one black genji and, accordingly, he signed the seizure list concerned. He then proved the said seizure list as Exhibit-2 and identified his signature thereon as Exhibit-2/1. He also confirmed that one Shohorab Hossain Bacchu (P.W.4) signed the seizure list in his presence, who is also witness, and that the said seizure list was prepared by S.I of local police station. Accordingly, he identified the said seized articles as material Exhibit-I series and confirmed that the seizure list was prepared upon seeing the said seized articles. He confirmed that he gave statements during investigation.

In cross-examination on behalf of accused Kalam, he confirmed that he did not see as to how the two victims were injured or by whom they were injured. He denied the defence suggestion that he at first heard that Delower had beaten them. He immediately confirmed that Kalam came to his house and informed that his wife was chopped by someone, but he did not ask as to who did the chopping. He, however, confirmed that Delower was known to him, but denied the defence suggestion that Delower's father and his father were relatives. But he confirmed that they were neighboring brothers. He again confirmed that although he had the trawler at the ghat on the night of the occurrence, he did not give it to accused, and that accused visited his house at about 12-12 $\frac{1}{4}$ at night above and that this witness did not visit accused's house at that night. He, however, confirmed that he had 8/9 people at his house and the said people

also came to know about it. But he could not confirm as to whether the people of other houses got to know about the incident at that time. He again confirmed that he visited Kalam's house at $7\frac{1}{2}$ on 04.10.2001 and he saw $2\frac{2}{3}$ hundred people there. He confirmed that police came after he went to Kalam's house and he did not find Kalam before that. He again confirmed that the people did not enter Kalam's house, but they entered the house after police came at about 11 o'clock. He deposed that he did not hear any screaming from the house of Kalam. He again deposed that people entered the house after half an hour of the entry of police and people did not enter when police entered the house. He again confirmed that Nupur was brought from the police station, but he could not say as to when Nupur went to police station or how she went there. He again confirmed that police entered the house along with Nupur and that only police had

interrogated Nupur and no local people did the interrogation. He also confirmed that Nupur was repeatedly interrogated with an interval of $\frac{1}{2}$ to one hour and police stayed in that house for about 2 hours, but he could not confirm whether statement of Nupur was taken down by police. He, however, deposed that police asked Harun and Awal to jump into the pond and the 'da' was recovered by Awal after 10/15 minutes of searching. He confirmed that he did not see police beating Kalam. He again confirmed that 4 articles were seized by the seizure list from two people and that he returned after recovery of the 'da'. He also confirmed that the seizure list of recovery of 'dao' was not prepared in front of him and he did not sign it and he could not confirm whether Delower, Sarwar and Bhai Abul Bashar were present when police came. But he confirmed that he saw Delower and Abul Bashar on the day of deposition. He expressed his ignorance

whether Kalam had filed the case immediately after the occurrence against Delower and others. However, he confirmed that the informant Abul Bashar was his step nephew. He, however, deposed that he did not give statement to police. He denied the defence suggest that since Kalam filed case against his cousin Delower and others, he gave false statements in collusion with his nephew Bashar and Delower or that this false case was initiated on the basis of false story or that Kalam did not visit his house on the night of occurrence to borrow the trawler. However, he confirmed that he did not give the trawler to Kalam because he did not have visiting relationship with Kalam and that Kalam was a bad man. He again denied the defence suggestion that he did not visit Kalam's house in the next morning or that police did not come or that Nupur did not disclose before police and them that her father had chopped her mother and the lodging master or

that Kalam did not confess being asked by police that he did chop his wife and Moshiur or that he did not throw the 'da' in the pond or that Awal did not recover the 'da' when Harun and Awal jumped into the pond or he created a false case sitting in the police station. He, however, confirmed that he signed the seizure list in the police station.

Harunur Rashid (P.W.3) was another neighbor of accused Kalam and son of P.W.2. He, accordingly, identified accused Kalam on the dock. He confirmed that the incident took place at about 11 o'clock at night on 03.10.2001 and Kalam visited their house at about $12\frac{1}{2}$ at that night and informed that his father and brothers had killed his wife and Moshiur and that he would go to Morolganj and he needed a trawler from this witness's father. But since the father of this witness did not give trawler, Kalam left. That in the morning, at about 8 o'clock on

04.10.2001, when this witness visited Kalam's house, he saw many village people. That Kalam came at 11 o'clock along with police. That this witness entered the house with police and saw two dead bodies, the first one was of Moshiur and the next one was of Sultana Yasmin. He deposed that when asked by daroga (S.I), the daughter of Kalam, aged $3\frac{1}{2}$ years, disclosed that it was her father who had killed her mother and lodging brother by chopping with a bangla 'da'. Nupur also disclosed that the said 'da' was thrown away in the pond by her father. When asked by daroga, Kalam admitted that the 'dao' was in the pond and that he had killed both the victims by chopping. That, subsequently, police took Kalam to police station. This witness confirmed that he gave statement during investigation.

In cross-examination, this witness confirmed that he did not see as to how the two victims were killed or by whom they were killed. He, however, confirmed that informant Abul Bashar was his cousin brother (ফুফাতো ভাই) and that Delower, Latif and Bashar were known to him and that they were accuseds in Kalam's case. He also confirmed that Latif and Delower were his neighboring cousin brothers (প্রতিবেশী চাচাতো ভাই). He, however, deposed that there were three houses in between his house and Kalam's house, and those houses belonged to Hafej Shahidul, Altaf and Delower. He confirmed that the brother of Kalam was Abdul Jalil and father was Abdul Jabbar. He also confirmed that P.W.2 was his father and that he visited Kalam's house after his father and he was accompanied by Lal Mia, Amzad Ali, Sada Mia and he could not remember the names of other people. That after his visit, he saw 2/3 hundred people at Kalam's house, but he did not

see as to who first visited Kalam's house. He deposed that before his entry into Kalam's house at about 11.00 o'clock, hundred other people entered the house. He also deposed that he was at around Kalam's house for about 3 hours with many people, but he could not confirm whether he saw his father entering Kalam's house. He again deposed that he saw Nupur when Nupur was interrogated by police. That when they were coming out of the house after seeing the dead bodies, there were about hundred people present. But he could not remember whether his father was near police or those people at that time. He, however, deposed that police wrote down the statement of Nupur, but he could not remember whether the said writing was signed or thumb-pressed in any way by Nupur. That at the time of writing of Nupur's statement, signature of witnesses were also taken and witnesses Delower Chowdhury, Faruk Hawlader were present at the time. However,

he deposed that he did not see anyone on that day signing anything apart from the paper on which Nupur's statement was written and that he gave statement during investigation on 07.10.2001, when police took his signature on the paper. He denied the defence suggestion that Kalam did not visit his house at the night of occurrence or did not seek to borrow any trawler or that Nupur did not disclose, upon questioning by police, that her father had chopped the victims or threw the 'da' in the pond or that Kalam did not admit in front all or that it was untrue that Kalam had chopped his wife and Moshiur or that he gave false depositions in collusion with his father, informant Bashar and the accuseds of Kalam's case.

Md. Sohrab Hossain Baccu (P.W.4) was another neighbor of Kalam. He, accordingly, confirmed that the incident took place at about 11 pm on

03.10.2001. That he heard in the next morning that the wife of Kalam and Moshiur were killed in Kalam's house. That he saw many people at Kalam's house in the morning, but no one entered the house. That later on, Kalam came, along with police, at 11 o'clock, and, the police, along with all, entered the house. That he saw the dead body of Moshiur lying upside down and the dead body of Kalam's wife lying inside the house on the southern side with blood. That being asked by police, the daughter of Kalam, Nupur, aged $3\frac{1}{2}$, disclosed that her father had killed her mother and Moshiur by chopping and threw the 'da' in the pond in front of the house. When asked by police, Kalam also admitted that he had killed those victims by chopping with 'da' and threw the 'da' in the pond. That the 'da' was recovered subsequently and Kalam was taken to police station. That on 04.10.2001, daroga (S.I) seized some blood stained earth, blood stained

mosquito net, one blood stained pillow, one blood stained katha and took signature of this witness at about 2/3 o'clock and the said seizure list was prepared by S.I Sunil Karmaker (P.W.12). He, accordingly, identified his signature as Exhibit-'Kha' at serial 'Ka'. That daroga (S.I) prepared another seizure list at night at 10.00 pm on 05.10.2001 and seized piece of red colored petticoat, green printed blouse, piece of stripe lungi and piece of black genji, and the said materials were produced by constable Robiul Islam and the seizure list concerned was prepared in his presence and the same was signed by this witness and Abdul Latif (P.W.2). Accordingly, he proved the said seizure list as Exhibit-2 and his signature thereon as Exhibit-2/2 followed by the materials as Material Exhibits-I and II series. He confirmed that the said materials were present in Court. That he signed the surothal prepared on Moshiur. Accordingly, he proved the said surathal as

Exhibit-3 and identified his thereon at serial No. 5 as Exhibit-3/1. That the witnesses Altaf, Azizur (P.W.14) and Sekendar also signed the same in his presence. That surothal on Sultana Yasmin was also prepared and he signed it when the same was read over to him. Accordingly, he proved the said surothal as Exhibit-3ক and his signature as Exhibit-3ক/1 and deposed that the same was signed by daroga Sunil Karmaker (P.W.12). He also confirmed that he gave statement to police during investigation.

In cross examination on behalf of accused Kalam, he confirmed that Bazlur Rahman and Nannu, sons of Azahar Ali, were known to him and they were his full cousin brothers (আপন চাচাতো ভাই). He also confirmed that in Kalam's case, the said Nannu and others were accuseds. That Delower and Bashar came to the Court on the day of deposition. He, however, confirmed that he did not see as to how and by whom Kalam's wife and Moshiur were killed

and confirmed that Kalam's house was about $2\frac{1}{2}$ km away. He deposed that he first heard from Lal Mia about the incident followed by many people and he heard it at about $7\frac{1}{2}$ in the morning and visited Kalam's house at 8 o'clock in the morning and saw many people. That 50/60 people entered the house along with police and before that no one had entered the house. He confirmed that he had entered the house along with police. He also confirmed that Abdul Latif (P.W.2), Altaf, Awal (P.W.5), Harun (P.W.3), Abdul Hakim Mridha, Sekandar and other people entered the house with police and, at that time, Nupur was on the lap of Kalam beside the dead bodies. He confirmed that he stayed at the house premise of Kalam until $2\frac{1}{2}$ pm when the dead bodies were taken away and police was also present up to that time. That Nupur was asked by police

near dead body and she was asked for once and no more. This witness confirmed that he was present at the time when police was in the house. That police wrote down what Nupur stated during interrogation, but he could not remember whether thumb impression of Nupur was taken thereon. That police took signature of people in presence of whom Nupur gave statement and they were 8/10 people. That Altaf, Sekandar, Malek, Latif (P.W.2), Awal (P.W.5), Harun (P.W.3) and Abul Malek gave signatures on three papers. That blood stained earth, pillow and mosquito net etc. were seized at the place of occurrence and Latif (P.W.2) signed the seizure list. That this witness signed before Latif at the place of occurrence. That one seizure list was prepared at the police station, which he signed, for seizing blouse, genji, petticoat and at that time there was no one present. That surothal was prepared in the house beside the dead body. That this witness did

not sign any other papers. He also could not say as to whether Kalam's wife had filed case against Zabbar, Jalil etc., but he knew that the relationship between Kalam and those people were not good. He, however, denied the defence suggestion that he did not visit Kalam's house after knowing about the incident or that Nupur did not admit, being asked by police, that her father had killed her mother and Moshiur by chopping with the 'da' or that the said 'da' was not recovered or that no incident took place as per his deposition or that he gave false deposition in collusion with Nannu in order to protect the accuseds in Kalam's case.

A. Awal Howladar (P.W.5) was another neighbor of accused Kalam. He deposed that informant Bashar was known to him. That the incident took place on 03.10.2001 at about 11 o'clock at night and he came to know about the incident on the next day i.e. on

04.10.2001, from the discussion of village people. That lodging master Moshiur and Sultana were murdered. That police came after this witness and others visited the house of Kalam and this witness saw the dead body of Moshiur lying at the veranda of Kalam's house and the dead body of his wife lying inside the house, and he came out after seeing the dead body. That when daughter of accused was asked by police, she disclosed that her father had killed her mother and threw away the 'da' in the pond situated on the southern side of the house. That accused also disclosed that he threw away the 'da' in the pond. That police asked this witness, Harun Howlader (P.W.6) and Md. Ali to search for the 'da' in the pond and, accordingly, he recovered, the 'da' after half an hour search. That police prepared seizure list for the said 'da'-recovery and he put thumb impression thereon and police read over the said seizure list. That Md. Ali and Harun

(P.W.6) also signed the seizure list. He confirmed that he gave statement to police during investigation. He, accordingly, identified the 'da' in Court as Material Exhibit-I.

In cross examination, he deposed that informant Abul Bashar was not his uncle, but neighboring cousin brother. He further deposed that his house was one and half km away from Kalam's house and that he did not see by his own eyes as to how and by whom Kalam's wife and lodging master were killed. That he heard about the incident for the first time on 03.10.2001 at about $10\frac{1}{2}$ and he heard it from Sultan, Jalil and Selim and others. That at the time of occurrence taking place, Sobahan, Nuru and other people were present. That he heard it at the door of his house and entered the house after hearing and, thereafter, he visited Kalam's house with so many people including Nam Ali, Nasir,

Sultan, Hafez and about 8/10 people, and reached the house at 11 o'clock. That a little bit before, police arrived. That he and others entered the house with police. That at that time, there were 3/4 hundred public present. That police entered the house with Kalam and his daughter, but he could not say as to when Kalam's daughter met police for the first time. He also could not remember as to how long Kalam's daughter had stayed with police. He deposed that within 10/15 minutes, police asked the daughter of Kalam at the courtyard when 3/4 hundred people were present. But he could not remember whether the statement of Kalam's daughter was written down. He, however, confirmed that three people, namely Md. Ali, Harun (P.W.6) and himself got into the pond and he found the 'dao' about 8/9 hands down in the water after 15/20 minutes of search and found the said dao about 5/7 hands away from the bank of the pond. That at that time there were 3/4

hundred people present. That after recovery, he handed over the 'dao' to police (Sunil Babu) (P.W.12). That at the time of recovery of 'dao', two chairmen, along with master and other respected people of the locality, were present and they were present also at the time of preparation of seizure list. That police prepared the seizure list after 10/15 minutes of the recovery. He confirmed that he was illiterate and he did not know as to what was written on the seizure list. He, however, admitted that such 'dao' was a common household item and the same was used in the daily routine work. He also confirmed that he did not see as to how that 'dao' was thrown into the pond. He, however, confirmed that no one could enter the house at night because of the lock and the pond was within the house premises, but the house premises was not bounded by four walls. He could not say whether it was bounded by bamboo nets and that other people may

enter the house. He also deposed that the 'da' in question was slightly broken on the head side, but could not remember the extent of such broken part. He also could not say as to who was the owner of that 'da'. He also could not say as to how Kalam had filed any case against anyone and he even did not hear it. He confirmed that Delower was known to him by face, and Lutfar, Nannu were also known to him. That witness Shohorab (P.W.4) was known to him, but he was not aware whether Shohorab and Bazlu were relatives. That witness Latif (P.W.2) was known to him, but he was not aware whether the father of Latif and father of Lutfar were maternal brothers. He denied the defence suggestion that he did not visit Kalam's house after knowing about the incident or that Kalam's daughter did not say that her father had killed her mother and master by chopping or that he did not recover the 'da' from the pond on the instruction given by police or that no such seizure list

was prepared in respect of the said 'da' recovery. However, he confirmed that he gave statements to police after about one month of the incident. He denied that he did not see police in that house after his visit or that Nupur did not say about the incident in front of all being asked by police or that he did not say during investigation to the police that he and others did recover the 'da' or that no incident took place at the stated place of occurrence, time as stated by this witness or that he gave false deposition because informant was his cousin brother or that he gave deposition on the direction given by the accuseds in Kalam's case or that he gave false deposition to give benefits to the accuseds in Kalam's case.

Harun Howlader (P.W.6) was another neighbor of accused Kalam. He, accordingly, identified Kalam on the dock. He deposed that the incident took place on 03.10.2001 at 11 o'clock at night and he heard about

it in the next morning at 9 o'clock. He then visited Kalam's house at $9\frac{1}{2}$ o'clock, but did not enter the house. That, at 11 o'clock, police came. He and others entered the house and saw the blood stained dead body of Moshiur lying inside the house beside the door followed by the dead body of Kalam's wife with blood. That being asked by police, Kalam's daughter, aged $3\frac{1}{2}$, told that her father had killed her mother with bangla 'dao' and that the said 'dao' was thrown away in the pond. Thereafter, when Kalam was asked by police, he admitted that he had killed his wife out of dispute with his father and brother. That this witness, along with witness Awal (P.W.5) and Ali, then got down into the pond at about 12 o'clock and Awal recovered the 'da' at about $12\frac{1}{4}$. That police prepared case, he, accordingly, signed it. He then proved the seizure list as Exhibit-4 and his signature thereon as Exhibit-4/1. He also

identified the 'da' in question in Court and proved the same as material Exhibit-I. He confirmed that he gave statement to the investigating officer.

During cross-examination on behalf of accused Kalam, he deposed that Abul Bashir was not known to him very much, but he was known to him somehow and he had good relation with him. He denied the defence suggestion that the informant was his relative. However, he admitted that informant was his remote uncle as a neighbor. He, however, deposed that he did not see as to when and how the wife of Kalam and the master were killed. He deposed that his house was $\frac{1}{2}$ km away from Kalam's house and, in between, there were 10/15 houses. That he came to know about the killing of Kalam's wife and master at 9 o'clock in the next morning and, at the time of his such knowledge, he was at his home and he heard about it from

Sarwar, Kalu and Mobarak. He then visited Kalam's house at about $9\frac{1}{2}$ and reached at 10 o'clock and, at that time, there were 4/5 hundred people. He also saw Awal (P.W.5) at that house along with other people, but no one there entered the house. That after one hour, 4/5 police came along with Kalam and his daughter. That police at first entered the house along with Kalam and his daughter and other people. This witness also entered the house with police. That police stayed at that house up to 3 and $3\frac{1}{2}$ in the afternoon. That at about $11\frac{1}{2}$ i.e. after $\frac{1}{2}$ an hour, police interrogated Nupur at the courtyard, one rope away from pond towards northern side under a tree, and it was a mehegoni tree. According to him, one rope equals to 80 hands and, at that time, there were lot of people present and Nupur was interrogated in presence of all people and Sunil daroga wrote down the statement of Nupur. But he

could not say whether Nupur put any thumb impression, but confirmed that police did not take signature of people in whose presence the statement was recorded. He deposed that the pond in question was 30 hands length and 25 hands wide and it had 5/6 hands deep water. That at the time of recovery of 'da', two chairmen, master and other people were present. That the house of Kalam was situated on the northern side of the pond and the kitchen was situated about 25 hands away. That the pond was two ropes south from Kalam's house and, thereafter, there was a government road and, on the eastern side, there was house road.

In cross-examination, he deposed that it was possible to throw 'da' while walking on the road. He confirmed that he did not see as to who and when the said 'da' was thrown away. He confirmed that one Awal put thumb impression on the seizure list and he put thumb impression with Awal sitting at the

same place and, at that time, two chairmen were present. He confirmed that the houses of Gani, Manu Mia, Mone Haowlader were situated far away on the western side of the pond. He deposed that he gave statement to police after about one month of the incident and he gave such statement along with Ali, Awal (P.W.5). He denied the defence suggestion that he did not visit Kalam's house in the next morning after knowing about the incident or that he did not state during investigation that he had visited Kalam's house after learning about the incident and that police visited thereafter or that Kalam's daughter did not disclose to police that her father had killed her mother and master or that she did not disclose that her father had killed her mother and master with a bangla 'dao' and threw away the said 'dao' in the pond or that he did not make this statement during investigation. In cross-examination, he further deposed that he did not have any brother

named Nazrul Islam @ Modhu. He confirmed that there were three brothers, and Shamsu and Habibur Rahman were his brothers. He expressed his ignorance that Kalam had filed a case as informant in respect of the same incident. He denied the defence suggestion that he gave false statement in order to protect the accuseds in Kalam's case or that no incident took place as per the time and place as stated by him.

Md. Abul Hossain (P.W.7) was tendered by the prosecution and, accordingly, his cross-examination was declined.

Md. Enamul Haque (P.W.8) was the officer, who filled-in the FIR form. He deposed that he was working as S.I at Morelganj P.S on 07.10.2001 when he received a computer typed complaint from Md. Abul Bashar Howlader (P.W. 1) and, accordingly, recorded the same as Morelganj P.S Case No. 12 dated 07.10.2001 under Section 302. That he filled

up the FIR column and handed over the investigation charge to S.I Sunil Kumar (P.W.12). Accordingly, he identified his signature etc. on the FIR column and form and he proved the said form as Exhibit-5 and signature thereon as Exhibit-5/1.

In cross-examination, he deposed that he did not have any personal knowledge about the incident and that the FIR was a typed one, but he did not know as to who computerized it. He denied the defence suggestion that he did not record the case properly.

Md. Nurul Islam (P.W.9) was the former chairman of the area concerned at the time of the occurrence. He deposed that the informant was known to him and that the incident took place on 03.10.2001. That in the morning on 04.10.2001, accused Abul Kalam @ Dulal came to him and told him that his father, maternal uncles and brothers had jointly killed his

wife Sultana Yasmin and lodging master Moshiur Rahman by chopping. This witness then advised Kalam to go to the police station and Kalam informed the police. This witness visited Kalam's house, along with others and police at 11 o'clock and found the blood stained dead body of Moshiur lying dead on the northern side of the house with upside down and the dead body of Sultana on the southern side of the house with blood. That the daughter of Kalam ($3\frac{1}{2}$) disclosed on questioning by police that her father had killed her mother and master by chopping with a 'da' and threw the 'da' into the pond. That police then recovered the said 'dao' from pond with the help of people and prepared seizure list and surothal. Police then asked Kalam as to whether his daughter's statement was correct and then Kalam replied that he had committed the incident because of his enmity with his father, maternal uncle and brothers. That police

then arrested Kalam and took him to police station with the seized materials. He deposed that he gave statement to police during investigation on 07.10.2001 and, accordingly, identified Kalam on the dock.

In cross-examination, he deposed that Khaleque was his relative (চাচাতো ভগ্নিপতি) and Delower, Samed, Sarwar were nephews of Khaleque. He expressed his ignorance that Kalam had filed case against Delower and others before this case. He deposed that he even did not hear it. That Kalam told him about the incident on 04.10.2001 in the early morning about 6/7 o'clock near Morelganj Bazar and the police station was 300 yards away therefrom and, at that time, his wife and children were present. He then sent Kalam to police station, but this witness did not visit police station. When Kalam told police about the incident, police took this witness to Kalam's house. He confirmed that he met police at a

place called Nobboi Roshi, one km away from Morelganj Bazar, and Kalam's house was 4 miles away from Nobboi Roshi. He also deposed that he was alone when he met police and, at that time, S.I Sunil and police force were present, but Kalam was not present with police. That he visited Kalam's house with police at 11 o'clock and before that no police visited Kalam's house. He deposed that he did not find Kalam at his house after his visit and Kalam came later on. That he found Nupur at Kalam's house. That Kalam came 5 minutes after his visit to Kalam's house and, at that time, there were 200 people present and Nupur was crying at the courtyard of the house. Police then asked Nupur after half an hour and recorded Nupur's statement, but this witness does not know whether Nupur's thumb impression was taken. He confirmed that he did not sign Nupur's statement, but he does not know whether others signed it. That after taking

Nupur's statement, police asked Kalam immediately, but he does not remember whether Kalam's statement was written down. He deposed that he was present at Kalam's house for $\frac{1}{2}$ an hour and he left alone. That he was present at the time of recovery of 'da' and the said 'da' was recovered from the middle of the pond and the same was found about 10 hands away from the bank. He denied the defence suggestion that Kalam's house was not beside the pond or that Nupur did not say that her father had killed her mother and master or that the said 'da' was not recovered by police from pond or that he did not visit Kalam's house after the incident at 11 o'clock or that the accuseds in Kalam's case were his relatives and for that reason he gave false statement or that he deposed falsely in order to destroy Kalam's case so that the accuseds in Kalam's case could be protected.

Md. Shah Alam Talukder (P.W.10) was a journalist and joint secretary of local press club. He deposed that, on 04.10.2001, he was at his village house and he came to know about the incident that Kalam had killed his wife and lodging master. He then visited the place of occurrence at 10 $\frac{1}{2}$ o'clock and saw two dead bodies along with so many people. That after about 1 hour, police came and, thereafter, he saw the dead bodies. That S.I Sunil Karmaker seized materials in his presence at about 2 $\frac{1}{2}$ o'clock and the said materials were blood stained earth, three blood stained pillows, one blood stained mosquito net and one 'dao'. He, accordingly, signed the seizure list. He then proved the seizure list as Exhibit-2(Ka), his signature thereon as Exhibit 2(Ka)2. He also identified the materials in Court which were marked as material Exhibit-I series. He confirmed that he

gave statement during investigation and, accordingly, identified Kalam in the Court.

In cross-examination, he deposed that his house was 4 (four) km away from Kalam's house and that he heard about the incident at about 8/9 in the morning on 04.10.2001 and he heard it from Shahadat, Kabir, Wahab and others. That he visited Kalam's house at $10\frac{1}{2}$ in the morning and, after one hour, police came accompanied by $3\frac{1}{4}$ hundred people and he saw Kalam coming with the police. That the materials were seized at $2\frac{1}{2}$ /3 o'clock and, at that time, there were $3\frac{1}{4}$ hundred people present. He admitted that Fazlur Rahman was his cousin (খালাতো ভাই). He also admitted that Kalam had filed first ejahar as informant, but he does not know whether Fazlur Rahman was an accused in that case. He denied the defence suggestion that the

materials were not seized in his presence or that he gave false deposition to protect his relative Fazlu.

Md. Robiul Islam (P.W.11) was the accompanying police constable with the S.I. He deposed that the case incident was on 04.10.2001, when he was working as constable at Morelganj P.S. That on that day, he visited place of occurrence at Gulishakhali and found two injured dead bodies in the house. He identified Kalam on the dock. He deposed that O.C was also present along with force. That the said two dead bodies were handed over to him for post mortem and he took the same to Bagerhat morgue by chalans which he signed. He, accordingly, proved the said two chalans in respect of two dead bodies as Exhibits-6 and 7 and his signature thereon as Exhibits-6/1 and 7/1. That he handed over the dead bodies on 05.10.2001 at about 12.15 hour to the doctor and the doctor examined the dead body at

$2\frac{1}{2}$ o'clock and he handed over the dead bodies to the relatives after receiving the same. He confirmed that S.I Sunil Kumar gave him the dead bodies.

In cross-examination, he deposed that the deceased were not personally known to him. He confirmed that he started from the house of the incident at about $1\frac{1}{2}$ at noon and reached the police station at 4 o'clock. That from police station he started for the said house at $9\frac{1}{2}$ along with O.C. Shahjahan, Daroga Sunil and 3 other constables. That at that time, there was no public with them, but while they were reaching the house of Kalam, there were public and he saw about 100 people there. He also found Kalam's daughter with Kalam, while they were going to Kalam's house and that daughter was $5\frac{1}{2}$ years old. He deposed that the said daughter was not interrogated by O.C. at the police station and she

was not even interrogated on their way to Kalam's house. That the two dead bodies were identified by Kalam himself and the same were taken away by chalans, but the said chalans were not signed by Kalam. He denied the defence suggestion that he did not take the bodies to the morgue or that he gave false deposition on the direction given by Sunil Babu (P.W.12).

Sunil Kumar Karmaker S.I (P.W.12) was the first investigating officer of the case who completed most of the investigation. He deposed that, on 03.10.2001, he was working as S.I. of Morelganj Police Station. That accused Abul Kalam, standing on the dock, filed Morelganj Police Station Case No. 4 dated 04.10.2001 under Sections 302/34 of the Penal Code against 13 accuseds and, thereafter, O.C. handed over the investigation charge to him. He then visited the place of occurrence along with his superiors, prepared the surothal report on the

dead bodies of Moshiur and Sultana Yeasmin, questioned informant Abul Kalam and his 3 years old daughter Nupur, and, upon such questioning, he came to know that the informant Abul Kalam himself had committed the said two murders. He deposed that according to Nupur's confession and statement, the sharp 'da' ($17\frac{1}{2}$ " length), with wooden handle, was recovered from the adjacent pond of Kalam's house. He, accordingly, sent the dead bodies to the morgue by one constable and arrested Kalam forthwith. That he submitted final report in Kalam's case as the said case was false and had Kalam arrested in Morelganj P.S. G.D No. 134 dated 05.10.2001 under Section 54 and forwarded him to Court. That, thereafter, the father of deceased-Moshiur, as informant, filed Case No. 12 dated 07.10.2001 under Section 302 on the Penal Code against Kalam, and O.C. Anamul handed over the charge of investigation of the said case to him. That

he again visited place of occurrence during investigation and prepared draft sketch map in two forms. Accordingly, he proved the same as Exhibit-8. That he also prepared and proved index as Exhibit-9 and his signatures thereon as Exhibit-8/1 and 9/1 respectively. He, accordingly, took custody of the said 'dao', wearing cloths of the deads, blood stained earth, three blood stained pillows, one blood stained mosquito net and some blood stained earth, which were seized in presence of witnesses in the earlier case. Accordingly, he proved three seizure lists as Exhibit-2, 2(Ka) and 4, and his signatures thereon as Exhibit-2/3, Exhibit-2(Ka)/3 and Exhibit-4/2. He identified those seized materials as Material Exhibit-I series. He deposed that he tried to record the statement of Nupur (3 years, 5 months), daughter of Kalam, by Court as she was the only eye witness to the occurrence. During investigation, he recorded 161 statement of witnesses. He

deposed that he handed over Nupur to the custody of her maternal grandfather, Nurul Islam Foraji. Thereafter, on his transfer for training, he handed over the investigation on 22.10.2001 in favour of O.C. He also deposed that he prepared two chalans for transferring the dead bodies to the morgue and, accordingly, he proved the said chalans as Exhibits-6 and 7 and his signatures thereon as Exhibit-6/2 and 7/2. He also prepared the surothal on the dead bodies and, accordingly, proved the same as Exhibits-3 and 3(Ka), and his signatures thereon as Exhibits-3/2, 3(Ka)/2. He proved the custody form, by which custody of Nupur was handed over to her maternal grandfather, as Exhibit-9, and his signature thereon as Exhibit-9/1.

In cross-examination on behalf of accused Kalam, he deposed that he got the charge of investigation immediately after lodging of the FIR on 07.10.2001 at about 12.00 o'clock and he visited the place of

occurrence on the same day at 12.05 and, at that time, there was no public with him. He confirmed that he visited the place occurrence once in this case and, thereafter, he did not visit the place of occurrence. He deposed that he recorded the statements of witnesses on one day at the place of occurrence and, on that day, he found some houses near the place of occurrence. He, accordingly, confirmed in cross-examination that the kitchen of the accused Kalam was on the north of the place of occurrence followed by paddy land. But he could not say as to whether there were houses far away towards the north. He confirmed that the informant of this case was Abul Bashir (P.W.1) and that accused Abul Kalam filed his case on 04.10.2001 at 9.15 against Jahedul, Kamrul, Rezaul, Jahangir, Delower, Sale Talukder, Sarwar Hossain, A. Karim, Mahidul Talukder, Yeakub Hossain, Rahman Hawlader, Jalil, Jabbar Hawlader, Bazlur Rahman

Nannu and Sahidul Talukder on the allegation of killing his wife and master under Sections 302/34. He also confirmed that the time of occurrence was 03.10.2001 at 11 o'clock in both cases. He also deposed that this case was lodged on 07.10.2001 at 11.45, after about 10 hours 15 minutes of Kalam's case, when he was the investigating officer in Kalam's case. However, he deposed that he did not take the C.D of previous case while investigating this case. But he deposed that he would be able to submit the C.D of that case. He confirmed that the FIR of this case was recorded by S.I Anamul Haque and he visited the place of occurrence afresh at 12.05. He also confirmed that he visited the place of occurrence in connection with the earlier case as well, but he would not be able to say as to when he visited the place of occurrence in that case without seeing the records of that case. He, however, confirmed that some papers of the earlier case are

tagged with this case. He also deposed that at the time of his visit to Kalam's house in connection with first case, informant Kalam and his daughter were with him and that he visited Kalam's house by speed boat along with Kalam and his daughter. He also confirmed that when Kalam visited police station in connection with the first case, his daughter was with him and her name was Nupur. He deposed that he made some queries with Nupur at the police station and while visiting Kalam's house, but Nupur did not say anything at the police station as regards the death of her mother and lodging master. He deposed that when he reached near dead bodies, he did not find any people there inside the house and outside, and that he, along with other police, entered the house first and, at that time, people did not dare to enter the house. That after 10/15 minutes, people entered the house. That in that house, he again asked Nupur after about 15/20

minutes in presence of people and at that time there were about 100/150 people present. That the age of Nupur was 3 years 5 months. However, he deposed that he did not write down the statement of Nupur, but he filed application before Court to have her statement recorded. He also confirmed that none other recorded the statement of Nupur. He again deposed that he was not in a position to say whether Nupur was interrogated without seeing the record of the earlier case. It was stated that the 'dao' was recovered from pond and it was not noted down whether the said 'dao' was recovered from middle or side of the pond. He confirmed that in the sketch map and index, the place of recovery of 'dao' was not mentioned. He, however, confirmed that the 'dao' was recovered by Awal (P.W.5) from pond on the request of police and, before Awal, two people jumped into the pond but did not find the 'da'. That before getting down into the pond, the bodies of the

people were checked, but the same were not checked with the help of public. He deposed that he was not in a position to say as to how long he was present at that house without seeing the record of that case. He deposed that he returned from Kalam's house at about 4 in the afternoon and before that he had arrested Kalam under Section 54 of the Code of Criminal Procedure. He deposed that he handed over the said daughter to her maternal grandfather. He further deposed that he submitted final report in the earlier case as the same was false, but the paper of that case was not with him at the time of deposition. He deposed that he had investigated this case upto 22.10.2001. He confirmed that he questioned Nupur in this case, but her statement was not recorded under Section 161 and there is no note in the C.D. as to when she was questioned. That she was not even examined as a witness in the earlier case. But he, subsequently,

deposed that Nupur was questioned on 07.10.2001 and the same was noted in the C.D. But there was no note in the C.D. as to why her statement was not recorded under Section 161. He deposed that in the investigation of both cases, he did not investigate about injury caused to Sultana by the accuseds in Kalam's case. He also did not do investigation in the criminal case filed by Sultana during her lifetime against the said accuseds. In cross-examination, he further confirmed that the accuseds in Kalam's case and the witnesses in present case are related to each other as uncle and maternal uncles. He confirmed that he examined witness Harunor Rashid (P.W.3), Abul Hossain, Abdul Latif (P.W.2) and Khairul Islam, and they were examined in Kalam's case, but he could not say whether it was noted in the C.D without seeing the said C.D in Kalam's case. That all the witnesses were examined at the place of occurrence and he questioned four witnesses on

07.10.2001. He also confirmed that since he went for training, he handed over the investigation. He also confirmed that he did not record any statement of Nupur or no statement was recorded in presence of any people or he did not take any signature of the people present on such statement. He confirmed that the said 'dao' was recovered before investigation of the case. He, however, deposed that he did not take any opinion from any expert to determine whether the injuries on the dead bodies were caused by the said 'da'. He then confirmed that the present case was filed against Kalam and the recording officer of the present case was Anamul Haque (P.W.8). He also confirmed that the accused in the present case is the informant in the earlier case and that the FIR of the present case is also computer composed, but nothing was written thereon as to when the same was written or computerized. He also confirmed that it was not

mentioned in the seizure list that the 'da' in question was recovered on the disclosure given by Nupur and confession of Kalam. It was also not mentioned in the seizure list that as to who recovered the said 'da'. He confirmed that he himself prepared the said seizure list. He also confirmed that he did not record any statement of Kalam under Section 161 of the Code. He confirmed that Kalam was forwarded to Court on 05.10.2001 under Section 54. He denied the defence suggestion that in both cases in respect of the said killing, he did not do investigation properly or that he created the present case on the advice of the accuseds in Kalam's case and S.I Anamul or that he created the case diary in order to support the said fabricated case or that he has shown the statements of witnesses recorded although no such statements were recorded or that he prepared C.D. and handed it over in that line or that had this case been investigated properly, the

charge sheet would have been submitted against the accuseds in Kalam's case or that he did not do the investigation properly being compelled by the accuseds in Kalam's case.

Dr. Khan Habibur Rahman (P.W.13) was a formal witness of the case as he was the doctor who conducted post mortem on the dead bodies concerned. According to his deposition, he was R.M.O. of Bagerhat General Hospital on 05.10.2001 when the post mortem of Moshir Rahman (aged 14) was done on the identification of one constable Rabiul Islam (P.W.11), and found the following injuries:

"1. Incised wound on the left face $3\frac{1}{1}$ " X $1\frac{1}{2}$ " X bone.

2. On the occipital region of head 4 "X $\frac{1}{2}$ "X cutting of the bone. On the left posterior temporal region of head 1 "X $\frac{1}{6}$ "X scalp on the right scapula 1 "X $\frac{1}{6}$ "X muscles.

On dissection antemortem clotted blood along and around the above mentioned injuries”.

According to his opinion, the death “*was due to shock and haemorrhage resulting from above mentioned injuries which were antemortem and homicidal in nature.*” Accordingly, he proved the said post mortem report of deceased Moshiur as Exhibit-10 and his signature thereon as Exhibit-10/1. That, on the same day, he conducted post mortem on the dead body of deceased Sultana Yasmin (25) on the identification of the said witness and found the following injuries:

“1. Incised wound on the right face 4"X2"X bone left face and ear 3"X1"X bone এইরূপ ১০ টি জখম আছে।

On dissection: Antemortem clotted blood along and around the above mentioned injuries and fracture of facial, nasal and frontal bone”.

That in his opinion “*the death was due to haemorrhage and shock resulting from above mentioned injuries which*

were antemortem and homicidal in nature”.

Accordingly, he proved the said post mortem report of Sultana Yasmin as Exhibit-11 and his signature thereon as Exhibit-11/1. He confirmed that both the post mortem, were conducted by himself.

In cross-examination on behalf accused Kalam, he deposed that the examination was done in connection with Morelganj P.S Case No. 04 dated 04.10.2001. He further deposed that he did not determine as to the injuries of which dead body were prior to other and he does not know which injuries were earlier and he also did not determine as to by which article such injuries were caused.

Azizur Rahman (P.W.14) was a former Chairman and another witness, who was examined at the fag-end of the trial. According to him, the incident took place on 03.10.2011 at 10 $\frac{1}{2}$ -11 at night. That this witness visited the place of occurrence at Kalam's

house under Gulishakhali village on 04.10.2011 in the morning at $9\frac{1}{2}$ -10. That this witness entered Kalam's house with police and saw the dead bodies of Kalam's wife and lodging master lying on the floor and that they were killed by chopping. That, at that time, accused Abul Kalam was present with him. That being asked by police, the daughter of Kalam disclosed that her father Abul Kalam had chopped her mother and lodging master. Police then asked Abul Kalam, who disclosed that he threw the 'da', used in the killing, in the pond. Thereafter, four people started searching in the pond on the instruction of police and one of them, named Awal (P.W.5), found the said 'da'. This witness deposed that police recorded his statement and took away Kalam after arrest.

[Since Kalam was absconding at the time of recording the deposition of this witness, state

defence lawyer, appointed by Court for Kalam, cross-examined this witness]. During cross-examination, this witness deposed that his house was $2\frac{1}{2}$ km away from Kalam's house and he did not see the occurrence. He deposed that the 'da' in question was recovered from Kalam's pond and the same was seized and about 100-150 people were present at the time of such recovery, but he could not say the names of all. He admitted that such 'da' was a household item in every family. However, he denied the defence suggestion that the said 'da' was not recovered on the pointing out of accused Kalam or that he was not present at the time of such recovery.

Submissions in Death Reference (case against Kalam):

5.6. In the Course of hearing, learned Deputy Attorney General has placed the entire case

records one after another followed by submissions on behalf of the State seeking confirmation of death sentence. On the other hand, accused-Kalam, being absconding, State Defence lawyer was appointed to defend him. However, it transpired during hearing that the said State defence lawyer was not up to the mark. Accordingly, this Court requested Mr. Md. Hafizur Rahman Khan, learned advocate, to assist the State defence lawyer so that the absconding accused may get the proper legal support in his defence. This being so, for the sake of our convenience, we will refer to the submissions of the learned State defence lawyer representing the absconding accused, first followed by the submissions from the learned Deputy Attorney General and Assistant Attorney General representing the State.

5.7.Mr. Hafizur Rahman Khan, learned advocate, along with Mr. S.M. Shafiqul Islam, state defence lawyer, has made the following submissions:

- (i) That there was no eye-witness to the occurrence and that the accused Kalam has been convicted merely on the basis of circumstantial evidence.
- (ii) By referring to the earlier case filed by Kalam against 13 accuseds, he submits that Kalam has categorically stated as to how his wife and the said lodging master were mercilessly killed by the accuseds named in his FIR. According to him, the trial Court convicted the accused without making any specific reference to the said case of Kalam, particularly when his daughter Nupur supported his case repeatedly in two judicial inquiries and trial in his case.

- (iii) By referring to the G.D entry No.12 dated 07.10.2001, as mentioned in the charge sheet, learned advocate submits that the said G.D, by which Kalam was arrested and produced before the Court, was not presented before the trial Court and as such accused-Kalam was highly prejudiced.
- (iv) By referring to the reply of some witnesses, including P.W.1 and P.W.12, he submits that most of the witnesses in this case, namely the case filed against Kalam, were admittedly relatives of the main accuseds in Kalam's case. Therefore, the said witnesses were highly interested witnesses and as such the trial Court has committed gross illegality in convicting Kalam relying on their depositions.
- (v) Further referring to the prosecution case that Nupur ($3\frac{1}{2}$ year), daughter of Kalam,

made the main disclosure implicating Kalam in the alleged killing, he submits that she was mere an infant child at the time of such alleged disclosure and the said child was not even made witness in the case and her statement was not recorded by any Magistrate. Therefore, according to him, the very basis of the prosecution case has collapsed and as such the trial Court has in fact convicted this accused merely on hearsay evidences which were not supported by cogent evidence.

5.8. As against above submissions, Mr. Shaheen Ahmed Khan, learned Deputy Attorney General, and Mr. Mohammad Jahangir Alam, learned Assistant Attorney General, have made the following submissions:

a) That this is a double murder case wherein one innocent woman and minor

boy were brutally killed by the accused-Kalam in order to trap his father, brother and maternal uncles out of land disputes.

- b) That most of the witnesses were neighboring witnesses and they were independent witnesses. Although some of them were remotely related to the accuseds in Kalam's case, the said witnesses were also relatives of Kalam as because the dispute was between two groups among the relatives. Therefore, the deposition of the said witnesses cannot be discarded by merely saying that they were somehow relatives of the accuseds in Kalam's case.
- c) That prosecution witnesses repeatedly deposed before the trial Court that Nupur ($3\frac{1}{2}$ year), daughter of Kalam, on the next morning of the occurrence, disclosed that

it was Kalam who had chopped his wife and lodging master and threw the incriminating article, namely, 'da' into the pond. Therefore, this innocent disclosure by an innocent child, who was on the lap of Kalam, cannot be discarded by merely saying that she was not produced before the trial Court as a witness. In support of such case, reference has been made to a decision in **Osman Gani vs. State, 6 BLC (2001)-611;**

- d) That some of the prosecution witnesses were even cited by Kalam as neighboring witnesses in his earlier FIR and they also supported the prosecution case about such disclosure and throwing away of 'da'.

- e) That upon such disclosure, accused Kalam made extra-judicial confession in presence of local witnesses admitting commission of crime and throwing of 'da' in the pond. In this regard, depositions of P.W.1, P.W.2, P.W.9 and P.W.14 were referred to specifically with the submission that such extra-judicial confession was proved by the prosecution.
- f) Again, by referring to the deposition of P.W.5 and other witnesses, it is submitted that the incriminating article, namely the 'da', was recovered on the pointing out of Kalam and, therefore, the fact of Kalam's knowledge about the hiding place and the information about such hiding place as disclosed by Kalam are to be regarded as admissible

evidence in view of the provisions under Section 27 of the Evidence Act;

- g) By referring to Section 25 of the Evidence Act, it is submitted that Kalam was not an accused. Rather, he was the informant or a witness in his case. Therefore, the confession made by him in presence of police cannot be regarded as a confession made to police and as such the same should be accepted by this Court as lawfully admissible extra-judicial confession. With respect to such submissions on Sections 25 and 27 of the Evidence Act, reference has been made to the decisions of the Indian Supreme Court and our Appellate Division, namely, the cases in **State of U.P. vs. Deoman, AIR (1960) SC-1125** and **Tofazzal Hossain vs. State, 22**

BLC (AD) -198 and Pawan Kumar vs. State of Uttar Pradesh, AIR 2015 (SC)-2050.

- h) Further referring to different orders of the trial Court, it is submitted that accused Kalam repeatedly misused the privilege of bail granted by the Court below and the High Court Division during trial and, finally, he absconded at the fag-end of the trial realizing that the evidences against him were preponderant and unshakable. Therefore, his such conduct of absconsion will also give a ground to this Court to draw inference against him in view of the provision under Section 114 of the Evidence Act.
- i) That even if the evidences produced by the prosecution are found to be not legally reliable or admissible, this is

clearly a wife killing case. Therefore, the principle of wife killing case will apply in inasmuch as that, admittedly, Kalam was the only adult person in the house at the relevant time when his wife and the said lodging master were killed. Therefore, it has to be checked by this Court whether Kalam has sufficiently explained as to how his wife and the said lodging master ended up with such merciless death.

- j) By referring to the judgment of acquittal and different depositions of witnesses in Kalam's case as well as the defence case of Kalam in the instant case, it is submitted that Kalam has not only failed to prove his defence case, but has also proved that he has taken a false plea and played with the criminal justice system in order to delay the trial and to

divert the course of law with ill motives. This being so, further inference should be drawn on his such conduct by this Court, particularly when he miserably failed to explain his special knowledge about the killing of his wife and the said lodging master. In this regard, they have referred to some decisions of our Appellate Division, namely, in **Abul Hossain Khan vs. State, 8 BLC (AD)-172, The State vs. Md. Shafiqui Islam, 43 DLR (AD)-92 and Gourango Kumar Shaha vs. State, 2 BLC (AD)-126.**

- k) That since the prosecution has succeeded or the accused himself admitted, that Kalam was present in the house in question at the relevant time of killing, it is the accused-husband, or the adult member in the family, who had

special knowledge about such killing and is required to explain as to how those two people ended up with such death by chopping with sharp weapon. Thus, since accused has failed to give such explanation, the presumption under Section 106 of the Evidence Act shall have to be drawn against him and in which case he should be found guilty.

- l) As regard sentence of death, they submit that there are various aggravating factors in this case against this accused which call for only death sentence. According to them, he has not only killed his innocent pregnant wife, he has killed an innocent lodging master (minor boy) who was staying at his home as a lodging master and such killing was a preplanned killing

in order to trap his opponents, who were his relatives.

- m) That post mortem report and surothal reports will suggest that killing by chopping was so merciless that this accused does not have any chance of reform and he is a threat to the society. Accordingly, the only punishment he deserves is death.
- n) By referring to the depositions of the witnesses, they submit that he was a police personnel and he was suspended from job because of this case against him. Being a man of law, he not only took law in his hands and killed two innocent people mercilessly, he also played with the law by filing a false case against his some opponents in order to trap them in

this double murder case and struggled to establish his false case by repeatedly giving false statements and depositions before judicial officers and the trial Court.

- o) That this accused repeatedly misused the privilege of bail during trial and finally absconded at the fag-end of the trial, knowing fully well that the evidences against him was so strong that he did not have any chance to escape punishment. Therefore, according to them, he does not have any mitigating circumstance to get any commutation from the death sentence.

6. Scrutiny of Evidence (Kalam's case):

6.1.It appears from the FIR lodged by Kalam immediately after the occurrence, namely, the FIR No. 4 dated 04.10.2001 (Annexure-A in criminal revision), that he has named 13

(thirteen) persons as accuseds including his brother, Abdul Jalil Hawlader, as accused No.7 and his own father, Abdul Jabbar Hawlader, as accused No. 8. His short FIR story is that the said accuseds broke into his house by breaking the grill of window on the southern side of the house and started beating him and his wife. He then ascended to the upper floor to save his life and, thereafter, some of the said accuseds mercilessly chopped his wife and the said lodging master who came to resist them after hearing hue and cry. That he saw the occurrence from the hole of the upper store (পাটাতন) and started screaming when the neighboring people came with hariken and torch lights; That the accuseds fled towards different directions, but they were seen and identified by some neighboring witnesses, including Abdul Latif Hawlader (P.W.3) and Lal Mia Hawlader

(P.W.4), and that the said witnesses saw the incident and heard about the incident. He also mentioned that he identified the accuseds in the light of hariken.

6.2. Therefore, it appears that Kalam himself has mentioned in the FIR the names of some neighboring witnesses including P.W.3 and P.W.4. Therefore, let us first scrutinize what these P.W. 3 and P.W.4 have deposed before the trial Court in Kalam's case: **P.W.3 (Haji A. Latif Hawlader)** deposed that he reached the place of occurrence in the next morning when police came. That Kalam's daughter Nupur ($3\frac{1}{2}$ years), being asked by police, disclosed that it was Kalam who had killed his wife and the said lodging master and threw away the 'da' (incriminating article) in the nearby pond. This witness also confirmed that such disclosure was

subsequently affirmed by Kalam who admitted, on query by police, that he himself had killed his wife and the said lodging master by chopping with the 'da' and threw away the 'da' in the pond. This witness was not declared hostile by the public prosecutor or Kalam himself, who had the opportunity to cross-examine this witness. Again, **P.W.4 (Lal Mia)** supported the deposition of P.W.3 as to the disclosure by Kalam's child (daughter), Kalam's extra-judicial confession, throwing away of the said 'da' and recovery of such 'da' on the information or confirmation given by Kalam. This witness was also not declared hostile, nor was he cross-examined by Kalam himself.

6.3. Apart from above depositions of two FIR cited neighboring witnesses, it appears in Kalam's case that there were two other neutral witnesses, namely, P.W.8 and P.W.9, who have

also supported the depositions of P.W.3 and P.W.4. In addition, father of the deceased Moshiur did not have any reason to tell lies before the Court, or investigating officer, about the killing of his innocent minor son. He himself deposed in Kalam's case as P.W.2 supporting the depositions of P.W.3 and P.W.4 as regards disclosure by Nupur, extra-judicial confession by Kalam, throwing away of incriminating article by Kalam in the pond and recovery of the said incriminating article.

6.4. Interestingly, accused No.7 (Kalam's full brother) deposed as P.W.1. We have not found any reference in the impugned judgment as to under what capacity an FIR named accused like him, against whom cognizance was taken, deposed as a witness. Therefore, we are not very much inclined to refer to his deposition as P.W.1 except that he took a u-turn as regards his initial

support of Kalam's version of the case as he made out in his FIR and during judicial inquiries. It further appears from the deposition of P.W.7, Judicial Magistrate, who conducted the first judicial inquiry, that in his such inquiry, he found Kalam to be guilty in the offence of the killing his wife and lodging master and, accordingly, he submitted report to that effect. Therefore, it appears from the depositions of the above witnesses in Kalam's case that their depositions have not been discredited in any way either by cross-examination of any of the parties to the case or by any major inconsistencies or contradiction.

6.5. Let us now examine the depositions of the informant Kalam and his daughter Nupur, who deposed before the trial Court as P.W.5 and P.W.6 respectively. **Kalam (P.W.5)**, in his case, made out different new stories which were not

mentioned in his initial statement in his FIR. He did not state in the FIR that accused Saleh Talukder asked him to open the door or accused Delower cut off the grill by Chinese axe or accused Jalil opened the door on the western side of the house or he took shelter in the upper store (পাটাতন) along with his daughter Nupur or his wife could not ascend to the upper store as because her knee was broken or accused Abdur Rahman compelled accused Jalil to give chopping on his wife etc. However, he specifically deposed that by hearing hue and cry, P.W.3 and P.W.4 rushed to the spot. Such embellishment, during deposition, has been admitted by him in cross examinations. He deposed in cross examination that while he was going to the police station in the early morning on 04.10.2001, he got the FIR computer composed, but he could not say as to who did it.

Admittedly, the FIR in his case was a computer typed one. Therefore, this conduct of Kalam raises huge doubt, particularly when two persons, namely his wife and the lodging master, were killed brutally and mercilessly in the night before and a man like him went to the computer shop first in the early morning to prepare the FIR without first visiting the police station.

6.6. The natural course of behavior or conduct of a human being would be that in such a situation, he would start bringing more people to the place of occurrence at night and immediately go to the police station without thinking about anything with regard to computer typing of the FIR or even writing the FIR. But in this case, according to him, he first went to the computer shop and got the FIR composed and typed, and then he went to police station to lodge the FIR. If we refer to his depositions, as he gave before the

Judicial Magistrate (P.W.7), further major contradictions will emerge.

6.7. The depositions of P.W.6, Nupur Akter, the daughter of Kalam, is more interesting. At the time of deposition before the trial Court, she was shown to be a lady of 17 years of age. However, when she was giving such deposition, she mentioned various facts which were not mentioned by her during her statement before P.W.7. As for example, she did not disclose before P.W.7 during judicial inquiry that the left knee of her mother was already broken at the time of occurrence or that her mother could not ascend to the upper store because of such injury on the knee or that, at the time of occurrence, people of the village came forward and they just stood by doing nothing or that she and her father saw the occurrence through the hole of the upper store. She further deposed that people

disclosed about the incriminating article in the pond, particularly when, in judicial inquiry, she deposed that she saw the accused throwing the said incriminating article into the pond. However, in her deposition, she admitted that the incriminating article ('da') in question was recovered from the pond by one Awal. She also admitted that she gave statement to the Judicial Magistrate named Muntasim Billah. Again, she gave statement before P.W.7 (first Judicial Magistrate). At the time of such statement, she was aged 8 years and she stated that she saw the incident from the upper store at the time of occurrence when she was aged $3\frac{1}{2}$ years and she saw that the accuseds were throwing the incriminating article in the pond. However, as per the deposition of her father (P.W.5), they were watching the incident through the hole of the upper store when the incident was taking place

within the house. Thus, we do not understand as to how she watched someone throwing the incriminating article in the pond. Therefore, it is evident that she has also taken recourse to various false statements before the Judicial Magistrate and the trial Court in order to save her father.

6.8. Her statement before the 2nd Judicial Magistrate is more interesting. At the time of giving such statement, she was a student of class Nine. She deposed that at the time of attack by the accuseds, her father first put her up in the upper store (পাটাতন) and then went down to rescue her mother, but her father came back to the upper store (পাটাতন) subsequently. She also stated that she identified the accuseds through their voices and she, along with her father, saw the accuseds from the said upper store throwing the

incriminating article into the pond. She again stated that at the time of occurrence, none of the witnesses came to their house, particularly when she deposed before the trial Court that the witnesses rushed to the spot, but stood by without doing anything.

6.9. Most interestingly, she stated before the Judicial Magistrate that after the accuseds left, she, along with others, slept at the house. When two persons were killed at night, it was highly unlikely that the members of the family would sleep, particularly when one of such persons was the mother of Nupur and wife of accused Kalam. In this regard, we may have a look at the 1st judicial inquiry report as submitted by P.W.7. It appears from the said report that this Judicial Magistrate personally visited the place of occurrence and took statement of different

witnesses. Thus, he reported in the following terms:

“বিজ্ঞ দায়রা জজ বাহাদুরের নির্দেশনা মোতাবেক ঘটনার সত্যতা উদঘাটনের স্বার্থে ভিকটিমের মেয়ে নুপুরকে ঘটনাস্থলে নিয়ে যাওয়া হয়। তাকে জিজ্ঞাসাবাদ করলে তার বক্তব্যে সে জলিল, দেলোয়ার এবং জব্বারের নাম বলেছে। ঘটনা সংগঠনের সময় সাক্ষি নুপুরের বয়স ছিল $৩/৩\frac{১}{২}$ বছর। প্রতিবার জিজ্ঞাসাতেই সে জলিল, জব্বার এবং দেলোয়ারের নাম বলেছে। এজাহারকারী পক্ষের সাক্ষীদের বক্তব্যের সাথে শুধু মাত্র দেলোয়ারের সম্পৃক্ততার মিল থাকলেও জলিল এবং জব্বারের সম্পৃক্ততার বিষয় অপর সাক্ষীদের বক্তব্য দ্বারা সমর্থিত নয়।

সাক্ষি নুপুরকে ঘটনাস্থলে নিয়ে যাওয়া হলে কোথায় ঘটনা ঘটেছে, ঘটনার সময় সে কোথায় ছিল, কোথা থেকে দা উদ্ধার করা হয়েছে সে সম্পর্কে কিছু বলতে পারেনি। সে তার নিজেদের ঘর পর্যন্ত চিনতে পারেনি। তবে সে ঘরে অবস্থানরত তার ফুপুদের চিনতে পেরেছে এবং ফুপু তার নানা বাড়ী যায় এ বিষয়টি নুপুরের নানার বক্তব্য থেকে জানা যায়।”

6.10. From the above report of the Magistrate, it appears that at the age of 07 (seven) even long after the occurrence when the judicial inquiry

took place, Nupur was not in a position to remember anything. But when she gave deposition before the trial Court at the age of 17 and she was remembering each and everything in such a meticulous way that the occurrence just took place one or two months ago. Therefore, it is apparent that Nupur took recourse to falsehood during judicial inquiry and trial in order to save her father.

6.11. Therefore, it appears from Kalam's case that Kalam has not only failed to prove his case, but he has impliedly proved that he has taken to a false recourse in order to vindicate his grudge against his opponents who were also his relatives. This being so, although the trial Judge in this case has not elaborately stated or discussed the evidences on record, we have ourselves assessed/reassessed all the

evidences on record including the statements given by the witnesses during judicial inquiries. Accordingly, we are of the view that the conclusion reached by the trial Court through the impugned judgment and order in respect of the acquittal of all accuseds do not suffer from any illegality. Rather, we are of the view that the Court below should have taken appropriate legal steps against Kalam and Nupur for giving false evidence in judicial proceedings.

6.12. Be that as it may, after consideration of all the evidences on record in criminal revision filed against such acquittal, we have not found any such minimum case in favour of Kalam. Rather, we have found that he has taken recourse to huge falsehood in his case. Accordingly, we do not find any reason to interfere with the impugned judgment and order passed by the trial judge in Sessions Case No. 361 of 2013.

This being so, the Rule issued in the aforesaid criminal revision should be discharged.

6.13. In the result, the Rule is discharged. The impugned judgment and order of acquittal are hereby affirmed. The Court below is directed to release the opposite party Nos. 2-12 from their bail bonds immediately.

7. **Scrutiny of Evidence in Death Reference (case against Kalam):**
Double murder and Place of Occurrence
Admitted:

7.1. Admittedly, this is a double murder case. Yet, there are ample evidences on record which proved beyond reasonable doubt that two people were killed at the time of occurrence. The two Surothal reports [Exhibits-3 and 3(Ka)] prepared by P.W.12 (1st investigating officer) have been proved before the trial Court by P.Ws.4, 11 and 12. The said surothal reports categorically show

the gravity of the crime in that the victims were mercilessly chopped by sharp cutting weapon. In addition, two post mortem reports, namely, Exhibits 10 and 11, in respect of the said two dead bodies have also been proved by the doctor (P.W.13) who conducted such post mortem examinations on the said dead bodies. These two post mortem reports also show the nature of crime in that the victims were indiscriminately chopped by sharp cutting weapon. Therefore, no further evidence is needed that this is a double murder case and, on that aspect, the prosecution has proved the case beyond reasonable doubt.

7.2. The place of occurrence in this case is also admitted position, particularly when accused Kalam himself admitted in his cross examination and defence case that the occurrence took place in his house, although his specific defence case

was that the victims were killed by some other people and not by himself. Those two surothal reports and two post mortem reports, though were prepared in connection with Kalam's case, namely, in Morelganj P.S. Case No. 04 dated 04.10.2001, yet, they were included in this case by the investigating officer after the FIR lodged by P.W.1, father of one of the victims. Therefore, no further evidence is also needed to prove the place of occurrence, although the same is supported by sketch map prepared by P.W.12 and proved by P.W.12 himself as Exhibit-8. Besides, identification of the victim-deceaseds is also not disputed.

Who killed?

7.3. Now, the next question arises as to who killed the victims. The prosecution case in this regard is that after lodging Kalam's FIR in the next morning of the occurrence, police came to the

place of occurrence along with Kalam and his daughter Nupur, aged 3 years 6 months. That when Nupur was asked by police as to who had killed her mother and the said lodging master, Nupur disclosed that it was her father who chopped them with 'da' and threw away the 'da' in the pond. On the basis of this prosecution case, next FIR was lodged by P.W.1, father of Moshiur (one of the victims), and, after investigation, charge sheet was submitted by the 2nd investigating officer (P.W.8). During trial, charge was framed on the basis of such prosecution case under Section 302 of the Penal Code against Kalam only. It may be noted at the outset that as against the above prosecution case, Kalam's defence case before the trial Court was that he named 13 accuseds in his FIR and the said 13 accuseds broke into his house and killed his wife and the lodging master at a

time when he and his daughter Nupur were hiding in the upper store of his house and saw the occurrence.

7.4. Let us now examine whether the prosecution has been able to prove the charge against Kalam beyond reasonable doubt or whether the defence has been able to succeed to create any reasonable doubt in prosecution case by cross-examination or by any evidence.

Hearsay about Nupur's disclosure:

7.5. The first leg of prosecution case is the aforesaid disclosure of Nupur in the next morning of the occurrence. In this regard, prosecution has relied on the depositions of P.Ws.1-6, P.W.9, P.W.12 (1st I.O.) and P.W.14. Admitted position is that Nupur was not produced before the trial Court as a witness, nor was she even cited as a witness in the charge sheet. We have found a vague

explanation for this in the record in that Nupur was once produced for having her judicial statement recorded by a Magistrate, but, probably, because of her tender age, such judicial statement could not be recorded. However, we have not found any such order of the lower Court/Magistrate specifically stating that she was not capable of giving any such judicial statement. Therefore, absence of Nupur's judicial statement, or even 161 statement, in this case remains mystery which no doubt goes against prosecution.

7.6. In this regard, we have also examined the case docket of the investigating officer concerned. However, no single line has been noted therein as regards such disclosure of Nupur and/or failure of the investigating officer in obtaining any statement of Nupur, particularly when, apart from

accused himself, she was the only living eye-witness to the occurrence. Even the forwarding letter of the investigating officer dated 07.10.2001 in respect of Kalam does not have any such reference to any disclosure by Nupur. Therefore, when Nupur herself did not support the prosecution case, rather her statement before the Judicial Magistrate and the trial Court in Kalam's case mentioned above are contrary statements implicating other people in the alleged killing, we have no option but to hold that this hearsay about Nupur's disclosure, as deposed by P.Ws.1-6, P.W.9, P.W.12 and P.W.14 before the trial Court, cannot be regarded as valid pieces of oral evidence in view of Section 60 of the Evidence Act, particularly when the author of such disclosure herself denied such disclosure in a separate case arising out of the same incident.

7.7. In this regard, we have examined the decision of a division bench of this Court in **Osman Gani vs. State, 6 BLC, 611**, as cited by the learned Deputy Attorney General. It appears therefrom that the disclosure statement of one 'Nazma' in that case was believed by the trial Court on the basis of depositions of some witnesses who supported such disclosure before the trial Court, although Nazma was not produced before the trial Court. However, the said cited case is distinguishable from the present one inasmuch as that Nazma in the said case did not deny anywhere as to making of such disclosure by herself. Accordingly, we are not in a position to accept this hearsay about Nupur's disclosure as a valid piece of Evidence.

Extra judicial confession by Kalam and recovery of 'da':

7.8. Another leg of prosecution case is that Kalam himself confessed before the witnesses in the next morning of the dreadful night that he had killed his wife and the lodging master. In this regard, prosecution has relied on the depositions of P.W.1-6, P.W.9, P.W.12 and P.W.14. According to the submissions of learned A.A.G, Mr. Mohammad Jahangir Alam, since Kalam was not an accused at the time of making such confession, the same cannot be discarded in view of the provisions under Section 25 of the Evidence Act. The next point raised by learned A.A.G is that since the incriminating article ('da') was recovered on the pointing out of Kalam through such confession, or immediately after such confession, the facts disclosed from such disclosure should be admitted as evidence in

view of the provisions under Section 27 of the Evidence Act. Learned A.A.G. has cited three cases of the Indian Supreme Court and one of our Appellate Division to support such views. These points, no doubt, need proper examination by this Court.

7.9. In this case, we should be straight about the chronology of facts concerned. The prosecution case is that the disclosure by Kalam regarding the killing and throwing away of the "da' was first made by Nupur when she was questioned in this regard by police. Therefore, on the face of it, this disclosure of Nupur was a statement given by a witness in the course of investigation, although Nupur was not subsequently made a witness in the case. Thus, this statement of Nupur is directly hit by Section 162 of the Code of Criminal Procedure, as the said statement was

made in the course of investigation to a police officer, although, the same was not reduced into writing, as deposed by P.W. 12 (1st I.O). Therefore, such disclosure has no evidentiary value. Next point raised by AAG is, since Kalam was yet to be an accused in this case, namely, in the subsequent case, he was the informant in his case and as such his extra-judicial confession did not suffer from the prohibition provided by Section 25 of the Evidence Act. Since this point relates to the recovery of 'da', let us first reproduce the provisions under Sections 25, 26 and 27 of the Evidence Act.

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation. - *In this section “Magistrate” does not include the head of a village discharging magisterial functions unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1898*

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

(Underlines supplied to give emphasis)

7.10. It appears from the above quoted provisions under Section 25 of the Evidence Act that a confession made to a police officer cannot be proved against a person who is an accused in any case. The question of proving something arises at the time of trial when some person is arraigned, or charged for any offence. Therefore, the time when he made such extra-

judicial confession. It was not necessary that Kalam had to be an accused in a particular case. Rather, it was necessary that such extra-judicial confession of Kalam would be used as evidence in a trial in future when he might be an accused of an offence in a case. The words “accused of any offence” and “deposed to” have also been used in Section 27 of the Evidence Act. These words “deposed to” signify that a particular evidence is placed before the trial Court during trial. Deposition is only taken during trial and not taken during investigation. Rather, information or statement is taken during investigation. Therefore, in this Section 27 as well, the term “a person accused of any offence” has been used in the same way as it is used in Section 25 of the Evidence Act. Therefore, when discovery of any fact is made from a person or when discovery of fact

regarding an incriminating article is made in consequence of information or disclosure made by a person, that person need not necessarily be an accused of any offence at the time of giving such information or disclosure. Rather, when such discovery of fact is deposed before the trial Court as an evidence against him, only then he is required to be an accused of any offence. This being so, an accused, while disclosing any information leading to the discovery of any fact regarding any incriminating article, is not required to be formally arrested. This position has been repeatedly supported by the Indian Supreme Court. (see, for example, **State of U.P. vs. Deoman, AIR 1960, Supreme Court-1125, Paragraphs-7 and 18**). The source of such established legal position is the much cited judgment of Sir John Beaumont in **Kottaya vs.**

Emperor, AIR (34) 1947 Privy Council-67, in particular, paragraphs 10 and 11 thereof. In the said judgment, the ‘fact discovered’ was also distinguished from the ‘incriminating article discovered’ and it was held that ‘fact discovered’ in consequence of information as provided in the said Section does not postulate ‘incriminating article discovered’. Rather, it was the fact that the accused had disclosed the information about the particular place wherein the said incriminating article was hidden and that pursuant to such information the said incriminating article was discovered.

7.11. However, our Appellate Division, in **Tofajjal Hussain vs. State, 22 BLC, (AD)-198**, has taken a different view. In the said decision, the author judge (the then hon’ble Chief Justice Mr. Surendra Kumar Sinha) has made reference to the above cited **Kottaya** case as the basis of

this discovery/disclosure theory and relied on that decision in a positive sense by taking a different view on the point of the status of the accused at the time of such disclosure and has held in paragraph 20 of the reported case that since the appellant was not an accused at the relevant time in respect of the offence for which he was convicted, the statement given by him leading to the recovery of the fire arm was not given by him as an accused and as such the same cannot be admissible as evidence under Section 27 of the Evidence Act. Since this **Tafazzal Hossain's case** and the ratio decided therein is a decision of our Appellate Division, we have no option but to follow the same in view of the provisions under Article 111 of the Constitution, in spite of our above view in line with the decision of the Indian Supreme Court

as regards particular status of the accused at the time of such disclosure.

7.12. In the present case, admittedly, Kalam was not an accused at the time when he made such extra-judicial confession, or disclosure, leading to the recovery of the 'da'. Therefore, his such statement or information, given not as an accused in this case, cannot be held to be admissible as evidence under Section 27 of the Evidence Act in view of the said decision of our Appellate Division in **Tofajjal Hussain's case**. On the other hand, in view of the **Kottaya case**, as decided by the Privy Council, when an accused makes extra-judicial confession, thereby, pointing out the hidden place wherein the incriminating article is hidden, his confessing part of such statement/disclosure is always hit by Section 25 of the Evidence Act unless very possession of such article is an

offence. However, the fact of his disclosed information and his knowledge about the hidden place of the incriminating article are to be admissible as evidence under Section 27 of the Evidence Act. This being so, we also have no option but to hold that this extra-judicial confession of Kalam cannot be admitted as evidence, particularly when he made such confession being asked by police. Besides, since, at the time of making such disclosure, he was not an accused in this case, as per the decision of the Appellate Division in **Tofajjal Hussain's case**, the fact disclosed from such disclosure also cannot be admissible under Section 27 of the Evidence Act. Thus, we are unable to accept the said fact of discovery as evidence in this case.

7.13. The decision of the Privy Council, as decided in 1947 in **Kottaya case**, is binding on us as well

as the decision of our Appellate Division in **Tofajjal Hussain's case**, modifying the ratio in **Kottaya case**, specifically in respect of the applicability of Section 27 of the Evidence Act. Accordingly, we hold that the fact, as discovered because of the information/disclosure given by accused Kalam, is not admissible as evidence.

7.14. Now, the final card of the prosecution is that the principle in wife killing case will be applicable in the facts and circumstances of the present case. Let us now examine this aspect, although the same was not at all considered by the Court below. Admittedly, the occurrence of double murder took place in Kalam's house when he was present in his house. Immediately after the killing of two members of his house, he was the only adult-surviving member in that house. Therefore, it was him who had the special

knowledge as to how and by whom his pregnant wife and the said lodging master were killed by sharp cutting weapon. It appears that Kalam has taken recourse to a separate case by way of defence and dragged the same upto the High Court Division by way criminal revision against the judgment of acquittal. In his such case, he has repeatedly filed naraji against the reports of police and Judicial Magistrate concluding that it was him who had killed the victims. His case ended up with the acquittal of all the accuseds implicated by him. We have already discussed at length about the merit and demerit of his case and has categorically found that his such case, or explanation, is a false story on the face of it. He not only failed to prove his such defence, but his case was also turned out to be a false plea/case, particularly when he and his daughter gave hugely

inconsistent statements at different times. The neutral witnesses cited by him in his FIR did not support his case at all. Rather, they supported the prosecution version of this case. Other neighboring neutral witnesses also supported the prosecution version of this case. This being so, we have no option but to hold that he has categorically failed to give any explanation as to how and by whom his wife and the said lodging master were killed in his house at the time of the occurrence when he was present therein. Therefore, in line with the decisions of our Appellate Division, as cited by the learned D.A.G and A.A.G, in **Abul Hossain Khan vs State, 8 BLC, (AD)-172; Gourango Kumar Shaha vs. State, 2 BLC (AD) -126, The State vs. Md. Shafiqul Islam, 43 DLR (AD)-92**, we hold that since he was admittedly present in his house at the relevant time of occurrence, but

has failed to give any explanation as to how and by whom his wife and the lodging master were killed, this failure to give explanation will lead us to infer and presume that he himself had killed his wife and the said lodging master in order to trap the accuseds in his case. Therefore, we are of the view that by application of the principle of wife killing case, the prosecution has succeeded in proving the charge against accused-Kalam beyond reasonable doubt. Thus, we have no option but to hold that the conviction of accused-Kalam under Section 302 of the Penal Code should be affirmed.

Sentence:

7.15. Now, the sentence; It appears that Kalam was in fact a police personnel and there are various aggravating factors against him, particularly when it is apparent from the post mortem

reports that the injuries caused by sharp weapon were of brutal nature. Not only that, at the time of killing, his wife was pregnant, which is evident from the post mortem report. Although he had enmities over property with the accuseds in this case, the lodging master, Moshiur, was not a party to such enmity at all. He was just an innocent lodging master who took shelter in his house because of the long distance of his own house from his madrasha. It has further been proved by prosecution that Kalam, from the very beginning, took recourse to a false story and compelled the accuseds in his case to face a protracted criminal proceeding at the expense of huge amount of money and various harassments including their arrests. Therefore, it appears that he played with the criminal justice system of this country in order to satisfy his grudge against his father,

brother and maternal uncles over a property dispute, and the killing in question was a cool-blooded pre-planned killing by a serving police personnel.

7.16. However, there are two mitigating factors in his favour: one is that he now has an adult daughter named 'Nupur' and that there is no direct evidence against him. The investigating officers in this case, particularly P.W.12, has proved to be very incompetent officer, particularly when the sketch map in this case was prepared in a very clumsy way and no statement of Nupur was recorded by him. Therefore, the case has been proved by the prosecution mainly basing on the principle of wife killing case, which is basically a principle standing on circumstantial evidence given that there is no confessional statement of the accused in this case. There are Indian

Supreme Court decisions to not give death penalty when the case is exclusively based on circumstantial evidence. Since we have held that the prosecution has succeeded in this case exclusively basing on circumstantial evidence, in particular using the negative burden principle on the accused, we are of the view that his sentence of death should be commuted to the sentence of life imprisonment until death. Thus, we are inclined to impose life imprisonment until death in view of the decision of our Appellate Division in **Ataur Mridha vs. State, 73 DLR (AD)(2021)-298**, particularly when there are so many aggravating circumstances against him that he should not be shown that much mercy by the Court.

Orders of the Court:

7.17. In view above discussions of law and facts, the orders of the Court are as follows:

- 1) The **Death Reference No. 77 of 2017** is rejected. However, the conviction of the accused, Md. Abul Kalam (absconding), son of Abdul Jabbar Hawlader of village-Gulishakhali, Police Station-Morelgonj, District-Bagerhat, under Section 302 of the Penal Code, as given by the Second Court of Additional Sessions Judge, Bagerhat in Sessions Case No. 14 of 2002, is, hereby, affirmed. Thus, the sentence of death, as imposed on him by the said Court, is commuted to the sentence of life imprisonment until death.
- 2) The above sentence of the convict shall be executed immediately after his arrest and he shall be kept in the general prison.
- 3) The Rule in **Criminal Revision No.582 of 2018** is discharged. Accordingly, the impugned judgment and order dated 07.05.2017 passed by the Second Court of Additional Sessions Judge, Bagerhat in Sessions Case No. 361 of 2013, is, hereby,

affirmed. Thus, the Court below is directed to release the Opposite Party Nos. 2-12 from their bail bonds immediately.

Let an advance order be communicated to the Court concerned.

Send down both the lower Court records in both cases immediately.

We express our gratitude to Mr. Md. Hafizur Rahman Khan, learned advocate, for his assistance.

.....
(Sheikh Hassan Arif, J)

I agree.

.....
(Biswajit Debnath, J)