

Supreme Court of Bangladesh

High Court Division

[Criminal Appellate Jurisdiction]

Present:

Mr. Justice S. M. Emdadul Hoque

And

Mr. Justice Md. Bashir Ullah

Death Reference No. 130 of 2017

with

Jail Appeal No.296 of 2021

The State

... petitioner

-Vs-

Md. Rafiqul Islam Rafique

... condemned-prisoner

Mr. Arobinda Kumar Roy, Deputy Attorney General with
Mr. Zahid Ahammad (Hero),
Mr. Abu Naser (Swapon) and
Mr. Mirza Mohammaed Soyeb Muhit, AAGs

---for the State

Mr. Md. Hafizur Rahman Khan, State Defence Lawyer

... for the condemned-prisoner.

Heard on 12.09.2023 and 13.09.2023

Judgment on 19.09.2023.

Md. Bashir Ullah, J.

The Additional Sessions Judge, 2nd Court, Kishoreganj has made this death reference under Section 374 of the Code of Criminal Procedure (Code) for confirmation of the death sentence awarded upon the condemned-prisoner Md. Rafiqul Islam Rafique on 28-09-2017 in Sessions Case No.188 of 2016 arising out of Bhairab Police Station case No. 30 dated 24.04.2015 corresponding

to G.R No. 302(2) of 2015 under section 302 of the Penal Code, 1860 with a fine of Tk.5000/-.

The condemned-prisoner preferred Jail Appeal No. 296 of 2021 through the concerned jail authority. The Jail Appeal filed by the condemned-prisoner challenging the judgment and order is heard analogously with the death reference and disposed of by this judgment.

The prosecution case, in brief, is that PW 1 Md. Kamal Miah, the younger brother of the deceased lodged the First Information Report (FIR) with Bhairab Police Station stating, inter alia, that the deceased Md. Jamal Uddin worked as member of truck rent provider association at Meghna ferry ghat under Bhairab police station. Accused Rafiqul Islam Rafique had a grocery shop at Meghna ferry ghat. The accused owed Taka 300 from Deen Islam, nephew of the accused against purchase from his shop. The deceased Md. Jamal Uddin and the said Deen Islam used to spend time together. On the failure of the accused to realise the money from Deen Islam despite repeated demands, the victim Jamal Uddin out of his friendship with Deen Islam took the responsibility to realise the money from him. At around 11:50 am on 23.04.2015 a quarrel started between the accused and the deceased over the issue of recovery of dues. At one stage of the altercation, the accused dealt a fatal blow on the left chest of Jamal Uddin with a knife. On

hearing the scream of the victim the witnesses namely, Awlad Hossain, Abul Hossain, Jewel and others came to the place of occurrence and caught the accused Rafiqul Islam Rafique red-handed along with a blood-stained knife. Upon receiving the information about the occurrence, the informant rushed to the place of occurrence. He carried the injured Jamal Uddin to Bhairab Upazila Health Complex by a CNG run auto rickshaw with the help of neighbour Sumon and brother Jaynal Abedin. The duty doctors declared him dead. The public captured the accused, beat him and handed him over to police along with the blood-stained knife.

P.W 19, Md. Saiful Islam a Sub-Inspector of police investigated the case. He visited the place of occurrence, held the inquest on the dead body and prepared a report. He sent the dead body to the morgue for conducting post mortem examination. He also prepared a sketch map, index, recorded statements of the witnesses under section 161 of the Code and seized some alamots. Eventually, he submitted a charge sheet on 24.12.2015 against the aforesaid accused under Section 302 of the Penal Code.

Thereafter, the case was sent to the Sessions Judge, Kishoreganj who framed charge against the accused under Section 302 of the Penal Code on 27.04.2016. The charge so framed was read over to the accused to which he pleaded not guilty and claimed to be tried. The record of the case was ultimately transmitted to the

Additional Sessions Judge, 2nd Court, Kishoreganj for speedy disposal.

In the trial, the prosecution examined as many as 19(nineteen) witnesses and they were duly cross-examined by the defence. The defence did not adduce any witness.

After examination of the prosecution witnesses, the accused was examined under Section 342 of the Code to which he reiterated his innocence.

The defence case as gathered from the trend of cross-examination of the prosecution witnesses and the examination of the accused under Section 342 of the Code is the total denial of the prosecution case claiming that the condemned prisoner was not at all involved with the alleged killing and has falsely been implicated in the instant case. An altercation took place between the accused Rafique and his nephew Deen Islam accompanied by the deceased Jamal and at that time deceased went to restrain them and then he was attacked by someone else. It is not clear who hit whom amid the chaos.

The trial Court, on consideration of evidence on record found the accused guilty of the charge levelled against him under section 302 of the Penal Code and sentenced him to death and to pay a fine of Tk.5, 000/- by its judgment and order dated 28.09.2017 and sent

this reference to this Court for confirmation of the sentence of death.

Mr. Mirza Mohammad Soyeb Muhit, the learned Assistant Attorney General has taken us through the materials on record. Mr. Arobinda Kumar Roy, the learned Deputy Attorney General then submits that the prosecution has proved the charge levelled against the condemned-prisoner beyond all reasonable doubt. PWs. 2, 3, 5, 6 and 15 are the eyewitnesses to the occurrence. They saw that the convict-prisoner dealt a knife blow on the left chest of the deceased to kill him. A 13" blood-stained knife was recovered from the hand of the condemned-prisoner. The post mortem report supports the evidence adduced by the prosecution witnesses.

He further submits that the murder was pre-planned, intentional and cold blooded and was committed in the broad daylight. He next submits that the prosecution proved the date, time and place of occurrence. He prayed for accepting the death reference and dismissal of the jail appeal by upholding the conviction and sentence passed by the trial Judge.

On the other hand, learned State Defence Lawyer Mr. Md. Hafizur Rahman Khan for condemned-prisoner submits that on the day of argument on 27.09.2017, the accused absconded but no state defence lawyer was appointed. The Court heard no argument or submission on behalf of the accused and as such the judgment

passed by the Additional Sessions Judge, 2nd Court, Kishorganj is not sustainable in the law. In support of his submission he refers to the case of *Sate Vs. Abdul Gazi* and others, reported in 33 DLR (1981) 79. He further submits that the story of seizing the knife from the hand of the accused is not believable for the reason that the public tortured him inhumanly and the police arrested him with several injuries. It is unusual to think that the accused would keep the knife in his hand while being tortured. He further submits that the accused had no intention or motive to kill the victim. The occurrence took place at one stage of altercation and only one injury was found on the dead body. He further submits that it was alleged that the occurrence took place near ferry ghat but no river or ferry ghat was shown in the sketch map and index. The informant was not an eyewitness to the occurrence and the prosecution did not prove the blood stained clothes. He finally prayed for rejection of the death reference and allowing the jail appeal by setting aside the impugned judgment and order of conviction and sentence passed by the Court below.

To consider the merit of the case and analyze the facts of the case, let us discuss the evidence of prosecution witnesses.

PW 1 Md. Kamal Mia, elder brother of the deceased and the informant stated that at around 11:50 a.m. on 23.04.2016 in front of the shop of Protik, at one stage of altercation the accused stabbed

victim Jamal Uddin with a knife and he fell down. Rashed, Awlad Hossain, Jewel and others came forward and caught the accused red-handed. Upon receiving the information the informant immediately rushed to the place of occurrence. They carried the victim to Bhairab (Upazilla) Health Complex where the doctors declared him dead. Police held an inquest of the dead body and prepared a report and he put his signature therein (exhibit I). He then went to the police station and lodged the FIR. He proved the FIR and identified his signature as exhibits 2 and 2/1 respectively. He also identified the seized knife as material exhibit 1. In cross-examination he stated that he had lodged the FIR on the 24th day at about 12:00 noon. He went to the place of occurrence and saw that around one hundred people had gathered there. He did not witness the stabbing with the knife. He does not know whether Protik or his (Protik) shop employees witnessed the occurrence. He stated that two other medicine corners are situated nearby with several shops along the road. However, he does not know if anyone from those establishments witnessed the occurrence. He stated that the accused Rafique had a grocery shop and there were dues payable by the nephew of the accused. He denied the defence suggestion that he does not know who hit whom in the chaos of so many people. He also denied that Rafique did not hit his brother or that no knife was

found in the hand of Rafique. He denied the defence suggestion that he had false case against accused Rafique.

PW 2 Md. Nabi Hossain stated that the occurrence took place at around 12:00 noon on 23.04.2015. At that time he was at Prodip Miah's tea stall. Deceased Jamal Miah and accused Rafique were engaged in an altercation and then the accused Rafique brought out a knife from his waist and stabbed on the left chest of Jamal and he witnessed it. They immediately chased the accused and caught him. Police quickly arrived at the place and apprehended the accused from the river bank. At the time of arrest police recovered the knife and seized the same. He identified his signature in the seizure list as exhibit 3. He also identified the seized knife as material exhibit I. He identified the accused on the dock. In cross-examination he stated that the knife was in the hand of the accused. He denied the suggestion that Rafique was engaged in altercation with his nephew and at that time they beat up accused Rafique. He denied that the victim succumbed to his injury caused by some of them but accused Rafique did not stab him. He insisted that Rafique stabbed Jamal in front of him.

PW 3 Awlad Hossain Sawdagar, a coal businessman and commissioner stated that at around 12:00 noon on 23.04.2015 he was in his working place at ferry ghat. At that time he noticed that Rafique had come and started an altercation with Jamal. Rafique

brought out a knife from his waist and stabbed on the chest of Jamal and tried to flee away. They chased and caught him. Many people rushed there. Upon receiving a phone call, police arrived at the place of occurrence and apprehended the accused and took him to the police station. He identified accused Rafique on the dock. In cross-examination he stated that the accused was caught and detained in the Gung Samity house. He did not know the subject-matter for which the incident took place. He denied the suggestion that there was a fight between Rafique and his nephew Din Islam, then Jamal went to refrain them and he (Jamal) was attacked by someone else. He stated that the incident took place in his presence and at that time Din Islam was not there. He stated that he is a Ward Commissioner. He denied the suggestion that the accused belonged to his opposition and that all are his voters and he has no dispute with the accused.

PW 4 Md. Israfil Miah, a witness to the Inquest stated that the incident occurred at 12:00 noon on 23-04-2015. When he was returning from the river Meghna after taking a bath, he heard hue and cry coming from the tea stall of Pordip Miah. He saw Jamal lying on the ground. Rafique ran but the crowd caught him. Councillor Awlad Hossain Sawdagar was also there. He went to the local Government Hospital after the victim had died there. Police held inquest of the dead body. He signed in the inquest report. He

identified his signature in the inquest report (exhibit 1/1). He identified accused Rafique on the dock. In cross-examination he stated that he had seen Jamal lying on the ground. He was wearing a vest and a pant. His vest was cut and the body was hit by stabbing. The vest and the pant were blood stained. He denied the suggestion that he did not see the injury after hearing the scream during the occurrence.

PW 5 Md. Shaheen Miah is a witness to the seizure who deposed that the occurrence took place at around 11:00 A.M./12:00 P.M. on 23.04.2015. When he was in front of the tea stall of Prodip at Bhairab ferry ghat then accused Rafique stabbed Jamal with a knife and tried to run away but the public caught and beat him. Thereafter, the commissioner and others detained him in the Gung Samity Room and informed the police. Police arrived and took him in their custody with the knife. He identified the accused on the dock. As a witness to the seizure he identified his signature thereon as exhibit 3/1. He also identified the seized knife as material exhibit I. In cross-examination he stated that Jamal wore a vest but he cannot remember its colour. He did not wear any lungi. He saw a cut injury on the head of the accused Rafique who was beaten up by the public. He said that the knife was recovered from accused Rafique. He denied the suggestion that Rafique did not kill Jamal.

PW 6 Md. Jewel Mia is the informant's nephew. He stated that the deceased was his uncle. The incident took place at around 12:00 noon on 23.04.2015. At the time of occurrence, he was in his shop at Meghna ferry ghat. His elder brother Abul Hossain also was in the shop at that time. He saw Rafique and Jamal arguing and at one stage, the accused Rafique stabbed Jamal with a knife. He chased Rafique and caught him with the knife with the assistance of others. The injured Jamal was carried to Bhairab Government Hospital where the doctors declared him dead. He identified the accused on the dock. In cross-examination he stated that many people chased accused Rafique but he did not know who caught him. Police arrived at the place of occurrence within 3 to 4 minutes. The people along with the commissioner handed over the knife to the police. He did not see whether Rafique (accused) had an injury on his head. In reply to a question he reaffirmed that Jamal succumbed to the injury inflicted by Rafique.

PW 7 Md. Jahangir Mia, a fruit seller and relative of the deceased deposed that accused Rafique stabbed Jamal in the left chest in front of him. The incident occurred at around 12:00 noon on 23.04.2015. Rafique was caught by the people and within a short time police arrived and recovered the knife from the hand of the accused. Police prepared seizure list and took his signature thereon. He identified his signature therein as exhibit 3/2 and the seized

knife as Material Exhibit I. In cross-examination he deposed that the informant was his brother-in-law. He denied the suggestion that Rafique did not stab Jamal.

PW 8 Joynal Abedin, elder brother of the deceased deposed that the incident occurred at around 12:00 noon on 23.04.2006. At that time, he was at home. His son Jewel and Abul Hossain informed him about the incident over phone. He rushed to the place of occurrence and saw blood stained body of Jamal. He and Kamal carried the injured Jamal to the hospital where the doctors declared him dead. In his cross-examination he stated that the victim was dressed with pants and vest (Genji) which were stained with blood. He could not remember the colour of the vest. He denied the defence suggestion that he did not see the occurrence and Rafique did not stab Jamal.

PW 9 Kazal Mia is a witness to the inquest. He identified his signature in the inquest report. His signature in the inquest report was marked as exhibit 01/02. In cross examination he stated that he did not sign the inquest report knowing what was written therein.

PW 10 Md. Kabir Mia was tendered by the prosecution and defence declined to cross-examine him.

PW 11 Md. Pratik Mia, who was the shopkeeper, stated that the incident occurred at 12:00 noon on 23.04.2015. He went to his shop and saw many people. His shop situates at ferry ghat. He

stated that Rafique had killed Jamal by stabbing him with a knife. He knew the accused from before. He identified the accused on the dock. In cross-examination he stated that the investigating officer did not record his statement. He denied the suggestion that the occurrence did not take place in front of his shop.

PW 12 Abul Hossain was tendered by the prosecution and the defence declined to cross-examine him.

PW 13 Dr. Mafizur Rahman, a Medical Officer stated that on 23.04.2015 he held the autopsy of the deceased. He proved the post mortem examination report as exhibit 4 and his signature thereon as exhibit 4/1. During post mortem examination he found the following injury on the body of the deceased:

“An oblique incised wound present on the front of left upper chest above nipple measuring $3\frac{1}{2}$ x $2\frac{1}{2}$ x 5 depth.”

In his opinion, death was due to hemorrhage and shock and also due to chest injury which was ante mortem and homicidal in nature.

In cross-examination he stated that it took around half an hour in conducting the post mortem examination. There is no column to mention the duration of the post mortem examination. He denied the suggestion that the injury as mentioned in the post mortem report was caused by dealing a blow with a sharp cutting

weapon. He further denied the suggestion that he did not properly hold the post mortem examination.

PW 14 Md. Liakat Ali, a constable of police stated that being directed by Sub-Inspector Saiful he brought the body of the deceased to the morgue and after post mortem examination he handed over the body to the deceased's relatives. The defence declined to cross-examine him.

PW 15 Md. Sumon Mia, a coal labourer stated that the occurrence took place at around 11:00/12:00 noon on 23.04.2015. At that time he was drinking tea in front of the shop of Protik. Jamal and Rafique were engaged in an altercation. Suddenly, Rafique stabbed Jamal with a knife and tried to flee away but the public caught him. He along with others carried Jamal to hospital but he (Jamal) died. In cross-examination he identified the accused on the dock. He stated that the informant is his neighbour and not a relative. He denied the defence suggestion that the alleged fact of stabbing Jamal by Rafique is false. He reiterated that he saw the occurrence with his own eyes.

PW 16 Ripon was tendered by the prosecution and defence declined to cross-examine him.

PW 17 Maminul Mia in his examination-in-chief stated that he is a witness to the inquest. The inquest of the body of the deceased Jamal Miah was held at around 12:45 p.m. on 23.04.2015

in the hospital. He identified his signature in the inquest report. His signature in the inquest report was marked as exhibit 1/3. He also identified the accused Rafiqul Islam on the dock. In cross-examination he stated that the deceased Jamal was his neighbour. He denied the defence suggestion that the alleged occurrence is false.

PW 18 Delowar Hossain was declared tendered by the prosecution. The defence also declined to cross-examine him.

PW 19 Saiful Islam a Sub-Inspector of police stated that on 23.04.2015 he was entrusted with the investigation of the case. He visited the place of occurrence, prepared the sketch map and index. He proved the sketch map and his signature thereon as exhibit 5 and 5/1 respectively, the index and his signature thereon as exhibit 6 and 6/1 respectively. He recorded the statements of witnesses under section 161 of the Code. He made a seizure and prepared list at 12:25 p.m. He recovered the blood-stained knife. He identified the seized knife marked as material exhibit I. He proved the seizure list and his signature thereon as exhibits 3/3 and 3/4 respectively. He stated that the knife (material exhibit I) was used in the murder. He saw an injury measuring $3\frac{1}{2}$ " x $1\frac{1}{2}$ " nearly on the left nipple (on the left chest) of the deceased. He proved the inquest report and his signature thereon as exhibits 1/4 and 1/5 respectively. The dead body was sent to Kishoreganj Government Sadar Hospital for post

mortem examination. He collected the post mortem examination report from the hospital. He identified the accused on the dock. In cross-examination, he stated that he had received information about the occurrence immediately before 12:00 noon. The Office-in-Charge informed him over mobile phone call that something had happened at ferry ghat and directed him to go there. He then accompanied by constable Liakat and some other police personnel went in front of Protik's shop at Bhairab ferry ghat. He saw that the public had caught the accused on the road. He denied the suggestion that he did not recover the knife from Rafique. He further denied that he did not mention the subject matter and cause of the fight or that Rafique did not stab the deceased.

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

It transpires that PW 2, Md. Nabi Hossain is an eyewitness to the occurrence. In his evidence he clearly stated that accused Rafique stabbed on the left chest of deceased Jamal in front of him. He proved the seizure of knife and identified the knife as Material Exhibit I. PW 3 corroborated the evidence of PW 2 on material point. Being an eyewitness he deposed that at the time of the altercation Rafique brought out a knife from his waist and stabbed on the left chest of Jamal. PW 4, Md. Israfil Miah deposed that the occurrence took place at 12:00 hours at noon on 23.04.2015. When

he was returning from Meghna River after taking a bath, he heard hue and cry from the side of the tea stall of Prodip Miah. He saw Jamal lying on the ground. Rafique ran but the crowd caught him. He proved the inquest report as exhibit 1 and his signature thereon.

PW 5 Md. Shaheen Miah corroborated the evidence of PWs. 2 and 3. He also proved the date, time and manner of the occurrence. He saw Rafique stabbing Jamal with a knife which was recovered by police. He identified the seizure knife as material exhibit I. PW 6, Jewel Miah a nephew of the deceased also corroborated the evidence of PWs 2, 3 and 5 on material point. He also proved the date, time and manner of the occurrence. He saw Rafique and Jamal arguing with each other and at one stage accused Rafique stabbed Jamal with a knife. He chased Rafique and with the assistance of others caught him with a knife. PW 7, Md. Jahangir Miah is also an eyewitness to the occurrence. Accused Rafiqul Islam Rafique stabbed Jamal on the left chest in front of him. He saw the police to recover the knife from the hand of Rafique. PW No.15, Md. Suman Miah is another eyewitness. He also proved the date, time and manner of the occurrence. He saw Jamal and Rafique were engaged in an altercation and suddenly Rafique stabbed Jamal with a knife.

PWs. 1, 2, 3, 4, 5, 6, 11 and 17 identified accused Rafiqul on the dock. PWs. 1, 2, 5 and 7 identified the knife as material exhibit I by which the accused Rafiqul Islam stabbed Jamal.

It appears from the FIR and evidence of PW 1, Md. Kamal Miah that accused Md. Rafiqul Islam had a grocery shop at the place of occurrence Meghna ferry ghat. Deen Islam, nephew of the accused purchased goods from the shop on credit worth about Taka 300/-. Rafique claimed the money on several occasions, but failed to realise. Then he met Jamal (the deceased), a friend of Deen Islam. The deceased Jamal Uddin took responsibility for realisation of money from the nephew of the accused, Deen Islam by settling the matter. At approximately 11.50 a.m. on 23.04.2015, an altercation occurred between accused Rafique and Jamal on the issue of realisation of Taka 300/- from Deen Islam. At one stage of altercation Rafique stabbed deceased Jamal with a knife. Rafique dealt only one blow. Evidence shows that the incident occurred in the heat of passion in an altercation.

The evidence of PW Nos. 2, 3, 6, 11 and 15 proves that accused Md. Rafiqul Islam Rafique dealt only one blow with knife on the chest of deceased Jamal Uddin. Post mortem report also corroborates the above evidence. PW 13, doctor Mofizur Rahman found, “an oblique incised wound present on the front of left Upper chest above nipple measuring $3\frac{1}{2}$ " x $\frac{1}{2}$ " x 5" depth” in the autopsy.

From the facts and circumstances of the case it appears that the wrong was done in the heat of passion upon a sudden quarrel and only one blow of knife was dealt which apparently suggest that the offence comes within the meaning of culpable homicide not amounting to murder which is punishable under section 304 part I of the Penal Code.

In this regard, we get support from the decision in the case of *state vs. Khalilur Rahman*, reported in 48 DLR (1996) 184, wherein this Court held:

“In this case the appellant Khalilur Rahman inflicted a sulfi blow and the deceased died later on whether there was sufficient provocation to invite such blow or not prosecution placed no material before the Court. The killing cannot be termed as murder, it may at best be a manslaughter. In the present case we have already noticed that accused Khalilur Rahman has merely struck on deceased Sikim Ali with sulfi only once. Accused Khalilur Rahman was quite free to inflict as many blows as he liked by his sulfi. There is none to prevent him from doing so but he merely dealt only one blow. It speaks that he restrained himself to inflict

further injuries on the person of Sikim Ali which might result in his death. Therefore, accused Khalilur Rahman did not intend to kill Sikim Ali. Admitted facts would show that the act was done premeditation and not in a cold blooded manner but in a quarrel in the heat of passion, as such, in our view, the offence attracts provision of Section 304 part 1 of the Penal Code. ”

Now the question for our consideration is whether the offence committed by accused Rafiqul Islam falls within the ambit of Section 300 of the Penal Code. Section 300 of the Penal Code defines the cases that can be called murder with the exception enumerated therein. Exception 4 of Section 300 of the Penal Code reads as follows:

“Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.”

In the *State Vs. Tayeb Ali* Case, reported in 40 DLR (AD) (1988) 6 the Apex Court held:

“All murders are culpable homicide but all culpable homicides are not murder. Excepting the General Exceptions attached to the definition of murder an act committed either with certain guilty intention or with certain guilty knowledge constitutes culpable homicide amounting to murder. If the criminal act is done with the intention of causing death, then it is murder clear and simple. In all other cases of culpable homicide, it is the degree of probability of death from certain injuries which determines whether the injuries constitute murder or culpable homicide not amounting to the murder. If death is likely to result from the injuries, it is culpable homicide not amounting to murder; and if death is the most likely result, then it is murder.”

It is an appropriate case where the offence under section 302 of the Penal Code is liable to be turned into an offence under section 304, part 1 of the Penal Code and should be convicted and sentenced, thereunder, as provided under the section.

In view of the above discussions, the order of conviction passed by the Additional Sessions Judge, 2nd Court, Kishorganj under Section 302 of the Penal Code is altered to one under Section 304 part I of the Penal Code.

In the result, the death reference No.130 of 2017 is rejected and Jail Appeal is allowed in part. The accused Md. Rafiqul Islam Rafique, son of late Tamij Uddin, of village Chandiber Dakkhin Para, Police Station-Bhairab, District- Kishoreganj is convicted under section 304 part I of the Penal Code and sentenced thereunder to suffer imprisonment for life and also to pay a fine of Tk. 5000/-, in default, to suffer imprisonment 3(three) months more. The condemned-prisoner will get the benefit of section 35A of the Code.

The jail authority is directed to shift the condemned-prisoner from the condemned cell to the regular prison (normal cell) forthwith.

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

S. M. Emdadul Hoque, J:

I agree.