

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman

And

Mr. Justice K M Zahid Sarwar.

Death Reference No. 138 of 2017

IN THE MATTER OF :

The State

...Petitioner.

-Versus-

Md. Monir Howlader alias Monir Hossain.

...Condemned-prisoner

Mr. Md. Abdul Aziz Miah (Mintu), D.A.G

Mr. Ashraf Uddin Khan, A.A.G and

Dr. Nurunnahar Akter (Nupur), A.A.G

...for the State.

with

Criminal Appeal No. 11391 of 2017.

Md. Monir Howlader alias Monir Hossain.

...Convict-appellant.

-Versus-

The State

...Respondent

Mr. Md. Humayoun Bashar, Advocate

...For the convict-appellant.

Mr. Md. Abdul Aziz Miah (Mintu), D.A.G

Mr. Ashraf Uddin Khan, A.A.G and

Dr. Nurunnahar Akter (Nupur), A.A.G

.. For the State.

with

Jail Appeal No. 468 of 2017.

Md. Monir Howlader alias Monir Hossain.

...Convict-appellant.

-Versus-

The State

.....Respondent

Mr. Md. Abdul Aziz Miah (Mintu), D.A.G
Mr. Ashraf Uddin Khan, A.A.G and
Dr. Nurunnahar Akter (Nupur), A.A.G
...For the State.

Heard On: 03.09.2023, 04.09.2023.

Judgment On: 10.09.2023.

Md. Badruzzaman, J:

This Death Reference under section 374 of the Code of Criminal Procedure (Cr.P.C) came up from learned Metropolitan Sessions Judge, Khulna for confirmation of death sentence of condemned prisoner, **Md. Monir Howlader alias Monir Hossain (herein after referred to as the prisoner)** who has been convicted under section 302 of the Penal Code and sentenced to death with a fine of Tk. 10,000/-, in default, to suffer rigorous imprisonment for one year vide judgment and order of conviction and sentence dated 16.10.2017 passed in Sessions Case No. 998 of 2016 arising out of Dawlatpur Police Station Case No. 12 dated 25.02.2016 corresponding to G.R. No. 29 of 2016 under section 302 of the Penal Code.

The prisoner, also, from jail presented a petition of appeal and petition has been numbered as Jail Appeal No. 468 of 2017. He, also, presented regular petition of appeal being Criminal Appeal No. 11391 of 2017.

Death Reference, jail appeal and criminal appeal have been heard together and now are being disposed of by this common judgment.

The prosecution case, as projected in the First Information Report and unfurled during the trial, was as follows:

The informant Abdul Wahab Mridha (P.W.1) lodged First Information Report with Dawlatpur Police Station on 25.02.2016 implicating the prisoner alleging, *inter alia*, that about 4/5 years back he gave in marriage of his daughter Rahima Begum with the prisoner in accordance with Mohammadan Law. After marriage, though the couple was leading a peaceful conjugal life but from one year back, the prisoner assaulted the family members of the informant including him on various pleas for which they filed case against him. Thereafter, the prisoner tortured his daughter Rahima on 25.02.2016 at about 8.00 am to 01.45 pm and killed his daughter Rahima inside the bed room and kept the room under lock and key from outside and thereafter, he voluntarily surrendered before Mr. Md. Amirul Islam, Metropolitan Magistrate, Khulna and confessed that he killed the victim Rahima by strangulation.

Being learnt about the incident, the informant, his son and other family members immediately went to the place of occurrence and found the room under lock and key. The police of local police station was informed who came to the place of occurrence and in presence of Md. Shahadat Hossain, local Ward Commissioner (P.W.3) broke the lock of the room and found the dead body of Rahima on the cot inside the room. The police then prepared inquest report of the dead body in presence of witnesses and thereafter, the informant lodged the FIR which was registered

as Dawlatpur Police Station Case No. 12 dated 25.02.2016 under section 302 of the Penal Code. The dead body was sent to Khulna Medical College Hospital for conducting autopsy. The prisoner was sent to the police custody by learned Magistrate Md. Amirul Islam (P.W.11) and he was then arrested in this case. Being agreed to make confessional statement he was again produced before Mr. Amirul Islam, Metropolitan Magistrate on 26.02.2016 for recording of confessional statement and the learned Magistrate recorded the confessional statement of the prisoner and thereafter, he was sent to jail.

Mr. Bablur Rahman Khan, Sub-inspector of Police (P.W. 13) investigated the case. During investigation, he seized apparels of the victim in presence of witnesses namely, Md. Abdul Halim (P.W.7) and Mannan. On 26.02.2016, Dr. Md. Wahid Mahmud (P.W.12) conducted the post mortem of the dead body and submitted post mortem report. The investigating officer also visited the place of occurrence, prepared sketch map and index of the place of occurrence and examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure and after concluding investigation he submitted police report being Charge Sheet No. 63 dated 14.05.2016 having found *prima facie* case against the prisoner under section 302 of the Penal Code.

During trial, the trial Court framed charge against the prisoner under section 302 of the Penal Code which was read over

and explained to him, who pleaded not guilty and claimed to be tried.

In course of trial, the prosecution in all adduced 13 witnesses to prove its case out of whom P.W. 6 and P.W. 9 were tendered by the prosecution. Except those two witnesses all other witnesses were cross-examined by the defense.

After closure of the prosecution case, the prisoner was examined under section 342 of the Code of Criminal Procedure. The prisoner again repeated his innocence and led no evidence in defense. The defense plea, as it appears from the trend of cross-examination of the prosecution witnesses and the statement of the prisoner recorded under section 342 of the Code of Criminal Procedure is that he has been falsely implicated in this case and that the victim had illicit relation with her elder sister's husband and the victim has been killed by her elder sister Amena and to save her elder sister the prisoner was falsely implicated in the case.

Upon conclusion of trial, the trial Court found the prisoner guilty of offence under section 302 of the Penal Code and convicted and sentenced him, as stated above.

Mr. Abdul Aziz Miah (Mintu), the learned Deputy Attorney General appearing for the State submits that the prosecution has succeeded in proving the charge leveled against the prisoner, Md. Monir Howlader alias Monir Hossain beyond all reasonable doubt in view of the evidence of the prosecution witnesses and the confessional statement of the prisoner which stands corroborated

by the medical evidence on record and accordingly, the prisoner was liable to exemplary punishment under section 302 of the Penal Code. Therefore, the Court below, after considering the materials and evidence on record, rightly convicted and sentenced the prisoner which calls for no interference by this Court.

Mr. Md. Humayoun Bashar, learned Advocate appearing for the prisoner seeks to impeach the impugned judgment and order of conviction and sentence on the ground that there is absolutely no eye witness of the occurrence; that there is no evidence that the prisoner was present at the place and time of occurrence; that the confessional statement was not true and voluntary and that the impugned judgment and order of conviction and sentence are based on misreading and non-consideration of the evidence and materials on record and as such, the conviction and sentence cannot be sustained in the eye of law. Alternatively, without prejudice to his earlier submissions, the learned Advocate further submits that the prisoner is a first time offender having is no other past criminal record and he is suffering in the jail since 25.02.2016 out of which he is suffering in the condemned cell for about 6(six) years for no fault of him and he was only 35 years of age at the relevant time and accordingly, the sentence of death penalty may be commuted to imprisonment for life or to imprisonment for lesser term for ends of justice.

In order to appreciate the submissions made by the learned Deputy Attorney General as well as learned Advocate for the

condemned prisoner, we have gone through the record and given our anxious considerations to their submissions.

Let us now weigh and sift the evidence on record as adduced by the prosecution to prove the charge.

P.W.1, Abdul Wahab Mridha, is the informant and father of the deceased deposed supporting the FIR story. He deposed that about 5/6 years back he gave in marriage of his daughter Rahima Begum with accused Monir Howlader (the prisoner). He did not give any peach in the conjugal life of his daughter and he used to beat her. The accused also tortured him. The accused was living in the rented house of Mannan Driver with his daughter. The time and date of occurrence is between 8.00 am to 01.45 pm on 25.02.2016. The accused killed his daughter by strangulation and went away after keeping the room under lock and key. After *Johor* prayer he heard from his elder son Badsha (P.W.5) that keeping his daughter in a room under lock and key the accused fled away. Instantly, he along with other inmates went to the house of Mannan Driver and found many people including Councilor and police therein. He saw the dead body on the cot after breaking the lock of the room. The police rummaged the dead body and took it to the police station and then he lodged the FIR. He proved the FIR, marked as Exhibit-1 and his signature therein marked as Exhibit-1/1.

In cross-examination he deposed that on hearing the incident after *Johor* prayer he went to the house of the accused and his son Badsha (P.W.5), wife Fatema (P.W.9), Md. Al Amin

(P.W.6), Md. Arman Mridha and Alif accompanied him. The police and Councilor broke the lock of the room and he became senseless after seeing the dead body. The accused lived in a separate room with his daughter (the victim) in the rented house of Mannan driver. The house of Faruk (P.W. 2) situated beside the house of Mannan. His another daughter was Amena and her husband's name is Anowar and Anowar was living around one kilometer distance. He denied the defense suggestions that there was case against Anowar or that the character of his deceased daughter was not good or that she had illicit relations with Anowar or that wife of Anowar learnt about the illicit relationship of the victim and Anowar or that said Amena in connivance with others killed his younger daughter or that he filed the false case or procured the confession to save his elder daughter.

P.W.2, Md. Faruk Hossain, is a neighbor of the prisoner testified that at 2 pm on 25.02.2016 he went to the house of Mannan Driver and saw many people. He saw the recovery of the dead body of a woman by breaking lock of western room. They recovered the dead body of the wife of accused. OC of Dawlatpur Police Station was there. The police prepared inquest report and took his signature therein. He proved the inquest report, marked as Exhibit-2 and his signature therein, marked as Exhibit- 2/1.

In cross-examination he did not deviate from his earlier statement. He further deposed that after breaking the lock the office-in-charge at first entered into the room and thereafter, Councilor entered into the room and there was electric light inside

the room. He knew the victim as he was a neighbor. He denied the defense suggestion that he did not go to the place of occurrence or entered into the room or that he signed the inquest report at the police station under the instruction of the police or that he deposed falsely.

P.W. 3, Md. Shahadat Hossain, is the Councilor of the Union Parishad testified that he went to the place of occurrence after 2 pm on 25.02.2016 and found police therein. As the room of Monir was under lock and key, the police entered into the room after breaking the lock. He also entered into the room and found dead body of a woman. The woman police rummaged the dead body. The police prepared inquest report and took his signature. He proved his signature, marked as Exhibit 2/2. He also deposed that the dead body was the wife of Monir. Her name was Rahima. Monir surrendered before the Court after killing his wife. He heard that Monir killed his wife by strangulation upon the throat. He identified the prisoner at the dock.

During cross-examination he denied the defense suggestions that he was not present during preparation of inquest report of the victim or that he did not see any injury upon the victim or that he signed the inquest report as per instruction of police or that he deposed falsely.

P.W.4, Md. Robi, deposed that date of occurrence was 25.02.2016. The occurrence took place at the house of Mannan of Munshipara Boubazar. At about 3 pm he went to the place of occurrence and found the dead body of a woman. The body was

recovered after breaking lock of the room. The police took his signature. He proved his signature marked as Exhibit- 2/3.

During cross-examination he deposed that he went after the lock was broken. He saw the dead body a bit before signing and he saw the dead body covered by cloth.

P.W.5, Md. Badsha Miah, is the brother of the victim deposed supporting the deposition of P.W.1, his father. He did not depose anything against father's deposition. He further deposed that he saw injuries upon the throat and blood came out from the nose of his sister.

During cross-examination he did not depose anything affecting his deposition made during examination-in-chief.

P.W.6, Md. Al Amin and P.W. 9, Fatema Begum were declared tendered by the prosecution and the defense declined to cross-examine them.

P.W.7, Md. Abdul Halim, is another brother of the deceased deposed that after 01.45 pm on 25.02.2016 he was taking meal. At that time his father told him that Rahima has been killed. Instantly they went to the place of occurrence at the house of his sister at Munshipara Boubazar and found many people there. The woman police rummaged the dead body and he found injuries upon her throat. There was blood upon mouth and nose. The police prepared inquest report and took his signature therein. He proved his signature, marked as Exhibit 2/4. The police also seized apparels of the victim and prepared seizure list in his presence and took his signature. He proved the Seizure List and signature

therein marked as Exhibits 3 and 3/1 respectively. He identified the prisoner at the dock.

During cross-examination he deposed that he did not give any statement before the police. He signed the inquest report at the place of occurrence. He signed the seizure list inside the room. He denied the defense suggestion that he signed as per instruction of the police or he knew nothing.

P.W. 8, Md. Arman Mridha, deposed that he is younger brother of deceased Rahima Begum. Occurrence took place between 8.00 am and 1.45 p.m on 25.2.2016. At that time accused killed his sister in his rented house. He lived as a tenant in the house of Mannan Driver. The room was situated beside Boubazar of Moheswarpasha. They were taking meal. His father came to house from mosque after prayer and informed that Rahima died. They went to the house of Rahima from where people recovered dead body of Rahima. He identified the prisoner at the dock.

During cross-examination he deposed that he did not see the occurrence and all of them went to the place of occurrence being informed from his father. He saw the recovery of the dead body. He denied the defense suggestions that the occurrence took place as there was illicit relationship with the brother-in-law of the elder sister or that the accused was not involved with the occurrence or that the accused did not strangle his sister or that he deposed falsely.

P.W.10, Md. Faruk Hossain, is the Constable deposed that while he was on petrol duty with S.I. Bablur Rahman Khan (P.W.13)

at about 14.35 hours, he saw the dead body of Rahima Khatun (24) inside the rented room of Monir Howlader at Moheswarpasha Munshipara Boubazar. He sent the dead body for autopsy to the Medical College Hospital. He proved the 'Form' by which the dead body was sent for autopsy and his signature therein, marked as Exhibits- 4 and 4/1 respectively. After autopsy, he handed over the dead body to the elder brother of the victim.

During cross-examination he deposed that they were in all three police personnel with their Sir out of whom one was a Woman Constable.

P.W.11, Md. Amirul Islam, testified that on 26.02.2016 at 11.00 a.m. the Investigation Officer produced the accused for recording confessional statement. He, after observing all legal formalities kept the accused inside his khashamra under a peon up to 3 p.m. for refreshment and before recording confessional statement he informed him about the consequence of confession. The accused agreed to make confessional statement. Thereafter, he recorded confessional statement of the accused in six pages along with Form of Confession. He read over the statement to the accused and the accused admitting the same as true, put four signatures therein. He also put six signatures.

In his cross-examination he deposed that the accused surrendered on 25.02.2016 and he was arrested on that day. On 26.02.2016 the accused was produced before him. He denied the defense suggestion that the accused was ill or that the police produced for recording confessional upon threat or that the

accused was all along under police custody or that he did not comply with the legal formalities while recording confessional statement or that the confession was not voluntary.

P.W.12, Dr. Md. Washid Mahmud, conducted the post mortem of the victim. He testified that on 25.02.2016 he, after conducting post mortem of the victim, found four injuries as follows:

- (I) One bruise was present on right side of the neck.
- (II) Four nail mark was present right side of the neck.
- (III) Two bruise was present on left side of the neck measuring 1 inch x ½ inch.
- (IV) One nail mark was present on left side of the neck (crescent shape).

The doctor further testified that death was due to asphyxia as a result of above mentioned injuries that is throttling which was *ante mortem* and homicidal in nature. He proved the post mortem report and his signature therein, marked as Exhibits 6 and 6/1 respectively.

During cross-examination he deposed that he found no injury in the body except the throat of the victim. He denied the defense suggestion that there was no such injury in the body of the victim which might cause death or that he was biased by the father of the victim or that he gave false report.

P.W. 13, Bablur Rahman Khan, Sub-Inspector of Dawlatpur Police Station was the I.O of the case deposed that he on 25.02.2016 took the charge of investigation, visited the place of

occurrence, prepared sketch map and index of the place of occurrence, prepared inquest report of the victim and signed therein, marked as exhibit 2/5. He sent the dead body along with a Form to Khulna Medical College Hospital for autopsy and he signed the Form, marked as exhibit 4/2. He took the accused for two days police remand and interrogated him and thereafter, he produced the accused before the Court for recording confession. He examined the witnesses separately and recorded their statements under section 161 of the Code Criminal Procedure. He also consulted the statements recorded under section 164 of the Code of Criminal Procedure and collected the post mortem report. He also seized apparels of the victim and prepared seizure list and signed therein, marked as Exhibits- 3 and 3/2 respectively. Upon concluding investigation and on the basis of evidence and confessional statement of the accused, he submitted charge sheet being No. 63 dated 14.05.2016 against the accused Monir Howlader under section 302 of the Penal Code. He proved the sketch map, index and his signature therein, marked as Exhibits- 7, 8, 7/1 and 8/1 respectively.

In cross-examination P.W. 13 deposed that he prepared inquest report of the victim on 25.02.2016 at 14.35 hours. Before entrusted with the charge of investigation he went to the place of occurrence along with officer and other forces and found the room under lock and key. The lock was broken. He did not seize the lock. At first, he entered into the room. No alat was seized from the place of occurrence except preparing inquest report. A Woman

Constable namely Mahfuza Khatun accompanied him. He entrusted with the charge of investigation at 15.05 hours on 25.02.2016. After taking charge of investigation, he went to the place of occurrence at 15.20 hours and he got the ejahar at the place of occurrence on that day at 15.25 hours from the Duty Officer through messenger. He denied the defense suggestion that Faruk Hossain, as mentioned in the sketch map and charge sheet, was not the same person. He consulted the confessional statement and there was statement therein that the victim Rahima and Anowar had physical relationship. He did not mention the matter in the CD. He went to the place of occurrence four times. He recorded the statements of public witnesses at the place of the occurrence and the police witnesses at the police station. There was no eye witness of the occurrence. He denied the defense suggestions that he did not investigate the case properly or that the deceased had illicit relationship with Anowar or that for said reason Anowar killed the victim or that for saving said Anowar, the informant filed false case with false statements or that he did not prepare sketch map and index properly or that the confession of the accused was extracted upon physical and mental torture.

On perusal of the testimony of the prosecution witnesses, it appears that there is no eye witness of the occurrence. Whole prosecution case is based upon circumstantial evidence and judicial confession of the prisoner. P.W. 1 Abdul Wahab Mridha is the informant and father of the victim. P.W.2 Md. Faruk Hossain is a neighbor of the prisoner. P.W. 3 Md. Shahadat Hossain, P.W. 5

Md. Badsha Miah, P.W. 7 Md. Abdul Halim and P.W. 8 Md. Arman Mridha are the brothers of the victim. P.W.4 Md. Robi is a neighbor. P.W.10 Md. Faruk Hossain is a Police Constable. P.W.11 Md. Amirul Islam is the Magistrate. P.W. 12 Dr. Md. Wahid Mahmud conducted post mortem of the deceased and P.W. 13 Bablur Rahman Khan is Investigating Officer of the case. P.W. 10, 11, 12 and P.W.13 are formal witnesses. Out of nine public witnesses two were declared tendered by the prosecution and only seven prosecution witnesses are public witnesses of fact.

Undisputed position is that death of the condemned prisoner's wife occurred in his house wherein the dead body of the victim was found. Admittedly, this is a wife killing case and after marriage, the prisoner and victim wife was living together and the occurrence took place at day time. The informant (P.W 1) and his three sons namely P.W.5 Md. Badsha Miah, P.W.7 Md. Abdul Halim and P.W. 8 Md. Arman Mridha unequivocally deposed that after being informed at noon, they rushed to the place of occurrence, that is, the house of prisoner and found the prisoner's room under lock and key and the police along with local Commissioner broke the lock of the door and entered into the room and found dead body of the victim and they found several injuries upon the throat of the victim, also.

P.W. 2, Md. Faruk Hossain, P.W. 3, Md. Shahadat Hossain and P.W. 4 Md. Robi also went to the place of occurrence immediately after the occurrence took place and they, also, found the dead body of the victim and injuries upon the throat of the

victim. But none of the prosecution witnesses found the prisoner at the place of occurrence. Admittedly, the accused voluntarily surrendered immediately after the occurrence before Mr. Md. Amirul Islam, learned Metropolitan Magistrate (P.W.11) and thereafter, he sent the accused under police custody and thereafter, he was arrested in connection with this case. It has not been denied by the defense that the prisoner and the victim were not living in the same house or that the victim was not killed at the house of the prisoner.

Moreover, P.W.13, the I.O. visited the place of occurrence, prepared sketch map and index of the place of occurrence. He marked “ক” as the place of occurrence in the sketch map and described in the Index the place of occurrence as “ঘটনাস্থল (ক) চিহ্নিত স্থান যাহা দৌলতপুর থানাধীন মহেশ্বরপাশা মুন্সিপাড়া বৌবাজারস্থ জনৈক মান্নান ড্রাইভারের সেমিপাকা দক্ষিণ দুয়ারী দুইরুম বিশিষ্ট ঘরের পশ্চিম পাশের রুমের মধ্যে খাটের উপর।”

The defense also did not deny that the victim and the prisoner were not residing at the place of occurrence or that the dead body was not recovered from the house of the prisoner where she was living with him and accordingly, the place of occurrence has been proved by the prosecution as narrated in the FIR. In regards date and time of occurrence, all the prosecution witnesses testified that they found the dead body of the victim after 2.00 p.m. on 25.2.2016 inside the room of the prisoner. The doctor did not mention in the post mortem report as to when the victim died but it can be revealed from the prosecution witnesses that the victim died at any time before 2 pm on 25.02.2016. The

defense did not make out any other case about the time of death of the victim. Following which it can be concluded that the victim died at any time before 2 pm on 25.02.2016.

In regards manner of death of the victim the prosecution witnesses stated that they found injuries upon the throat of the victim and they saw bleeding in the nose and mouth of the victim. Doctor also found four injuries upon the throat of the victim and finally opined that the cause of death was due to asphyxia as a result of above mentioned injuries that is throttling. Considering the oral evidence of the P.Ws as well as the opinion of the Doctor it has established by the prosecution that the victim was killed by throttling. Accordingly, the manner of death has been established by the prosecution.

The evidence as discussed above clearly suggests that the prosecution has able to prove date, time, place and manner of occurrence beyond reasonable doubt.

Now question arises who was responsible for the murder of the victim.

Immediately after the occurrence the prisoner voluntarily surrendered before learned Metropolitan Magistrate on 25.02.2016 (P.W 11) who sent him to the police custody and then he made confession before the learned Magistrate (P.W. 11) on 26.02.2016. As to the judicial confession made by the prisoner before the Magistrate, (P.W.11) only contention about it was not voluntary and true and it was extracted upon torture. It appears that before recording the confessional statement the learned

Magistrate allowed the appellant sufficient time for his mental reflection. It further appears that he put necessary questions and recorded the answers of the prisoner. The learned Magistrate also endorsed that he found truthfulness of the confession and he found no injury in the body of the prisoner and the prisoner denied that he was tortured. It further appears that the statement was recorded after due compliance of sections 164 and 364 of the Code of Criminal Procedure. Learned Magistrate satisfied that the prisoner was not forced to make confessional statement and he was not tortured and he found no injury upon the body of the prisoner.

The confessional statement of the condemned prisoner (Exhibit 5) reads as follows:

“আমার স্ত্রীর নাম রাইমা। আমার স্ত্রীর বড় বোন এর নাম আমেনা। আমেনার স্বামীর নাম আনোয়ার। গত ৩/৪ বছর আগে থেকে আমি জানতে পারি আমার স্ত্রীর রাইমা এর সাথে আনোয়ারের অবৈধ সম্পর্ক রয়েছে। তাদের মধ্যে শারীরিক সম্পর্কও ছিল। সে প্রায়ই বাড়ির বাইরে চলে যেত। মাঝে মাঝে আমাকে কিছু না জানিয়ে বাপের বাড়ি চলে যেত। কখনো কখনো বাপের বাড়ির নাম করে আনোয়ারের বাড়ি চলে যেত। আমি তাকে অনেকবার বলেছি তুই ভাল হয়ে যা। রাইমা আমার কথা শোনে নি। রাইমার আগে একটা বিয়ে ছিল। শুনেছি রাইমার খারাপ স্বভাবের কারণে এই বিয়ে ভেঙে যায়। পরে শুনেছি। আমার বিয়ের পর প্রথম যেবার আমার সন্দেহ হয়। সে বার আনোয়ার একটা মামলায় পুলিশের হাতে ধরা পড়া থেকে বাঁচতে আমাদের বাসায় গিয়েছিল। তাকে বাসায় রেখে আমি কোন একটা কাজে বাইরে যাই। বাসায় আচমকা ফিরে ঘরে ঢুকতেই দেখি আনোয়ার খাটে শুয়ে, আমার স্ত্রী ছুটে রান্না ঘরে চলে গেল এবং সেখানে গিয়ে সেলোয়ারের ফিতা আটকাচ্ছিল। এরপর সে অনেকবার এসব করেছে বলে

বিভিন্ন সময় বুঝতে পারি। কিন্তু হাতে নাতে ধরতে পারি নি। তালাক দেবার কথা চিন্তা করেছি। কিন্তু দেনমোহর ৭০/৮০ হাজার টাকা শোধ করার সামর্থ্য আমার নেই। আর ওসব করতে গেলে মামলা মোকদ্দমা হবে। তা চালানোর ক্ষমতা আমার নেই। তাই আমাকে সব সহ্য করে যেতে হত। কিন্তু কত আর সহ্য করা যায়? একজন স্বামী কি স্ত্রীর অপকর্ম মেনে নিতে পারে?

গত ২৪/০২/২০১৬ ইং তারিখ রাত দশটার সময় আমি বাড়ি ফিরি। তখন হালকা টিপ টিপ বৃষ্টি হচ্ছিল। আমি বাড়ি ফেরার পথে দেখি আনোয়ার আমাদের বাড়ি থেকে বেরিয়ে চলে যাচ্ছে। আমি আনোয়ারের সাথে কথা বলি না। ঘরে ফিরে রাইমাকে জিজ্ঞাসা করি। তখন সে স্বীকার করে যে আনোয়ার এসেছিল। আমার তখন সন্দেহ হয়। আমি রাইমার সাথে শারীরিক সম্পর্ক করতে চাই। সে রাজি হয় নি। তখন তাকে আমি জোর করি। তার কাপড় খুলে দেখতে পাই, হাত দিয়ে বুঝতে পারি তার গোপনাংগে বীর্ষ রয়েছে। আমার তখন হিতাহিত লোপ পেয়ে যায়। তবু সারারাত মাথা ঠান্ডা রাখি। একসাথে ঘুমিয়েছিও। রাতে ভাবতে থাকি কী করা যায়। সকালে সাংসারিক বিষয় নিয়া আবার ঝগড়া আরম্ভ হয়। আমি তখন তাকে রাতের ঘটনা বুঝতে পারার কথা বলি। সে তখন আমাকে অশ্রাব্য ভাষায় গালিগালাজ করতে থাকে। একপর্যায়ে তাকে ঘরে ডেকে নিয়ে যাই। ঝগড়া গালিগালাজ চলতে থাকে। এক পর্যায়ে নিজেকে সামলাতে না পেরে আমি রাইমার গলা টিপে ধরি। ৩/৪/৫ মিনিট ধরে রাখি। এর মধ্যে সে মারা যায়। তার লাশ খাটের উপর কাঁথা দিয়ে ঢেকে রেখে আমি গোসল করি। তারপর কাপড় পরে লাশের পাশে বসে ভাবতে থাকি কী করা যায়। শেষে সিদ্ধান্ত নেই। কোর্টে আত্মসমর্পন করব। এরপর সেখানে এসে আপনাকে সব ঘটনা খুলে বলি। এই আমার জবানবন্দী।”

The above confessional statement of the prisoner clearly suggests that the prisoner, after killing his wife, voluntarily surrendered before the learned Magistrate and then he made confession stating as to how he killed his wife, the victim. In his

confession the prisoner tried to make out a defense case that his wife had illicit relations with her sister's husband Anowar and upon a sudden quarrel with her, the incident took place. But a contradictory defense plea was taken by the defense during cross-examination of the prosecution witnesses who tried to establish a case that the victim was killed by her elder sister or the husband of the elder sister as the victim had illicit relationship with elder sister's husband Anwar and that to save the husband of the elder sister, the informant falsely implicated the prisoner in this case. Except giving such suggestion to P.W. 1 and P.W. 13, the defense could not adduce any witness to prove that the victim was killed by any other person other than the prisoner. Such contradictory defense plea not supported by any other evidence cannot be taken into consideration to disprove the prosecution case.

A Confessional statement if not made by accused under inducement, threat or promise, is admissible in evidence. If the confession made by the accused is voluntary and truthful and relates to the accused himself, then no further corroboration is necessary and a conviction of the accused can be solely based on it. Such confessional statement is admissible as a substantive piece of evidence. (Ref: Md. Kamal Hossain and another vs. The State, 19 ADC 455).

Considering the judicial confessional statement (Exhibit 5) along with the evidence of P.W. 11, we are of the view that the confession of the prisoner was voluntarily made by him and the

statement was true and consistent with the prosecution case and that was recorded following the provisions of law.

The victim was the wife of the condemned prisoner at the relevant time and it has established that at the fateful day she was in the custody of the condemned prisoner.

By now it is well settled that ordinarily the accused has no obligation to account for the death for which he is placed for trial. If a murder is taken place while the accused has been living with his wife in the same house, then the accused husband, under section 106 of the Evidence Act, is under obligation to explain how his wife had met with her death. In absence of any explanation coming from his side it seems, none other than the accused husband was responsible for causing her death. [Ref: State vs. Aynul Huq, 9 MLR 393; Gauranga Kumar Saha vs. State, 2 BLC (AD) 126; Abdul Mutaleb Howlader vs. State, 5 MLR (AD) 362; Abdus Salam vs. The State, 19 BLD (1999) 98; Abu Sayed (Saked) vs. The State, 12 MLR (AD) 101; Dipok Kumar Sarker vs. State, 40 DLR (AD) 139; Sudhir Kumar Das alias Khudi vs. State, 60 DLR 261; Mamun @ Mamun Ar Rashid vs. State, 74 DLR (AD) 36].

As to the responsibility for causing the murder of the victim by the condemned prisoner there is, however, no direct evidence of the occurrence. The prosecution sought to prove the charge on certain circumstantial facts as well as the judicial confessional statements made by the accused. It has well established that the convict and his wife (victim) were residing in the same house at the relevant time and accordingly, the convict-

prisoner was duty bound to explain the circumstances as to how his wife met her death but no plausible explanation came from him rather, he admitted his guilt in his confession. Accordingly, irresistible presumption is that it is the condemned-prisoner who is responsible for the death of the victim. The conduct of the condemned-prisoner coupled with the defense version of the case as well as facts and circumstances involved, indicate that the condemned-prisoner has failed to discharge his onus.

The motive of the prisoner in killing the victim was that his wife had illicit relation with her sister's husband for which he killed the victim.

Analyzing the evidence set out above, it appears that the prosecution has satisfactorily proved beyond reasonable doubt that the condemned prisoner killed his wife by throttling on the date, time and place as alleged by the prosecution and the trial Court has rightly convicted the prisoner under section 302 of the Penal Code.

Quantum of sentence in awarding upon an accused for committing an offence depends on gravity of the offence and sometimes it confers upon an aggravating or mitigating factor. Under section 302 of the Penal Code, discretion has been conferred upon the Court to award two types of sentences, either death or imprisonment for life to which fine may be added. The object of the legislature should not be frustrated by exercising such discretion by the Court in doing so, so that crime does not go

unpunished and society is at the satisfaction that proper justice has been done and Court has responded to the crime and expectation of the society but it must be done within the purview of law as stipulated in the section itself.

It appears from documents on record that condemned prisoner immediate after occurrence voluntarily surrendered before the concerned Magistrate 25.02.2016. He never obtained bail during trial of the case and he is in condemned cell since delivery of the judgment dated 16.10.2017 which indicates that he has suffered long pangs of the death in the condemned cell for about 6 (six) years. Long suffering in the condemned cell and normal cell may sometimes be considered as mitigating circumstance to commute sentence depending on the facts and circumstances of the case. [Ref: Manik vs. State, 35 BLD (AD) 63; Nazrul Islam (Md.) vs. State, 66 DLR (AD) 199]. It also appears that at the date of occurrence the age of the was 35 years which was also showed in the charge sheet by the investigating officer. The prisoner has no past criminal record and he is not a habitual offender.

Considering the duration of suffering in normal cell plus condemned cell, his age as well as facts and circumstances of the case, we are of the view that ends of justice will be met if the condemned prisoner is sentenced to imprisonment for life with fine instead of death sentence.

Accordingly, condemned prisoner Md. Monir Howlader alias Monir Hossain is sentenced to suffer imprisonment for life with a

fine of Taka 10,000/- in default, to suffer rigorous imprisonment for 1 (one) year more. The Jail authority is directed to shift the condemned prisoner from the condemned cell to regular cell at once.

The convict appellant prisoner will get the benefit under section 35A of the Cr. P. C.

In the result, Death Reference No. 138 of 2017 is, hereby, rejected with the modification of sentence, as stated above. Criminal Appeal No. 11391 of 2017 and Jail Appeal Nos. 468 of 2017 are dismissed.

Let a copy of this judgment and order along with the LCR be sent to the concerned Court below for information and necessary action at once.

I Agree

(K M. Zahid Sarwar, J)