

**Present:**

Mr. Justice Muhammad Mahbub Ul Islam  
And  
Mr. Justice Md. Hamidur Rahman

**Death Reference No.55 of 2018.**

The State.

-Vs-

Md. Kamrul Islam Dhali

...Absconding-Convict.

Mr. Mohammad Mujibur Rahman, D.A.G  
with

Mr. Chowdhury Shamsul Arifin, A.A.G  
and

Mr. Md. Jasim Uddin Khan, A.A.G

...For the State.

Mr. Md. Hafizur Rahman Khan, the learned State  
Defence Lawyer.

... For the Absconding-Convict.

**Heard on: 29.10.2024, 11.11.2024.**

And

**Judgment On:20.11.2024.**

**Md. Hamidur Rahman, J:**

This Death Reference under section 374 of the Code of Criminal Procedure, 1898 has been sent by the learned Nari-O-Shishu Nirjaton Daman Tribunal, Satkhira in view of the

provisions under section 29 of the Nari-O-Shishu Nirjaton Daman Ain, 2000 read with section 374 of the Code of Criminal Procedure for confirmation of death sentence imposed by it vide judgment and order of conviction and sentence dated 05.04.2018 passed in Nari-O-Shishu Nirjaton Case No.75 of 2010, the Tribunal sentenced the convict Md. Kamrul Islam Dhali(absconding) to death after convicting him under section 11(Ka) of the Nari-O-Shishu Nirjaton Daman Ain, 2000 (Amended, 2003). The said convict was absconding from the date of pronouncement of Judgment i.e. on 05.04.2018 and did not prefer any Appeal before the High Court Division of the Supreme Court of Bangladesh.

The background facts of the case are that convict accused Md. Kamrul Islam Dhali (absconding) lodged a FIR on 24.07.2009 to the Officer-in-charge Shamnagar Police Station, District-Satkhira stating inter alia that his wife Most. Salma Khatun (24) is the mother of one child has been suffering from alsar/stomach pain for a long time. She was not getting well after treatment by the doctor. She used to say that she will commit suicide by administering poison. On

24.07.2009 she administered poison and feeling unwell. Then they took her to the Shamnagar hospital but on the way at the place namely Jelepara at about 3.30 p.m. she died.

But the brother of the victim P.W.1, Rashedul Mollah filed Complaint Petition on 17.08.2009 before the Nari-O-Shishu Nirjaton Daman Tribunal, Satkhira stating inter alia that the victim was given in marriage with accused Md. Kamrul Islam Dhali 4(four) years ago. During subsistence of their marriage, she was blessed with one son aged about 1` year and 8 months. At the time of marriage victim's father paid Tk.10,000/-and a wood boat as a will of the convict-accused Md.Kamrul Islam Dhali as dowry. After the marriage the convict-accused started demanding dowry from the victim and created pressure on her, started physical torture and sent her to his father's house. Before two months of the incident a 'Salish' was held for it and the victim was taken to the accused No.1 Md. Kamrul Islam Dhali's house. After some days they again started torturing physically as a result victim died. Then the convict-accused poured poison in the mouth of the victim to save him from the allegation of murder of the victim.

Accused No.4 namely Mahmud Dhali then informed the Informant that his sister (victim) died by administering poison and they rushed to the victim's husband house and found dead body of the victim in the yard of her husband's house. Accused No.4 also informed them that they went to hospital but on the way, they found her death and taken back to victim's husband house. In the said Complaint Petition it is also stated that accused filed an ejahar before the Shamnagar Police Station, District-Satkhira to disrupt the main incident.

On the aforesaid allegation the said Complaint Petition was treated as First Information Report (FIR) being No. 2639(3)1 dated 03.09.09 under sections 11(Ka)/30 of the said Ain against the accused persons, namely-(1) Md. Kamrul Islam Dhali, (2) Nazir Gazi, (3) Molida Khatun and (4) Mahmud Dhali.

P.W.12, Anima Rani Das, Sub-Inspector (SI) of Shamnagar Police Station, District-Satkhira investigated the case. However, in the meantime, on the strength of Unnatural Death (UD) Case No.22/09 dated 24.07.2009, she collected Inquest Report and Post Mortem Report. During her

investigation P.W.12, seized some materials by way of seizure list, prepared sketch map and visited the place of occurrence. Upon finding the allegation to be established prima facie against the accused, she submitted charge sheet being Charge Sheet No. 37 dated 01.02.2010 under section 9(Ka)/30 of the said Ain against them.

Thereafter, the case being ready for trial, was sent to the Nari-O-Shishu Nirjaton Daman Tribunal, Satkhira for trial and the said case numbered as Nari-O-Shishu Case No.75 of 2010. Thereafter, the said Tribunal framed charge against the accused persons vide order dated 03.06.2010 under section 11(Ka)/30 of the said Ain. The said charge was then read over to them, but they pleaded not guilty and demanded trial. During trial, prosecution produced 12 (twelve) witnesses, (P.W.1 to P.W.12) initially some documents and material, which were accordingly, marked as exhibits and material exhibit respectively. After completion of recording, the Tribunal examined the accused under section 342 of the Code of Criminal Procedure, whereupon the accused persons pleaded not guilty and refused to give any evidence. The Tribunal then

after hearing the parties, delivered the impugned judgment and order of conviction and sentence dated 05.04.2018, thereby, convicting the accused Md. Kamrul Islam Dhali under section 11(Ka) of the said Ain, accordingly, sentenced him to death with a fine of Tk. 50,000/-.

Before scrutiny of the evidence on record as against the submission of the learned Advocates, let us first describe, in short, as to what the prosecution witnesses deposed before the Tribunal.

P.W.1, Rashidul Mollah @ Md. Rashidul Mollah is the Informant of the Complaint Petition and brother of the victim. He deposed that he filed the case against namely (1) Md. Kamrul Islam Dhali, (2) Nazir Gazi, (3) Molida Khatun and (4) Mahmud Dhali. The victim was given in marriage with accused Md. Kamrul Islam Dhali 4 years ago and at that time Tk.10,000/- and a wood boat was given to the convict-accused. The accused person in consultation with other accused persons demanded 50,000/- taka as dowry and threw away victim from his house before two months of the said incident. He wanted to file a case but the accused persons

took the victim back in the house of Md. Kamrul Islam Dhali. Thereafter, they have beaten the victim for dowry as a result the victim died. Then the accused Md. Kamrul Islam Dhali poured poison in the mouth of the victim to save him from the charge of murder. At about 2.00 p.m. accused person No.2 Nazir Gazi informed him via mobile call that his sister committed suicide after administering poison. He along with his father and other members of the family rushed to the victim's house and found the dead body of the victim in the yard of the Kamrul Islam's house. Accused person No.4 Mahmud requested his father to take the dead body in his house and accordingly he brought the dead body to his house. Thereafter, he came to learn that convict-accused Kamrul Islam filed a case before the police station that the victim was unable to tolerate stomach pain and committed suicide by administering poison. Then the Police came and sent the dead body for Post Mortem to the concerned hospital. He went to the Shamnagar police station on 25.07.2009 and 15.08.2009 but police refused to register the case. Thereafter, he filed the Complaint Petition before the Nari-O-Shishu Tribunal, Satkhira which was Exhibit as Exhibit-1 and he also confirmed his

signature there as Exhibit-1/1. He also identified the accused persons on the dock namely Nazir Mahmud and Kamrul Islam.

In his cross-examination, he deposed that Sunnath Mollah is his father. His mother is Mazeda who is also a witness. Zinnath is his uncle. Asadul is his cousin. He came to the Court and filed the case. It is not true that his mother tried to commit suicide with rope. It is not true that his sister tried to commit suicide with rope. He did not see the incident. He was informed about the incident through accused's brother Mofizul. He did not mention in the Complaint Petition about Mafizul. The police took the dead body from their house. The distance from Kamrul Islam house is about five kilometres. At the time of preparing Inquest Report he was present but he did not put his signature. His father signed in the Inquest Report. He also denied the suggestion that the accused did not kill his sister by beating and wrapping her neck with cloth and the convict-accused did not administer poison on her mouth. It is not true that with the help of the relatives he filed the case.

P.W.2, Sunnat Mollah @ Md. Surat Mollah is the father of the victim. He gave his daughter's hand in marriage to

Salma to Md. Kamrul Islam Dhali. On 24.07.2009 his son Rashidul informed him about the death of the victim. Thereafter, he along with his wife, Rashidul, Asad Mollah, Azizul Moral rushed to the Kamrul Dhali's house and found the victim died. Then they heard that Salma (the victim) was killed by accused persons namely-Kamrul Islam, Nazir, Mahmudul, Mazedal, through beaten her. He brought the dead body of the victim to his house. Kamrul Dhali informed the Police Station about the incident and then police came to his house. Police found sign of injuries in the body of the victim and took the dead body of the victim for Post Mortem to the concerned Hospital. He also identified the accused persons on the dock.

In his cross-examination, he deposed that at the time of incident he was at home. Salma (the victim) died in the accused's house. He was requested by the accused person to take the victim's dead body in his house. On the next day at about 10.00 a.m. police came to their house. He did not go to the police Station. He also stated that after buried the victim his son went to the police station.

P.W.3, Asadul @ Md. Asadul Mollah is the cousin of the victim. He was declared as hostile witness.

P.W.4, Mazeda is the mother of the victim. She deposed that after the marriage of Salma for the demand of dowry victim administered poison.

In her cross-examination, she deposed that there was misunderstanding between the husband and wife.

P.W.5, Zinnat was declared tendered.

P.W.6, A. Razzak was declared hostile.

P.W.7, Azia Rahman also declared tendered and declined to cross examination.

P.W.8, (Constable No.192, A. Latif Mollah), is a constable of Shamnagar police station, Satkhira. He deposed that on 25.07.2009 he worked as Constable and Investigating Officer of the case made seizure list of the case and he put his signature thereon. He also confirmed seizure list which is exhibit as Exhibit- 2 and he confirmed his signature thereon as Exhibit-2/1.

P.W.9, Shahidul Mollah is the uncle of the Informant he deposed that he heard about the incident from his wife Mrs. Mazedra.

In cross-examination, he deposed that he don't know that accused Kamrul Islam tortured victim Salma for dowry.

P.W.10, Abu Sadek is the neighbour of Salma. He deposed that he heard about the death of the victim. But he does not know about the incident.

He also declined to cross-examination.

P.W.11, Abu Musa Mollah deposed that he knew the victim but he did not know about the incident of her death.

He also declined to cross-examination.

P.W.12, Anima Rani Das is the Investigation Officer of the case. She deposed that at that time she was Sub-Inspector of Shamnagar Police Station under Satkhira District and then the Officer-in-Charge of the Police Station handed over the investigation charge on her of the Shamnagar Police Station Case No.05 dated 02.09.2009. She accordingly perused the FIR, visited the place of occurrence, prepared

sketch map and index. She also perused UD Case No.22/09 dated 24.07.2009, documents, Post Mortem Report and Inquest Report, seized some materials and recorded the statements of the witnesses under 161 of the Code of Criminal Procedure. She also tried to arrest the accused but failed. That upon examination of the Post Mortem Report, Inquest Report and other circumstances, she found the allegations under sections 9(Ka)/30 of the said Ain and accordingly she submitted charge sheet under the said sections being Shamnagar Police Charge Sheet No.37 dated 01.02.2010 under sections 9(Ka)/30 of the said Ain. She also proved the sketch map as Exhibit-3 and her signature thereon as Exhibit-3/1. She also proved that index as Exhibit-4 and her signature thereon as Exhibit-4/1.

In her cross-examination, she deposed that UD Case was disposed of after filing of the case. She has perused the Post Mortem Report and it was not detected the cause of the death. She did not seize any alat regarding death of the victim. According to visera report, Salma died after

administering poison, accused persons threatened the victim for dowry. It is not true that she submitted false report.

Before scrutiny of the evidences produced by the prosecution, let us first refer to the submissions made by the learned advocates before this Court. It may be noted that at the out-set of the hearing, entire paper book, lower Court records as well as other materials were placed before this Court one after another by the learned Deputy Attorney General and Assistant Attorney General. Thereafter, the Deputy Attorney General made oral submissions in support of confirmation of the conviction and death sentence of the convict-accused. However, for the sake of our convenience, we will refer to the submissions of the learned state defence lawyer first followed by the learned Deputy Attorney General.

Mr. Md. Hafizur Rahman Khan, the learned state defence lawyer appearing on behalf of the convict-accused (absconding) contends that the doctor who examined the dead body of the victim was not testified by the prosecution and thus the prosecution case became doubtful.

The learned defence counsel submits that there is no specific evidence about demand of dowry. P.W.2, the father of the victim in his depositions did not mention about dowry. The inquest report was made in his house and there is no mentioned about dowry. That the charge frame under section 11(Ka) of the said Ain is not attracted in the instant case. Death Reference should be rejected and trial shall be conducted under the Penal Code because the definition of dowry is not attracted in the instant case.

He also submits that there is no eye witness of the incident. The case is based on circumstantial evidence. The prosecution failed to prove cogent circumstantial evidence and as such the conviction is liable to be set aside.

He further submits that the victim of the accused on 24.07.2009 firstly filed ejahar before the Shamnagar Police Station, District-Satkhira about the incident and explained the death of the victim. The accused is totally innocent.

He next submits that the doctor who conducted Post Mortem Report did not depose in support of the Post Mortem Report. The trial court wrongly dispensed testimony of the

doctor under section 509 A of the Code of Criminal Procedure.

In the present case section 509 A of the CrPc is not attracted.

He further submits that delay in filing Complaint Petition more than 24 days which create doubt about prosecution case. The state defence counsel referred the decision reported in 37 DLR, 156.

He also referred the decision reported in 54 DLR (AD) 60 wherein it was observed by the Apex Court that:

“Incriminating evidence or circumstances sought to be proved by the prosecution must be put to the accused during examination under section 342 of the Code of Criminal Procedure otherwise it would cause miscarriage of justice”.

In the instant case, the accused persons were not properly examined under section 342 of the CrPc.

He also referred the decision reported in 56 DLR, 454 wherein it was observed that Jurisdiction over the subject matter is condition precedent to the acquisition of authority over parties and if a Court has no Jurisdiction over subject matter, consent of the parties cannot confer such Jurisdiction

and a judgment made without Jurisdiction is absolutely null and void.

Mr. Mohammad Mujibur Rahman, the learned Deputy Attorney General appearing on behalf of the State submits as regards the aforesaid submissions of the learned state defence lawyer on behalf of the convict-accused the learned Deputy Attorney General opposing the submissions and controverted the arguments advanced from the side of the learned lawyer of the defence and submits that the learned Judge, Nari-O-Shishu Nirjaton Daman Tribunal, Satkhira, during trial of the original case as well as disposal of the same committed no illegality or irregularity.

The learned Deputy Attorney General further submits that the learned trial Judge at the time of deciding the merit of the case properly appreciated the evidence and relevant laws and assessed the evidence on record in its true perspective and complying all the legal formalities of criminal trial decided the merit of the case in favour of the prosecution and against the defence.

He also submits that accused Md. Kamrul Islam Dhali and victim was husband and wife and they lived in the Md. Kamrul Islam Dhali's house situated in Village-Mirgang, Police Station-Shamnagar, District-Satkhira and it is proved by the witnesses that the wife (victim) met with her death in the residence of her husband Md. Kamrul Islam Dhali. The learned DAG in his context, referred some decisions of the Apex Court and argued that, it is a decided matter that it is the husband who is to explain and answer as to why and how his wife met with her death; which was no doubt is unnatural. The accused made out a new case and filed an ejahar that the victim died due to administer poison which is totally false. Thereafter the brother of the victim tried to file case but the police refused to take the case and the Informant compelled to file Complaint Petition No.37 dated 01.02.2010 before the Nari-O-Shishu Nirjaton Daman Tribunal, Satkhira and then police treated the Complaint Petition Case as First Information Report. Inasmuch as the very case and its proceeding (trial) as proceed for murder for want of dowry money, the witnesses and P.W.1 and P.W.2 categorically deposed about the dowry

and other witnesses did not feel mentioned the word dowry within their depositions.

The learned Deputy Attorney General lastly submits that the accused Md. Kamrul Islam Dhali awarded death penalty in presence of the sufficient ingredients under Section 11(Ka) of the said Ain, as such, the impugned judgment and order of conviction and sentence dated 05.04.2018 should be upheld and the reference is liable to be accepted.

The learned DAG by referred to us Post Mortem Report which is reproduce below:

- i. An extensive irregular blackened injury (ecchymosis) over right side of face-occupying rt. maxillary, mandibular & post auricular region and occipital area measuring about 5" X 4".
- ii. An irregular blackened injury over chest wall between two breasts and lower part of thyroid regions of neck.

Following viscera preserved for chemical examinations and reports:

- i. Stomach and its contents-In one jar.
- ii. Part of liver and one Kidney-In one jar.

Opinion:- Kept pending until having chemical examination and reports.

By referring the Inquest Report and Post Mortem Report learned Deputy Attorney General submits that there are several injuries sign on the victim such as in her leg, neck and face. So, it is not possible for the victim to administer poison after such injuries. So, story made by the accused in the FIR dated 24.07.2009 is not acceptable. He also submits that in FIR story that the victim died on the way namely Jelepara when she was taken to the hospital. On applying objective test it can be said that a reasonable person must take her to the hospital in any way wherein a doctor can confirm about death of the victim the learned Deputy Attorney General further submits that the accused was absconding at the time of pronouncement of Judgment. Therefore, such conduct of absconding 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.

It appears from the above evidence of the prosecution witnesses that there is no ocular evidence with regard to the killing of the victim. Even thus, none of the accused persons

was examined in support of the prosecution case. Most of the prosecution witnesses are the relatives of the victim. It is quite natural that they were supported to reach the place of occurrence on hearing news of the death of the victim as they are close relatives to the victim, when the inmates of the house or the neighbours may not come forward to depose or tell the truth in wife killing case.

In the instant case the convict-accused Md. Kamrul Islam Dhali on 24.07.2009 to the Officer-in-charge, Shamnagar Police Station filed an ejahar and admitted that his wife Most Salma (the victim) administered poison in the accused person's house and after she felt unwell and with the help of the local people they entered into the room and found that foam was coming out from victim's mouth thus they took her to the hospital, but on the way the place namely-Jelepara around 3.30 p.m. she died. So, the incident took place at the accused's house. One thing gave us doubt that how did they know about that the victim was dead. If the accused persons are innocent, they must take her to the hospital where the doctor can be confirmed about death of the victim. According,

they back home with the victim and confirmed the victim's brother about the incident and they rushed to the accused Kamrul house and found the dead body in yard of the convict-accused house. It may be mentioned here that the accused No.4 requested victim's father to take the dead body to their house and accordingly they brought the dead body to their house. But the place of occurrence is convict-accused Md. Kamrul Islam Dhali's house. Therefore, the prosecution is necessarily relying on circumstantial evidence or the evidence of the nearest relatives of the victim. It finds support from the case of the State Vs. Md. Shafiqul Islam and another reported in 43 DLR,(AD) 42 where it was opined that:

“In a wife killing case from its very nature, there could be no eye witness of the occurrence, apart from inmates of the house who may refuse to tell the truth. The neighbour may not come forward to depose. The prosecution is therefore; rely on circumstantial evidence in a case of this nature, like any other case of circumstantial evidence admittedly stands looking for the motive and the opportunity to commit that case.”

Although the doctor was not found to verify the post-mortem examination report but it has sufficient value being corroborative evidence when it is supported by other evidence. It appears from the record that the trial court initially issued summons, then vide order no.28 dated 08/02/2012 issued non-bailable warrant to the doctor and also sent a copy to the Civil Surgeon, Satkhira. Thereafter vide several orders issued W/W but in vain. On 23/04/2014 vide order no 31 again issued N.B.W.W through the Civil Surgeon. The trial Court again vide order no 37 issued non-bailable warrant and also sent copy of the order to the K.M.P, Khulna for necessary action, which shows that all attempts have been exhausted in due course to produce the doctor but in vain .Post -mortem examination report of the dead body of the deceased even if not taken into consideration, does not weaken the prosecution case for lack of corroboration of ocular witnesses. Nevertheless, statute itself contemplates that the report of post-mortem examination is required to be used as evidence, and the civil surgeon or other medical officer who made the report is dead or is incapable of giving evidence or is beyond the limits of Bangladesh and his attendance cannot be procured without an

amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such report may be used as evidence. In the present case it appears that the trial judge made several attempts to bring the doctor before the Court for which some delay for four years occurred. Lastly, the trial Judge took final decision considering the medical examination report as corroborative evidence, which is absolutely justified in the eye of law.

It has emerged in this case that requirements of section 509 A of the Code of Criminal Procedure was not complied with and doctor's attendance could not be procured because he was not available and, as such, the use of post-mortem report under section 509 A of the CRPC as corroborate evidence is proper and justified by the trial Court.

The inquest report of the victim revealed that black marks on the left wrist, a black bruise under the knee of the right leg and a black bruise near the neck on the right side of the face. It was also mentioned in the said inquest report that smelled of the poison come from the body of the victim. The result of the chemical examination of the viscera of the victim

indicated that pesticide poison was found in the viscera and the victim death was caused due to poison.

So, it is clear that the convict-accused firstly injured the victim then poured poison in her mouth which caused death of the victim.

Regarding submission of the state defense lawyer that re-examination under section 342 of the Code of Criminal Procedure the accused was not properly examined which caused miscarriage of justice. In this context, it is to be remembered that in the pretext of non-reading of all evidence/deposition of the witnesses, the trial would not be vitiated: if there is no question of prejudice due to any flaw in the examination of the accused under section 342 of the Code of Criminal Procedure. Here in this case, it appears that all the prosecution witnesses were cross-examined on behalf of the condemned and thorough cross-examination on the entire case of the defense, a lot of questions and suggestions were put to the witnesses. Hence condemned accused and along with his co-accused were fully aware or in the know about the prosecution case and the evidence from start to finish, who

deposed to substantiate the case of the prosecution. They had therefore, no difficulty to follow the proceedings and after closer of the evidence of the prosecution they examined under section 342 of the Code of Criminal Procedure. The learned trial judge has drawn their proper attention stating that they have heard the evidence in details and they were asked if they had anything to say. The reply was simply that they are innocent. In these circumstances, it cannot be said that any miscarriage or failure of justice has been caused and, as such, there arises no question of prejudice of the condemned accused in the trial held against him or during his examination under section 342 of the Code of Criminal Procedure. With regard to this, our apex court given a directive in the case of *Abdur Razzaque Vs the State* reported in 28 DLR(AD) 35 wherein it was held that the purpose of section 342 of the Code of Criminal Procedure is to inform the accused of the case about the incriminating evidence which has come against him from the side of prosecution. If such evidence is within the knowledge of the accused, there is no question of prejudice.

Regarding submission of State Defense lawyer that there is no specific evidences about demand of dowry. The informant brother of the victim in the complaint petition stated about the demand of dowry. PW2 father of the victim did not deposed about dowry but in cross examination he denied the suggestion that for the demand of dowry the accused has beaten the victim, it's a false case. The state defense lawyer also submits that the trial is without jurisdiction and submits that the instant case will be tried by the Session Judge under Penal Code. In this regard we refer to decision of our apex court reported in 18 SCOB (2023) AD 1. "Our final conclusion is that the High Court Division as an Appellate Court has the jurisdiction to convert the conviction under section 11(Ka)/30 of the Ain to one Under sections 302/34 of the Penal Code as appeal as continuous of an original case. An Appellate Court has the same power as that of the trial Court i.e. the Tribunal and therefore, as an Appellate Court the High Court Division in the present case competent to convert the conviction to secure ends of justice. Undoubtedly such an act of the High Court Division shall in no way prejudice the accused and state: otherwise order of remand shall entail unnecessary time,

money and energy due to fruitless or useless prosecution and defense. In the instant case demand of dowry established by the prosecution witnesses and alteration to Penal Code is not attracted. So we are of the view that the trial is not without jurisdiction.

So, the submissions of the state defense lawyer is ill founded.

Appellate Division of the Supreme Court of Bangladesh in the case of Haji Mahmud Ali Londoni & others Vs the state and another reported in 5 SCOB(2015)Ad 102 observed that

“It is settled principles that where the inference of guilt of an accused is to be drawn from circumstantial evidence only, those circumstances must, in the first place, be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused, and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused excluding any other hypothesis.”

On critical analysis of the evidence, it further appears that in this case that prosecution has established beyond all shadow of doubt that the wife of the convict-accused, the victim girl Salma Khatun met with her death which was

unnatural in nature in the residence of her husband on 24/07/2009. It is also established that the convict-accused and the victim Salma Khatun were living together at the time of occurrence as husband and wife in their resident. The prosecution witnesses found the dead body in the yard of the convict-accused house. The convict-accused tried to make a new case and filed an ejahar before the Shamnagar police station. It is decided matter in our jurisdiction that, it is the husband, who shall have to explain as to how and why his wife met with her death in his residence. But in the instant case Md Kamrul Islam Dhali by filing ejahar tried to make out a new case which is not acceptable, In a wife killing case law enjoins that in a wife killing case it is quite natural that there could be no eye witness of the occurrence apart from the inmates of the house who may refuse to tell the truth. In the instant case the accused requested the father of the victim to take the dead body in his house and accordingly he brought the dead body in his house.

Having gone through the materials on record we find that by sufficient credible cogent (both oral and circumstantial)

evidence it is proved that the wife died in the house of her husband. Be that as it may, there exists strong presumptive value that in the hands of husband the wife met with her death. These very findings have got every support in the case of Illias Hussain VS State reported in 54 DLR (AD) 78 where it was held when a wife met with an unnatural death in custody of the husband and also in his house the husband is to explain under what circumstances the wife met with her death.

On the meticulous assessment of evidence along with the impugned judgment and order of conviction and sentence: it appears that the learned trial judge relying upon several decisions of the Court, arrived at a decision from the testimonies of the witnesses and from the surrounding circumstances of this case which was prevailing at the time of occurrence stating that the wife of Md Kamrul Islam Dhali the deceased of this case salma khatun met with her unnatural death in the dwelling hut of her husband Kamrul's homestead and Md. Kamrul Islam Dhali at the time of occurrence was living with his wife Salma Khatun.

In the present case, nowhere the defense has any case or any such suggestion that at the time of occurrence the accused Md. Kamrul Islam Dhali was not in his residence rather, he was outside of that and the husband and the wife were living together in their house. The very circumstantial evidence as it appears is strong incriminating evidence against the accused to connect him in the offence of killing his wife Salma khatun. In the case reported in 63 DLR (AD) 134, it was held that in connection with the offence punishable under section 11(Ka) of the said Ain, inasmuch as the husband of the deceased is to explain as to how the victim wife met her death: the minimum onus of proof lies on prosecution that at the relevant time the husband was present in the house or was residing with his wife in the same place of occurrence.

In this case, analyzing the material evidence on record we find that the prosecutions have successfully discharged their onus that the husband Md. Kamrul Islam Dhali was residing in his house with his wife Salma Khatun on the date of occurrence salma in the residence of her husband house met with her unnatural death when the husband and wife were

living together as husband and wife in the same house which was the place of occurrence.

The learned trial judge in her findings and decision rightly pointed out after thorough discussions over the evidence on record and after proper assessment of the same in its true perspective that it is the husband of the victim Salma Khatun who has killed his wife by beating and then administered poison in her mouth. With regard to this , on close reading of the judgment and order of the conviction and sentence it appears that the learned judge, Nari-O-Shishu Nirjatan Tribunal, Satkhira intensely discussed and evaluated the decision which are oral, documentary and circumstantial and thereafter arrived at a decision as to the guilt of the accused person Md. Kamrul Islam Dhali who for want of dowry money murdered his wife salma khatun in his residence situated in Jatindranagar, Mirgang, Police station- Shamnagar, District- Satkhira.

Having regard to the facts, circumstances and discussions referred to above before parting, we must observe that the facts, circumstances and nature of the case properly

been evaluated before awarding death sentence by the learned trial judge. The way in which the accused Md. Kamrul Islam Dhali committed murder of his wife Salma Khatun is no doubt shocking conscience of everybody and as such we find nothing to interfere with the impugned judgment and order passed by the trial Court.

In the result, the death reference is confirmed and accepted, send down the lower Court's record with a copy of this judgment at once for necessary action in accordance with law.

**Muhammad Mahbub UI Islam, J:**

I agree.