

District: Shariatpur.

In the Supreme Court of Bangladesh

High Court Division

(Criminal Appellate Jurisdiction)

Present:

Mr. Justice J.B.M. Hassan

And

Mr. Justice Md. Toufiq Inam

Death Reference No. 67 of 2018.

The State

-Versus-

Abdur Razzak Howlader (Absconding),

----- Accused-Convict.

Mr. M. Masud Rana, D.A.G. with

Mrs. Ayasha Akhter, A.A.G,

Mr. Mir Moniruzzaman, A.A.G and

Mr. Md. Tareq Rahman, A.A.G.

----- For the State.

Mrs. Shahana Sayed, Advocate,

--- State-Defence Lawyer for the Accused-Convict.

Heard on: 23.01.2025, 28.01.2025, 29.01.2025,
04.02.2025.

and

Judgment Delivered on: 09.02.2025.

Md. Toufiq Inam, J:

The deceased, Champa Begum, a young woman of 22 years, succumbed to severe burn injuries after being set on fire with kerosene. Allegedly, the sole accused, Abdur Razzak Howlader, committed this heinous act to exact revenge after failing to rape her earlier that evening. Following the incident, her husband, Md. Siddik Sarder, as the informant, initiated legal proceedings by lodging a First Information Report (FIR) with Goshairhat Police Station, Shariatpur, on 07.11.2006.

The case was subsequently put on trial as *Nari-O-Shishu Nirjatan Daman Tribunal Case No. 10 of 2007*. However, the sole accused remained absconding throughout the proceedings and was tried in absentia. To date, he continues to evade arrest, making him a fugitive from law and justice.

On 06.06.2018, the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Shariatpur, found Abdur Razzak Howlader guilty under Sections 4(1) and 9(4)(kha) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) [“the Ain 2000”]. He was sentenced to death and fined Tk. 10,000 under Section 4(1). Additionally, under Section 9(4)(kha), he was sentenced to five years of simple imprisonment along with a fine of Tk. 5,000, with a default sentence of one additional month of simple imprisonment.

Since the Tribunal awarded the death penalty, the matter was referred to this Court for confirmation of the sentence, as required under Section 374 Cr.P.C. It was registered as *Death Reference No. 67 of 2018*, which we have now taken up for hearing and disposal through this judgment.

In the FIR, Md. Siddik Sarder, the victim's husband, stated that he had been living in his father-in-law's house as a live-in son-in-law. On the night of 31.10.2006, at around 8 PM, while his wife was engaged in household work, the accused, Razzak Howlader, entered their house through an open door. Taking advantage of the informant's absence and acting with ill intent, the accused forcibly attempted to rape his wife. A struggle ensued, during which the victim, in an effort to protect herself, grabbed a *boti* (a traditional vegetable and fish cutter) and struck the accused, inflicting a cut injury below his left wrist.

Failing to rape her, the accused fled, threatening, "You will see what I will do to you later." Out of fear and shame, the victim did not disclose the incident to anyone and continued with her nightly routine before going to sleep.

Later that night, at around 10:30 PM, the accused returned, gaining entry through a loosened section of the northern fence. He poured kerosene from a lamp onto the victim and set her on fire. As the flames spread, the victim recognized the accused before he fled through the same gap in the fence. The locked door delayed her escape, and as she screamed for help, neighbors rushed in and managed to get her out of the burning house.

However, she had already lost consciousness. The neighbors rescued the victim and initially admitted her to Goshairhat Hospital. Due to the severity of her injuries, she was later referred to Chandpur Hospital for advanced treatment. Upon receiving the news, the informant rushed to Chandpur Hospital and remained by her side, providing care. Once she regained some strength, she narrated the details of the incident. Since the informant was occupied with her treatment, there was a delay in lodging the FIR.

Champa Begum underwent treatment for 22 days. Fulfilling her last wish, she was brought home to see her relatives. Tragically, she passed away the following day, on 21.11.2006, at around 5:15 AM, due to burn injuries.

An inquest report was prepared on the same day, and her body was sent for autopsy. The post-mortem examination, conducted by PW9, revealed that all parts of her body were anemic and covered in burn scabs. The forensic expert concluded that the cause of death was burn shock and its complications, which were ante-mortem and homicidal in nature.

The police launched an investigation and, after recording witness statements under Section 161 Cr.P.C., submitted Charge-Sheet No. 3 dated 26.01.2007 against the sole accused under Sections 9(4)(kha) and 4(1) of the Ain, 2000. A supplementary charge sheet, Charge-Sheet No. 39 dated 12.05.2007, was later filed under Sections 9(2) (kha) and 4(ka) of the Ain 2000, adding

three more witnesses and further establishing the motive behind the crime.

The Tribunal framed charges against the accused on 30.11.2010 under Sections 9(4)(kha) and 4(1)(2) of the Ain, 2000. However, as the accused remained a fugitive, the charges could not be read to him.

During the trial, the prosecution presented 11 witnesses in support of their case. A state-appointed defence lawyer was engaged for the accused, but no witnesses were produced in his defence. Due to his continued abscondence, the accused could not be examined under Section 342 Cr.P.C.

The defence's version of events suggested that Champa Begum sustained burn injuries while lighting a lamp and that the accused was entirely innocent of the charges. However, the prosecution's evidence, including the victim's dying declaration and medical reports, overwhelmingly contradicted this claim

After the trial, the learned Judge of the Tribunal, by the impugned judgment and order of conviction and sentence dated 06.06.2018, found the sole accused, Abdur Razzak, guilty of the offence. He was sentenced to death along with a fine of Tk. 10,000 under Section 4(1) the Ain 2000. Additionally, he was sentenced to five years of simple imprisonment under Section 9(4)(kha), along with a fine of Tk. 5,000. In default of payment, he was to suffer one additional month of simple imprisonment.

Mr. M. Masud Rana, the learned Deputy Attorney General appearing for the State, at the very outset, submits that the date, time, place, and manner of the incident are consistent with the prosecution testimonies, as well as the inquest and post-mortem reports. From the testimonies, it is evident that the victim herself made statements naming the accused as the perpetrator. The Tribunal, therefore, rightly convicted the accused and sentenced him to capital punishment, which he deserves. Accordingly, he prays for confirmation of the death sentence awarded to the accused.

On the contrary, Mrs. Shahana Sayed, the learned state-appointed defence lawyer, prays for an order of acquittal, arguing that:

- I. There is no eyewitness in the case and the testimonies of PWs are nothing but hearsay evidence, which are not credible to uphold the conviction.
- II. The incident took place on 31.10.2006, whereas the FIR was lodged after a delay of 7 days on 07.11.2006, which creates serious doubt in the prosecution case.
- III. The informant, in the FIR, stated that he was in his own village-Soygaon at the time of the occurrence, but PW1, the father of the victim stated that informant

went out for fishing at the relevant time, this discrepancy creates serious doubt and the same benefit should be credited to the accused's account.

- IV. As the investigation officer (IO) and the informant did not come to the Court to testify in favour of the prosecution, no strong evidence or chain of circumstances has been established by the prosecution, for which the accused can be convicted.
- V. The victim succumbed to death after 22 days of the alleged incident, but she did not make any dying declaration to the proper authority naming the accused as the culprit nor did she make any statement under section 22 of the Ain, 2000.
- VI. The victim was alive for 22 days at hospital and did not die instantly. This shows that the burn injury was not the likely cause of her death. In this connection she relied on the case of *Humayun Matubbar –Vs- State reported in 51 DLR (HCD) P-433*.
- VII. The absconsion of the accused throughout should not be considered as a proof of his guilt. An innocent person may avoid trial out of panic. In this connection she referred to the case the of *Alamgir Hossain & another –Vs- State reported in 22 BLC (AD)155* and

the case of *State –Vs- Abdul Quiyum and others reported in 18 BLC (HCD)556*.

Refuting the arguments advanced by the learned state defence lawyer, the learned DAG submits that:

- (i) Victim made a dying statement in front of the prosecution witnesses, who rushed there after the incident. Of whom PW1 in his cross-examination, PW2, PW4, PW5, PW6 and PW8 in their examinations in-chief categorically deposed that the victim named the accused as responsible and the same dying declaration is a spontaneous one and voluntary in nature. Thus, the conviction can solely be based on this direct evidence. He refers the case of *Alais Miah @ Ilias Miah –Vs- State reported in 20 BLC (AD)341*; the case of *Arshed Ali Mirza –Vs- State reported in 7 BLC (HCD) 265, para-20*.
- (ii) Victim Champa, Begum disclosed the name of the accused to the prosecution witnesses, when the 1st incident of attempted rape took place. Later, on the same night, the accused came back and set her on fire, pouring kerosene in her body, which caused her death and therefore, the capital punishment is the only punishment the accused deserves.

- (iii) The testimonies of the prosecution witnesses, who heard the victim to name the accused as the perpetrator, supports the circumstantial evidence, such as, prior attempted rape and victim's resistance injuring him with *boti* blow, made a chain of circumstances of the event and therefore, the prosecution has successfully proven the case against the accused beyond any shadow of doubt.
- (iv) Though the Informant and the IO did not come to testify as witnesses, the other prosecution witnesses, post-mortem report, fact of fleeing the accused with parents establish the case of the prosecution against the accused. He relies upon the decision of *Abu Taher Chowdhury & others –Vs- State reported in 42 DLR (AD) 253*, wherein it was held that the conviction can be based upon a sole testimony of a single witness. He goes on to cite the case of *Bhagaban Chandra Chakma –Vs- The State reported in 1987 BLD (HCD)351 Para-27* in this connection.
- (v) As the accused fled away with his parents after the incident and never appeared in court or trial, it gives a circumstantial proof of his guilt.

Now, let us discuss the prosecution evidence. PW1 Mohammad Ali, the father of the victim, deposes that on the night of

31.10.2006, at around 8 PM, the accused, Razzak Howlader, entered his house while he and his family were away in Hizla, Barishal, attending his brother-in-law's wedding. His daughter, Champa, and her husband were at home. After leaving his daughter at home, his son-in-law went fishing. At the time of the incident, Champa was alone. The accused entered the house and attempted to rape her. In an effort to protect herself, she struck the accused with a *boti* (machete), injuring his wrist. The accused then threatened his daughter and left. At around 10:30 PM that night, the accused returned, loosened the bamboo fence, crawled inside through the gap, poured kerosene from a lamp onto her, and set her on fire. The flames spread across her body, causing severe burn injuries. The accused fled through the same gap in the fence. When his daughter screamed for help, his father, mother, and sister, who were in the neighboring room, rushed to put out the fire. His daughter eventually lost consciousness. They took her to Goshairhat Hospital and later admitted her to Chandpur Sadar Hospital for treatment. She was then referred to Dhaka Medical College Hospital, where her condition gradually worsened. After 20 days, she was brought home according to her last wish. The day after her return, she passed away.

During his cross-examination, he states that Razzak's house was located 6-7 houses away. He denies any prior dispute between the families. He further states that he did not witness the incident himself but only knew what his daughter told him.

PW2 Ahmmad Ali, the victim's uncle, deposes that on the night of the incident, Champa was alone at home. Razzak entered and attempted to rape her. In an attempt to protect herself, Champa struck Razzak with a *boti*, injuring his wrist. While leaving, the accused threatened to take revenge. At around 10:30 PM, Razzak re-entered the house through the gap in the fence. He poured kerosene from the lamp onto Champa and set her on fire. In the light of the fire, Champa recognized the accused and later revealed his identity. Hearing her screams, locals rushed in and poured water on her. He further states that she was first taken to Goshairhat Hospital, then to Chandpur Hospital, and later to Dhaka Medical College Hospital for advanced treatment. As her condition deteriorated, she wished to return home. The next day, she passed away. They informed the police, who arrived and prepared an inquest report, in which he signed.

During cross-examination, PW2 states that the first incident occurred around 8 PM and the second incident at around 10 PM. Hearing the commotion, he rushed to the scene and saw Siraj, Siraj's wife, and his mother pouring water on Champa. He further states that they had no prior enmity with the accused.

PW3 Maksuda Begum deposes that Champa was lying in her room when, at around 8 PM, Razzak entered and attempted to violate her honor. Champa defended herself by attacking Razzak with a *boti*. Injured, Razzak threatened her and left the scene. Later, at around 10:30 PM, he returned to take revenge. He poured kerosene from a lamp onto Champa's body and set her on

fire. Her entire body was engulfed in flames. Hearing her screams, they rushed to the scene and poured water on her to extinguish the fire. He further states that at the time of the incident, Champa was alone at home.

PW4 Azizul Dhali states that the incident occurred nine years ago. While he was sitting at home after finishing the *Esha* prayer, he suddenly heard commotion from the victim's house. He rushed to the scene and found Champa engulfed in flames. He instructed the women present to remove her burning clothes and pour water on her. After extinguishing the fire, they asked Champa what had happened. She said that Razzak had tried to violate her honor earlier, and when she resisted and attacked him, he later returned and set her on fire.

PW5 Farida Begum, the victim's mother, deposes that she was at her parents' house at the time. The victim was alone at home. At around 8 PM, Razzak tried to rape her. Champa fought back with a *boti*, causing him to flee. Later, at around 10 PM, Razzak returned, poured kerosene on her, and set her on fire. She was taken to Goshairhat Hospital, then Chandpur Hospital, and later to Dhaka Medical College Hospital. Her daughter, knowing she would not survive, requested to return home. There, she collapsed and passed away. She also reveals that her daughter was seven months pregnant at the time.

During cross-examination, she states that her daughter died 22 days after the incident. She was conscious and able to speak. She

did not witness the incident herself but learned about it from her daughter. She denies the defense's suggestion that the accused did not set her daughter on fire or that her daughter died due to an accident involving a lamp.

PW6 Ismail Soyal deposes that he heard Champa's screams and rushed outside. Being an adjacent neighbor, he saw flames on her body and helped pour water to extinguish the fire. When asked what had happened, Champa stated that Razzak had tried to rape her, and when she fought back, he later returned and set her on fire.

PW7 Shiraj Miah states that at around 8 PM on the day of the incident, Razzak attempted to rape Champa in her husband Siddik's absence. Champa resisted and struck Razzak's left elbow with a *boti*, causing him to flee while making threats. Later, at around 10:30 PM, while Champa was sleeping, Razzak entered the room through the gap in the fence, poured kerosene from the lamp, and set her on fire, causing severe injuries.

During cross-examination, PW7 states that he first went to the scene at 8 PM when Champa struck Razzak. He stayed there for half an hour. Later, at around 10 PM, he heard Champa's screams and rushed to the scene again. He denies the defense's suggestion that Champa sustained burn injuries from lighting the lamp herself.

PW8 Akkas Ali deposes that at around 8 PM, Razzak attempted to rape Champa, but she injured him with a *boti*. Razzak fled, threatening her. At around 10:30 PM, he returned, entered the room, poured kerosene from the lamp, and set her on fire. In the light of the flames, Champa saw Razzak. She suffered severe injuries and later named Razzak as the perpetrator.

PW9 Dr. Abdur Jobber Howlader, who conducted the autopsy, deposes that he examined Champa, aged 22 years, on 21.11.2006. He found severe burn injuries on her body, including the upper chest, middle of the thigh, both forearms, and hands. The dissected body was found to be anemic with burnt scabs. He opined that the cause of death was burn shock and its complications, which resulted from the aforementioned burn injuries. He further stated that the injuries were ante-mortem and homicidal in nature. During his cross-examination, he stated that the percentage of burn injuries could not be mentioned as there was no such column in the report.

PW10 A. Khalek Kazi states that the victim was married and pregnant. The accused entered her room intending to violate her honour, but the victim struck him with a *boti*, causing him to flee. At around 10.30 PM, the accused returned and set the victim on fire by pouring kerosene over her. Upon hearing her screams, the neighbors rushed to the scene. She was taken to Goshairhat Hospital, then to Chandpur Hospital, and later to Dhaka Medical College Hospital. As her condition deteriorated,

she was taken back home according to her last wish, where she passed away.

PW11 Sekandar Ali alias Sekandar Bepari deposes that at around 8.30 PM, Razzak entered the informant's house intending to violate Champa. In response, she struck him on the elbow with a *boti*, causing him to flee. Later, at around 2 o'clock, he returned and set her on fire by pouring kerosene. The victim was taken to Dhaka Medical College Hospital. As her burns were not healing, she was eventually taken back home according to her last wish. PW11 also states that he signed the inquest report.

For a close scrutiny of the prosecution testimonies, the following statements should be quoted for consequence:

i) PW1 in his cross-examination states that “মায় ঘর ছিল। ঘটনা দেখি নাই। মেয়ে যা বল।”

ii) PW2 in his examination in chief states that “রাত ১০.৩০ এর দিকে বেড়া ফাঁক করে বেড়ার নীচ দিয়ে রাজ্জাক ঘরে ঢুকে কুপি বাতির তেল ঢেলে চম্পার গায়ে আগুন দেয়। চম্পার সারা শরীর দগ্ধ হয়। আগুনের আলোতে চম্পা আসামীর চিন্তে পালিয়ে চম্পা পলায়।”

iii) PW4 in his examination in chief states that “আগুন নেভানোর পর জিজ্ঞেস করলে জানায় রাজ্জাক এসে ইজ্জত মারতে চায় কিছুক্ষণ আগে। কোপ দেয়, পরে এসে এই আগুন লাগায়।”

iv) PW5 in his cross-examination states that “ঘটনার ২২ দিন পর আমার মেয়ে মারা যায় আমার বাড়ীতে। মেয়ে কথা বলতে পারত। ঘটনা আমি কিছু দেখি নাই। মেয়ে দেখে, মেয়ে বল।”

v) PW6 in his examination-in-chief states that “দাঁখি চম্পার গায়ে আগুন। আগুন নেভাই। নিভিয়ে জিজ্ঞেস করলে বলে রাজ্জাক আগে এসে ইজ্জত মারতে চাইলে চম্পা কোপ দেয়। পরে আবার আসে, এসি কেরোসিন ঢেলে গায়ে আগুন লাগিয়ে দেয়। চম্পার মুখ খেঁকিই শুন।”

vi) PW8 in his chief states that “রাত ১০.৩০ টার দিকি আবার ঘরির বেড়া ফাঁক করে ঢুকে কুপিবাতির কেরোসিন চম্পার কাপড়ে ঢেলে দিয়ে আগুন লাগায়। আলোতে চম্পা তাকে দেখে ফেলে, রাজ্জাক পালিয়ে যায়। চম্পা গুরুতর আহত হয়। আমরাও যাই চিৎকার শুনে। তখন চম্পা নাম বলে রাজ্জাকের।”

From the above quoted testimonies of PW1, PW2, PW4, PW5, PW6, and PW8, it is evident that the victim made a dying statement to them. This raises the question of whether her statement to these witnesses qualifies as a dying declaration under the law.

The term “*Dying Declaration*” is not explicitly defined in the Evidence Act of 1872. However, the principle underlying it is enshrined in Section 32(1) of the Act. This provision states that when a person, in a state of apprehension of death due to physical condition, injuries, or other circumstances, makes a statement regarding the cause of death, such a statement-whether verbal, written, or recorded- is admissible as evidence under Section 32(1) of the Evidence Act. A dying declaration is, therefore, the final account of the deceased concerning the circumstances leading to his/her death.

A dying declaration can be either written or oral. It is not always necessary for it to be recorded in accordance with the provisions of Chapter XXV of the Cr.P.C. If a dying declaration is found to be free from suspicion and deemed truthful, it can serve as the sole basis for conviction. As held in *PLD 1967 Pesh-274*, the key criteria for assessing the reliability of a dying declaration are:

1. Whether it appears intrinsically credible.
2. Whether there is no possibility of error in the victim identifying or naming the perpetrator.
3. Whether it is free from external influence and consistent with other evidence and circumstances of the case.

A dying declaration, when found free from suspicion and corroborated by circumstances, is sufficient to establish guilt without further corroboration. It does not necessarily have to be written or recorded by a magistrate, doctor, or official witness; an oral statement made to credible witnesses can also qualify as a valid dying declaration. However, its admissibility and evidentiary value depend on truthfulness, spontaneity, and consistency with other evidence.

Hence, in order to evaluate a dying declaration, the court must carefully consider: i) Whether the victim was physically capable of making the statement. ii) Whether the witnesses who heard the declaration did so firsthand. iii) Whether the victim correctly identified and named the accused. iv) Whether the victim had the opportunity to recognize the perpetrator.

The evidentiary value of a dying declaration depends on the facts and circumstances under which it was made. Unlike English law, in which a person must be under the immediate expectation of death for their statement to be admissible, our law does not impose this requirement. However, the statement must pertain to the cause of the maker's death. Reference may be made to *Alais Miah v. State*, reported in 20 BLC (AD) 341.

In this case, from the testimonies of PW1, PW2, PW4, PW5, PW6, and PW8, who heard the deceased, Champa Begum, make her oral dying statement- it is clear that she explicitly named the accused, Razzak, as the perpetrator. Although the statement was made orally, it was spontaneous and given immediately after both incidents occurred on the same day. A dying declaration made to relatives and neighbors can be deemed reliable if the witnesses are credible. The deceased's statement, being her last words regarding the cause of her death, is admissible as a dying declaration and requires no further corroboration if found credible and truthful.

Now, let us examine whether the deceased's oral statement to the witnesses qualifies as a credible and reliable dying declaration. PW1, PW2, PW4, PW5, PW6, and PW8 categorically stated that they heard the victim naming Razzak as the assailant. She made this statement when she was on the brink of death, in direct reference to the cause of her demise:

a) A dying person is unlikely to lie.

- b) The victim survived for 22 days but consistently named Razzak to multiple witnesses before her death, strengthening the reliability of her statement.
- c) In addition to her relatives, multiple independent witnesses also heard the victim naming Razzak as the person who set her on fire. This eliminates the possibility of misidentification or incorrect attribution.
- d) The consistency of the victim's statement across multiple witnesses reduces the likelihood of fabrication.
- e) Had the victim falsely accused someone, contradictions would likely have emerged in the testimonies of different witnesses.
- f) The victim made her statement spontaneously at both instances on the same day, without any apparent prompting or external influence.

The victim consistently named the accused, Razzak, as the perpetrator before multiple witnesses. There is no material contradiction in the testimonies of those who heard her statement, and no evidence suggests any motive for fabrication. As such, the deceased's oral statement qualifies as a valid and reliable dying declaration under Section 32 of the Evidence Act, 1872, carrying significant probative value in determining the culpability of the accused. Those compelling reasons support the credibility and truthfulness of her statement.

In view of the foregoing analysis, it is evident that the dying declaration made by the deceased, Champa Begum, is truthful,

credible, and legally admissible under Section 32 of the Evidence Act, 1872.

Next, the learned defence counsel argues that since the Investigating Officer (IO) and the Informant did not testify in court, the prosecution's case is automatically weakened. However, the absence of these witnesses does not necessarily invalidate the prosecution's case if other strong and credible evidence, such as a dying declaration, is corroborated.

In this regard, we hold that in the absence of any contradiction highlighted by the defence between the witnesses' testimonies in court and their statements recorded under Section 161 Cr.P.C., the non-examination of IO did not materially affect the prosecution's case. The reasons are:

1. No Contradiction Raised by Defence- The IO's role is investigative, not judicial. The primary purpose of examining the IO is to verify contradictions between a witness's statement under Section 161 Cr.P.C. and their testimony in court. However, since the defence did not raise any material contradictions, the IO's testimony was unnecessary. In the absence of such contradictions, the non-examination of the IO does not vitiate the trial.
2. Independent Witnesses Establish the Dying Declaration- The prosecution's case rests primarily on the dying declaration, a well-recognized and admissible form of

evidence. The Apex Court has consistently held that an oral dying declaration made to credible witnesses can form the basis of a conviction if it is free from suspicion and corroborated by other evidence. Since independent witnesses confirm the dying declaration, the absence of the IO's deposition does not weaken the prosecution's case.

3. No Prejudice Caused to the Defence- The defence neither raised contradictions nor suggested any impropriety in the investigation. Therefore, the accused cannot claim prejudice due to the IO's non-examination. The burden lies on the defence to demonstrate that such an omission led to a miscarriage of justice.

Non-Examination of the Informant

The informant, victim's husband is not a direct witness to the incident. An informant is merely a formal witness, similar to other prosecution witnesses. Since the prosecution's case is based on the dying declaration, which has been proved by independent witnesses, the non-examination of the informant does not at all affect the case. A trial cannot be vitiated merely because certain witnesses were not examined, unless it is shown that their absence caused actual prejudice to the accused.

Moreover, the prosecution is not required to examine all witnesses cited in the charge sheet. Section 134 of the Evidence Act does not prescribe a specific number of witnesses required to

prove a fact. Even a single credible witness can be sufficient for conviction. In *Abu Taher Chowdhury & Others v. State*, reported in 42 DLR (AD) 253, the Apex Court held that a conviction can be based on the testimony of a single witness if found credible. Similarly, in *Ezahar Sepai v. State*, reported in *BCR 1987 HCD 220*, it was held that non-examination of witnesses who were not eyewitnesses does not warrant an adverse inference against the prosecution under Section 114(g) of the Evidence Act, 1872.

A close analysis of the evidence on record establishes the date, time, and manner of the incident. The consistent testimonies of prosecution witnesses regarding the dying declaration, coupled with circumstantial evidence, form an unbroken chain leading to the sole accused, Razzak. The deceased survived for 22 days with full consciousness and was therefore capable of naming her assailant. Deceased's dying declaration, reinforced by the inquest report and post-mortem report, unequivocally establishes the culpability of the accused.

Regard being had to above, the case of the prosecution rests upon the following evidence:

i) **Oral Dying Declaration:** The deceased, Champa, made an oral dying declaration to PW1, PW2, PW4, PW5, PW6, and PW8, all of whom testified that she explicitly named Razzak as the sole perpetrator.

ii) **Medical Evidence:** PW9, Dr. Abdur Jabber Howlader, who conducted the autopsy, deposed that he examined the deceased Champa on 21.11.2006 and found extensive burn injuries on her body, upper chest, middle of the thigh, both forearms, and hands. The dissected body was found anemic, with burnt scabs. He conclusively opined that the cause of death was burn shock and its complications, resulting from the aforementioned ante-mortem and homicidal burn injuries.

iii) **Circumstantial Evidence:** Firstly, during the initial incident at 8 PM, the deceased, in an attempt to protect herself, inflicted a cut injury below Razzak's left wrist using a *boti*, a traditional cutting instrument. Following his failed attempt to rape her, the accused left the scene, issuing a clear threat. Later, at around 10.30 PM, the accused returned, removed the fence, crawled inside, poured kerosene on the deceased's body, and set her on fire. His actions were driven by the grudge he harbored after failing to rape her earlier that day. He then fled the scene through the same gap in the fence.

Further strengthening the case against Razzak is his continuous abscondence. Since the incident, Razzak has deliberately evaded from law and remained in hiding, making him a fugitive from justice. His failure to surrender has led to his trial in absentia, further reinforcing the inference of guilt. His immediate flight, subsequent trial in absentia, and ongoing evasion constitute strong incriminating circumstances that corroborate his involvement in the crime. In this regard, reliance may be placed

on *State v. Saidul Huq*, reported in 8 BLC (2003) 132, which supports the principle that an accused's flight and continued evasion can serve as compelling circumstantial evidence of guilt.

In light of the prosecution evidence, the arguments of both parties, and the discussion above, we conclude that the prosecution has proven the case beyond any shadow of doubt against the sole absconding accused, Razzak. Accordingly, we find no reason to interfere with the decision of the learned Tribunal regarding his guilt under Sections 4(1) and 9(4)(kha) of the Ain, 2000.

However, considering that the accused has no prior criminal record in the charge sheet, we deem it just and appropriate to impose a sentence of life imprisonment instead of the death penalty.

Consequently:

1. Death Reference No. 67 of 2018 concerning the absconding convict Abdur Razzak Howlader, son of Lalmia Howlader, of Village-Charmajari, Police Station-Gosairhat, District-Shariatpur, is rejected. The death sentence awarded by the Tribunal is hereby **commuted to imprisonment for life**, along with a fine of Taka 10,000 (ten thousand), failing which the convict shall undergo an additional one (1) month of simple imprisonment under Section 4(1) of the Ain, 2000.

2. The sentence of simple imprisonment for five (5) years, with a fine of Taka 5,000 (five thousand), in default of which the convict shall undergo one (1) month of additional simple imprisonment under Section 9(4)(Kha) of the Ain, 2000, as awarded by the Tribunal, is hereby upheld. Both sentences 1 and 2 shall run concurrently.
3. The concerned authority is directed to secure the arrest of the absconding convict, Abdur Razzak Howlader, and ensure his imprisonment in accordance with this judgment.

The Office is directed to send down the records together with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

J.B.M. Hassan, J:

I agree.

(Justice J.B.M. Hassan)

Sayed. B.O.