

Present:

Mr. Justice Zafar Ahmed
And
Mr. Justice Shathika Hossain

Death Reference No. 68 of 2018
with
Criminal Appeal No. 6884 of 2018
with
Jail Appeal No. 197 of 2018

The State

-Versus-

1. Parvez Alam Sumon

...condemned-prisoner

2. Hossain Ahmed @ Manik (absconding)

...condemned-convict

Mr. Al Amin Siddiqui, with

Mr. Mir Moniruzzaman, with

Mr. Md. Solaiman Howlader, with

Mr. Md. Mijanur Rahman, with

Mr. Md. Aminul Islam, AAGs

.....For the State

Mr. Hafizur Rahman Khan, Advocate,

...State Defence Lawyer for condemned-convict Hossain
 Ahmed @ Manik (absconding)

Mr. Mohammad Shishir Manir, Senior
 Advocate, with

Mr. Md. Ahsanullah, with

Mr. Altaf Hossen Amani, with

Mr. Muhammad Zainul Abedin, with

Mr. Abdullah Sadiq, Advocates

...For the condemned prisoner Parvez Alam Sumon

Heard on: 23.04.2026, 30.04.2026, 12.08.2026,
13.08.2026, 16.08.2026 and 17.08.2026

Judgment on: 17.08.2026

Zafar Ahmed, J.

1. The instant death reference under Section 374 of the Code of Criminal Procedure, 1898 (in short, the “Cr.P.C.”) arises out of

the judgment and order of conviction and sentence dated 11.06.2018 passed in Sessions Case No.1985 of 2016 arising out of G.R. No. 39 of 2014, Sylhet Dakhin Surma Police Station Case No. 8 dated 13.03.2014 by the learned Metropolitan Sessions Judge, Sylhet convicting **Parvez Alam Sumon** and **Hossain Ahmed @ Manik** (absconding) under Table 1(Kha) appended to Section 19(1) of the মাদকদ্রব্য নিয়ন্ত্রণ আইন, ১৯৯০ (Narcotics Control Act, 1990) and sentencing them to death as well as a fine of Tk. 10,000/- each.

2. Condemned prisoner Parvez Alam Sumon filed Jail Appeal No. 197 of 2018. He also filed Criminal Appeal No. 6884 of 2018. The death reference, Jail Appeal and the Criminal Appeal are heard together and disposed of by this single judgment. Convict Hossain Ahmed @ Manik was present before the Court during the trial. During arguments, Manik absconded. Till date, he is absconding.
3. Md. Mizanur Rahman, Assistant Revenue Officer, Foreign Postal Customs Unit, Sylhet (PW13) is the informant of the case. It is stated in the First Information Report (FIR) that the informant party, at their office, received 4 parcels from

Pakistan through the Postal Department. No declaration was found on those parcels. On the top of the parcels, the names of (1) Zakir, (2) Goural, (3) Babul, and (4) Zamil, along with their addresses and mobile phone numbers, were written as recipients of the parcels.

4. On 09.03.2014, the parcels were opened at the office of the Foreign Postal Customs Unit, Sylhet. 442 mini polypacks containing a total of 7.95 kgs of suspicious-looking powder were found. Samples of the powder were sent for chemical examination. On 12.03.2014, the chemical examination report was obtained, wherein it was opined that the samples contained heroin. Thereafter, the FIR was lodged on 13.03.2014 against Zakir, Goural, Babul, and Zamil under Section 25B of the Special Powers Act, 1974 read with the relevant section of the Customs Act, 1969.
5. During the course of investigation, the convict Manik was arrested. He made a judicial confession. Md. Jamsed Alam, an Inspector of Police (PW29), who is the 5th Investigating Officer (I.O.) of the case, submitted the charge-sheet dated 02.11.2015 against the convicts Parvez Alam Sumon and

Manik under Table 1(Kha) appended to Section 19(1) of the Narcotics Control Act, 1990.

6. Parvez Alam Sumon and Manik were implicated in the charge-sheet based on the seizure list, chemical examination report, confessional statement of Manik, CDR (Call Detail Record) of mobile phones, and other evidence. The FIR named four accused persons, and another were dropped from the charge-sheet. Parvez Alam Sumon was shown arrested in the case on 20.09.2016.
7. Charge was framed against Parvez Alam Sumon and Manik on 22.11.2016 under Table 1(Kha) appended to Section 19(1) of the Narcotics Control Act, to which they pleaded not guilty.
8. The prosecution examined 34 witnesses. They were cross-examined. The convicts were examined under Section 342 of the Cr.P.C. The defence did not examine any witness.
9. The defence case is that the accused are innocent. They did not commit any offence as alleged by the prosecution.
10. The Narcotics Control Act, 1990 has been repealed by the Narcotics Control Act, 2018. Despite the repeal, the Act, 1990

shall apply to the appeal by virtue of the savings clause contained in Section 69 of the Act, 2018.

11. Heroin is a prohibited narcotic under Section 19 of the Narcotics Control Act 1990. Section 19 provides penalty for breach of Section 9. Section 9(1) is relevant in the case. Section 9(1) states:

“৯।(১) এ্যালকোহল ব্যতীত অন্য কোন মাদকদ্রব্যের চাষাবাদ, উৎপাদন, প্রক্রিয়াজাতকরণ, বহন, পরিবহন, আমদানী, রপ্তানী, সরবরাহ, ক্রয়, বিক্রয়, ধারণ, সংরক্ষণ, গুদামজাতকরণ, প্রদর্শন প্রয়োগ ও ব্যবহার করা যাইবে না, অথবা এতদুদ্দেশ্যে কোন প্রচেষ্টা বা উদ্যোগ গ্রহণ, অর্থ বিনিয়োগ কিংবা কোন প্রতিষ্ঠান স্থাপন, পরিচালনা বা উহার পৃষ্ঠপোষকতা করা যাইবে না”।

12. The learned defence Counsel, at the outset, draws our attention to the charge. The relevant portions of the charge are reproduced below:

“এতদ্বারা আপনি আসামী পারভেজ আলম সুমন ও হোসেন আহমদ @ মানিককে, নিম্ন লিখিতরূপে অভিযুক্ত করিতেছি যে, বিগত ০৯-০৩-২০১৪ খ্রিঃ তারিখ দুপুর ০১.০০ ঘটিকায় অত্র মামলার বাদীর গোপন সংবাদের ভিত্তিতে সিলেট জেলার দঃ সুরমা থানাধীন বৈদেশিক ডাকঘর শুল্ক ইউনিট সিলেট এর কার্যালয়ের সামনে পাকা রাস্তার উপর সজ্জীয় ফোর্স সহ উপস্থিত হইয়া ০৪ টি পার্শ্বল এর ভিতর (৮+১০+১০+১০) = ৩৮টি কাপড়ের ব্যাগ রয়েছে। ০৪টি ব্যাগের ভিতরে ৪৪২ টি মিনি পলিপ্যাক ৭.৯৫ কেজি পাউডার জাতীয় দ্রব্য উদ্ধারপূর্বক জব্দ করেন যাহা আপনি অবৈধভাবে বিক্রয়ের উদ্দেশ্যে নিজ দখল হেফাজতে রাখিয়াছিলেন”।

13. The trial Court observed in the judgment, “উপরের আলোচনা থেকে

ইহা প্রতীয়মান হয় যে, আসামী হোসেন আহমদ @ মানিক এবং আসামী পারভেজ আলম সুমন এর দখল ও নিয়ন্ত্রণ থেকে ৮.৪৫ কেজি হেরোইন বিগত ০৯/০৩/১৪ খ্রি. তারিখে দুপুর ১.০০ ঘটিকায় উদ্ধার হয়েছে মর্মে সন্দেহাতীতভাবে প্রমাণিত হয়েছে”.

Learned defence Counsels submit that according to the FIR, the place of occurrence is the “Office of the Foreign Postal Customs Unit, Sylhet”, whereas, it is stated in the charge that the place of occurrence is the “pucca road situated in front of the Office of the Foreign Postal Customs Unit, Sylhet”.

14. Learned defence Counsel next points out that the charge mentions recovery of 7.95 kgs of “powder-like articles”. The FIR mentions about 7.95 kgs of heroin, which is corroborated by PW13 (informant). But PWs 1, 3-5 mentioned about 8.45 kgs of heroin, PWs 6-8 mentioned about 8.95 kgs of heroin, and PWs 9-10 mentioned about approximately 9 kgs of heroin. The seizure list (ext. 1) mentions about 8.45 kgs of heroin, which has been reflected in the judgment. In this regard, we note that the difference as to the quantum of heroin recovered from the parcels will not have any bearing on the outcome of

the case. The reason would be unfolded in the later part of the judgment.

15. Learned defence Counsel lastly submits that according to the charge, the convicts kept the “পাউডার জাতীয় দ্রব্য” in their possession whereas there is no allegation or *iota* of evidence whatsoever against them that they kept the articles in their control and possession. This factual aspect is also reflected in the judgment passed by the trial Court, wherein it is observed, “উপস্থাপিত সাক্ষ্য পর্যালোচনায় দেখা যায় যে, যখন জব্দকৃত হেরোইন উদ্ধার ও জব্দ করা হয় তখন আসামী দুইজনের কেহই ঘটনাস্থলে উপস্থিত ছিল না। যে পার্সেলসমূহ পরীক্ষা করে উক্ত হেরোইন উদ্ধার করা হয়েছে, সে পার্সেলের প্রাপকের ঠিকানায় কোন আসামীরই নাম নেই”. The learned defence Counsel argues that the charge was grossly defective and as such the conviction of the accused for possession and control of the heroin cannot be sustained.
16. The learned Assistant Attorney General (AAG) refers to Section 537 of the Cr.P.C. and submits that the defect in the charge cannot be a ground for setting aside the conviction.
17. Section 537 provides that a finding or sentence passed by a competent Court shall not be reversed or altered on appeal on

account of any error, omission or irregularity in the charge. Explanation to Section 537 states that in determining whether any error, omission or irregularity in any proceeding has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

18. The learned AAG frankly concedes that the instant case is not a case of actual and physical control and possession of heroin; rather, it is a case of heroin trafficking through importation by the convicts, which has been proved beyond reasonable doubt. *Per contra*, learned defence Counsel argues that there is no *iota* of evidence to connect the convicts with the importation of heroin as alleged by the learned AAG.
19. Out of 34 PWs, 5 PWs were tendered. 12 PWs were employees of the Postal Department. 7 PWs were employees of the Customs Department. 7 PWs were from the Police Department. 1 PW was the Magistrate who reordered the confessional statement of Manik. 1 PW was the Chemical Examiner, and 1 PW was the seizure list (ext. 6) independent witness.

20. The oral testimony of PW32 (chemical examiner) and the chemical examination report (ext. 8) have established that the recovered articles were heroin. The learned defence Counsels do not dispute it.
21. The informant was examined as PW13. He supported the FIR story in his testimony. He did not mention the names of the convicts. The oral testimony of PW13 establishes that the heroin was imported to Bangladesh from Lahore, Pakistan in four parcels through the Postal Department.
22. PW28 is the 2nd I.O. of the case. He is the star witness. He admitted during cross-examination that he did not arrest the four accused named in the FIR, whose residence and that of Manik are in the same area. PW28 further deposed that Manik was arrested based on mobile phone CDR. However, the CDR was not tendered in evidence.
23. It appears from the seizure list (ext. 6) that on 19.05.2014 at 10.30 pm five mobile phone sets and a black basket with a chain said to be used for carrying heroin were recovered from the house of the convict Manik. The basket in question was not examined by an expert. Five mobile phones and one packet

and foam inside the packet (not black basket) were produced before the Court and were marked as material ext. I series. In this regard, we note that four mobile phone numbers of the recipients written on the parcels containing heroin as stated in the FIR (recipients were dropped from the charge-sheet) and five mobile phone numbers recovered from Manik's house are different. Neither the recipients nor their mobile phone numbers were examined by the police.

24. Learned AAG and the defence Counsels admit that the entire prosecution case revolves around the confessional statement of Manik. Learned AAG submits that the confessional statement of Manik is inculpatory and the same is true and was made voluntarily. Learned defence Counsels, on the other hand, submit that the confession is exculpatory; the same was neither true nor voluntarily made.

25. The relevant portions of Manik's confessional statement are reproduced below:

“... আমার আপন ভাগিনা পারভেজ আলম সুমন।... সে বিগত ১৫ বৎসর যাবৎ সপরিবারে লন্ডনে থাকে। আমি আমার পরিবার পরিজন নিয়ে আমার ভাগিনার দেশের বাড়িতে থাকি এবং তার সম্পত্তি দেখাশুনা করি। সুমন প্রায়ই দেশে আসে। গত ডিসেম্বর মাসে সুমন আমাকে তার নাম্বার "০০৪৪৭৪৫৪১৮২২২৪" থেকে আমার

মোবাইল নম্বর ০১৭১১-৯১০০৯৬ [seized vide seizure list (ext. 6)] এ ফোন দেয় এবং আমাকে দেশের এক ব্যক্তির মোবাইল নম্বর দিয়ে বলে ঐ ব্যক্তির সাথে যোগাযোগ করতে। সুমন আরো বলে ঐ ব্যক্তির সাথে যোগাযোগ করলে ঐ ব্যক্তি আমাকে একটি প্যাকেট দিবে। সুমন এর কথামত আমি ঐ ব্যক্তির সহিত ডিসেম্বর মাসেই যোগাযোগ করি মোবাইলএ। ঐ ব্যক্তির নাম আমার জানা নাই। ঐ ব্যক্তি পরদিন সন্ধ্যার সময় সোবহানিঘাট এ অবস্থিত ফুলকলি মিষ্টির দোকানে থাকতে বলে আমাকে। তার কথামত আমি পরদিন সন্ধ্যার সময়ে সেখানে উপস্থিত হই এবং ঐ ব্যক্তি আমাকে টেপ প্যাচানো একটি মাঝারি বক্স আমাকে দেয়। বক্সটি পলিথিনের ব্যাগে ছিল। আমি ব্যাগটি নিয়া বাড়িতে চলে যাই। এর ১০/১৫ দিন পর সুমন দেশে আসে। এই ঘটনার কিছুদিন পূর্বে ঐ একই ব্যক্তি ঐ একই জায়গায় আমার সাথে দেখা করে একই রকমের আরো একটি বক্স আমাকে দেয়। সুমন বাড়িতে আসার পর আমি দুইটি বক্সই তাকে দেই। পরে শুনতে পাই সুমন কোরিয়ার সার্ভিসে উক্ত বক্স দুইটি লন্ডনে পাঠান সে আমারে বলে ব্যবসা করার জন্য লন্ডনে মালের sample পাঠালাম। গত ফেব্রুয়ারী মাসে সুমন লন্ডন যাবার পূর্বে আমাকে বলে সে দেশের চারজনের চারটি ঠিকানা পাকিস্তান পাঠাইছে। তাদের নামে চারটি প্যাকেট আসবে। তারা আমার কাছে মালগুলি দিয়া যাবে। সে আরো বলে যায় মালগুলি আমি পাওয়ার পরে উক্ত চারজনকে কিছু করে টাকা দিতে। সুমন লন্ডনে আমার বরাবরে ৭৮,০০০/- পাঠায় এবং বলে টাকা দিয়ে তাদেরকে অর্থাৎ উক্ত চারজনকে খুশি করে দিতে। সুমন মার্চ মাসের শুরুর দিকে দেশে আসে। আমি তখন তাকে জিজ্ঞাসা করি তোমার না কিছু মাল আসার কথা ছিল? সে বলে উক্ত মাল আর আসবে না, কিছু সমস্যা হয়ে গেছে। সে মার্চের শেষভাগে আবার লন্ডন চলে যায়। সুমনকে উক্ত মালামাল সম্পর্কে জিজ্ঞাসাবাদ করলে সে উন্নতমানের গাঁজা বলিয়া জানায়। ... সুমন আমাকে বিগত ০৮/০৩/১৪ ইং তারিখে জানায় সিলেট foreign post office এর কাস্টমস বিভাগ হইতে প্যাকেটের গায়ে উল্লিখিত মোবাইল নম্বর এ কল দিয়া সুমনকে মাল আনতে যাইতে বলে। সুমন তখনও দেশেই ছিল। ৪টি সীম নাম্বারই সুমনের ছিল। যখন সুমন বুঝতে পেরেছে তার মালগুলি ধরা খাইছে তখন

সে সবগুলো সীম নম্বরই বন্ধ করে ফেলে। সুমন এপ্রিল মাসের ০৪ তারিখ লন্ডন চলে যায়, আর দেশে আসে নাই। ...”.

26. It is recalled that Parvez Alam Sumon was shown arrested in the case after submission of the charge-sheet. His alleged involvement in heroin trafficking through importation came to light when Manik mentioned his name in his confession, wherein he stated that Sumon had been staying in London for the last 15 years. He used to visit Sylhet frequently. In February 2014, Manik left Bangladesh for London. Sumon came to Bangladesh at the beginning of March. He left Bangladesh at the end of March or on 4th April.
27. The 4th I.O. of the case (PW18) deposed that he applied to the Special Police Super Immigration (Airport) for supplying information about Sumon’s overseas travel history and for his arrest. Neither PW18 nor any of the I.O.s deposed anything about the outcome of the request to provide the requisite information.
28. In *Dogdu*, AIR 1977 SC 1759, it was observed that when in a case involving capital punishment the prosecution demands conviction primarily based on confession, the Court must

apply the double tests: (I) whether the confession is perfectly voluntary, and (II) if so, whether it is perfectly true. The ratio declared in *Dogdu* was applied in *Md. Humayun Kabir*, 15 SCOB [2021] AD 76, wherein it was observed that to prove the charge under Section 302 of the Penal Code primarily based on the confession, it is the duty of the Court to ascertain whether the confession was made voluntarily, and if so, whether the same was true and trustworthy. Satisfaction of the Court is a *sine qua non* for the admissibility of the confession in evidence. True and complete disclosure of the offence is the soul of a true confessional statement, and the same has to be consistent with the prosecution case.

29. In *Abdul Wahab & another*, 6 BLD (1986) 390, it was held:

“Confession means admission of certain facts which constitute an offence committed by the maker thereof who is charged with the offence which is the subject matter of the statement. Confession should be directly on the point admitting facts. No statement that contains self-exculpatory matter can amount to confession. Confession must either admit in terms of the offence or at any rate substantially all facts which constitute the offence”.

30. In light of the above-mentioned cases, let us examine Manik's confession. According to the confession, before leaving Bangladesh for London in February, Sumon told Manik that four packets would arrive in Bangladesh from Pakistan. The local recipients would deliver those packets to Manik. Sumon returned to Bangladesh at the beginning of March. When asked by Manik, Sumon said that the goods would not arrive due to some problems. Sumon further said that the goods were high-quality ganja.
31. In the next part of Manik's confession, it is stated that Sumon told Manik on 08.03.2014 that he had received a phone call on the number written on the packet from the Foreign Post Office, Sylhet to collect the packets. PW3 (Supervisor of Postal Department) testified that the Office of the Foreign Postal Department, Sylhet received the parcels on 06.03.20214. 07.03.2014 and 08.03.2014 were Friday and Saturday respectively. The office was closed on those days. The parcels were opened on 09.03.2014 in his presence. PW3 further deposed that before opening the parcels, they did not inform the recipients and the police. PW13 (informant) also deposed

that the recipients were not informed. PWs 4 and 5 (employees of the Postal Department), who were present at the time of opening the parcels, deposed that before opening the parcels, the recipients were not informed and there is no rule to that effect. PW34 (Customs Officer) testified in cross-examination that the names of the recipients were written on the parcels. No notice was given to the recipients by the Customs Department.

32. It is on the face of the record that Manik's confession has neither been corroborated by the PWs on material particulars nor consistent with the prosecution case. Moreover, it is self-contradictory in that Manik stated in the confession that Sumon went to London at the end of March, then again, he said that Sumon went to London on 4th April.
33. Section 30 of the Evidence Act provides that where an accused person confesses his own guilt, and at the same time implicates another person who is jointly tried with him for the same offence, his confession may be taken into consideration against such other person as well as against himself. In *Ibrahim Mollah*, 1987 BLD (AD) 248, it has been held that

when the confessional statement does not implicate the maker, it is not a confession in the eye of law because, from beginning to end, it is nothing but a testimony against the other accused without the maker having involved himself in any part of the commission of the alleged offence.

34. In the instant case, the circumstantial evidence, *e.g.*, Call Detail Record (CDR), which was admittedly obtained by the 2nd I.O. (PW28) and the overseas travel record of Sumon, if any, which was admittedly applied for by the 4th I.O. (PW18), was not tendered in evidence to lend support to the story narrated in Manik's confession. Manik did not admit guilt in his confession in respect of the offence he was charged with. We have no hesitation in holding that the confession is exculpatory.
35. A question arises as to why Manik made the confession. Was he tutored by the police? Was he under the apprehension that if he did not confess, he would be remanded to police custody? Can the Court infer such apprehension from the attending facts and circumstances of the case, and if such reasonable apprehension does exist, what would be the consequence?

Before looking for the answer, a brief discussion of relevant case law would be fruitful.

36. In *Dipok Kumar Sarker*, 1988 8 BLD (AD) 109, it was held:

“The only objection as to the confession raised before us is that the Magistrate before recording the confession did not inform the appellant that he would not be remanded to police custody even if he did not make any confession. There is no requirement under the law to inform the accused as above. Of course, if a Magistrate has any reason to believe that the accused is apprehensive of the police or that the police might have tortured or prevailed upon him during custody, he may assure him by telling him as aforesaid but that is not to say that if it were not said (in a particular case) the voluntaries of the confession would be in doubt. In the present case the appellant was produced before the Magistrate for recording confession at the earliest possible opportunity, he was arrested in the afternoon of 21.12.84 and produced on the following morning at 10.00 am. It is on record that as a matter of fact the appellant was forwarded to jail custody at 3.00 p.m. after recording of confession. There is no material on record to show distantly that the appellant was in any manner forced by the police to make the confession or that the genuineness of the same was not free from doubt”.

37. In *State vs. Abul Hashem*, 50 DLR (1988) 17, the above-quoted decision reported in 8 BLD (AD) 109 was discussed.

It was held:

“The decision in 8 BLD is distinguishable in this case. In the instant case accused persons were kept in police custody for two days and therefore it was the duty of the Magistrate who recorded their confession to put questions as to how they were treated in the police station, why they were making confession and that if they made a confession or not they would not be remanded to police custody. Further, it is found in the record that the Magistrate did not inform the accused persons that he was not a police officer but a Magistrate. On scrutiny we find in the record that Magistrate sent the accused persons to the police custody after recording their confessional statements. Therefore, we find the Magistrate had no idea or acumen that it was his legal duty to remove the utter inducement and influence of the police completely from the mind of the accused before recording their confession. So, therefore, we hold that the confessions made by the accused cannot be considered either against the maker or against their co-accused”.

38. The cases reported in 8 BLD (AD) 109 and 50 DLR 17 were cited in *State vs. Ali Hossain*, 18 BLD 655, wherein it was held:

“In the instant case convict accused Jamila Khatun was directed by the police in the evening of 8.6.1992 and she was in the police custody for long two days till her confessional statement was recorded by the Magistrate on 10.6.92. But the aforesaid words of assurance were not administered to him by the Magistrate P.W. 15. The said words of assurance though not a Rule of Law as such but were a Rule of prudence. Such assurance or caution are necessary in case of long detention of the accused in police custody before the confessional statement is recorded. ...It is the bounden duty of the recording Magistrate to try to ascertain whether there was any manner of police torture to assure Jamila Khatun that she would not be sent back to police custody whether she made any confession or not in order to remove any apprehension of any torture or influence by the police in police custody. In the absence of such word of assurance or caution we do not consider the confessional statement made by the accused appellant Jamila Khatun true and voluntary and as such, such confessional statement cannot be used against her or against her co-accused. Similar consideration is also applicable in the case of accused appellant Ali Hossain. Ali Hossain was in police custody since the night of 13.6.1992 till 10-30 A.M. on 20.6.1990. Such a prolonged detention in the police custody of Ali Hossain made it all the more necessary for the Magistrate P.W. 15 to assure

him that he would not be sent back to the police custody whether he made confessional statement or not. Absence of such assurance rendered the confessional statement of accused appellant Ali Hossain untrue and not voluntary and as such it cannot be used against him nor against his co-accused”.

39. Manik was arrested on 20.05.2014. It appears from the order dated 20.05.2014 passed by the learned Metropolitan Magistrate, Sylhet that on 20.05.2014, police produced Manik before the learned Magistrate and prayed for 10 days’ police remand. The Magistrate granted 5 days’ remand. On 25.04.2014, the police produced Manik before the Magistrate with a prayer for a further 5 days’ remand. 2 days’ remand was granted. Then the confession was made and recorded on 28.04.2014. After recording the confession, Manik was sent to jail.

40. PW19 is the Magistrate who recorded the confession of Manik. He stated in cross-examination that he did not inform Manik that he would not be remanded to police custody even if he did not make any confession. It appears from the confessional statement (ext. 5) that Manik was not questioned

as to how he was treated during a total consecutive (5+2) =7 days' police remand. The Magistrate did not take any step to remove the apprehension of inducement and influence of the police completely from the mind of Manik.

41. We have already held that Manik's confession was exculpatory. More so, being fortified with the cases reported in AIR 1977 SC 1759, 15 SCOB [2021] AD 76, and 6 BLD (1986) 390 (on point of corroboration by PWs) and 50 DLR 17 and 18 BLD 655 (on point of assurance by Magistrate to remove apprehension), we hold that the confession made by Manik is untrue and not voluntary and as such the same cannot be used against him and the co-accused as per provisions of Section 30 of the Evidence Act.
42. Accused Manik turned into a fugitive by jumping bail. Till date, he has remained absconding. Can it be considered as an indication of his guilty mind and conscience? Learned State defence Counsel refers to some case laws and submits that the act of jumping bail *ipso facto* does not prove a guilty mind. In ***Alamgir Hossain***, 22 BLC (AD) (2017) 155, it was observed that abscondence by itself is not conclusive evidence to infer

either guilt or guilty conscience. It may lend weight to other evidence. In this case, there is no other evidence save Manik's confession, which has already been held to be unreliable. Therefore, no adverse inference can be drawn from Manik's abscondence.

43. In a case like the present one where it is extremely difficult to obtain direct evidence, or there is no direct evidence at all to prove the facts in issue, the prosecution is permitted to adduce indirect, circumstantial or presumptive evidence from which the existence of the given facts can be logically inferred. Circumstantial evidence is not direct to the point in issue but consists of evidence of various other factors which are closely associated with the fact in issue, and taken together they form a chain of circumstances from which the inevitable conclusion can be drawn that the accused are the only perpetrators. To fasten the accused with the crime based on circumstantial evidence, the same must be so strong as to eliminate the possibility of innocence of the accused (*Balai Chandra Sarkar*, 47 DLR 467) or it would exclude any other hypothesis

than that of the guilt of the accused [*Md. Rezaul Huq*, 16 BLD (AD) 261].

44. In drugs and/or narcotics cases, it is not difficult for the prosecution to prove the cases of actual and direct control and possession of the incriminating articles. Difficulties arise in drug trafficking cases which are not cases of actual and direct control and possession. This is a global phenomenon.
45. Mr. Shishir Manir, learned Senior defence Counsel refers to the South African case of *Muholi*, [2006] ZASCA 38 decided by the Supreme Court of Appeal of South Africa, wherein Muholi was convicted on the charge of drug dealing (494.3 grams of heroin) and was sentenced to 12 years' imprisonment. On appeal, the Johannesburg High Court reduced the sentence to a period of imprisonment for 8 years.
46. Relevant facts are that police received a fax informing them that a parcel of drugs was to be routed via London to Ms Muholi. Police collected the parcel from the airport, took it to their office, took photographs of the parcel and opened it. They found baby bath and baby clothes in the parcel. Packets of a substance, subsequently proved to be heroin weighing 494.3

grams, were kept hidden in the parcel. The address of a local parcel handling business was stated on the parcel.

47. The Supreme Court found that there was no evidence as to the importation of drugs by Muholi. The trial Court and the High Court held that circumstantial evidence led to only one inference that Muholi was part of a chain in a drug dealing transaction. The Supreme Court, while setting aside the conviction, held:

“It may be that the accumulation of facts from which the inference of guilt was drawn makes it probable that Muholi was the intended recipient, and knew that the parcel contained heroin. But each of the facts relied upon in order to draw the inference of guilt leads to another reasonable inference. Viewing the circumstantial evidence cumulatively cannot lead to the conclusion that the probabilities add up to proof beyond reasonable doubt. Accordingly, there is no proof beyond reasonable doubt that she performed any act in connection with the collection of heroin”.

48. In the instant case, three important pieces of circumstantial evidence were not led. Firstly, mobile phone numbers of four recipients of the parcels were not examined and no Call Detail Record (CDR) was obtained; secondly, the CDR of Manik’s

five mobile phone numbers was not tendered in evidence although the same was available which draws an adverse presumption against the prosecution as per clause (g) of Section 114 of the Evidence Act, and thirdly, the overseas travel history of the accused Parvez Alam Sumon was not obtained to corroborate Manik's confessional statement although the 4th I.O. (PW18) applied to the concerned authority for the same. Moreover, the named recipients of the parcels were neither arrested nor examined by the police, although the 2nd I.O. (PW28) testified that the houses of the recipients of the parcels and that of the accused Manik are in the same area. We have already discarded the confessional statement of Manik as being untrue, not voluntary and exculpatory. Other than the confession, there is no circumstantial evidence to connect the accused with the offence of heroin dealing. This case is, in fact, a case of no legal evidence. The instant case is a glaring example of a shoddy and clumsy investigation, if not a motivated investigation.

49. In the result, the death reference No. 68 of 2018 is rejected.

Jail Appeal No. 197 of 2018 and Criminal Appeal No. 6884 of 2018 are allowed. The judgment and order of conviction and sentence dated 11.06.2018 passed in Sessions Case No.1985 of 2016 by the learned Metropolitan Sessions Judge, Sylhet is hereby set aside. The accused Parvez Alam Sumon and Hossain Ahmed @ Manik (absconding) are acquitted of the charge. Parvez Alam Sumon be set at liberty at once, if not wanted in connection with any other case. The warrant of arrest of Hossain Ahmed @ Manik (absconding) is recalled and vacated.

Communicate the judgment and order at once.

Shathika Hossain, J.

I agree.