

District: Narayangonj.

**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. 70 of 2018.

The State

-Versus-

Babul Mia, (Absconding)

son of Batan Mia, of Village-Goddardia,

Police Station- Modhukhali, District-Faridpur.

----- Condemned-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. Hasna Begum, Advocate,

--- State-Defence Lawyer for the Convict.

**Heard On: 12.03.2025, 16.03.2025, 17.03.2025 and
18.03.2025.**

And

Judgment Delivered On: 19.03.2025.

Md. Toufiq Inam, J:

Background of the Case:

The deceased, Sakina Khatun, a young woman of 20 years, was allegedly murdered by her husband, Babul, over a dowry demand of 50,000 Taka. On 15/05/2004, at around 9:00 PM, the accused,

Babul stabbed the victim multiple times with a knife, leading to her death.

FIR and Investigation:

Following the incident, her father, PW1 Tamijuddin Bhuiyan, as the informant, initiated legal proceedings by lodging a First Information Report (FIR) under Section 11(ka)/30 of the Nari-O-Shishu Nirjatan Daman Ain 2000 (as amended in 2003) [“the Ain 2000”] with Modhukhali Police Station, Faridpur, on 21.05.2004 against the accused, Babul and others alleging that his daughter was married to the accused two years back. They lived in a rented house near the accused’s job station at Narayangonj. After the marriage, Babul repeatedly pressured his daughter to bring 50,000 Taka as dowry. Due to his inability to provide the money, Babul and his associates often unjustly tortured his daughter.

An inquest report was prepared on the same day. She was examined with the help of the deceased’s grandmother, Amena Begum. Upon inspection, the following injuries were observed on the deceased’s body: (1) One sharp weapon wound in the middle of the chest; (2) Two sharp weapon wounds on the left side above the navel; (3) One sharp weapon wound on the right side of the lower lip; (4) Two sharp weapon wounds on the right side of the neck; (5) One sharp weapon wound on the right side of the forehead; (6) One sharp weapon wound above the wrist of the left hand; (7) Two sharp weapon wounds on the left side of the back; (8) One sharp weapon wound on the right buttock; (9)

One injury mark on the left rib. Additionally, a pipe was inserted into one of the wounds, and another pipe was observed inserted into the anus. Upon questioning the deceased's father, it was revealed that her husband, Babul, had been pressuring her for dowry, and when she refused, on the night of 15.05.2004, at approximately 9:00 PM, Babul, along with his accomplices, confined her inside a room and brutally attacked her with a sharp weapon, inflicting severe and fatal injuries.

The post-mortem examination was done on 21.05.2004, which found multiple stab injuries in different part of her body as mentioned in the inquest report. The average depth of the injuries is 1½ inches except the injury of upper left abdomen which was 2 inches depth. On dissection muscles of left abdomen peritoneum and stomach are penetrated from ant to posteriorly. Thoracic cavity and abdominal cavity are filled with dark fluid. He eventually opined that the cause of death was due to shock and hemorrhage resulting from above mentioned injuries, which was ante-mortem and homicidal in nature. The report was countersigned by the concerned the Civil Surgeon.

PW 5 Mohammad Hossain made a statement under Section 22 of the Nari O Shishu Nirjaton Daman Ain 2000 to the Magistrate 1st Class stating that on 16.05.2004, at approximately 9:45 PM, he was watching TV in his house. His children were also watching TV with him. At that time, a woman stood at the door of his house and started watching TV. He invited her inside to watch

TV, and she came in and sat on his bed while watching. At that moment, his children informed that she was the new wife of Jasim Uddin, a tenant in the neighboring house. Shortly after, a man stood at his door. PW5 invited him inside and asked for his identity. He stated that he was a tenant of another house, named Babul, and claimed that the woman was his first wife. Realizing the situation, PW5 asked them both to leave the house. At that moment, Babul said to the woman, “You are my first wife. My heart is breaking for you.” Babul then grabbed the woman’s right hand, but she resisted and told him not to touch her. Suddenly, Babul pulled out a knife. Seeing this, he (PW5) asked the woman to leave the house, but Babul advanced toward him and, at one point, struck him with the knife near his right ear, causing bleeding. His wife and children screamed in fear, and he quickly went to a doctor for treatment. Later, he learned that Babul had stabbed the woman in a neighboring house, causing injuries. She was later admitted to Shubhochcha Clinic in Kanchpur in a critical condition. The statement of PW5 under section 22 of the Ain 2000 runs as under:

“গত ১৬/০৫/২০০৮ ইং তারিখে রাত্রি আনুমানিক ৯.৪৫ টায় আমি আমার বসতঘরে টিভি দেখিতেছিলাম। পাশে আমার ছেলে মেয়েও টিভি দেখিতেছিলো। এমন সময় আমার ঘরে একজন মহিলা দরজার সামনে দাড়িয়ে টিভি দেখিতে থাকে। আমি মহিলাকে ঘরের ভিতরে এসে টিভি দেখার জন্য বলিলে সে ঘরের ভিতরে এসে আমার চৌকির উপর বসে টিভি দেখিতে থাকে। এমন সময় আমার ছেলেমেয়ে জানায় যে, উনি পার্শ্বের বাড়ীর ভাড়াটিয়া জসীম উদ্দিনের নূতন স্ত্রী। অতঃপর একজন লোক আমার বাড়ীর দরজার সামনে দাড়ায়, আমি তাকে ঘরের ভিতরে আসতে বলিলে সে এসে এবং তার পরিচয় জিজ্ঞাসা করিলে সে জানায় আমি অন্য এক বাড়ির ভাড়াটিয়া আমার নাম বাবুল এবং আশুস্বক মহিলা তার ১ম স্ত্রী বলে দাবী করে। অতঃপর আমি

ব্যাপারটি অনুমান করে তাদেরকে আমার ঘর থেকে বের হতে বলি। এমন সময় বাবুল আগন্তুক মহিলাকে বলে যে, তুই আমার জীবনের প্রথম স্ত্রী, তোর জন্য আমার বুকটা ফেটে যাচ্ছে। অতঃপর সে মহিলার ডান হাত ধরে মহিলা তাকে শরীরে স্পর্শ করতে নিষেধ করে। এমন সময় বাবুল একটি ছোড়া বের করে, আমি উপায়ন্তর না দেখে মহিলাকে ঘর থেকে বের হতে বলিলে বাবুল এগিয়ে আসে এবং এক পর্যায়ে আমার ডান কানের পার্শ্বে ছোরার আঘাত লাগে, এতে রক্তক্ষরণ হয়। আমার স্ত্রী ও ছেলে মেয়ে ভয়ে চিৎকার দেয় এবং আমি দ্রুত ডাক্তারের নিকট চলে যাই। পরে জানতে পারি বাবুল সে মহিলাকে পার্শ্ববর্তী বাড়ীতে ছোড়া দিয়া আঘাত করে এবং মহিলা জখম অবস্থায় কাঁচপুর শুভেচ্ছা ক্লিনিকে ভর্তি হয়। এ আমার জবানবন্দী।”

The police of Rupgonj Police Station, Narayanganj launched an investigation and, after recording witnesses statements under Section 161 Cr.P.C., submitted Charge-Sheet No. 181 dated 10.08.2004 against the accused Babul under Section 11(Ka) of the Ain, 2000 and did not send up other accused persons in the charge sheet. The Tribunal framed charges against the accused Babul on 01.08.2005 under Sections 11(Ka) of the Ain, 2000. However, as the accused remained a fugitive, the charge could not be read to him.

Trial Proceedings:

During the trial, the prosecution presented 07 witnesses in support of their case. Due to continued abscondence of the accused-Babul, a state-appointed defence lawyer was engaged for him, but no witness was produced in his defence. The accused could not be examined under Section 342 Cr.P.C. due to his abscondence. The defence's version of events suggested 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.

Tribunal's Conviction and Sentencing:

The case was proceeded on trial as Nari-O-ShishuNirjatan Daman Tribunal Case No. 171 of 2004 under Section 11(Ka) of the Ain 2000. However, since the sole accused remained absconding throughout, he was tried in absentia. To date, he continues to evade arrest, making him a fugitive from law and justice. On 12.06.2018, the learned Judge of the Nari-O-ShishuNirjatan Daman Tribunal, Narayangonj, found Babul Mia guilty under Section 302 of the Penal Code. He was sentenced thereunder to death and fined Tk. 100,000.

Reference For Confirmation of Death:

Since the Tribunal awarded the death penalty, the matter had been referred to this Court for confirmation of the sentence, as required under Section 374 Cr.P.C. It was registered as Death Reference No. 70 of 2018, which we have now taken up for hearing and disposal through this judgment.

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.

Defence Arguments:

Mrs. Hasna Begum, the learned state-appointed defence lawyer, prays for an order of acquittal, arguing that:

1. There is no eyewitness in the case, and the testimonies of prosecution witnesses are nothing but hearsay evidence, which are not credible to uphold the conviction.
2. The incident took place on 15.05.2004, whereas the FIR was lodged after a delay of 7 days on 22.05.2004, which creates serious doubt in the prosecution case.
3. The failure of the prosecution to establish one allegation, demand for dowry, inherently creates serious doubt regarding another charge of murder.
4. As the investigation officer (IO) and the Medical Officer (MO) 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.

5. The victim succumbed to death after 6 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.
6. The victim was alive for 6 days at the hospital and did not die instantly. This shows that the injuries were not the likely cause of her death.
7. Absconsion of the accused throughout should not be considered as proof of his guilt. An innocent person may avoid trial out of panic.

Prosecution Arguments:

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

- I. The victim made a dying statement in front of PW1, who rushed there after the incident, stating that the accused, Babul, had stabbed her and caused severe bleeding injuries. PW1 categorically deposed that the victim named the accused, Babul, and the same dying declaration is spontaneous and voluntary in nature. Thus, the conviction can solely be based on this direct evidence.

- II. The testimonies of the prosecution witnesses, especially PW1 and PW5, support the circumstantial evidence, such as prior demand of dowry and attacking the victim with a knife, which demonstrates premeditation with intent to kill the victim, forming a chain of circumstances of the event. Therefore, the prosecution has successfully proven the case against the accused beyond any shadow of doubt.
- III. Though the IO and the MO did not testify as witnesses, the other prosecution witnesses, statement of PW5 under Section 22 of the Ain 2000, and the fact that the accused fled establish the prosecution's case against the accused.
- IV. As the accused, Babul fled after the incident and never appeared in Court or for trial, it gives circumstantial proof of his guilt.

Prosecution Evidence:

PW1 Tamizuddin Bhuiyan deposes that the accused, Babul, used to demand dowry from his daughter, the victim. His daughter says, "You know my father is a poor man; how will he give the money?" On the date and time of the incident, the accused, Babul, demanded a dowry of 50,000 Taka from his daughter, the victim, Sakina. When his daughter refused to give the dowry, the accused, Babul, stabbed her randomly with a knife, causing severe bleeding injuries. Initially, the local people took his injured daughter to Shubhochcha General Hospital. Then she was

taken to Dhaka Medical, then to Mohakhali Hospital, and from there, she was again referred to Dhaka Medical. Since he is poor, while taking her to Faridpur Hospital, his daughter, the victim, Sakina, passed away. One of the tenants from that house was with him, but he cannot recall the name at this moment. He received the news through a mobile phone from someone and then went to the scene. Later, he brought the dead body home. After that, he went to the police station and filed a complaint regarding the incident. He states that he is illiterate, so he signed the complaint with a thumb impression. His daughter, Sakina, personally told him that the accused, Babul, had stabbed her and caused severe bleeding injuries. The police interrogated him. The accused is not present in the dock today.

During his cross-examination by the defence lawyer, he states that when the accused attacked his daughter, he was not present at the scene. He went there after receiving the news. His daughter lived with her husband in a rented house in Noapara. When the accused injured his daughter in that house, the other tenants took her to a clinic. He denied the suggestion that the accused, Babul, did not attack his daughter on the date of the incident, nor that he is giving false testimony; This is the absolute truth, sir. The accused, Babul, assaulted his daughter for dowry, causing injuries, and due to those injuries, she passed away.

PW2 Atiar Rahman Molla states in his testimony that the incident occurred at night on 15.05.2004. His house is next to the informant's house. Since the marriage of the accused and the victim, he has heard that the accused, Babul, frequently assaulted the victim for dowry. He asked the informant to resolve the matter. He later learned that the accused, Babul, demanded 50,000 Taka as dowry and assaulted the victim with a knife, which led to her death. The body was later brought to the informant's house. He saw the body at that time. The police examined the body and prepared an inquest report. He observed injury marks on various parts of the body, including the abdomen and neck. He identified the submitted inquest report and his signature as Exhibit-1 and 1/1. The accused was not in the dock; however, he would have recognized him if he were present.

During cross-examination by the defence lawyer appointed by the court, he states that he had not been to the accused's house in Rupganj. He was in Faridpur at that time. He saw the victim's body and witnessed the police preparing the inquest report in his presence. He states that they had been hearing for a long time that the accused frequently assaulted the victim for dowry and had discussed settling the matter. He denies the suggestion that he was giving false testimony.

PW3 Abdul Kader states in his testimony that he could not remember the exact date of the incident but estimated it to be around ten years ago. The incident took place at Babul Mia's

house. His house is near the informant's house. They often heard that the accused, Babul, frequently assaulted the victim Sakina for dowry. Later, he learned that Babul killed Sakina with a knife wound. The victim's father, along with the police, brought the body to the informant's house, and he saw the body. The police prepared the inquest report, and he signed it. He identified the submitted inquest report and his signature as Exhibit-2 and 2/1. The police interrogated him. The accused was not in the dock.

During cross-examination by the defence lawyer, he states that he had limited education but could sign his name. He could not recall whether the inquest report had been read to him, as the incident happened ten years ago. He also could not remember the exact moment when his signature was taken. The body was covered with cloth. When suggested that he was providing false testimony, he denied it, stating that he only testified about what he saw and heard.

PW4 Sharifa Akhter states in her testimony that she knew the informant and the accused previously as they lived in her area as tenants. However, she was not aware of the incident. She only heard that the matter had been settled. The defence refrained from cross-examining this witness.

PW5 Mohammad Hossain states that he did not know the informant or the accused personally, as they were not local residents but lived in the area. He heard that the accused was

named Babul Mia and that he lived there with his wife. They used to have disputes, and his wife once said she would not go with him. At one point, Babul stabbed his wife with a knife. During cross-examination by the defence lawyer, this witness stated that he had no financial transactions with the accused. He did not know Babul before the incident. The accused lived two to three yards away from his house. When suggested that his testimony about the accused stabbing his wife was false, he denied it.

PW6 Md. Imtiaz Hossain states in his testimony that he did not know the informant or the accused. He had not heard anything about the incident. He did not know whether the accused assaulted his wife over dowry. The defence refrained from cross-examining this witness. PW7 Abdul Rouf states that the informant and the accused lived in their area as tenants. He did not know them personally. He was unaware of when the victim passed away, as he was not present in the area at that time. The defence refrained from cross-examining this witness.

Evidence Analysis and Findings:

PW1 (Tamizuddin Bhuiyan), the father of the deceased, is a key witness in this case. His testimony is crucial because he asserts that his daughter, Sakina, explicitly told him that the accused, Babul, had stabbed her. This statement, made by Sakina while she was critically injured and undergoing treatment, is a dying declaration under Section 32(1) of the Evidence Act, 1872. The

declaration was made in a situation where Sakina was on the brink of death and identified the cause of her injuries-the stabbing by Babul. The statement is admissible as a dying declaration because it was made spontaneously and directly related to the cause of her death. PW1, a credible witness, attests to the fact that his daughter named the accused while she was still alive, corroborating the fact that Sakina's statement is consistent and truthful. According to PW1, Sakina's statement described her refusal to comply with a dowry demand and the subsequent violent attack by Babul. This context aligns with the dowry dispute motive and supports the prosecution's case.

Testimony of PW2 (Atiar Rahman Moll) is important because it corroborates the account of the domestic violence involving Babul. He states that the accused had frequently assaulted the victim for dowry and that the victim eventually succumbed to the injuries inflicted by Babul during the knife attack. PW2 witnessed the inquest report being prepared and signed it, and he observed injury marks on various parts of the victim's body. This provides additional circumstantial evidence linking Babul to the crime. While PW2 did not witness the actual stabbing, his knowledge of the ongoing dowry dispute between the victim and the accused, coupled with his observation of the victim's body and injuries, supports the narrative of a violent and fatal assault by Babul.

PW3 (Abdul Kader), like PW2, did not directly witness the stabbing but was aware of the frequent dowry-related assaults on the victim. He confirms that Babul killed Sakina with a knife wound. He too signed the inquest report. His testimony is consistent with the testimonies of other witnesses, particularly regarding the nature of the injuries and the victim's struggle with the accused over dowry. PW3's testimony adds further weight to the argument that the accused was known for abusing the victim and that the stabbing incident was a result of ongoing domestic violence.

PW5 (Mohammad Hossain)'s testimony provides additional circumstantial evidence that links Babul to the stabbing of Sakina. He states that he heard about the disputes between the accused and the victim over dowry and witnessed the accused attacking his wife with a knife. Although PW5 does not describe the full extent of the attack, his knowledge of the abusive relationship and the violence further establishes Babul's role in the crime. While PW5 may not have directly seen the murder, his statement regarding the knife attack and the conflict between the accused and the victim strengthens the prosecution's case. As the accused was carrying a knife, the attack on victim appears to a premeditated and intentional one. However, the PW4, PW6 and PW7 had no specific knowledge of the incident or the accused.

Dying Declaration:

PW1 in his testimony stated that "His daughter, Sakina, personally told him that the accused, Babul, had stabbed her and

caused severe bleeding injuries.” This very testimony of PW1, contains a clear dying declaration made by the victim, Sakina, before her death. Question arises, whether this statement made by the deceased before her death is legally admissible as a dying declaration under Section 32(1) of the Evidence Act, 1872, as it was made by the deceased regarding the cause of her death.

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, 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 present case, from the testimonies of PW1 and PW5- it is clear that she explicitly named the accused, Babul, as the perpetrator. Although the statement was made orally, it was spontaneous and given immediately after incident occurred. A dying declaration made to relative and neighbor can be deemed reliable if the witness is 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. PW1 testified that Sakina personally told him that the accused, Babul, stabbed her with a knife, causing severe bleeding injuries. This statement was made while Sakina was still alive and undergoing treatment in various hospitals before succumbing to her injuries. As a direct

dying declaration, it holds significant evidentiary value. According to established legal principles, a dying declaration does not require corroboration if found truthful and voluntary.

The dying declaration made by Sakina, as relayed by PW1, is a key piece of evidence. Section 32(1) of the Evidence Act makes a statement made by a deceased person regarding the cause of their death admissible in court. The statement made by the deceased, Sakina, to her father (PW1) that Babul had stabbed her and caused her fatal injuries fits squarely into this category.

The dying declaration is credible, because:

1. *Physical Condition of the Deceased:* Sakina's injuries were severe and ultimately fatal. As she was undergoing treatment in hospitals, it is reasonable to assume that she made the statement with full awareness of her condition and imminent death. This enhances the reliability of the declaration.
2. *Directness and Spontaneity:* The dying declaration made by Sakina was direct, naming Babul as the perpetrator of the stabbing. The fact that she made this statement immediately following the attack and while still alive reinforces its spontaneity, making it unlikely to be influenced by external factors.

Truthful and Consistent, because:

1. *Independent Corroboration:* PW5's testimony, along with the physical evidence (the multiple stab wounds

on the victim as confirmed by the inquest report), corroborates the dying declaration. The absence of contradictions in the testimonies of witnesses further strengthens the reliability of Sakina's statement.

2. *No External Influence:* The statement was made to her father (PW1), a close relative, who is likely to have a truthful account of the final words of his daughter. There is no evidence of external pressure or influence that would have led to a false declaration.
3. *Medical and Witness Evidence:* PW1's account aligns with the medical evidence that Sakina had severe stab wounds. Additionally, the testimony of PW5, who witnessed the attack, further supports the claim that Babul was responsible for the assault.

The dying declaration made by Sakina, as relayed by PW1, is a key piece of evidence. Section 32(1) of the Evidence Act makes a statement made by a deceased person regarding the cause of their death admissible in court. The statement made by the deceased, Sakina, to her father (PW1) that Babul had stabbed her and caused her fatal injuries fits squarely into this category.

As per *PLD 1967 Pesh-274*, the key elements to assess a dying declaration are: whether it is intrinsically credible, whether the victim identified the perpetrator with certainty, and whether the statement is free from external influence. This declaration in this case seems credible, as the victim identified the accused

unequivocally and the statement is consistent with the injuries observed. No indication of fabrication or error in identification exists, making it a strong piece of evidence.

PW5's statement aligns with the circumstances leading up to the victim's death. While he didn't witness every detail of the stabbing, his account that Babul attacked Sakina with a knife and injured her, is a corroborative statement that supports the dying declaration. Additionally, the injury sustained by PW5 himself during the attack by the accused further establishes the connection between the accused and the crime. The medical records, confirmed by the inquest report and the witnesses PW2 and PW3, document the multiple stab wounds found on Sakina's body, indicating the deliberate and fatal nature of the attack. These corroborate the victim's statement about the cause of her injuries and death.

Statement made by Sakina to her father (PW1), identifying Babul as the perpetrator, qualifies as a valid and admissible dying declaration under Section 32(1) of the Evidence Act, 1872. It meets the legal requirements for a dying declaration: i) It directly addresses the cause of death; ii) It is made by the deceased while still alive and conscious of her condition; and iii) It is corroborated by other circumstantial and medical evidence. Given the consistency, spontaneity, and corroboration of the statement with other evidence, the dying declaration holds

significant probative value in proving the accused's involvement in the crime.

Non-Examination of the IO:

The defence argues that the prosecution's case is weakened due to the absence of the IO's testimony. However, the prosecution's case can still stand strong for the following reasons:

1. No Material Contradictions: The primary role of the IO in a criminal trial is to assist in identifying contradictions between a witness's testimony and their previous statement made under Section 161 Cr.P.C. If the defence had raised any contradictions between the testimonies of witnesses and their statements recorded during the investigation, then the IO's testimony would have been critical. However, in this case, the defence has not pointed out any contradictions in the witness testimonies, which means that the IO's testimony becomes unnecessary. The prosecution's case remains unaffected as no contradictions have been raised.
2. Reliability of the Dying Declaration: The crux of the prosecution's case relies on the credible and admissible dying declaration made by the deceased, which was communicated to PW1. The dying declaration is considered reliable, free from suspicion and corroborated by other evidence, such as the testimony of PW5 and the medical evidence. Since there were no contradictions or issues raised by the defence regarding the dying

declaration or other corroborative evidence, the non-examination of the IO is not a fatal flaw in the prosecution's case.

3. No Prejudice to the Defence: The defence has not raised any specific issue regarding the investigation, nor have they argued that the absence of the IO's testimony caused any prejudice. The defence carries the burden of proving that the omission has resulted in a miscarriage of justice. In the absence of such a claim, the prosecution's case can still be considered solid and unaffected by the non-examination of the IO.

Non-Examination of MO and Admissibility of PM Report:

The non-examination of the Medical Officer (MO) who conducted the post-mortem does not automatically render the report inadmissible. A post-mortem report, by itself, is not substantive evidence; rather, the testimony of the MO in court constitutes substantive evidence. The report may, however, be used to refresh the MO's memory when testifying. As a general rule, the admissibility of post-mortem reports requires the MO's testimony.

However, Section 509A Cr.P.C. provides an exception to the general rule, allowing the admissibility of post-mortem reports without the MO's testimony in court when the MO: a) is unavailable due to death, b) is incapable of giving testimony; and c) cannot be produced before the court without an unreasonable

delay or expense. This exception applies only if at least one of the above criteria is met. The court must ensure that at least one of these criteria is satisfied to uphold the integrity of the judicial process and to lawfully admit the post-mortem report as evidence in cases where the MO cannot be examined.

Upon a thorough review of the case record, it is clear that the Tribunal made all reasonable efforts to ensure the attendance of the Investigating Officer (IO) and Medical Officer (MO) in court. From 25.06.2015, to 02.08.2017, the Tribunal issued multiple summonses, exercised due diligence, and even issued Non-Bailable Warrants of Arrest to secure their presence. Despite these efforts, the MO could not be produced before the court. This indicates that the Tribunal took all necessary steps to ensure procedural fairness, and suggests that the MO was either unable to testify or could not be secured without unreasonable delay or expense.

Furthermore, the medical report detailing the nature of the injuries, which is consistent with the statements of the prosecution witnesses, supports the claim that the injuries were inflicted by the accused, Babul. In such circumstances, the report, when combined with other credible evidence, is sufficient to establish the accused's involvement. As a result, the non-examination of the MO does not undermine the prosecution case, provided that the remaining evidence sufficiently proves the accused's guilt beyond a reasonable doubt. The prosecution has

demonstrated that every reasonable effort was made to secure the necessary witnesses, and the remaining evidence is sufficient to establish the accused's guilt.

The absence of the IO's and MO's testimonies does not automatically render the prosecution's case invalid or weak. Since no material contradictions have been raised by the defence, and the dying declaration, supported by other corroborative evidence, remains central to the case, the prosecution's case is strong. Additionally, the post-mortem report, despite the MO's absence, is admissible under the exception provided in Section 509A Cr.P.C. The prosecution has shown that every reasonable effort was made to secure the necessary witnesses, and the remaining evidence is more than sufficient to establish the accused's guilt beyond a reasonable doubt.

Independent Assessment of Charges:

The defence's argument that the failure to prove dowry demand negates the murder charge is not legally sustainable because each charge is assessed independently. The absence of proof regarding dowry demand on the day of occurrence does not automatically absolve the accused of murder, especially when there is independent and conclusive evidence of the act of killing.

'Motive' can provide context and strengthen a prosecution's case, but it is not an essential element for a murder. While motive helps in understanding the circumstances of a crime, its absence

does not render a conviction unsustainable when there is compelling evidence of guilt. It is a well-settled principle that *“proof of motive is never essential for conviction when facts are clear.”* In criminal law, motive may reinforce the prosecution’s case, but it is not a prerequisite for conviction. If the prosecution has proven the murder charge beyond a reasonable doubt, the accused can still be convicted even if the alleged motive (dowry) remains unproven.

In this case, the accused was initially charged under Section 11(ka) of the Nari O Shishu Nirjaton Daman Ain, 2000 (dowry death). However, the prosecution successfully proved the charge of murder under Section 302 of the Penal Code, even though the allegation of dowry demand could not be established. As per Section 236 CrPC, the failure to prove the dowry charge does not preclude the court from convicting the accused for murder when independent and conclusive evidence supports the act of killing. This reaffirms the principle that each charge is assessed separately, and a conviction can be sustained based on the proven offence.

Conclusion & Sentencing Consideration:

Considering the totality of the evidence, including circumstantial evidence, witness testimonies, the dying declaration, and the accused’s abscondence, the prosecution has successfully established an unbroken chain of circumstances leading to Babul’s conviction for murder. While the unproven allegation of

dowry demand does not undermine the murder conviction, the prosecution's evidence, taken holistically, meets the requisite standard of proof for culpability under Section 302 of the Penal Code. Accordingly, there is no reason to interfere with the Tribunal's decision regarding Babul's guilt.

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

The Consequence:

1. Death Reference No. 70 of 2018 concerning the absconding convict- Babul Mia, (absconding) son of Batan Mia, of Village-Goddardia, Police Station- Modhukhali, District-Faridpur, is rejected. The death sentence awarded by the Tribunal is hereby **commuted to imprisonment for life**, along with a fine of Taka 100,000 (one lac), failing which the convict shall undergo an additional six (6) months of simple imprisonment under section 302 of the Penal Code.
2. The authorities concerned are hereby directed to secure the arrest of the absconding convict, Babul Mia, to compel him to serve the sentence in accordance with this judgment.

The Office is directed to send down the LC records, along with a copy of this judgment, without delay.

(Justice Md. Toufiq Inam)

J.B.M. Hassan, J:

I agree.

(Justice J.B.M. Hassan)