

Present:

**Mr. Justice Muhammad Mahbub UI Islam
And
Mr. Justice Md. Hamidur Rahman**

Death Reference No.54 of 2018.

The State.

-Vs-

Azim Uddin....Condemned prisoner.

Mr. Mohammad Mujibur Rahman,D.A.G
with
Mr. Chowdhury Shamsul Arifin, A.A.G.
and
Mr. Md. Jasim Uddin Khan, A.A.G.
...For the State.

**Criminal Appeal No.12740 of 2023.
(Arising out of Jail appeal No.145 of
2018).**

Azim Uddin.... condemned-prisoner.

-Vs-

The State.

Mr. Syfuzzaman, Advocate with
Mr. Md. Abdus Salam, Advocate.

..... For the condemned-prisoner.

**Heard on: 22.10.2024, 23.10.2024,
27.10.2024, 28.10.2024, 29.10.2024,
30.10.2024, 14.11.2024.**

Judgment on:27.11.2024.

Md. Hamidur Rahman, J:

This Death Reference under section 374 of the Code of Criminal Procedure, 1898 has been sent by the learned Additional Session Judge, Thakurgaon for confirmation of death sentence of Azim Uddin, son of Md. Solim Uddin of village Birholi, Police Station-Pirgonj, District-Thakurgaon, imposed by it vide judgment and order of conviction and sentence dated 30.04.2018 being found guilty for commission of offence punishable under section 302 of the Penal Code in Sessions Case No. 226 of 2016 arising out of Pirgonj Police Station Case No.04 dated 05.06.2015 corresponding to G.R. No. 580 of 2015 convicting the appellant under section 302 of the Penal Code. The said convict-appellant having, in the meantime preferred Criminal Appeal No. 12740 of 2023 (arising out of Jail Appeal No.145 of 2018) the same also been sent to us for disposal along with the said death reference.

Therefore, the said death reference and Criminal Appeal are to be disposed of by this common judgment.

Prosecution case, in short is that on 05.06.2015 PW1(Md. A. Khalek) brother of deceased lodged the FIR with the Pirgonj Police Station, District-Thakurgaon as against 7(seven) accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum including the convict-appellant as accused no.1. The informant made a house on his paternal land and the accused persons on 04.06.2015 at 10.00 a.m. with a view to take possession of the said land went to the house premises of the informant with sharp weapons. It was also alleged that on 04.06.2015 the accused persons entered into the house of the informant and threatened to kill them. When his brother A. Malek came out from the house of the informant then getting direction from the accused No.3, the condemned-prisoner dealt blow with an axe on the middle side of head of the victim and caused bleeding injury. The other co-accused Nos. 2/4/5/6/7also hit the body of the victim. Then the victim

was taken to the Pirgonj Hospital wherein he referred to the Dinajpur Medical College Hospital. Then the doctor referred A. Malek (the victim) to the Rangpur Medical College Hospital.

That on the basis of said facts Pirgonj Police Station Case No.04 dated 05.06.2015 under section 143/448/323/326/307/ 506(2)/114 of the Penal Code was registered.

Accordingly, the charge of investigation was given to S.I Md. Abu Bakkar Siddique (P.W.15) of the said Police Station. However, in the meantime victim (A. Malek) died on 10.06.2015 at 4.25 p.m. when he was under treatment in the Rangpur Medical College Hospital and for that reason, another GD Entry being No. 650 dated 11.06.2015 was registered and charge of investigation was given to SI Md. Al Amin (P.W.16) and accordingly he prepared inquest report and sent the dead body to the Rangpur Medical College Hospital morgue for Post Mortem. In the meantime Investigating Officer Md. Abu Baker Siddique being informed about the death visited the Rangpur Medical College Hospital prepared sketch map along with index thereof. Then he applied to the officer-in-charge, Kotwali Police Station, Rangpur for Inquest Report and Post Mortem

Report. Kotwali Police Station, Rangpur and accordingly supplied the Inquest Report and Post Mortem Report to Md. Abu Bakker Siddique. He thereafter recorded statement of the witnesses under section 161 of the Code of Criminal Procedure and after completion of investigation, submitted charge sheet being no 138 dated 01.07.2016 against 7(seven) accused persons under section 143/448/302/114/34 of the Penal Code.

At the commencement of trial on perusal of the materials on record and upon hearing of the parties, charge was framed under section 143/448/302/114/34 of the Penal Code against the accused persons. The charge was read over and explained to accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum, which they pleaded not guilty and demanded for trial.

In order to prove the charge levelled against the accused persons, the prosecution has examined as many as 18(eighteen) witnesses. The prosecution also produced some

documents and materials which were, accordingly, mentioned as exhibits respectively.

On the other hand, none was examined on behalf of the defence.

After closure of the prosecution witnesses the accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum have examined under section 342 of the Code of Criminal Procedure and their statement recorded thereunder. All of them pleaded not guilty and refused to give any evidence as defence.

The defence case, as it transpires from the trend of cross-examination of the prosecution witnesses is that the accused persons are innocent and have not been involved in this case and the charge levelled against the accused persons are false.

After trial, on perusal of the evidence and material on record, the learned trial Judge came to the findings that the prosecution succeeded in proving the charge brought against

the condemned-prisoner namely- Azim Uddin under section 302 of the Penal Code and accordingly sentenced him to death with a fine of Tk. 10,000/-. On the other hand, other accused namely- 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum released from the charge vide the impugned judgment and order dated 30.04.2018. Thus the Additional Session Judge, Thakurgaon sent the case record to the High Court Division of the Supreme Court of Bangladesh in view of the provision under section 374 of the Code of Criminal Procedure for confirmation of the said death sentence as stated above, the condemned prisoner thus in the meantime preferred the aforementioned Jail Appeal and regular Criminal Appeal. Thereupon, after necessary formality the said appeals have also been sent to us along with said death reference for disposal.

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

P.W.1, (Md. A. Khalek), was the informant and brother of the deceased. Accordingly, he deposed before the trial Court that the occurrence took place on 04.06.2015 at 10.00 a.m. at morning. The accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum total 7(seven) persons came to the disputed land which he inherited from his father, after earth filling built a house therein by tin and Kanchi bera (কঞ্চি বেড়া). At the time of incident the accused persons came to the place of occurrence and made impediment to fencing. That when A Malek came out from the house by order of Md. Salim Uddin, the condemned prisoner (Azim Uddin) dealt blow him by an axe in the middle of the head. Then the victim laid down on the ground. At the time of incident village peoples were also present namely-Taslim, Ashraf and Abul Kashem and they are also witnesses of the case. Immediately he took his brother (victim) to the Pirgonj Hospital. Then the Pirgonj Hospital authority told him to take him (victim) to the Dinajpur Hospital. Then he took his brother to the Dinajpur Medical College Hospital. Thereafter, the Dinajpur Medical Hospital authority

referred the victim to the Rangpur Medical College Hospital. Then they took him (victim) Rangpur Medical College Hospital and admitted the victim. When his brother was under treatment, he lodged the FIR. Accordingly, he proved the said FIR as Exhibit-1 and his signature thereon as Exhibit-1/1. That the Inquest and Post Mortem Report were done thereafter.

In cross-examination, he deposed that he filed typed copy of the FIR before the Police Station; FIR was lodged at his instruction. The accused persons and the Informant belong to same family. It is true that before incident there was quarrel between them. Local people tried to resolve the matter. The axe was not seized by the Investigating Officer, because said axe was taken away by the convict-accused. There was blood stained in the earth but the investigation officer did not take any sample of the said blood stained. Firstly, he took his brother to the Pirgonj Hospital and the doctor did not admit him in the said hospital. That may be timed around 10.30/10.45 a.m. Then they went to the Dinajpur Medical College and admitted the victim in the Dinajpur Medical College Hospital at about 12.00 p.m. The victim was admitted

to the said hospital for two hours and then they left for the Rangpur Medical College and reached there at about 4.30/5.00 p.m. His brother died on 10.06.2015 after 6(six) days treatment under the Rangpur Medical College Hospital. He was along with victim at the Pirgonj Hospital. His brother Ashraf Ali lives in Dinajpur and he was with the victim at Dinajpur. After one day of incident he lodged the FIR.

P.W.2, (Md. Hafizul Islam), he deposed that he knew the Informant and accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum. The occurrence took place on 04.06.2015 at about 10.00 a.m. in front of the informant's house and also adjacent to his house. He heard scream and saw that the accused Azim Uddin dealt blow by an axe to the informant's brother. Then the victim was taken to the Pirgonj Hospital and thereafter, the victim was taken to the Dinajpur Medical College Hospital. Later on for better treatment he was taken to the Rangpur Medical College Hospital. The victim died under treatment at the Rangpur Medical College Hospital. Later on,

he informed the Investigating Officer about the incident. He knew the accused persons and also identified them on the dock.

In his cross-examination on behalf of all the accused persons, that he and the informant engaged in the business of sugarcane separately. He came to the place of occurrence after heard scream along with many people. Victim was weared half shirt and also wear lungi (লুঙ্গি). The colour of lungi he could not remember. The accused dealt blow the victim by an axe and fled away from the place of occurrence and villagers could not grab him. The place of occurrence was in blank land and at the time, the Informant (Khaleq) was fencing. Informant and victim belonged to same family. Accused person also lives there. It is not true that there was quarrel before incident. There was arbitration by the Chairman and members. After 15 days of arbitration the said incident took place. There was sign of injury on the head of the victim and only one sign. He did not go to the hospital and the investigation officer investigated him about the matter. It is not true that the informant hired people to grab the land. It is not

true that the accused person did not hit the victim. It is not true that there was no weapon in the accused's hand. It is not true that he did not see the incident and investigating officer seized the said axe. It is not true that he deposed on request of the informant and also at the time of occurrence he was in hat. It is not true that his deposition is false.

P.W.3, Md. Khorshed Ali is the neighbour of the informant (P.W.1). He deposed that occurrence took place around 10.00 a.m. at the morning on 04.06.2015. According to him on that day he arrived at the place of occurrence after heard scream. His house is adjacent to the place of occurrence and he saw that accused Azim Uddin dealt blow the victim's head by an axe, then the victim laid to the ground and also saw the head injury of the victim. Thereafter along with others he took the victim to the Pirgonj Hospital and doctor said that to take the victim to the Dinajpur Hospital. Then the victim was taken to the Dinajpur Medical College Hospital. On 10.06.2015 the victim died when he was under treatment in the Rangpur Medical College Hospital. He also identified the accused persons in the dock namely-1. Azim

Uddin, 2. Md. Yeakub Ali, 3. Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum. He also informed the Investigating officer about the incident.

In cross-examination, he deposed that on the date of occurrence the police investigated him. The informant is known to him and he called him brother Khalek. There was dispute between the parties regarding land. There was a house in disputed land. The house belongs to A. Khalek and not the victim. He could not remember as to time of quarrel but remembered that quarrel was going on for 20 (twenty) minutes. They tried to catch the accused Azim Uddin but the accused fled away. He saw sign of injury on the head of the victim. He went to the Pirgonj Hospital with the victim. Then the victim was referred to the Dinajpur Hospital. The victim died on 10.06.2015 at the Rangpur Medical College Hospital. When he arrived at the place of occurrence then Hafizul, Kashem, Shahjahan, Mortuza, Mozzammel, his father Rezaul Hoque and many others were present. The axe was not seized by the police. It is not true that there was no weapon in

the hand of the accused. It is not true that informant brought others people to grab the said land.

P.W.4, Md. Ashraf Ali, deposed that he is the brother of Informant. He also confirmed the date and time of the occurrence. In his deposition he also confirmed that accused Azim Uddin dealt blow the victim by an axe. He deposed that his brother Khalek as Informant filed the FIR. He is also an eye witness of the incident.

In his cross-examination, he deposed that there was quarrel between the parties before seven days of the incident. At the time of arbitration witness Hafizul and Khurshed were present. At the time of incident he was present at informant's land and amongst the villagers Ayub, Jabbar, Sirajul and other 10/15 peoples were also present.

P.W.5, Md. Taslim Uddin is the nephew of the informant. He also confirmed the date, place and time of the occurrence. He also knew the accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum. He is also an eye

witness of the incident. His uncle Informant Md. A. Khalek (P.W.1) was fencing then the accused persons tried to obstruct him. Then he saw that accused Azim Uddin dealt blow Abdul Malek's (the victim) head with an axe. Then the accused person fled away and he grabbed victim's head. Thereafter, he took victim to the Pirgonj Medical College Hospital and victim was referred to the Dinajpur Medical College Hospital. Thereafter, the victim referred to the Rangpur Medical College Hospital. He died in Rangpur Medical College Hospital on 10.06.2015 and Police came and made the inquest report. He also confirmed the Inquest Report and his signature as Exhibit-2 and 2/1. A UD case was recorded in Rangpur District.

In cross-examination, he deposed that at the time of incident he was doing business of raw materials. Bazar is sit from 8.00 a.m. to 8.00 p.m. The informant lived there for 12 to 13 years. He lived in beside the disputed land. The accused persons are also uncle and grandfather in relation. He was also fencing with Md. A. Khalek (the informant). Azim Uddin dealt blow the victim by an axe. He wanted to catch Azim

Uddin but failed. He did not try to catch other accused. He cannot remember the Dag number of the said land but remember khatian number being No. 786 and he cannot remember name of mouja of the land. At the time of occurrence he, the informant and Ashraf Ali was fencing. Disputed land adjacent to the accused's house. It is not true that at the time of occurrence they hired 20/50 people. It is not true that he called over the victim from the tea shop. It is not true that they hit Abdul Malek and killed him. It is not true that they falsely implicated them in the case. It is not true that he give evidence on request of the informant.

P.W.6, Md. Shahjahan Ali is the neighbour of the informant. He also confirmed time, place and manner of occurrence. After heard scream he rushed to the place of occurrence. After arriving at the place of occurrence he saw sign of injury on the head of Malek (the victim) and heard that the accused Azim Uddin dealt blow the injury on the head of the victim by an axe. Relatives of the victim took him to the hospital. Then the victim was referred to the Dinajpur Medical College Hospital. Thereafter, the victim was referred to the

Rangpur Medical College Hospital for better treatment and died on 10.06.2015. He informed the Investigation Officer about the incident.

In cross-examination, he deposed that after heard scream he rushed to the place of occurrence. The victim was injured before he reaches the place of occurrence and saw him laid down in the land of Khalek. The victim Malek used to live beside Khalek's house. The victim and the accused belong to same family. Both sides have conflict with the disputed land. He did not see them to fencing. He also heard that there was one injury on the head of Abdul Malek. It is not true that they hired people to hit the victim. It is not true that the accused person did not hit the victim. Police investigated him after 15/20 days after the incident. It is not true that on the request of the informant he give deposition.

P.W.7, Md. Mortuza Ali is the neighbour of the informant. He also confirmed the time, date and place of occurrence. He also rushed to the place of occurrence after heard scream. He heard from the informant and other people that the accused Azim Uddin dealt blow victim's head by an axe. The victim was

taken to the hospital and died when he was under treatment. Police made inquest report before him and he also put signature on the inquest report. He also confirmed inquest report and his signature thereon which was Exhibit as 2 and 2/2.

In his cross-examination, he deposed that he did not see the incident. He arrived at place of occurrence after 15/20 minutes of the incident. He did not see Malek laid down in the land and the distance of place of occurrence and his house about 500/600 yards.

P.W.8, Md. A. Rashid is the constable of Kotwali Police Station, Rangpur who was working on 11.06.2015 in the said Police Station and by virtue of Chalan, the dead body of the victim was taken to the Forensic Medicine Department from cold storage of the Rangpur Medical College Hospital for Post Mortem. He along with SI Md. Al Amin prepared the Inquest Report of the victim. The said report was prepared before him. He saw injury in the victim's head also 11 stitches in the victim's head. He also confirmed chalan which was Exhibit as Exhibit-3.

The defense lawyer declined to cross him.

P.W.9, Md. Sujon Ali is the nephew of the informant. He also confirmed the date, time and place of occurrence. He deposed that his uncle was fencing at that time accused persons namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum came to the place of occurrence and obstructed the informant. At that time the accused Azim Uddin dealt blow by an axe on uncle's head. He then took the victim to the Pirgonj Hospital but the doctor referred him to the Dinajpur. Thereafter, Dinajpur Medical College Hospital referred him to the Rangpur Medical College Hospital. He took the victim to the Rangpur Medical College Hospital. He also deposed that his uncle Md. Abdul Khalek lodge the said FIR as informant. Thereafter, his uncle Abdul Malek (victim) died on 10.06.2015. The inquest report was prepared before him. He saw the incident and told to the Investigating Officer about the incident.

In cross-examination, he deposed that he is the nephew of the informant. Victim was his uncle. There was dispute

regarding land between both the parties. In the disputed land there is a house of the informant and the victim had no house. The incident took place at about 15/20 minutes. He tried to catch Azim Uddin when the accused dealt blow the victim with an axe but he did not. He took the victim to the Pirgonj Hospital at 11.00 a.m. and wait there for 10/20 minutes. He arrived at the Dinajpur Medical College Hospital at about 12.00/1.00 P.M. and also arrived at the Rangpur Medical College Hospital at about 5.00/6.00 p.m. His house is about 20 yards away from the place of occurrence.

P.W.10, Md. A. Kashem is the neighbour of the informant. He knew the informant and the accused persons. He came to the place of occurrence after heard scream and saw that the victim was laid down on the earth with injury. He heard from Hafizul, Ashraful, Lalon, Khalil and others that the accused Azim Uddin dealt blow Malek's head with an axe. He also confirmed the accused persons in the dock.

In cross-examination, he deposed that his house is about 300/400 yards away from the place of occurrence. After heard scream he came to the place of occurrence. He did not

go to the Pirgonj Hospital. There was dispute regarding land. The victim died after 6 (six) days. It is not true that he did not go to the place of occurrence. It is not true that victim was hit by the hired people.

P.W.11, Md. Khalilur Rahman is the brother of the informant. Victim Malek was his younger brother. He also confirmed the time date and place of occurrence. He also identified the accused namely-1. Azim Uddin, 2. Md. Yeakub Ali, 3.Md. Salim Uddin, 4. Md. Masibor Rahman, 5. Most. Rezina Begum, 6. Most. Sajeda Begum and 7. Most. Moriam Begum. He also deposed that the accused dealt blow the victim's head with an axe.

In cross-examination, he deposed that at the time of incident he was at his house. Distance from his house is about 3 feet away from the place of occurrence and heard scream and he rushed to the place of occurrence.

P.W.12, Md. Mazedur Rahman is the nephew of the informant. He also confirmed the date, time and place of occurrence. He also signed on the Inquest Report which was Exhibit as 2/1.

In cross-examination, he deposed that he did not see the incident. He heard the news from Hafizul uncle. It is not true that accused persons were not guilty.

P.W.13, Md. Mozammel Karim is the nephew of the Informant and the accused person is also his nephew. He heard that Azim Uddin dealt blow victim's head with an axe. He also identified the accused.

In cross-examination, he deposed that he heard about the incident but did not see the said incident.

P.W.14, Md. Rezaul Karim is the neighbour of the informant and also the accused persons. He also confirmed the date, time and place of the occurrence. He saw accused Azim Uddin fled away from the place occurrence.

In cross-examination, he deposed that he did not see quarrel.

P.W.15, Md. Abu Bakkar Siddique was the Investigating Officer of the case. He deposed that on 05.06.2015 he was Sub-inspector of the Pirgonj Police Station under Thakurgaon District. That on that day Officer-in-charge of the said Police

Station recorded FIR lodged by the Informant (P.W.1) and handed over the investigation charge on him. He also confirmed formal part of FIR as Exhibit-4. There was also signature of the Officer-in-charge Md. Mokbul Hossain which he also confirmed and Exhibit as 4/1. He accordingly visited the place of occurrence, prepared sketch map and index on different papers and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure. He also detained accused persons namely-Md. Yeakub Ali, .Md. Salim Uddin, Md. Masibor Rahman. thereafter he examined the Inquest Report and Post Mortem Report and circumstances he found the allegation under section 143/448/302/114/34 of the Penal Code against the accused persons No.1, Azim Uddin, under sections 143/448/302/34 of the Penal Code against accused (2) Md. Salim Uddin, 143/448/302/34 of the Penal Code against accused persons namely- 3. Md. Yeakub Ali, 4.Margina, 5. Sazedra, 6.Mashiur Rahman,7. Mariam and accordingly he submitted charge sheet under the said sections being Pirgonj Police Station Charge Sheet No.138 dated 01.07.2016. He accordingly deposed that the Inquest Report of the victim was prepared by the Sub-inspector of the Kotwaly

Police Station, Rangpur because the victim died in the Rangpur Medical College Hospital. He also deposed that at the time of investigation he invented that there was dispute between Informant and his brother with the accused persons regarding father's property.

In cross-examination, he deposed that he did not seize any alat at the time of investigation of the case. He prepared the sketch map on 06.06.2015 and FIR was lodged on 05.06.2015. He also described the sketch map. In the said sketch map he did not mention about relation to C.D.E. He did not mention mouja, dag number but at the time of investigation he learnt to know about dispute between the parties regarding land which he mentioned in the charge sheet. He also deposed that after consideration of FIR, Inquest Report and Post Mortem Report, he filed the said Charge Sheet. There was no sign of injury in the chest and back of the victim's body according to the Inquest Report. He said that he did not seize the said axe, bloodstained on earth and clothes. It is not true that he did not investigate any witness. It is not true that he did

not visit place of occurrence. He also denied the defence suggestions.

P.W.16, Md. Al Amin is the Sub-inspector of Kotwali Police Station, Rangpur. On 11.06.2015 he was on duty in the said Police Station. By virtue of G.D Entry No.650 dated 11.06.2015 he prepared the Inquest Report of the victim Abdul Malek in front of the victim's nephew Taslim Uddin who also identified the dead body of the victim. He also described the Inquest Report. He also with the help of Constable No.1268 A. Rashid sent the dead body to the Head of Department, Forensic Medicine Department, Rangpur Medical College Hospital for Post Mortem through chalan.

In cross-examination, he deposed that he prepared Inquest Report on 11.06.2025 at 12.30. He found that 11 (eleven) stitches on the middle head of the victim. He did not see any other injury.

P.W.17, Asaduzzaman is the relative of the victim. The Inquest Report of the dead body of the victim was prepared on 11.06.2015 by the police in the cold storage of the Rangpur Medical College Hospital. He saw 11 stitches on the victim's

head. He also confirmed the signature on the Inquest Report which was Exhibit as 2/5.

In cross-examination, he deposed that it is not true that the accused did not hit the victim.

P.W.18, Dr. Rabi Sankar Mandol was a formal witness as he was the doctor who conducted Post Mortem on the dead body. According to his deposition, he was working as a Professor of the Forensic Department, Rangpur Medical College Hospital on 12.06.2015 at 13.00 p.m. the dead body of A. Malek aged about 50 years was brought to him and accordingly conducted Post Mortem on him and found the following injuries:

“1. One stitched up wound on the middle area of frontal region on the head (11Stiches) measuring about 3" was present. ”

On detailed dissection: Scalp: Huge amount of clotted blood was present into the whole scalp with contusion on the frontal region. Skull: Multiple fractures with depression on the frontal region. Multiple fractures on both parietal and accipital region. Brain matter comes out from the frontal region. Menings:

Torne. Brain: Huge clotted blood was present on the whole brain surface of both cerebral hemispheres.

Comment: Considering P.M. examination findings. I am in opinion that death was due to haemorrhage and shock and intracranial haemorrhage as a result of head injury which was ante-mortem and homicidal in nature.”

Before scrutiny of the evidence produced by the prosecution, let us first refer to the submissions made by the learned Advocates before this Court. It may be noted that at the outset of the hearing, entire paper books, lower court’s record as well as other materials were placed before this Court one after another by the learned Deputy Attorney General and the learned Assistant Attorney Generals. Thereafter, learned Deputy Attorney General made oral submissions in support of death confirmation of the convict-appellant. However, for the sake of our convenience, we will refer to the submissions of the learned Advocate of convict-appellant first followed by the submission of the learned Deputy Attorney General.

Mr. Syfuzzaman, learned Advocate along with Mr. Md. Abdus Salam, the learned Advocate appearing on behalf of the convict-appellant, made the following submissions:

- i. By referring the FIR he submits that FIR was lodged on 05.06.2015 and the date of occurrence was on 04.06.2015. He also submits that the victim died after 6 (six) days of the incident. The victim was firstly taken to the Pirgonj Hospital where the doctor referred the victim to the Dinajpur Medical College Hospital and the victim also referred to the Rangpur Medical College Hospital where the victim died under treatment on 10.06.2015. He try to establish that due to delay in treatment the victim died.
- ii. By referring P.W.16, Investigation Officer cross-examination that no alat was seized by the I.O which is vital part for the prosecution case to proof beyond reasonable doubt. He also submits that axe, blood stained on earth and cloths were not recovered and seized Azim Uddin falsely implicated in the case out of previous enmity. In this connection the learned lawyer referred to us an unreported decision passed by the Supreme Court of India namely Ram Singh

Vs. The State of U.P and submits that in Paragraph 28 of the said judgment which is discussed below.

- iii. By referring sketch map he submits that regarding place of occurrence there are different opinions between the witnesses. He also submits that P.W.1, the Informant deposed that the place of occurrence was “বসত বাড়ীর লাগা পূর্ব দিকের জমি” is not matched with the sketch map.
- iv. By referring P.W.2, he submits that his name was not mention in the FIR as an eye witness. He also submits that the Informant made his family members as witnesses to establish the case which create doubt about the prosecution case.
- v. By referring the judgment at page 251 of the paper book that “প্রসিকিউসন্স আসামীগনের পূর্ব পরিকল্পনা বা সাধারণ উদ্দেশ্য প্রমাণ করিতে পারে নাই. He also submits that it was not a pre-planned murder.
- vi. He prays for rejecting the death reference and setting aside the impugned judgment and order. He also prays for the acquittal of the convict-appellant.

As regard above submissions Mr. Mohammad Mujibur Rahman, learned Deputy Attorney General has made the following submissions:

The learned Deputy Attorney General submits that there are 7(seven) eye witnesses who deposed that they saw that the convict-appellant dealt blow by an axe to the victim's head namely- P.W.1, Md. A. Khalek, P.W.2, Md. Hafizul Islam, P.W.3, Md. Khurshed Ali, P.W.4, Md. Ashraf Ali, P.W. 5, Md. Taslim Uddin, P.W.9, Md. Sujon Ali, P.W.11, Md. Khalilur Rahman and the learned trial Court rightly passed impugned judgment relying upon the statements of eye witnesses.

The learned DAG also submits that there are minor discrepancy statements about the place of occurrence. He submits that the Informant and accused are belong to same family and they are living together. The witnesses are also neighbours. The witnesses deposed at their angle about the place of occurrence. So, it is not doubtful about the place of occurrence. The evidence on records in particular the depositions of the eye witnesses proved beyond reasonable

doubt that the convict-accused Azim Uddin dealt blow on the victim's head at the time of occurrence.

He further submits that the convict-appellant had the intention to kill the victim. Convict-appellant came to the place of occurrence with an axe in his hand. A reasonable person can believe that blow by an axe any person may get fatal injury and may be died. So, the Azim Uddin had intention to kill the victim and came with an axe in his hand at the place of occurrence.

Learned DAG also submits that the prosecution case was proved by the witnesses and it is not necessary to examine all the witnesses, who are mentioned in the FIR. He next submits that the prosecution proved date, time, place and manner of occurrence. The evidence on records, in particular, the depositions of the eye witnesses.

Now in view of the submissions and counter submissions by the Deputy Attorney General and learned Advocate for the defence, let us review the relevant evidence, materials on record and scan the attending circumstances of the case to arrive at a correct decision as to whether the trial

Court was justified in passing the impugned judgment and order of conviction and sentence against the convict-appellant Azim Uddin.

In the present case, 7(seven) eye witnesses proved the prosecution case. The relevant portions of their depositions are stated below:

P.W.1, Md. A. Khalek, the Informant and brother of the deceased saw the convict-appellant dealt blow the victim by an axe on the middle of the head. In his deposition he stated that: “আমার ভাই আঃ মালেক যখন ঘর হতে বের হয়ে আসে তখন আসামী সলিম উদ্দিন আজিম উদ্দিনকে হুকুম দিয়া বলে যে, ধর তখন আসামী আজিম উদ্দিন তার হাতে থাকা কুড়াল দিয়া victim আঃ মালেকের মাথার মাঝখানে কোপ দেয় ”

P.W.2, Md. Hafizul Islam, is the neighbour of the informant and the accused. He is also an eye witness of the case. He heard scream and rushed to the place of occurrence and saw that the accused Azim Uddin dealt blow by an axe to the informant's brother. In his deposition he stated “চিল্লাচিল্লি শুন, গিয়ে দেখি যে, আসামী আজিম উদ্দিন কুড়াল দিয়ে বাদীর ভাই মালেকের মাথায় কোপ মারে।”

P.W.3, Md. Khorshed Ali is the neighbour of the victim. He is also an eye witness of the case. He heard scream and rushed to the place of occurrence and saw that the accused Azim Uddin, dealt blow by an axe to the victim's head. In his deposition he stated: “ঘটনাস্থল সংলগ্ন আমার বাড়ী। ঘটনাস্থলে এসে দেখি যে, আসামী আজিম উদ্দিন তার হাতে থাকা কুড়াল দিয়ে সজোরে victim মালেকের মাথায় আঘাত করে।”.

P.W.4, Md. Asraf Ali is the brother of Informant. He is also an eye witness in the case. He saw that accused Azim Uddin dealt blow the victim by an axe. In his deposition he stated: “আসামী আজিম উদ্দিন কুড়াল নিয়ে এসে victim মালেকের মাথায় কোপ মারে।”

P.W.5, Md. Taslim Uddin is the nephew of the Informant. He is also an eye witness of the case. He saw that accused Azim Uddin dealt blow A. Malek head with an axe. In his deposition he clearly stated: “দেখি যে, আসামী আজিম উদ্দিন কুড়াল দিয়ে আমার চাচা মালেকের মাথায় কোপ দেয়।”

P.W.9, Md. Sujon Ali is the nephew of the Informant. He is also an eye witness. He deposed that he saw that the accused Azim Uddin dealt blow with an axe in his uncle

Malek's head. In his deposition, he stated: “আসামী আজিম উদ্দিন কুড়াল দিয়ে আমার চাচা মালেকের মাথায় আঘাত করে।”

P.W.11, Md. Khalilur Rahman is the brother of the victim. He is also an eye witness of the case. He saw that the accused dealt blow on victim's head with an axe. In his deposition he stated: “আসামী আজিম উদ্দিন কুড়াল দিয়ে আমার ভাই মালেকের মাথায় কোপ দেয়।”.

On scrutiny of the evidences of eye witnesses namely- P.W. 1, P.W.2, P.W.3, P.W.4, P.W.5, P.W.9 and P.W. 11, we find that they categorically mentioned that Azim Uddin dealt blow with an axe and the victim was serious injured and died after 6 (six) days in the Rangpur Medical College Hospital. Their examination-in-chief could not be shaken in cross-examination by the defence. P.W.6, P.W.7, P.W.10, P.W.12, P.W.13, P.W.14 and P.W.17 also corroborated depositions of the eye witnesses. We find their evidence is ocular and unimpeachable.

The record shows that immediately after the occurrence, the convict Azim Uddin disappeared from the locality indicating

his guilt which is relevant under section 8 & 9 of the Evidence Act.

Admittedly, the charge against appellant is murder punishable under section 302 of the Penal Code. The prosecution case is that the appellant hit the victims head with an axe and victim was seriously injured and after 6 (six) days victim died in the Rangpur Medical College Hospital.

It appears from the materials on record that the prosecution successfully proved that the Inquest Report as prepared by one S.I of the Police Station concerned at the earliest opportunity by P.W. 5 as Exhibit- 2 Inquest Report. On the other hand Post Mortem Report as prepared by the doctor concerned namely-Dr. Rabi Sankar Mondal (P.W.18) has also been proved said doctor as Exhibit-7 and his signature thereon as exhibit-7/1. It appears from the said evidences, in particular the Post Mortem Report (Exhibit-7), that P.W. 18 found the following injuries on the victim:

- i. One stitched up wound on the middle area of frontal region on the head (11stiches) measuring about 3" was present.

On detailed dissection: Scalp: Huge amount of clotted blood was present into the whole scalp with contusion on the frontal region. Skull: Multiple fractures with depression on the frontal region. Multiple fractures on both parietal and occipital region. Brain matter comes out from the frontal region. Meninges: Torn. Brain: Huge clotted blood was present on the whole brain surface of both cerebral hemispheres.

After such examination, the doctor (P.W.18) in his opinion held: 'that death was due to shock and intracranial haemorrhage as a result of head injury which was ante-mortem and homicidal in nature.'

P.W.18, proved the said Post Mortem by his clear deposition before the trial Court. It appears from the said report that due to head injury the victim died. So, the argument by the defence lawyer about death of the victim after 6(six) days is not based on cogent reason.

The defence counsel submissions regarding place of occurrence that the witnesses made different comments about the place of occurrence. It is evident from the material on record that victim, Informant and the convict-accused belong

to same family and they live together at the same place. They described place of occurrence in their points of view. In this regard we relied on a decision reported in 22 DLR (HCD) 681 wherein the Court observed that “Discrepancies on minor point are not fatal and evidence of a witness cannot be disbelieved merely due to some minor contradiction.

The learned lawyer for the convict-appellant submits that the Informant made the family members as witnesses to establish their case and neutral neighbours were not made witnesses in the case and which create doubt about the prosecution witnesses, but this submission is not acceptable. In the case of *Milon Vs. State* reported in 53 DLR 464 wherein it was held:-

“Mere non examination of nearby shop keepers or a neighbour cannot be held to be fatal to the prosecution case if there are eye witnesses of the alleged occurrence. It is a sound Principle of law that it is not quantity of the witnesses but quality of the evidence that matter much to convict an accused in a grave offence of murder. In criminal law there is no impediment in convicting an offender on the basis of testimony of single witness

if his evidence is found by the Court to be honest and trustworthy and if fully corroborated by the circumstances of the case and medical evidence. ”

In Abdul Hai Sikder Vs. State, reported in 43 DLR (AD) 95, the Appellate Division held:

“His evidence remains unshaken by cross-examination and it appears that the High Court Division was well founded in its findings that the conviction of the appellants can safely be based on the solitary evidence of the eye witness P.W.1”.

The learned lawyer of the convict-appellant contends that said axe and blood stained on earth was not recovered and hence, the conviction and sentence imposed upon the accused is liable to be set aside. In this regard he referred a case from Indian Jurisdiction. Para 28 is produced below:

“In Pritinder Singh Vs. State of Punjab, (2023) 7 SCC 727, this Court in the facts and evidence of that case held that conviction could not be sustained. That apart, from not collecting any evidence as to whether the gun used in the crime belonged to the appellant or not, even the ballistic expert had not been examined to show that the wad and pellets were fired from the empty cartridges of the appellant. In that case which was based on circumstantial evidence, it was held that when there was

serious doubt as to credibility of the witnesses, the failure to examine ballistic expert would be a glaring defect in the prosecution case”.

The Indian Supreme Court held in Yogesh Singh Vs. Mahabir Singh reported in (2017) 11 Supreme Court Cases 195:

“In any case it is an established proposition of law that mere non recovery of weapon does not falsify prosecution case where there is impel unimpeachable ocular evidence”.

So, the contention taken by the learned lawyer for convict-appellant regarding non-recovery of the axe and blood stained on earth is not acceptable.

There is sufficient evidence on record showing that there was a land dispute between the accused and the Informant. It is evident that prior to the occurrence accused threatened the Informant. The First Information Report was lodged. The Inquest Report and medical evidence also corroborated the date, time and occurrence. The presence of witnesses at the spot was not doubtful. The testimonies of ocular witnesses

were corroborated. So, we find the prosecution has proved its case beyond reasonable doubt.

The apex court has already expressed its view about sentencing in death reference cases in **Ataur Mridha vs. State, 73 DLR (AD) (2021)-298** as regards absence of any specific guidelines for the judges to give appropriate and proportionate sentence. The majority judgment, as delivered by his Lordship Mr. Justice Hasan Foez Siddique (as his Lordship then was), expressed his view in the following way:

“137. There is no guidance to the Judge in regard to selecting the most appropriate sentence of the cases. The absence of sentencing guidelines is resulting in wide discretion which ultimately leads to uncertainty in awarding sentences. A statutory guideline is required for the sentencing policy. Similarly, a properly crafted, legal framework is needed to meet the challenging task of appropriate sentencing. The judiciary has enunciated certain principles such as deterrence, proportionality, and rehabilitation which are needed to be taken account while sentencing. The proportionality principle includes factors such as mitigating and aggravating circumstances. The imposition of these principles depends on the fact and circumstances of each case. The guiding considerations would be that the punishment must be proportionate. The

unguided sentencing discretion led to an unwarranted and huge disparity in sentences awarded by the courts of law. The procedure prescribed by law, which deprives a person of life and liberty must be just, fair and reasonable and such procedure mandates humane conditions of detention preventive or punitive. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided. While deciding on quantum of sentence as accused getting away with lesser punishment would have adverse impact on society and justice system. Sentencing for crimes has to be analysed on the touchstone of three test viz. crime test, criminal test and comparative proportionality test.”

Further, in doing the balancing act between aggravating and mitigating circumstances, his Lordship observed as follows:

“On balancing the aggravating and mitigating circumstances as disclosed in each case, the Judge has to judiciously decide what would be the appropriate sentence. In Judging an adequate sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, the injury to the individuals or to the society, whether the offender is a habitual, casual or a professional offender, affect of punishment on the offender, delay in the trial and the mental agony suffered by the offender during the prolonged trial, an eye to correction and reformation of the offender are some amongst many factors that have to be

taken into consideration by the Courts. In addition to those factors, the consequences of the crime on the victim while fixing the quantum of punishment because one of the objects of the punishments is doing justice to the victim. A rational and consistent sentencing policies requires the removal of several deficiencies in the present system. An excessive sentence defects its own objective and tends to undermine the respect for law. On the other hand, an unconscionably lenient sentence would lead to a miscarriage of justice and undermine the people's confidence in the efficacy of the administration of criminal justice.” (See para 138)

In the present case, we find that the death sentence imposed upon the convict petitioner when his age was 53. We also note from the charge sheet that the PCPR (previous condition and previous record) do not disclose any previous criminal activity of the condemned petitioner which tends to show that his character is not inherently criminal in nature. We keep in mind also the fact that admittedly there was land dispute and enmity and grudge had developed between the condemned petitioner and the victim and his family which has triggered the action of accused.

In the case of Nalu Vs state reported in 1 Apex Law Report's (AD) 222 and unreported decision of our Apex Court

in Jail Appeal No. 15 of 2010 , with similar mitigating circumstances, apex Court commuted the sentence of death to one of imprisonment of life.

In the facts and circumstances of the instant case, keeping in mind the age of the condemned petitioner now he is 59, no previous criminal record, admitted previous enmity, the fact that the convict accused arrested on 07/08/2016 and impugned judgment passed on 30/04/2018, he had languished in the condemned-cell for more than 6 and half years. We are of the view that ends of justice will sufficiently met if the death sentence is commuted and altered to one of imprisonment of life.

In view of above discussions of law and facts, the orders of the Court are as follows:

1) This Death Reference No. 54 of 2018 is rejected.

2) The Criminal Appeal No. 12740 of 2023, as preferred by the convict, **Azim Uddin** is dismissed with modification in respect of sentence. Accordingly, the impugned judgment and order dated 30/04/2018 passed by the learned Additional Session Judge in Session Case No. 226 of 2016 arising out of Pirgonj Police Station CaseNo.4 dated 05/06/2015 convicting

the appellant under Section 302 of the Penal Code are, hereby, affirmed. However, the sentence of death, as imposed by the trial Court upon the appellant, is commuted to the sentence of life imprisonment with a fine Taka 10,000/- and the convict shall get the benefit of Section 35A of the Code of Criminal Procedure for the period he has been in custody in the meantime. The jail appeal, being Jail Appeal No. 145 of 2018 as preferred by him, is dismissed with modification in respect of sentence.

3) The authorities concerned, including the Jail Authority, are directed to withdraw the convict, **Azim Uddin**, son of Md. Solim Uddin of Village- Birholi, Police Station-Pirgonj, District-Thakurgaon, from the condemned cell immediately and shift him to the general prison.

Let a copy of the judgment and order along with lower court records be sent to the trial Court for information and necessary action at once.

Muhammad Mahbub UI Islam, J:

I agree.