

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 60027 of 2019

With

Criminal Miscellaneous Case No. 37085 of 2019

With

Criminal Miscellaneous Case No. 28106 of 2021

IN THE MATTER OF :

Applications under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Abul Hossain

...Informant-Petitioner
(in CrI. Misc. no. 60027 of 2019)

Versus

Mst. Aleya Begum alias Alo and others

...Opposite Parties

Rashel

...Convict-Petitioner
(in CrI, Misc. no. 37085 of 2019)

Versus

The State

...Opposite Party

Md. Sohel Rana

...Convict-Petitioner
(in CrI, Misc. no. 28106 of 2021)

Versus

The State

...Opposite Party

Mr. Md. Abul Kashem, Advocate

...For the Informant-Petitioner
(in CrI. Misc. no. 60027 of 2019)

Mr. A.K.M. Enayetullah Chowdhury with

Mr. Md. Shahidul Islam, Advocates

...For the Opposite Party No.1
(in CrI. Misc. no. 60027 of 2019)

Mr. Md. Iqbal Hussain, Advocate
 ...For the opposite party No. 2
 (in CrI. Misc. no. 60027 of 2019)
 Mr. Abdullah Al Rasel, Advocate
 ...For the Convict-Petitioner
 (in CrI, Misc. no. 37085 of 2019)
 Mr. Mohammad Jahirul Islam, Advocate
 ...For the convict-Petitioner
 (in CrI, Misc. no. 28106 of 2021)
 Mr. S.M. Asraful Hoque, D.A.G with
 Ms. Fatema Rashid, A.A.G
 Mr. Md. Shafiquzzaman, A.A.G. and
 Mr. Md. Akber Hossain, A.A.G
 -----For the State

Judgment on: 12th March, 2024

Md. Riaz Uddin Khan, J:

These three Rules have been issued against the single judgment passed by Divisional Druto Bichar Tribunal, Chattogram and all these three Rules are disposed of by this single judgment.

Rule was issued in Criminal Miscellaneous Case No. 60027 of 2019 on the instance of the informant asking the opposite parties to show cause as to why the judgment and order dated 19.03.2019 passed by the Divisional Druto Bichar Tribunal, Chattogram in Druto Bichar Tribunal Case No. 07 of 2016 arising out of Chandina (Cumilla) Police Station Case No. 07(10)2014 corresponding to G.R. No. 230 of 2014 acquitting the opposite party Nos. 1 and 2 from the charges level against them under sections 302/201/34 of the Penal Code, 1860 should not be set aside and/or such other or further order or orders passed as to his Court may seem fit and proper.

Other two Rules were issued in Criminal Miscellaneous Case Nos. 37085 of 2019 and 28106 of 2021 asking the opposite party-State to show cause as to why the above mentioned judgment and order of conviction and sentence passed against the convict-petitioners Rasel and Md. Sohel Rana should not be quashed and/or such other or further order or orders passed as to his Court may seem fit and proper.

Succinct facts for disposal of these Rules are that on 13.10.2014 the informant lodged a First Information Report (the FIR) with the Chandina Police Station, Comilla stating inter alia that the informant's son, Ismail Hossain, a student of class VII of Joyan High School on 11.10.2014 at about 6.00 pm went out for watching football match on television to the tea stall of Abul Kashem. After end of the match while returning, wife of Sirjul Haq saw Ismail with two unknown youngmen on the road backside of Fazol's house and she asked him 'wherefrom he comes' but he did not reply. Sirajul Haq's wife does not know those two youngmen. Thereafter at about 8.30 pm when Ismail went near his home, two unknown youngmen called out him to take back his mobile phone which was heard by the wife and daughter of the informant from the house and they did not say anything. Ismail went out on the calling of those two youngmen and did not come back home and his cell phone was also

unreachable. The informant and his family members searched for him in all possible places including his relatives' houses but in vain. On 13.10.2014 at about 8.30 am the informant came to know that the dead body of his son is laying on the paddy field owned by Alam of Laxmipur village. The informant along with others went to the place of occurrence and saw the dead body of his son and also saw injury marks on the head, face, throat, ears etcetra and he presumed that after beating his son some unknown persons killed him by strangulation. The informant suspect that due to enmity with the neighbor Rokya who often threatened him to kill his son may kill him.

The police came to the place of occurrence and made the inquest report and sent the dead body for autopsy. Then the informant lodged the FIR on 13.10.2014 which gave rise to Chandina Police Station Case No. 07(10)2014 corresponding to G.R. No. 230 of 2014.

Mr. Md. Abul Kashem, learned Advocate appearing for the informant-petitioner in Criminal Miscellaneous Case No. 60027 of 2019 submits that the opposite party No. 1 Mst. Aleya Begum @ also made a confessional statement recorded under section 164 of the Code of Criminal Procedure. It is an inculpatory judicial confession which is made voluntarily but the trial court wrongly observed without

corroborative evidence one cannot be convicted. Now, in our Criminal jurisprudence it is a settled principle that if the confession is made voluntarily and is true, only the confession is enough to convict the accused. Besides Monir, a convict, made a confessional statement recorded under section 164 of the Code of Criminal Procedure. So the confession made by the opposite party No. 1 is supported by the confession of Monir. According to the learned advocate if we go through both the confessions then we would find that both opposite party No.1, Mst. Aleya Beum @ Alo and No.2, Abdus Salam are involved with the killing of the deceased. But the trial Court without considering the same, only on the basis of wrong conception of law acquitted the Opposite parties.

In replay Mr. AKM Enayetullh Chowdhury, learned Advocate for the opposite party No.1 submits that if we carefully go through the statements of Aleya Begum and Monir along with the depositions of the prosecution witnesses then it is clear that this is a case of no evidence so far opposite parties are concerned. The confessions are neither true nor voluntary having no credence. The trial court after scrutinizing all the evidence on record rightly acquitted the opposite parties calling for no interference by this Court.

The learned advocate for the opposite party no.2 adopted the submissions of the opposite party no.1 and further submits there is no evidence against accused Abdus Salam except in the confession of co-accused Aleya. In other confession convict Monir even did not utter his name. In such view the matter the trial court rightly acquitted opposite party no.2, Abdus Salam.

In Criminal Miscellaneous Case No. 37085 of 2019 Mr. Abdullah Al Rasel, learned Advocate appearing for the convict-petitioner Rasel submits that the convict petitioner is not FIR named and the informant is not the eye witness of the occurrence and there is no specific allegation against him. Prosecution produced 15 witnesses to prove their case but none is eye witness. Two co-accused namely 1.Monir and 2.Aleya Begum made confessional statements under section 164 of the Code of Criminal Procedure and on the basis of those confessional statements the convict petitioner was implicated in the instant case and without those confessional statements there is no evidence against him but the learned trial court did not consider that aspect of the case convicting the petitioner without any corroborative evidence to prove the prosecution case while acquitting confessing accused Aleya Begum.

The learned advocate strenuously submits that though the informant after hearing about the occurrence from the witnesses lodged the FIR but nowhere mention the name of the petitioner Rasel that he called out the deceased whereas in the dock the PWs-4, 5 and 6 alleged that the petitioner called out the deceased and they have heard it from 7 to 8 yards distance at dark night which is highly improbable.

Explaining the reason for filing instant application under section 561A of the Code of Criminal Procedure and for failure to prefer appeal the learned advocate submits that the convict petitioner was present before the trial court at the day of pronouncement of the judgment on 19.03.2019 but being poor and illiterate person he could not prefer appeal in time because he could not collect money for obtaining the certified copy and with his cousin's help after obtaining necessary papers the tadbirkar went to the learned advocate to assail his conviction but in the meantime the statutory period for preferring appeal has already been elapsed and finding no alternative preferred this application.

In Criminal Miscellaneous Case No. 28106 of 2021 Mr. Mohammad Jahirul Islam, learned Advocate appearing for the convict-petitioner Md. Sohel Rana, submits that the convict petitioner is not FIR named and the informant is

not the eye witness of the occurrence and there is no specific allegation against him and there is no independent and disinterested witness in the case.

The learned Advocate further submits that this is a case of no evidence and none of the disinterested and impartial local witness has corroborated the prosecution case in all material particulars. The prosecution has failed to prove its case beyond all reasonable shadow of doubt. The prosecution could not prove the charge against convict-petitioner and this material fact clearly raise a volume of doubt about the credibility of the prosecution story.

Per contra the learned Deputy Attorney General appearing for the state submits that the prosecution has proved the case against all the convicts namely Rasel, Monir, Sohel Rana and Sarwar. The trial court rightly found that the killing was held centering a mobile phone belonging to deceased Ismail who was done to death by the convicts by strangulation.

We have heard the learned advocates for the parties, perused the applications along with the annexure. We have also perused all the evidence on record including the FIR, Charge sheet, exhibits, depositions and the impugned judgment and order of conviction and sentence. In order to appreciate the submissions of the learned

advocates for the parties let us consider the evidence on record available before us.

PW-1 Abul Hossain is the informant who narrated the FIR story in his deposition and further stated that he came to know from police that Aleya, Salam, Rasel, Sarwar, Monir, Sohel killed his son. He lodged a GD Entry on 19.10.14 against Monir as he threatened him. In his cross-examination he stated that police told the names of the accused to him after submission of charge sheet. He denied the suggestion that police did not tell the names of the accused.

PW-2 Sirajul Islam and PW-3 Abul Khair are the witness of inquest report and seizure list. They did not mention any names of the accused in their depositions.

PW-4 Hafsa Begum is the daughter of the informant and sister of the deceased stated in her examination in chief that accused Monir, Sohel, Rasel, Sarwar used to talk with her brother Ismail and on 11.10.14 at about 6 pm Ismail went to watch Argentina-Brazil football match at the tea stall of Abul kashem where Monir, Sohel, Rasel, Sarwar along with the villegers watched the match. At about 8.30 pm when her brother came back accused Rasel called him to take back his mobile from 7/8 hands distance from their house and at that time she, her mother and sister were at the the front room. Thereafter his brother did not come back

for which they looked for him and on 13.10.14 came to know that the dead body of her brother was laying on the paddy field. Police arrested Rasel, Sohel, Monir, Aleya and Salam and then Aleya and Monir confessed that Sarwar was also involved with the occurrence. In her cross-examination she stated that when accused Rasel called the deceased, at that time her father was not at home. Police interrogated her on 13.10.14 and on that day her mother and sister were also interrogated. Aleya is their next door neighbor and her aunt (kaki) whose husband lived in Saudi Arabia. She denied the suggestion that to grab her tree garden Aleya was implicated in the case due to enmity with her father and witness sirajul Islam. She denied further suggestion that accused Monir, Sohel, Rasel and Sarwar were not involved with the occurrence.

PW-5 Nur Nahar Begum is the wife of the informant and mother of the deceased who gave deposition in the dock similar to PW-4. PW-6 Hazera Begum is the daughter of the informant and sister of the deceased also deposed similar to PWs-4 and 5. She further stated that her father came back home at 9 pm and they did not inform him about the missing of her brother and as her brother did not come back she informed him in the morning that accused Rasel called out her brother for mobile.

PW-7 Md. Alam is the owner of the paddy field on which the dead body of the deceased was found. He stated that he came to know after the arrest of the accused that Monir, Rasel, Sohel and others killed the deceased.

PW-8 Jahangir Alam is the brother-in-law of the informant and uncle (mama) of the deceased who received the dead body from the hospital after the autopsy was done. He stated that he came to know from police that accused Monir, Rasel, Sohel, Sarwar, Aleya and Salam killed his nephew. He denied the suggestion that police did not tell him the names of accused Monir, Rasel, Sohel, Sarwar.

PW-9 Ruhul Amin is the inquest witness and neighbor of the informant stated that he came to know about the missing of Ismail through micing on 11.10.14 and dead body was found on 13.10.14 at about 10/10.30 am and he went there after police reached there and signed on the inquest report prepared by police.

PW-10 Mofiz is the seizure list witness who stated that police seized the alamat in his presence and he signed on the seizure list.

PW-11 Dr. Abdul Hye is the medical expert who conducted autopsy of the deceased on 14.10.14, stated that at first he wrote, "no signs of injury could be detected, as the body was decomposed. On dessection of the neck clotted blood was found on the both sides of

trachea. Opinion kept reserved. Viscera preserved for chemical analysis.” After receiving the viscera report he opined that death in his opinion was due to acute cardio respiratory failure as a result of manual strangulation which was antemortem and homicidal in nature. In cross he denied the suggestion that his opinion of manual strangulation was on assumption since neck and trachea were decomposed.

PW-12 Abdul Hamid is a police constable who was a member of raiding party along with the investigating officer who arrested accused Monir from the Dhaka Airport on 18.04.2015.

PW-13 S.I. Md. Nurul Islam, the Investigating Officer stated that he took the case for investigation and went to the place of occurrence, prepared the inquest report of the dead body and sent it to the hospital for autopsy. Then he prepared the sketch map and seized some alat and prepared seizure list. He arrested accused Rasel on 17.10.14 and Monir on 18.4.15 respectively. On interrogation Monir voluntarily confess that he along with Rasel, Sarwar, Sohel, Aleya killed the deceased and accordingly Monir made judicial confession. He also arrested Aleya who also made judicial confession. He recorded statements of as many as 12 witnesses under section 161 of the Code of Criminal Procedure. He submitted the

chargesheet. In his cross-examination he stated that he interrogated wife of Sirajul Haq who denied to be a witness and he visited the tea stall and interrogated its owner Abul Kashem. He could not identify the two youngmen as mentioned in the ejahar. He interrogated the informant on 13.10.14 but interrogated the mother of the deceased Nurnahar (PW-5) on 6.5.15 and at the same time interrogated Hazera (PW-6) and Hafsa (PW-4), the sisters of the deceased. He did not recover any mobile phone from Aleya or anyone from her family as no mobile phone was found. He denied the suggestion that he tortured accused Monir or Aleya to obtain confession.

PW-14 Md. Anis is a school teacher of Jatrabari Ideal School and College who lived in Dhaka for last about 8 years stated that he heard that accused Salam used to visit accused Aleya centring wich an altercation took place between Aleya and mother of the deceased. Salam and Aleya with the help of accused Monir, Rasel, Sohel, Sarwar killed the deceased. He was present during preparation of inquest report and signed on it. In his cross he stated that he was interrogated by the police on 25.8.15. He was outside of the country for 22 days from 25 July, 2015 and did not go abroad from 11.10.14 to 25 July, 2015. He heard about the illicit relations between Salam and Aleya from Soaib and Abul Bashar but did not hear anything from the mother

of deceased. Eldest son of Aleya is student of Feni Government Politechnic Institute, eldest daughter is the SSC examinee while her youngest son is a student of primary school. He conceded that illicit relation between Salam and Aleya or planning of killing centering that relationship or calling out the deceased etcetra were his assumption.

PW-15 Md. Sazzad Hossain is the Magistrate who recorded the confession of accused Monir and Aleya on 19.04.2015 and 20.04.2015 respectively. He stated that accused Monir and Aleya made their statements voluntarily and in recording their statements he followed the procedure. He sent back both the accused after recording their statements. In cross-examination he stated that he gave 1 hour time to Aleya for reflection. He further stated that the statement of accused Monir was exculpatory for which he certified that it was voluntary but did not write that it was true.

Besides the depositions as above accused Mst. Aleya Begum @ Alo and Monir gave statements under section 164 of the Code of Criminal Procedure wherein Mst.Aleya Begum @ Alo stated - “ইসমাইল কে মারার দিন রাতে ব্রাজিল আর্জেন্টিনার খেলা ছিল। এর সপ্তাহ খানেক আগে রাত ১০.০০ টার সময় পার্শ্ববর্তী বাড়ির সালাম আমার বাসায় আসে। সালাম মাঝে মধ্যে আমার ঘরে বিভিন্ন কাজে আসত। এ নিয়ে ইসমাইলের মা আমার ও সালাম সম্পর্কে খারাপ কথা বলে। একদিন সালাম এসে আমাকে বলে যে, আমি যদি কিছু টাকা দিই তাহলে সে ও তার লোকজন দিয়ে ইসমাইল কে খুন করবে। আমি রাজী হইনি। ঘটনার তিনদিন আগে

একদিন সালাম এসে আমার হাতে এক লক্ষ টাকা দেয় এবং বলে যে, এই টাকা লোকজনকে দিবে ইসমাইল কে খুন করার জন্য। আমি যেন ছারোয়ারকে টাকাটা দেই। শুক্রবার রাত ৮.০০ টার দিকে ছারোয়ার এসে আমার কাছ হতে ঐ টাকা নিয়ে যায়। সালাম ও ছারোয়ারের সাথে কথাবার্তায় সোহেল, রাসেল, মনির এরাও তাদের দলের মর্মে জানতে পারি। ব্রাজিল আর্জেন্টিনা খেলার দিন রাতে তারা ইসমাইলকে মসজিদের ধারে মেরে দূরে ক্ষেতের মধ্যে তার লাশ ফেলে রাখে। পরের দিন সকালে সালাম আমাকে ফোন করে জানায় যে, তারা ইসমাইলকে মেরে ফেলেছে এবং আমি যেন বাড়ীতে কিছু না বলি। দুই দিন পরে ক্ষেতের মধ্যে ইসমাইলের লাশ পাওয়া যায়।”

While convict Monir in his statement recorded under section 164 of the Code of Criminal Procedure stated- “সোহেল, সরোয়ার, রাসেল ও আমি একই এলাকার ও পূর্ব পরিচিত। মৃত ইসমাইল মা ও তাদের বাড়ির প্রবাসী মনিরের স্ত্রীর সাথে প্রায়শই ঝগড়াঝাটি লেগে থাকতো। সেদিন ছিল শনিবার, রাতে ব্রাজিল-আর্জেন্টিনার খেলা ছিল। ঐ দিন বিকেলে অনুমান ৩.০০ টার সময় নতুন বাজারে আমার ও রাসেলের সাথে সোহলে ও ছারোয়ারের দেখা হয়। সোহেল ও ছারোয়ার আমাদেরকে জানায় যে, তাদের সাথে মনিরের স্ত্রীর এ মর্মে কথা হয়েছে যে, ইসমাইলকে মেরে ফেলতে হবে। এজন্য সে তাদেরকে এক লক্ষ টাকা দিবে, যার পঞ্চাশ হাজার টাকা সে আরো তিনজন লোক জোগাড় করে দিবে তারা পাবে এবং বাকি পঞ্চাশ হাজার টাকা আমাদেরকে দিবে। আমি ও রাসেল এ প্রস্তাবে রাজী হইনি। ঐ দিন বিকেলে ৪.৩০/৫.০০ টার দিকে আলী মিয়ান দোকানের সামনে ব্রীজের উপর আমরা পুনারায় একত্রিত হই। এ সময়ও তারা (সোহেল ও ছারোয়ার) ইসমাইলকে খুন করার ব্যাপারে আরো কথাবার্তা বলে। এসময়ও আমি রাজী হইনি। আমি ও রাসেল তখন বাজারে চলে আসি। রাত অনুমান ৮.৩০/৯.০০ টার সময় সোহেল ও ছারোয়ার আমার সাথে থাকা রাসেলকে ফোন করে রাস্তার ধারে যেতে বলে। আমি ও রাসেল বাজার থেকে পশ্চিম দিকে রাস্তা ধরে এগিয়ে যেতে যেতে মাজারের সামনে সোহেল ও ছারোয়ারের সাথে আমাদের দেখা হয়। তখন তারা বিল হতে রাস্তায় উঠছিল। তারা আমাদেরকে বলে যে, মনিরের স্ত্রীর জোগাড়কৃত অজ্ঞাতনামা তিনজন লোকের সহায়তায় ইসমাইলকে গলা টিপে মেরে ফেলা হয়েছে। ঐ তিনজন লোক ইসমাইলের মৃত দেহ ফেলে আসার জন্য বিলের মধ্যে নিয়ে গেছে। সোহেল ও ছারোয়ার এ ঘটনা কাউকে না জানানোর জন্য আমাদেরকে অনুরোধ করে। আমি ও রাসেল বাজারে চলে আসি এবং সোহেল ও ছারোয়ার তাদের বাড়িতে চলে যায়।”

These are the evidences before us. The learned trial judge after considering the evidence on record convicted accused Rasel, Md. Sohel Rana, Monir Hossain and sarwar under section 302/34/201 of the Penal Code while acquitted accused Mst. Aleya Begum @ Alo and Abdus Salam from the charge.

The informant obtained rule against the judgment and order of acquittal against Mst. Aleya Begum @ Alo and Abdus Salam.

The principles governing the scope of interference by the appellate/revisional court in an appeal or revision filed by the State/Informant/Complainant challenging acquittal of accused by the trial court are well settled by our higher Court. The appellate court has full power to review, reappraise and reconsider the evidence upon which the trial court passed the order of acquittal. The Code of Criminal Procedure does not impose any limitation, restriction or condition to exercise such power both on question of law and facts. However, the appellate court should bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless proved guilty by a competent court of law. Secondly, the accused having

secured acquittal, presumption of innocence is further rock-hard, reaffirmed and strengthened by the trial court. Most importantly, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. In other words, while deciding an appeal against acquittal, the appellate court is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record. If the view is possible view, the appellate court should not overturn the order of acquittal on the ground that another view was also possible. These principles have been settled by our apex court as well as by the Indian Supreme Court. In a recent case Supreme Court of India held that it is beyond doubt that the scope of interference by an appellate for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles: (a) that the judgment of acquittal suffers from patent perversity; (b) that the same is based on a misreading/omission to consider material evidence on record; (c) that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record. [H.D. Sundara

& others Vs. State of Karnataka reported in (2023) 9 SCC 581].

The scope of interference against the order of acquittal recorded by the trial court in a revision and/or application filed under section 561A of the Code of Criminal Procedure is undoubtedly limited than an appellate court.

Keeping the above principles in mind, we now proceed to analyse the evidence on record in the present case with reference to the material infirmities and lacunae in the prosecution case.

Admittedly there is no eye witness in the instant case. The informant alleged that his son, Ismail Hossain (the deceased) went missing after watching a football match on television at the tea stall of Abul Kashem. Sirajul Haq's wife saw Ismail with two unknown youngmen. At about 8.30 pm when Ismail went near his home, two unknown youngmen called out him to take back his mobile phone which was heard by the wife and daughter of the informant from the house and they did not say anything. Ismail went out on the calling of those two youngmen and did not come back home and his cell phone was also unreachable. Investigating Officer (IO) admitted that he could not identify that two youngmen. Sirajul Haq's wife did not turn up to identify the said two youngmen. On 13.10.2014 at about 8.30 am the informant came to know that the dead body of his son is laying on the paddy field

owned by one Alam of Laxmipur village. The informant along with others went to the place of occurrence and saw the dead body of his son and also saw injury marks on the head, face, throat, ears etecetera and he presumed that after beating his son some unknown persons killed him by strangulation. The informant suspected that due to enmity with the neighbor Rokya who often threatened him to kill his son may kill him. The informant further stated that he came to know from police that Aleya, Salam, Sarwar, Monir, Sohel killed his son and police told the names of the accused after submission of charge sheet.

No witness claimed that they have seen the convict petitioners Rasel or Md. Sohel Rana with the deceased before the occurrence or fled just after the occurrence. PWS-4, 5 and 6 two sisters and mother of the deceased respectively claimed on the dock that they heard the voice of convict Rasel but did not see him. Other than depositions of these 3 PWS there is no evidence against the accused except two statements recorded under section 164 of the Code of Criminal Procedure by accused Aleya and Monir. We shall deal those confessions later. We have already noticed that PWS-4, 5 and 6 in a single voice claimed that accused Rasel called out deceased Ismail and they could identify the voice of Rasel from their house at a dark night from 7/8 hands away. It is noticeable that the

informant alongwith his family members (PWs-4,5 & 6 included) looked for missing Ismail for one day but these witnesses never said anything about Rasel or Sohel or Aleya or Salam. Even these 3 PWs did not say anything to the IO before 06.05.2015 though the IO went to the house of these witnesses after the recovery of dead body and thereafter on many times. There is no explanation for revealing the name of accused Rasel after more than 6 months. According to the informant, two unknown persons called out Ismail. The informant after gathering all the information from his relatives lodged the FIR. So, hearing the voice of convict Rasel by the PWs-4, 5 & 6 is nothing but subsequent embellishment and created story. If they really heard the voice of Rasel in the fateful night they must told it to the informant and also to the IO immediately after Ismail went missing or at least after recovery of dead body of Ismail. So, these witnesses (PWs-4, 5 & 6) are not trustworthy at all and no credence can be attached in their depositions.

Now, let us consider the judicial confession of convict Monir (who is not before us). According to the Magistrate (PW-15), who recorded the statement of accused Monir, it was voluntary but not true. However, Monir stated that accused Sohel and Sarwar informed him and Rasel that expatriate Monir's wife told them to

kill Ismail and will get taka one lac on which they (Monir and Rasel) did not agree. At about 8.30/9.00 pm Sohel and Sarwar ringed Rasel asking them to go near the road. They were going through the road and when they reached near the majar they met Sohel and Sarwar who were coming from the beel informed that Ismail has been killed by the 3 hired persons of expatriate Monir's wife and asked not to inform anyone. From going through this confession it appears to us that it is pure and simple exculpatory statement in nature. The IO could not find those 3 hired killer as stated by convict Monir. Without any corroborative evidence no co-accused can be convicted. We have already noticed that there is no such corroborative evidence.

Let us now consider the judicial confession of acquitted accused Mst. Aleya Begum @ Alo. She stated that Salam used to visit her house and one day Salam told her that he wants to kill Ismail as his mother used to say bad words regarding their relationship on which Aleya disagree. One day Salam gave her taka one lac to hand over it to Sarwar to kill Ismail and she gave it to Sarwar. She could know that Sohel, Rasel and Monir were also involved during conversation with Salam and Sarwar. Ismail was killed and on next day Salam informed her through phone that they have killed Ismail and asked her not to inform anyone.

The trial court elaborately discussed the evidence along with the confession of Aleya and categorically found that prosecution utterly failed to prove the story of illicit relationship between Aleya and Salam. Police could not recover any mobile phone from Aleya or her family members and the IO admitted that as he did not find any mobile phone from Aleya or her family members did not seized it. Moreover, Ismail's (deceased) mother Nurnahar Begum (PW-5) nowhere in her deposition alleged that he knew about any illicit relation between Aleya and Salam or she said anything to anybody regarding relationship between Alaya and Salam. On so filthy ground of some bad words of the mother, a boy of 14 years were killed, the trial court did not believe that story and found it is highly improbable. Even if this story is believed she cannot be convicted on a charge of murder having no common intention of plan of murder except pre and post knowledge of murder. We do not find any reason to decide that the judgment of the trial court is perverted, so far it relates to the acquittal of accused Mst. Aleya Begum @ Alo and Abdus Salam. There is no iota of evidence against Abdus Salam except the confession of Aleya, a co-accused while another co-accused Monir utter nothing about him in his confession.

Regarding convict petitioner Sohel Rana there is no evidence except the two

abovementioned confession of co-accused Aleya and Monir. Trial Court did not believe those confessions as true and voluntary and we also do not find any reason to believe those confessions which run contrary to the prosecution case. It is very unfortunate that an innocent boy of 14 years of age has been killed but the Investigating Officer could not unearth the truth. Sirajul Haq's wife could have identify those two youngmen, if anyone of them were amongst the accused, whom she saw with the deceased.

Considering the facts and circumstances of the case as discussed above, we are of the view, that the prosecution could not prove the case beyond all reasonable doubt against the convict-petitioners Rasel and Md. Sohel Rana. Hence the Rules issued in Criminal Miscellaneous Case No. 37085 of 2019 and Criminal Miscellaneous Case No. 28106 of 2021 are made absolute.

The informant could not convince us by showing credible evidence that the judgment and order of acquittal recorded by the trial court was perverted or warrant our interference by invoking inherent power under section 561A of the Code of Criminal Procedure. Hence the Rule issued in Criminal Miscellaneous Case No. 60027 of 2019 against the acquittal of the opposite parties Mst. Aleya Begum @ Alo and Abdus Salam is discharged.

The judgment and order of conviction and sentence dated 19.03.2019 passed by the learned Sessions Judge (In Charge) and Divisional Druto Bichar Tribunal, Chattogram in Druto Bichar Tribunal Case No. 07 of 2016 arising out of Chandina Police Station Case No. 07 dated 13.10.2014 corresponding to G.R. No. 230 of 2014 convicting the petitioners Rasel and Md. Sohel Rana under sections 302/34/201 of the Penal Code is hereby set aside so far it relates to the convict-petitioners and is affirmed so far it relates to Mst. Aleya Begum @ Alo and Abdus Salam acquitting them from the charge.

The convict-petitioner Rasel is on bail earlier granted by this Court and need not surrender and his bail bond is discharged. The convict-petitioner Md. Sohel Rana be set at liberty forthwith if not warranted in any other case.

Pending application(s), if any stand disposed of.

Send down the lower court's record along with a copy of this judgment at once.

Ashish Ranjan Das, J:

I agree.