Present:

Mr. Justice Zafar Ahmed
And
Ms. Justice Shathika Hossain

Death Reference No. 33 of 2018
with
Criminal Appeal No. 4056 of 2018
with
Criminal Appeal No. 4242 of 2018
with
Criminal Appeal No. 4055 of 2021
with
Criminal Appeal No. 1810 of 2022
with
Criminal Appeal No. 293 of 2025
with
Jail Appeal No. 131 of 2018
with
Jail Appeal No. 132 of 2018
with
Jail Appeal No. 133 of 2018
with
Jail Appeal No. 134 of 2018
with
Jail Appeal No. 135 of 2018
with
Jail Appeal No. 136 of 2018

The State
-Versus-
Md. Masud Rana @ Mantri and others
…condemned prisoners

Mr. Al Amin Siddiqui, with
Mr. Mir Moniruzzaman, with
Mr. Md. Solaiman Howlader, with
Mr. Md. Mijanur Rahman, with
Mr. Md. Aminul Islam, AAGs
.....For the State

Ms. Shahnaz Haque, Advocate
... State Defence Lawyer
(convict No. 3 Md. Liton Miah @ Rafique and convict No.6 Md. Sakhawat Hossain @ Shafique)

Mr. S M Shahjahan, Senior Advocate, with
Mr. Md. Atiqul Haque, with
Mr. Md. Shafiqul Islam, with
Ms. Mahin Momtaz, Advocates
...For the Criminal Appeal No. 4056 of 2018
(convict No.1 Masud Rana)
Mr. Al Haj Alal Uddin, with
Ms. Rubaya Sultana, with
Ms. Sazia Afreen, with
Ms. Tania Nusrat, Advocates
...For the Criminal Appeal No. 4242 of 2018
(convict No.7 Sarwar)
Mr. A.M. Mahbub Uddin Khokon, Senior Advocate, with
Mr. Tareq Bhuiyan, with
Mr. Shah Newaz, Advocate
...For the Criminal Appeal No. 4055 of 2021
(convict No. 2 Bijoy)
Mr. Md. Ahsanullah, with
Mr. Md. Anowar Hossain, with
Mr. Mohammad Samsul Islam, with
Mr. Md. Kawser Hamid, Advocates
...For the Criminal Appeal No. 1810 of 2022
(convict No. 5 Chandu)
Mr. S M Shahjahan, Senior Advocate, with
Ms. Helena Begum, Advocate
...For the Criminal Appeal No. 293 of 2025
(convict No. 4 Isahaque)

Heard on: 18.08.2026, 19.08.2026, 20.08.2026, 23.08.2026, 24.08.2026, 25.08.2026, 30.08.2026, 31.08.2026, 01.09.202602.09.2026
Judgment on: 06.09.2026

Zafar Ahmed, J.

1. In Sessions Case No. 912 of 2017 [G.R. No. 225 of 2015 (Kaunia), Kaunia Police Station Case No. 10 dated 11.11.2015], the Special Sessions Judge, Rangpur, by judgment and order dated 18.03.2018 convicted 7 accused under the Penal Code for

the murder of one Rahmat Ali and sentenced them to death as well as a fine of Tk. 20,000/- each. Sections of the Penal Code under which they were convicted and the respective Jail Appeal and Criminal Appeal filed by them are as follows:

i. **Convict-1 -** Md. Masud Rana @ Mantri u/s 302/34, Jail Appeal No. 131 of 2018 and Criminal Appeal No. 4056 of 2021;

ii. **Convict-2 -** Bijoy @ Md. Mahaddes Ali @ Darji u/s 302/34, Jail Appeal No. 136 of 2018 and Criminal Appeal No. 4055 of 2021;

iii. **Convict-3 -** Md. Liton Mia @ Rafique u/s 302/109, Jail Appeal No. 133 of 2018;

iv. **Convict-4 -** Md. Isahaque Ali u/s 302/109, Jail Appeal No. 132 of 2018 and Criminal Appeal No. 293 of 2025;

v. **Convict-5** - Md. Chandu Mia u/s 302/109 (absconding during trial, arrested on 26.05.2021), Criminal Appeal No. 1810 of 2022.

vi. **Convict-6** - Md. Sakhawat Hossain @ Shafique u/s 302/109, Jail Appeal No. 135 of 2018; and

vii. **Convict-7** - Md. Sarwar Hossain @ Sabu @ Mijan @ Driver u/s 302/109, Jail Appeal No. 134 of 2018 and Criminal Appeal No. 4242 of 2018.

6 co-accused, namely (1) Sadat @ Ratan Mia @ Saad, (2) Md. Toufiqul Islam @ Sabuj, (3) Md. Abu Sayed, (4) Md. Jahangir Hossain @ Rajib, (5) Md. Rajibul Islam @ Badal (absconding), and (6) Md. Babul Aktar @ Babul Master were found not guilty and were acquitted of the charge u/s 302/109 of the Penal Code.

2. The Special Sessions Judge, Rangpur referred the Death Reference to the High Court Division under section 374 of the Code of Criminal Procedure, 1898 (in short, the "Cr.P.C.") for confirmation of the death sentence. The Death Reference, Jail Appeals and Criminal Appeals are heard together and disposed of by this single judgment. Hereinafter, the condemned prisoners are referred to as C1 to C7 with their respective first name(s).

First Information Report (FIR):

3. On the night of 10.11.2015 at around 10 pm, Rahmat Ali (60) was returning home after closing his pharmacy situated at Chaiter Mor, Rangpur district, half a km away from his home.

When he reached a road near the home of PW4, unknown assailants killed him with sharp weapons. PW16 found the dead body of Rahmat at around 10.15 pm on the side of the road and raised hue and cry. PWs 4, 7 and 23 went there and informed Rahmat's son PW1 (informant) of the incident. PW1 is an Advocate by profession. Police came to the place of occurrence. After completion of the inquest and post-mortem examination of the dead body, PW1 lodged the First Information Report (FIR) with Kaunia Police Station on 11.11.2015 at 3.35 pm against unknown accused.

4. It is stated in the FIR that Rahmat was a follower of the Sureshwari Tarikat, which was not received well by the local people belonging to the Jamaat-Shibir. They used to threaten him over the matter.

5. It is further stated that the informant's cousin brother (PW2) filed a case under Section 138 of the Negotiable Instruments Act (N.I. Act) against one Md. Samsul Arefin. The informant was the lawyer for his cousin brother. In the past, Samsul Arefin threatened the informant regarding the matter. Samsul Arefin and his father were members of the Jamaat-Shibir. They had a connection with one Md. Jahidul Islam. The

informant suspected that they might have killed his father out of enmity with the informant.

1st charge-sheet:

6. The case was partly investigated by the Sub-Inspector Monoranjan (PW44), who was the 1st investigating officer (I.O.) of the case. Inspector Mamun-or-Rashid (PW45) was the 2nd I.O. of the case. During the course of investigation, C1 Masud Rana, C3 Liton, C4 Isahaque, and C7 Sarwar made judicial confessions. Police also seized some alamats, including knives and Jihadi books. Charge-sheet dated 03.07.2016 was submitted under Sections 302, 109 and 34 of the Penal Code against 14 accused persons, including C1 and C3-C7. In respect of C2 Bijoy, it was stated in the charge-sheet that his father's name and address could not be found.

Charge framed against C1, C3-C7:

7. On 16.08.2017, learned Special Sessions Judge, Rangpur framed charges against 12 accused, including C1 and C3-C7. C1 to C3 were charged under Sections 302 and 34 of the Penal Code. C4 to C7 were charged under Sections 302 and 109 of the Penal Code. C5 Chandu was absconding. The accused pleaded not guilty to the charge. It is relevant to mention here

that, meanwhile, two charge-sheeted accused, namely **Md. Saddam Hossain @ Rahul** and **Md. Nazrul Islam @ Hasan @ Bike Hasan** were killed in a crossfire.

Naraji, supplementary charge-sheet, arraignment of C2:

8. Earlier, the informant filed a 'Naraji' petition against the charge-sheet, which was rejected by the Court below. The matter went to the High Court Division. This Division, by order dated 0810.2017 passed in Criminal Miscellaneous Case No. 43568 of 2017, passed an order for further investigation of the case. During the further investigation, C2 Bijoy was shown arrested in the case on 30.10.2017. A Test Identification Parade (T.I.P.) was conducted on 18.12.2017. Bijoy was identified by PW22. A supplementary charge-sheet dated 30.12.2017 was submitted by the ASP Md. Arman Hossain (PW46), wherein C2 Bijoy, with his father's name and address, was implicated. The supplementary charge-sheet was accepted, cognizance of the offence against Bijoy was taken, and charge under Sections 302 and 109 of the Penal Code against him was framed by the learned Special Sessions Judge on 23.01.2018. Bijoy pleaded not guilty to the charge.

Meanwhile, PWs 1-29 were examined and cross-examined. They were recalled and were re-examined.

9. State defence lawyer was engaged for the absconding accused, including C5 Chandu. The prosecution examined 46 witnesses. The accused persons were examined by the learned Special Sessions Judge under Section 342 of the Cr.P.C. They again pleaded their innocence. C1-C4 and C6-C7 made statements during their examination by the Court. C2 and C7 submitted some documents.

10. The defence case, as it appears from the trend of cross-examination of the PWs and the statements made by the convicts under Section 342, is that they are innocent and they have been falsely implicated in the case by the police. The specific defence case of C2 Bijoy is that the real Bijoy was killed in a crossfire and that he was set up in the case by the police during the further investigation into the case. C7 Sarwar took a specific defence of mistaken identity.

11. In this Death Reference hearing, the oral evidence of the PWs, which exclusively relates to the acquitted accused, is ignored since it has no bearing upon the merit of the case against the

condemned prisoners. Accordingly, the oral testimony of the relevant PWs is discussed below.

Summary of oral testimony of relevant PWs:

12. PW1 (informant) deposed that he saw the dead body of his father Rahmat at about 11.45 pm on 10.11.2015 at the place of occurrence. He further deposed that Rahmat was a follower of Sureshwari Tarikat and was a khadem of the Mazar of his paternal grandfather, which, he suspected, was not received well by the local people belonging to Jamaat-Shibir. They, from time to time, threatened Rahmat. PW1 further deposed that he was the lawyer for his cousin brother (PW2), who had filed a criminal case against Samsul Arefin under the N.I. Act, for which Samsul Arefin threatened him. Samsul Arefin and his father were workers of Jamaat-Shibir. They had a connection with one Md. Jahedul Islam. PW1 suspected that they may have killed his father for this reason. In cross-examination, PW1 stated that police did not record his statement under Section 161 of the Cr.P.C. and did not give him the investigation report although he had asked for it. He further stated that he was aware that the persons suspected by him were not charge-sheeted as accused.

13. PW2 is the nephew of Rahmat. He had filed the case under the N.I. Act against Samsul Arefin. He deposed that he went to the place of occurrence after 10/15 minutes of the incident and saw the dead body of Rahmat. Police went there between 11 pm and 12 am. PW2 went to the house of Samsul Arefin along with police at around 3 am. Police found a bag underneath the bed in his room containing many Jihadi books and some clothing. Police took away the bag. PW2 further deposed that Samim (Samsul Arefin) threatened the informant for the N.I. Act case. PW2 further deposed that Rahmat was a follower of Sureshwari Tarikat and was a khadem of the Mazar. Abdul Aziz, Azizul Maulana and many others used to give JMB training next to their house. In 2005, during the period of 'Bangla Bhai', they publicly threatened the deceased that they would kill him for the programmes conducted in the Mazar. The accused Saddam (since killed) was related to Abdul Aziz. On the date of the incident, Azizul and one Huzur detained him for about 15/20 minutes at the Chaiter Mor. In cross-examination, he deposed that he was not examined by police.

14. PW3 (deceased's wife) deposed that the deceased was a follower of Tarikat and was a khadem of the Mazar. For this

reason, he was opposed by the Jamaat people. In cross-examination, she stated that the police did not examine her during the investigation but questioned her on the night of the occurrence.

15. PWs 4, 6-12, 14 and 16 are independent witnesses. They deposed that the deceased was a follower of Sureshwari Tarikat and/or was a khadem of the Mazar. PW 11 further deposed that some people of Jamaat used to oppose the deceased. The local Jamaat people held a meeting and publicly said that everything would be fine if the big leader of the Mazar, at which Uros is conducted, is killed. The killing incident happened after 5/7 days. In cross-examination, PW11 stated that police questioned him on the date of the occurrence. Thereafter, police did not question him. He further stated that he could not say the date of the meeting of Jamaat.

16. PW17 is a UP member. He is a seizure list witness. He deposed that on 02.12.2015, the I.O. recovered a 26½ inch long knife from a pond. He had witnessed the recovery. On the same day, many Jihadi books were recovered from underneath the earth of the pond, which he did not witness. On 03.12.2015, two knives were recovered as per the showing of C1 Masud Rana.

He had witnessed the recovery. He signed the seizure lists. He further deposed that he knew Masud Rana, who lived in the area. He deposed that Masud Rana was present in the dock. In cross-examination, PW17 deposed that at the time of recovery, Masud Rana was not present.

17. PW18 is also a seizure list witness. In cross-examination, he deposed that at the time of recovery of the knife and Jihadi books, Masud Rana was not present.

18. PW19 is also a seizure list witness. He deposed that on 02.12.2015 and 03.12.2015, police recovered three knives and many Jihadi books from the pond of the accused Masud Rana and seized those. He signed the seizure lists. He identified the knives and the books in the Court. He further deposed that the pond was drained using his 'shallow' and then the articles were recovered. In cross-examination, PW 19 stated that at the time of draining the pond, Masud Rana was not present.

19. PW22 is an independent witness. He owned a house in the Choto Nurpur area in Rangpur. During his examination on 13.09.2017, while C2 Bijoy was not charged as an accused, he deposed that he let out his house to C3 Liton and C6 Sakhawat in June/15. 2/3 persons stayed in that house from time to time.

C4 Isahaque also stayed at his house. C6 Sakhawat used to stay there with his wife and two children. Another person with his wife also stayed there. He was not present at the dock. The unknown person's wife stayed in the house after Sakhawat's wife had left the house. They identified themselves as cloth merchant. Subsequently, they used to run an auto-rickshaw. They left the house in December/15. After the killing of Japanese, he came to learn through the newspaper that they belonged to JMB. PW22 identified C3 Liton, C4 Isahaque and C6 Sakhawat in the dock. When C2 Bijoy was arraigned in the case, PW22 deposed on 31.01.2018 on recall. He deposed that Bijoy also stayed at his house for about six months with others as a tenant. Bijoy used to operate an auto-rickshaw. PW22 further deposed that he had identified C2 Bijoy @ Mahaddes at Rangpur jail. He identified Bijoy in the dock. He denied the defence suggestion that the accused did not rent his house or did not operate auto-rickshaws or that his deposition is false. PW22 further stated, while cross-examined by C2 Bijoy, that the investigating officer brought Bijoy from Bogura to Kotwali police station. He denied the suggestion put to him by Bijoy that he was shown Bijoy at the police station and then

he identified him. He further stated that earlier he gave a statement to the police. The subsequent investigating officer did not record his statement.

20. PW23 is an independent witness. He owned a rickshaw-charging shop in the locality. He deposed that on 13.09.2017 C3 Liton and C4 Isahaque used to charge auto-rickshaws at his shop. They told him that they were cloth merchant. He identified C3 and C4 in the dock. On recall, on 31.01.2018, PW23 deposed that C2 Bijoy @ Mahaddes also used to charge auto-rickshaw at his shop. He identified Bijoy in the dock. He denied the defence suggestion that the accused did not operate auto-rickshaws or that his testimony is false. He denied the suggestion put to him by C2 Bijoy that police had shown Bijoy to him.

21. PW24 was an auto rickshaw businessman in the locality. He deposed that in the 1st week of September, 2015, he sold a green colour auto rickshaw to 3/4 persons. One of them was C3 Liton. He identified Liton in the dock. In cross-examination, PW24 deposed that the police took Liton to his shop and he identified him as the auto-rickshaw purchaser.

22. PW27 is the doctor who held the post-mortem examination of Rahmat on 11.11.2015 at 12.30 pm. On examination, he found the following injuries on the dead body:

(1) One incised wound 9" x 4" x 2½ " was present on the back of the upper part of the neck (transversely) with cutting of skin, muscles, vessels, nerves and other underlying structures including bones.

(2) One incised wound 3" x 1 ½ " x 1" was present on the right temporo-occipital region (behind the ear) on the head obliquely with cutting of lower and of right ear lobe.

(3) One incised wound 6" x 2" x 4" was present on the front of the neck above the thyroid cartilage with cutting of skin, muscles, vessels, nerves and other neck structures with underlying cervical bones.

(4) One incised wound 1" x ¼" skin was present on the posterior aspect of right wrist joint.

(5) One incised wound 1" x ¼" skin was present on the posterior aspect of the right forearm (1" above the wrist joint).

PW27 opined that death was due to shock and haemorrhage as a result of cut throat wounds which were ante mortem and homicidal in nature. He was not cross-examined.

23. PW28 is a police Constable. He is the seizure list (ext. 7, 10, 13) witness. He deposed that some articles were recovered on

25.11.2015 and 26.11.201. On 25.11.2015, C1 Masud Rana was present with them. At the beginning of cross-examination by C1, he stated that on his left palm “Masud Rana” is written. He did not know Masud Rana beforehand. He further stated that on 25.11.2015 police arrested C1 from the Sapla Square in Rangpur. 20/25 police personnel were present there. He was inside the vehicle at that time.

24. PW30 was an A.S.I. of police. He scrutinised the names and addresses of some accused, including C7 Sarwar. He stated in cross-examination that he did not get any information as to C7’s involvement with the JMB.

25. PW33 was an A.S.I. of police. He deposed that C1 Masud Rana and C4 Isahaque were known to be involved in militancy. In cross-examination, he stated that he did not collect any documents as to their involvement in militancy.

26. PW34 was an A.S.I. of police. He deposed that during inquiry he learnt that C5 Chandu was an active member of the JMB. During cross-examination, he stated that he did not record the statement of anyone as to Chandu’s membership with the JMB and did not collect any documents.

27. PW41 was an A.S.I. of police. He deposed that he scrutinised the name and address of C2 Bijoy. He further deposed that his real name is Md. Mohaddes Ali @ Darji. Since he used to work as a tailor (দর্জি), 'Darji' was added to his name. He is not known as 'Bijoy' in the locality. He was an active member of JMB, and Bijoy is his pseudonym. In the locality, he is known as 'দর্জি জঙ্গী'. He used to come to Bogura town with a sewing machine and did not go to his local area for 1 or 1½ months. In cross-examination, PW41 stated that C2 Bijoy has a tailoring shop in the local bazaar. He denied the defence suggestion that the accused Bijoy is not known as 'দর্জি জঙ্গী'.

28. PW42 was the Senior Judicial Magistrate who recorded the confessional statements of C1, C3, C4 and C7 (Masud Rana, Liton, Isahaque, Sarwar). In cross-examination, PW42 stated that he verbally told the accused that if they did not confess, they would not be sent to police custody, but the same was not written. He further stated that he examined the accused's body and wrote that there was no mark of injury. He denied the defence suggestion that he did not examine the body of the accused or that the accused told him about physical torture, which he had ignored, or that he did not apply judicial mind,

or that he did not give sufficient time to the accused [for reflection].

29. PW43 was a Judicial Magistrate. He conducted the T.I.P. on 18.12.2017 at 4 pm at Rangpur Central Jail, in which C2 Bijoy was identified by PW22. The T.I.P. report dated 27.12.2017 and the form were marked as ext. 19 and 20, respectively. PW43 denied the defence suggestion that PW22 identified Bijoy in the T.I.P. as per the identification of the investigating officer or that the T.I.P. was not conducted properly.

30. PW44 was the 1st I.O. of the case. He stated in cross-examination that he did not seize the folding knife.

31. PW45 was the 2nd I.O. of the case. He was an Inspector of police. He submitted the charge-sheet. He deposed that, as per the showing of C1 Masud Rana, he had recovered 3 knives and Jihadi books from a pond consisting of approximately 20 decimals. He also recovered mobile phones and computer equipment from other accused.

32. PW45 stated in cross-examination that C1 Masud Rana disclosed the name of Bijoy during interrogation in police custody and thus he (PW45) learnt the name of Bijoy for the first time. Masud Rana did not know the full name and address

of Bijoy. Bijoy is his organisational name. PW45 denied the suggestion that this Bijoy is not the real Bijoy or that the real Bijoy was killed in a crossfire related to JMB, which he was aware of or that he did not investigate the case properly.

33. PW45 further stated in cross-examination that the witnesses did not mention the name of C7 Sarwar in their statement recorded under Section 161 of the Cr.P.C. He further stated that '@ Mizan @ Driver', which was added to the name of Sarwar, was found in the case records. He denied the defence suggestion that '@ Mizan @ Driver' was not part of the name of Sarwar.

34. PW46 was the A.S.P. He conducted the further investigation and submitted the supplementary charge-sheet against C2 Bijoy. In cross-examination, PW46 stated that he made an application to show Bijoy arrested in the case on 30.10.2017. Bijoy was brought to the Kotwali police station for the first time on 14.11.2017. The statement of PW22 was recorded under Section 161 of the Cr.P.C. on 19.11.2017. PW46 made an application for holding T.I.P. on 19.11.2017. He denied the defence suggestion that he had shown Bijoy to PW22 at the police station, or that real Bijoy was killed in a crossfire in

Tangail, or that this accused (C2 Bijoy) was framed as Bijoy, or that he had falsely implicated C2 in the case in the hope of departmental credit.

35. Admittedly, there is no direct evidence against the condemned prisoners. The 'last seen principle' does not apply to the case. This is a case of unseen murder. The entire prosecution case and the conviction are based on the circumstantial evidence, recovery of articles based on the disclosure statement of the convicts and the confessional statements of four convicts, *i.e.,* C1 Masud Rana, C3 Liton, C4 Isahaque, and C7 Sarwar. The proper way to approach a case like the present one is, first, to marshal the evidence against the accused, excluding the confession altogether. If it is capable of belief independently of the confession, it is not necessary to call the confession in aid. However, if the Court is not prepared to act on the other evidence as it stands, the Court may call in aid the confession and use it to lend assurance to the other evidence and thus fortify itself in believing what without the aid of the confession it would not be prepared to accept. This proposition of law is supported by ***Kashmira Singh,*** AIR 1952 SC 159, and ***Sumon,*** 26 BLC (AD) (2021) 114. Accordingly, we

would discuss the other evidence first, excluding the confession.

List of circumstantial evidence:

36. In the instant case, the circumstantial evidence is as follows:

    a. C2 Bijoy, C3 Liton, C4 Isahaque and C6 Sakhawat were tenants of PW22 at Choto Nurpur, Rangpur from 15th June to 15th December in 2015. Another unknown person used to stay there with his wife (PW22).

    b. The above-named convicts purchased an auto-rickshaw and used to operate it (PWs 22-24).

    c. C1 Masud Rana, C2 Bijoy, C4 Isahaque, and C5 Chandu were involved with JMB. Police did not get any information as to the involvement of C7 Sarwar with JMB.

    d. Recovery of knives and Jihadi books.

    e. Convicts used various pseudonyms.

JMB:

37. Jamaatul Mujahedin and Jamaatul Mujahedin Bangladesh is the same organisation commonly known as JMB, which is a banned organisation under the Santrash Birodhi Ain, 2009, for its involvement in terrorist activities. It appears from the

decided cases where the members of JMB were tried for various charges (murder, including the murder of 2 Judges, bomb hurling, terrorist activities, etc.) that the members of JMB use various pseudonyms. Examples are the cases reported in 59 DLR (AD) 36, 72 DLR (AD) 113, and 21 ADC 465.

Recovery and disclosure statement:

38. Police recovered knives, Jihadi books, mobile phones, computer equipment including CPU, *etc*. Call Detail Record (CDR) of the mobile phone numbers was not obtained. Forensic examination of the computer equipment and the CPU was not conducted. Therefore, the facts as to recovery of mobile phones and computer equipment are irrelevant in the case.

39. On 02.12.2015 at 4.50 pm, police recovered a sharp knife measuring 26½ inches long with a wooden handle (21 inches long without handle) from a pond measuring around 20 decimals with bank [seizure list (ext.5)]. The pond was owned by C1 Masud Rana (PW19). On the same day at 7.30 pm, some books and other articles were recovered from underneath the earth of the bank of the same pond [seizure list (ext.8)]. On

03.12.2015 at 7.15 pm two sharp knives, one 26 inches long with wooden handle (20½ inches long without handle) and the other 21 inches long with wooden handle (15½ inches without handle) were recovered from the same pond after draining the water [seizure list (ext.6)]. The prosecution claims that those were recovered as per showing of C1 Masud Rana but PWs 17-19 (seizure list witnesses) categorically testified that at the time of recovery, Masud Rana was not present there. Learned senior Counsel for Masud Rana submits that the testimony of PWs 17-19 disproved the prosecution case as to the recovery of knives and Jihadi books as per the showing of the convict.

40. Section 27 of the Evidence Act, 1872 is an exception to the general rule that a statement made before the police by an accused is not admissible in evidence. However, vide Section 27, only so much of the statement made by an accused during police custody is admissible in evidence as distinctly leads to the discovery of a fact. The reason for admissibility in evidence of such statement, which is generally termed as 'disclosure statement', is that discovery of a fact pursuant to such statement is a guarantee of the truth of the said statement, which is presumably in the exclusive knowledge of the

accused and also presumed to be untainted (AIR 2001 SC 979, AIR 1960 SC 1125). Thus, disclosure statements can also be described as those which "furnish a link in the chain of evidence" needed for a successful prosecution. The procedure for recovery, seizure of articles and making the seizure list is governed by Section 103 of the Cr.P.C. Neither Section 27 of the Evidence Act nor Section 103 of the Cr.P.C. requires the physical presence of the accused at the place of recovery. There is no requirement of law that the disclosure statement should be reduced in writing (***Farid Khan***, 45 DLR 171).

41. We are not oblivious of the observations made by our Apex Court in ***Md. Humayun Kabir***, 15 SCOB [2021] AD 76 (para 27, 28) wherein it has been observed:

> "Since statement under section 27 of the Evidence Act is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act.
>
> In the case of *Himachal Pradesh Administration V. Om Prakash* reported in (1972) 1 SCC 249 it was observed by the Supreme Court of India that … The protection afforded by sections 25 and 26 of the Evidence Act, while considering the

> evidence relating to the recovery the Court shall have to exercise that caution and care which is necessary to lend assurance that the information furnished and the fact discovered is credible".

42. Police often suffer from excessive zeal and become overenthusiastic to establish or bolster the case and, in so doing, exaggerate facts. It does not necessitate the Court to throw away the entire evidence deposed by police or any witness. The test of surrounding circumstances, and of comparing the testimony of one witness with that of other witnesses and thereby separating what is true from what is false, is a well-recognised method of identifying the relevant facts. A similar view was echoed by the Supreme Court of India in ***Raj Kumar Singh***, (2013) 5 SCC 722, wherein it was observed: (para 43)

> "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test the credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. …the court must not attach undue importance to minor discrepancies, rather must consider broad spectrum of the prosecution version. The discrepancies may be due to normal errors of perception or observation or due to lapse of memory or due to faulty or stereotype investigation".

43. Based on the above-discussed proposition of law and the admitted facts, we can safely discard the prosecution case so far as it relates to the physical presence of C1 Masud Rana at the place of recovery, but the fact remains that three knives and Jihadi books were recovered as per the disclosure statement made by him to the police while he was in police custody. The disclosure statement is admissible under Section 27 of the Evidence Act and the recovery of the knives and Jihadi books, vide seizure lists exhibit 5-6 and 8, is also admissible in evidence. Our view is further fortified by the fact that the defence did not dispute the recovery, nor did it raise a defence that the recovered articles were planted in the pond by the police.

Motive:

44. Section 8 of the Evidence Act provides that any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. In a case of direct evidence, the prosecution is not obliged to suggest any motive. However, things are different when the case against the accused rests completely on circumstantial evidence. In ***State vs. Abdul***

Kader @ Mobile Kader and ors., 67 DLR (AD) (2015) 6, it was held:

> "To consider the circumstantial evidence in a charge of murder against an accused, motive is a very important element (para 98). It is true that when there is no eye witness of the incident of killing, the prosecution is required to prove as far as possible the motive of the accused to connect him in the incident". (para 41)

In ***Md. Humayun Kabir,*** 15 SCOB [2021[AD 76, it was held:

> "The proof of motive helps the Court in coming to a correct conclusion when there is no eye witness of the occurrence…. It is true that the failure to establish the motive for the crime does not throw over-board the entire prosecution case but it casts a duty on the Court to scrutinize other evidence with greater care since motive moves a man to do a particular act and the same is relevant fact behind a crime…. motive prompts a man to form an intention to do an act and the same is a moving power. There is hardly any action without a motive".

45. As to the motive, learned defence Counsel refers to the FIR and depositions of PWs 1-3 and submits that Samsul Arefin and Jahidul Islam were suspected in the body of the FIR as killers of Rahmat, the motive being the conduct of a case by the informant (PW1) as a lawyer on behalf of PW2, who had filed a case against Samsul Arefin under the N.I. Act. Samsul threatened PW1 for conducting the case. Learned Counsel

further submits that PW1 was not supplied with a copy of the charge-sheet although he had asked for it. The persons he suspected were not charge-sheeted. Moreover, on the very night of the occurrence, PW2 went to Samsul's home at around 3 am with police. Some articles, including Jihadi books, were recovered from underneath his bed. Police took away those articles. Learned Counsel points out that PWs 1-3 (PW3 is the wife of the victim) were not examined by the police during investigation. Further investigation into the case was conducted based on the 'Naraji' petition filed by PW1. Learned defence Counsel submits that these facts make it clear that from the very beginning, the investigation was conducted in the wrong direction wherein the motive as stated by PWs 1 and 2 was completely ignored. Learned Counsel submits that the investigation was conducted with a motive to hide the real perpetrators of the crime.

46. In this regard, we note that PW1 did not raise any objection against the supplementary charge-sheet in which C2 Bijoy was implicated in the case. It is on record that two separate and distinct motives for killing Rahmat were mentioned in the FIR as well as in the deposition of PWs 1 and 2. Firstly, he was a

follower of Sureshwari Tarikat and was a khadem of the Mazar, which was not received well by the local Jamaat-Shibir people, and secondly, the N.I. Act case. The issue as to motive relating to the N.I. Act case was not raised by the defence during the trial. It has been raised for the first time in the instant Death Reference. Suffice it to say that it is within the absolute domain of the police as to how they would conduct the investigation, subject to the applicable laws and the rules. It is for the Court to accept it or to reject it. The informant is at liberty to file a Naraji petition if he is aggrieved by the police report. In this case, the High Court Division directed further investigation based on the Naraji petition. Subsequently, a supplementary charge-sheet was submitted, and the same was accepted by the Court. It would be seen that the first motive, *i.e.,* the victim being the follower of Sureshwari Tarikat and a khadem of the Mazar, was the proven motive in the case. We also must bear in mind that motive alone is not sufficient to convict the accused in a case of circumstantial evidence.

Confessional statement and voluntariness:

47. Recording a confession is a very solemn act. Section 164 of the Cr.P.C. lays down certain precautionary rules to be followed by the Magistrate to ensure the voluntariness of the confession while recording the same. In such a case, the accused, being placed in a situation free from the influence of the police, is expected to speak out the truth, being remorseful of what he has committed. A confession can be acted upon if it passes two tests in the assessment of the Court. The first test is its voluntariness. If a confessional statement fails to pass the first test, the second test [trustworthiness] is immaterial [***Dr. Miah Md. Mohiuddin***, 17 SCOB [2023] AD 1].

48. In respect of the confessions of C1 Masud Rana and C3 Liton, it has been argued that how much time was given to them for reflection was not mentioned by the Magistrate in the printed form, that the mandatory requirement of 3 hours for reflection was not given to them, and that the confessions were obtained after a prolonged police remand followed by torture and, as such, their confessional statements have failed to pass the first test of voluntariness.

49. As to the reflection time, Rule 79(4) of the Criminal Rules and Orders, 2009 (in short, the 'Cr.R.O.') provides that the

accused shall be given sufficient time for reflection. The rule does not mandate 3 hours' time for reflection. The question is what amount of time can be considered as 'sufficient time'? In ***Haripada Devenath,*** 19 DLR (Dhaka) 573, it was held that there is no absolute rule that a confessing accused should be given three hours or any specific time for reflection, that the Rule referred to in the confessional form does not have the force of law, and that any irregularity in recording a confession is curable under Section 533 of the Cr.P.C. It was held in ***Jatindra Kumar Sutradhar,*** 20 DLR (Dhaka) 526 that no hard and fast rule can be laid down as to the time given to the accused for reflection before confession. In ***Rattan Kha,*** 40 DLR 186, it was held that a full three hours taken in both reflection and recording confession is sufficient compliance with the requirement to give the confessing accused time for reflection. In ***Sidharth,*** AIR 2005 SC 4352, the Supreme Court of India held that two hours given for reflection were sufficient.

50. C1 Masud Rana was brought before the Magistrate's Court chamber on 07.12.2015 at 1.30 pm to have his confession recorded. After recording the confession, he was forwarded to

the jail at 4.45 pm. The entire procedure took 3 hours 15 minutes to complete. C3 Liton was brought before the Magistrate's Court chamber on 14.01.2016 at 3 pm. After recording the confession, he was forwarded to the jail at 8.15 pm. The entire procedure took 5 hours to complete. In both confessions, column 3 of the form regarding giving time for reflection is blank. This omission, in our view, is a mere irregularity which cannot be taken as a vitiating factor. Applying the principles laid down in *Haripada Devenath, Jatindra Kumar Sutradhar, Rattan Kha,* and *Sidharth* **(**supra), we hold that Rule 79(4) of the Cr.R.O. was complied with by the Magistrate in giving sufficient time for reflection to the confessing accused C1 Masud Rana and C3 Liton.

51. Now, we turn to the argument advanced by Mr. S M Shahjahan, learned Senior defence Counsel that the confessions of C1 Masud Rana and C3 Liton were obtained after a prolonged police remand followed by torture and the prosecution has failed to justify the prolonged police remand which has rendered the confessions involuntary. In support of the argument Mr. Shahjahan refers to the case of ***Faruk Mahajan and ors.***, 17 BLD (1997) 15 wherein it was held,

"It becomes clear from a combined reading of section 61 and section 167 of the Cr.P.C. that an accused cannot be detained in custody of the police for a longer period than under all the circumstances of the case is reasonable and such period must not, without an order of remand by a Magistrate, exceed 24 hours, exclusive of the time necessary for the journey from the place of arrest to the Court of the Magistrate. Any longer detention is unlawful. In passing an order of detention touching the liberty of a person, a Magistrate should apply his judicial mind to determine whether the circumstances of the case really call for a detention in police custody".

Mr. Shahjahan also refers to the case of ***Vinod Solanki,*** (2008) 16 SCC 537 wherein it was held: (para 36)

> "A person accused of commission of an offence is not expected to prove to the hilt that confession had been obtained from him by any inducement, threat or promise by a person in authority. The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction".

52. C1 Masud Rana was arrested on 25.112015 at 7.30 pm. On 26.11.2015, the Magistrate granted 4 days' police remand of Masud Rana. Thereafter, a further 8 days' police remand was granted on 30.11.2015. After 11/12 days' police remand, he made the confessional statement on 07.12.2105.

53. C3 Liton was arrested on 04.01.2016 at 8.30 pm. On 05.01.2016, the Magistrate granted 10 days' police remand. He made the confessional statement on 14.01.2016 after 9 days' police remand.

54. Section 167(2) of the Cr.P.C. authorizes the Magistrate to grant police remand of an accused for a term not exceeding 15 days as a whole. Rule 74 of the Cr.R.O. provides, *inter alia*, that an order for police remand should be made after exercising sound judicial discretion and perusal of the case diary; that the Magistrate should consider whether police remand is necessary for the identification of any person, the discovery or identification of any property or for any special reason; and that an accused, who has failed to make the expected confession or statement, shall not, as a general rule, be a ground for police remand. In ***Bangladesh vs. BLAST***, 69 DLR (AD) (2017) 63, it has been observed: (para 134)

> "Since a remand order is judicial order, the Magistrate has to exercise this power in accordance with the well settled norms of making a judicial order. The norms are that he is to see as to whether there is report of cognizable offence and whether there are allegations constituting the offence which is cognizable. Non-disclosure of the grounds of satisfaction by a police officer should not be accepted".

55. Learned defence Counsel failed to show any material from which it can be inferred that the prolonged police remand has infringed Rule 74 of the Cr.R.O. and the guidelines given in the *BLAST* case. It has been pointed out by the learned defence Counsel that initially C1 Masud Rana was remanded to police custody for 4 days. Thereafter, further order for 8 days' police remand was made in violation of Rule 74(3), which provides that further detention in police custody should be made for the shortest possible period depending on the nature of each case. In this regard, our observation is that Rule 74(3) does not override Section 167(2) of the Cr.P.C.

56. Learned AAG submits that in the instant case, Rahmat was murdered on 10.11.2015. Earlier, a Japanese national, namely Hoshi Kunio, who was living in Rangpur, was murdered on 03.10.2015 at a place under Kaunia police station (the present killing was also committed at a different place under the same police station). The same investigating officer Mamun-or-Rashid (PW45), who submitted the 1st charge-sheet in the instant case, also investigated the Hoshi Kunio murder case and submitted the charge-sheet in that case. The present convicts C1 Masud Rana, C3 Liton, C4 Isahaque, C6

Sakhawat and another were sentenced to death in the Hoshi Kunio murder case. The High Court Division accepted the death reference in respect of C1, C3, C6 and another and acquitted C4 of the charge. The matter is now pending before the Appellate Division. The judgment of the High Court Division has been reported in 28 BLC 729 = 2022 BLR 270. The learned AAG submits that during the course of investigation, the same I.O. arrested the present convicts, including C1 Masud Rana, C3 Liton and others, interrogated them, recovered various incriminating articles, and for this reason prolonged police remand was essential to bring the real perpetrators of the crime to justice. Learned AAG further points out that C1 Masud Rana made two separate judicial confessions in both cases on 07.12.2015, which were recorded by the same Magistrate. C3 Liton made the judicial confession in the instant case on 14.01.2016 and in the Hoshi Kunio murder case on 21.01.2016. Learned AAG submits that in the attending facts and circumstances of the case, the prolonged police remand was essential, and the prolonged police remand cannot be a ground for testing the voluntariness of the confessions.

57. In ***B.P. Achala Anand v. S. Appi Reddy***, (2005) 3 SCC 313, the Supreme Court of India observed:

> "Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice".

58. While dealing with a custodial death case coupled with police atrocities, the Indian Supreme Court observed in ***Prithipal Singh and ors.,*** (2012) 1 SCC 10: (para 50)

> "Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass an unconventional order keeping in mind that an extraordinary fact situation requires extraordinary measures. …Thus, it is evident that while deciding the case, the court has to bear in mind the peculiar facts, if so exist, in a given case".

59. In the case in hand, the investigating officer was investigating two separate murder cases which occurred within a span of 38 days, the suspects being the members of the banned terrorist organization JMB. The circumstances are extraordinary. The police remand orders were made in accordance with law. Therefore, the judicial confessions followed by the prolonged police remand cannot be *ipso facto* a ground to question the voluntariness of those. The cases cited by the learned defence Counsel are of no assistance to the ground taken by him.

60. It is argued that the Magistrate did not assure C1 Masud Rana and C3 Liton that, whether they would make a confessional statement or not, they would not be remanded to police custody. In this regard, we note that it is decided through case law that such words of assurance are not a rule of law as such but are a rule of prudence. Concerning this rule of prudence, *i.e.*, giving the words of assurance, it was observed in ***Dipok Kumar Sarker***, 8 BLD 1988 (AD)109:

> "Of course, if a Magistrate has any reason to believe that the accused is apprehensive of the police or that the police might have tortured or prevailed upon him during custody, he may assure him by telling him as aforesaid but that is not to say that if it were not said (in a particular case) the voluntariness of the confession would be in doubt".

The above-quoted observations make it obligatory for the Magistrate to give the words of assurance if he has reasons to believe the accused is apprehensive of the police or that the police might have tortured or prevailed upon him during custody. PW42 (Senior Judicial Magistrate), who recorded the confessional statement of C1 Masud Rana, C3 Liton and two others, testified in cross-examination that he verbally told the accused that if they did not confess, they would not be sent to police custody, but the same was not written. We note that the

Magistrate asked C1 and C3 the questions and ascertained the facts which he is required to do under Sections 164 and 364 of the Cr.P.C. read with Rule 79 of the Cr.R.O. The answers and the observations made by the Magistrate led him to a reasonable belief that no such apprehension in the mind of the accused existed. Therefore, the objection raised by the defence has no leg to stand. This leads us to the conclusion that the judicial confessions of C1 Masud Rana and C3 Liton have passed the first test of voluntariness. In order to examine the second test, *i.e.*, whether the confessions were true, those are reproduced below.

Confessional statement of C1 Masud Rana:

61. Confession of C1 Masud Rana dated 07.12.2015 is reproduced below:

আমার নাম মাসুদ রানা হলেও আমার ডাক নাম মামুন ওরফে মন্ত্রী। আমি ২০১৩-২০১৪ সেশনে পবিত্র ঝাড় ফাজিল মাদ্রাসা হতে ফাজিল পাস করি। আমার ব্যবহৃত মোবাইল দুইটি ছিল। তার একটি ০১৭৮৬-৯৭৬২৩৫ এবং অপরটি ০১৯৮৪-৮১৩৩৭৬।

আমি সপ্তম শ্রেণীতে লেখাপাড়া করাকালে ছাত্র শিবিরকে সমর্থন দিলেও প্রত্যক্ষভাবে জড়িত ছিলাম না। আমি অষ্টম শ্রেণীতে লেখাপড়া করাকালে জে.এম.বি এর নেতা মোঃ ইনছার আলীর অনুপ্রেরণায় জে.এম.বিতে যোগদান করি। আমি জে.এম.বি তে ভালো কাজ করায় আমাকে পীরগাছা থানার সভাপতি অর্থাৎ দ্বায়িত্বশীল হিসাবে নিয়োগ দেয়।

আমাদের সংগঠনের লক্ষ্য হলো সশস্ত্র জিহাদের মাধ্যমে দ্বীন ইসলামকে প্রতিষ্ঠা করা। রহমত আলী একজন ভন্ডপীর হওয়ায় এবং সে শরীয়ত বিরোধী কাজ করায় তাকে হত্যার পরিকল্পনা করা হয়। তাকে মানুষ সিজদা করতো এবং তার মাজার শরীফে গাঁজা খেয়ে জিকির করতো। এছাড়াও সেখানে অনেক খারাপ কাজ হতো। সে ছিল মুশরিক।

গত ০৯/১১/২০১৫ ইং তারিখে সকাল আনুমানিক ১০.০০ টায় সাদ্দাম আমাকে মোবাইল ফোনে (নং ০১৯৮৪-৮১৩৩৭৬) ফোন করে বড় দরগা হাই স্কুল মাঠে সন্ধ্যা ৭.০০ টার দিকে যেতে বলে। একটা কাজ রেডি আছে মর্মে আমাকে জানায়।

আমি তখন আমার বাড়ীতে লুকিয়ে রাখা দুইটি ছোড়া কাপড়ে পেঁচিয়ে ব্যাগে ভরে সাইকেলে করে বিকাল/সন্ধ্যা ৫.৩০ টার দিকে জে.এম.বি এর সদস্য ইসাহাক (২৪) পিতা মৃত ময়েজ খাঁ এর বাড়ীতে নিয়ে

যাই। প্রথম দিকে ইসাহাক ছোড়া রাখতে রাজী না হলেও পরবর্তীতে সে আমার নির্দেশমত রাখে। আমি আগের দিনে রুহুল আমিন হত্যায় ব্যবহৃত পিস্তল তিনটি ও ম্যাগাজিন দুইটি রেখেছিলাম।

আমি মোবাইল ফোনে জে.এম.বি এর সদস্য আব্দুর রহমান চান্দুকে সিরিজ কাগজ নিয়ে গিয়ে ছোড়া দুইটি ধার দিতে বলেছিলাম। আমি ৭.০০ টার দিকে সাদ্দামের কথামত বড় দরগা হাইস্কুল মাঠে যাই। সেখানে আমি, সাদ্দাম, বিজয়, হাসান এবং অজ্ঞাতনামা একজনকে দেখি। সেখানে ভন্ডপীর রহমতকে হত্যার পরিকল্পনা করা হয়। রহমতকে হত্যার সিদ্ধান্ত নিয়ে আমি, হাসান এবং বিজয় ডিসকভারী মোটর সাইকেলে করে ইসাহাকের বাড়ীর সামনে যাই। আমি আগেই ইসাহাককে পিস্তলসহ তার বাড়ীর গেটে দাঁড়াতে বলেছিলাম। আমরা তিনজন রাত্রী ৭.৩০ টার দিকে ইসাহাকের বাড়ীর সামনে থেকে পিস্তল নেই। আমরা তিনজন ভায়ারহাট ব্রীজে যাই রাত্রী ৮.৪৫ ঘটিকার দিকে। সেখানে সাদ্দাম এবং অজ্ঞাতনামা একজন মোটর সাইকেল নিয়ে দাঁড়িয়ে ছিল।

আমরা দুইটি মোটর সাইকেল নিয়ে ০৫ জন চৈতার মোড়ের দিকে রওনা হই। সেখান গিয়ে রহমতকে হত্যার জন্য উপযুক্ত জায়গা এবং পালিয়ে যাওয়ার রাস্তায় দেখি। সাদ্দাম অজ্ঞাতনামা লোককে নিয়ে চৈতার মোড় হতে অনুমান আধা কিলোমিটার দূরে রাস্তায় অবস্থান নেয়। রাত্রী অনুমান ৯.৩০ টার সময় আমি, বিজয় এবং হাসান মোটর সাইকেল যোগে চৈতার মোড়ে যাই। রহমত আলী বাড়ী ফেরার পথে আমি ও বিজয় তাকে অনুসরন করি। হাসান মোটর সাইকেল নিয়ে আমাদের ফলো করার কথা থাকলেও সমন্বয় না হওয়ায় ঐ দিন রহমত কে হত্যা করা হয় নাই। আমরা পরদিন কাজ করবো মর্মে সিদ্ধান্ত নিয়ে যার যার বাড়ীতে চলে যাই। সেই মোতাবেক গত ১০/১১/২০১৫ ইং এ সন্ধ্যা ৬.০০ টার দিকে ইসাহাকের বাড়ী হতে একটি ধারালো ছোড়া (লম্বায় এক হাতের বেশী) নিয়ে অটো যোগে সাত দরগা বাজারে যাই। পরে রাত্রী ৭.৩০ টার দিকে হাসান এবং বিজয় লাল কালো রং এর ডিসকভারী মোটর সাইকেল যোগে সাত দরগা বাজারে উপস্থিত হলে তাদের সাথে ভায়ারহাট ব্রীজে যাই। আমরা পৌছায় পরপরই সাদ্দাম মোটর সাইকেলে অজ্ঞাতনামা ব্যক্তিকে নিয়ে পিস্তল সহ উপস্থিত হয়।

সেখানে থেকে আমরা ০৫ জন চৈতার মোড় থেকে অনুমান এক কি.মি. দূরে পৌছলে সাদ্দাম আমাকে, হাসান ও বিজয়কে তিনটি পিস্তল দেয়। সাদ্দাম বিজয়কে ছোট একটি ছোড়াও দেয়।

রাত্রী অনুমান ১০.০০ টার দিকে রহমত আলী দোকান বন্ধ করে নিজ বাড়ীতে ফেরার পথে চৈতার মোড় হতে দক্ষিনে অনুমান ৫০০ গজ দূরে পৌছলে আমি আমার হাতে থাকা ছোড়া দ্বাঁড়া তার মাথার ডান পার্শ্বে দুইটি চোট দেই। সে রাস্তায় পড়ে গেলে বিজয় তার হাতে থাকা ভাঁজ করা চাকু খুলে তার পিঠের উপর উঠে তাকে জবাই করে। কাজ শেষে আমি এবং বিজয় হাসানের মোটর সাইকেলে উঠে রহমত আলীর বাড়ীর সামনে দিয়ে চৈতার মোড় হতে আধা কিলোমিটার দূরে থাকা সাদ্দাম ও অজ্ঞাতনামা ব্যক্তির সাথে দেখা করি। সাদ্দামের কাছে তিনটি পিস্তল এবং ভাঁজ করা চাকু দিয়ে আমরা তিনজন আমাদের বাড়ীর দিকে চলে যাই। আমরা তিনজনই রাত্রে গোয়াল ঘরে ঘুমাই। ফজরের নামাজের আগেই মোটর সাইকেল গোয়ালঘরে রেখে বের হয়ে আসি।

আমার কাছে থাকা ছোড়াটি এবং পূর্বের থাকা দুইটি ছোড়া আমার বাড়ীর পার্শ্বে পুকুরের পানিতে ফেলে দেই।

এর তিন চারদিন পর সাদ্দাম এসে মোটর সাইকেল নিয়ে যায়।

পরবর্তীতে আমাকে গ্রেফতার করার পর গত ০২/১২/২০১৫ ইং তারিখে আমার দেখানো মতে রহমতকে হত্যায় ব্যবহৃত ছোড়াসহ অপর দুইটি ছোড়া পুলিশ পুকুর থেকে উদ্ধার করে। একই সাথে ৫/৬ মাস আগে পুকুরে ফেলে রাখা গ্রেনেড তৈরীর বডি (লোহার পাইপ) ৫৪ টি উদ্ধার করে। এ জিনিসগুলো ইনছার আলী আমাকে দিয়েছিল।

এই ঘটনার আগে আমি গত ০৩/১০/১৫ ইং এ হোশি কুনিও কে হত্যা করি।

62. C1 Masud Rana stated in his confessional statement that he was the President of JMB of Pirgacha, Rangpur. The organization’s goal is to establish Islam through armed Jihad. A plan was hatched to kill Rahmat, as he was a fraudulent Pir, was engaged in acts contrary to Sharia, and was a Mushrik.

63. Masud Rana further stated that on 09.11.2015 at about 7 pm, five people, namely C1 Masud Rana, C2 Bijoy, Saddam, Hasan (both killed in crossfire) and an unknown person gathered at a place and planned to kill Rahmat. They tried to kill him on that day but could not succeed.

64. Masud Rana further stated that on the night of 10.11.2015, the same five people went to a place which was approximately 1 km away from Chaiter Mor. Saddam gave 3 pistols to Masud Rana, Hasan and Bijoy. Saddam also gave a small knife to Bijoy. At around 10 pm, when Rahmat was returning home after closing his shop and reached a point approximately 500 yards south of Chaiter Mor, Masud Rana struck the right side of his head twice with the dagger. The dagger was described in the confessional statement as sharp লম্বায় এক হাতের বেশী, which is approximately more than 18 inches long. When Rahmat fell to the ground, Bijoy unfolded the knife he was carrying, climbed onto his back and slit his throat. Thereafter, Masud Rana and Bijoy got on a motorcycle ridden by Hasan and met Saddam and the unknown person at a spot ½ km away from Chaiter Mor. They gave 3 pistols and the folding knife to Saddam and went to their home. Masud Rana threw away the dagger used

for the murder of Rahmat and 2 more daggers in the pond situated next to his home. On 02.12.2015, police recovered those daggers from the pond as per his showing. Masud Rana further stated in his confessional statement that on 03.10.2015, he had killed Hoshi Kunio.

Confessional statement of C3 Liton:

65. Confession of C3 Liton dated 14.01.2016 runs as under:

আমি তরফ সরতাজ সরকারী প্রাথমিক বিদ্যালয়ে পঞ্চম শ্রেণী পর্যন্ত লেখাপড়া করি। পরে তরফ সরতাজ ফাজিল মাদ্রাসায় ৬ষ্ঠ শ্রেণী পর্যন্ত লেখপাড়া করি। আমি আমার বাবার সাথে কৃষিকাজ করি। আমি 01794198329 মোবাইল ব্যবহার করি।

আমি নামাজ পড়া কালে আমার প্রতিবেশী চাচা আঃ ইজ্জাক আমার সাথে বাদলের পরিচয় করিতে দেয়। সে আমাকে কোরআন, হাদীসের বিভিন্ন বিষয় শোনাতো এবং আমার ভালো লাগতো। এক পর্যায়ে আমি তার কথামত জে.এম.বির সমর্থক হই। আমার আব্বা সুদের উপর টাকা ধার নিতো। ইবাদত কবুল হবে না জন্য সে আমাকে ঢাকায় যাওয়ার নাম করে বাড়ী হতে বের হতে বলে। এরই প্রেক্ষিতে ঈদ-উল ফিতরের ১৫ দিন পর গত ০৩/৮/১৫ কি ০৪/০৮/১৫ ইং তারিখের দিকে আমি বগুড়ার চার মাথায় চলে আসি। সেখান থেকে বাদল আমাকে গোবিন্দগঞ্জ গরুর হাটে নিয়ে যায়। সেখানে আমার সাথে রাজিবের পরিচয় করিয়ে দেয়। আমাকে রাজিবের কথামত চলতে বলে বাদল। রাজিব আমাকে নিয়ে হাসান এবং সাদ্দাম @ রাহুলের সাথে পরিচয় করিয়ে দেয়। রাজিব আমাকে সাদ্দাম @ রাহুলের কথামত চলতে বলে। সাদ্দাম @ রাহুল আমাকে এবং হাসানকে রংপুরের ছোট নুরপুর তার ভাড়া বাসায় নিয়ে যায়। সেখানে বিজয়, সফিক, সফিকের স্ত্রী ও তার দুই বৎসর বয়সী বাচ্চা ছিল। সফিকের স্ত্রী আমাদের রান্না করে দিত। পরে সফিক ও তার স্ত্রী চলে গেলে সাদ্দাম @ রাহুলের স্ত্রী আসে। সে আমাদের রান্না করে দিতো। পরে সফিক ও তার স্ত্রী চলে গেলে সাদ্দাম @ রাহুলের স্ত্রী আসে। সে আমাদের রান্না করে দিতো। এরপর সবুজ নামের একজন আসে। সাদ্দাম @ রাহুলের স্ত্রী কয়েক দিন পর চলে গেলে হাসানের স্ত্রী দুই ও চার বৎসর বয়সী দুই বাচ্চা নিয়ে আসে। এরপর আবার তারা চলে গেলে সাদ্দাম @ রাহুলের স্ত্রী এসে রান্না করে দিত।

আমরা বাসাতেই নামাজ পড়তাম। আমাকে সাতমাথা হতে সাদ্দাম @ রাহুল =৯১,৫০০/- টাকা দিয়ে সেকেন্ড হ্যান্ড ব্যাটারী চালিত অটো কিনে দেয়। আমরা সকলেই পর্যায়ক্রমে তা চালাতাম। শুধু @ সাদ্দাম রাহুল চালাতো না। আমরা রাস্তাঘাট চিনতাম। এরমধ্যে রাজিব ও নয়ন তিন চারদিন এসে কোরআন- হাদীস ও সাংগঠনিক আলোচনা করেছিল।

একদিন সাদ্দাম @ রাহুল ডায়াং এর কালো রং এর মোটর সাইকেলে করে কাউনিয়াস্থ চৈতার মোড় বাজারে নিয়ে যায়। সেখানে আমাকে রহমত আলীকে দেখায়। তাকে দেখিয়ে বলে সে একজন ভন্ডপীর। তাকে মানুষ সিজদা করে, গাঁজা খায় ও খারাপ কাজ করে। তাকে হত্যা করতে হবে মর্মে জানায়। পর্যায়ক্রমে সবুজ, হাসান, বিজয়, মিজানদের কেউ রহমত আলীকে দেখায়।

আমি, মাসুদ রানা, রাহুল @ সাদ্দাম, সবুজ এবং মিজান উক্ত রহমত আলীকে হত্যার পরিকল্পনা করি। কিন্তু সমন্বয় না হওয়ায় তাকে হত্যা করতে পারি নাই।

সর্বশেষে গত ১০/১১/১৫ ইং রাত্রী অনুমান ০৮:৪৫ টার দিকে আমি ও রাহুল @ সাদ্দাম ডায়াং মোটর সাইকেল যোগে ভায়ারহাট ব্রীজে যাই। রাহুল @ সাদ্দাম তা চালাচ্ছিল। সেখানে গিয়ে হাসান, বিজয় ও মাসুদ রানাকে ডিসকভার মোটরসহ দেখতে পাই। ঐ মোটর সাইকেলটি চালাচ্ছিল হাসান।

চৈতার মোড়ের ১ কি. মি. দূরে রাহুল @ সাদ্দাম তিনটি পিস্তল বের করে বিজয়, হাসান এবং মাসুদ রানাকে একটি একটি করে পিস্তল দেয়। বিজয়কে একটি ফোল্ডিং চাকু এবং মাসুদ রানাকে একটা বড় ছোড়া দেয়। সাদ্দাম @ রাহুল আমাদের Leader ছিল। সে আমাদের বলেছিল, যদি চাকু দিয়ে কাজ হয় তাহলে যেন পিস্তল ব্যবহার না করা হয়।

সেখানে আমি ও সাদ্দাম থাকলাম। বিজয়, হাসান এবং মাসুদ রানা চলে গেল। পরবর্তীতে অনুমান ১০.০০ টার দিকে তারা ফিরে এসে জানায়, রহমতকে তারা চাকু দিয়ে মেরেছে। সাদ্দাম @ রাহুলকে তারা পিস্তল ও ফোল্ডার চাকু দেয়, কিন্তু মাসুদ রানা বড় ছোড়া সহ অন্যদের নিয়ে চলে যায়। আমাকে সাদ্দাম ঐ রাত্রে ৬/৭ কি. মি. দূরে তার বাড়ীতে নিয়ে যায় এবং পরদিন সকাল ১০.০০ টায় আমাকে সাতমাথায় পৌঁছে দেয়। পরে আমি ছোট নুরপুরের বাসায় চলে আসি।

জে.এম.বি এর সব পরিকল্পনা সবাইকে জানানো হয় না। তবে আমি শুনেছিলাম এই ঘটনার আগে রাহুল @ সাদ্দাম, মাসুদ রানা, হাসান, বিজয় জাপানী নাগরিককে হত্যা করেছিল।

আমি নতুন সদস্য হওয়ায় আমাকে খুব বেশি কিছু জানাতো না।

66. C3 Liton stated in his confessional statement that he was a supporter of JMB. He stayed in a house at Choto Nurpur with Saddam, Hasan (both killed in crossfire), C2 Bijoy, C6 Shafique (Md. Sakhawat Hossain @ Shafique) and Sabuj (acquitted). Shafique lived there with his wife and a 2-year-old child. Shafique's wife used to cook for them. After she had left the house, Saddam's wife went there and used to cook for them. After she had left, Hasan's wife went there and stayed there with two small children. When they had left, Saddam's wife went there and used to cook for them. Saddam bought a second-hand battery-operated auto-rickshaw. They used to run it in turns.

67. Liton further stated that one day Saddam took him to a bazaar at Chaiter Mor, pointed out Rahmat to him and told him that he (Rahmat) is a fraudulent Pir; people prostrate before him; he consumes ganja and is engaged in immoral acts. He has to be killed. Rahmat was also shown to Sabuj (acquitted), Hasan,

C2 Bijoy, and Mijan (C7 Md. Sarwar Hossain @ Sabu @ Mijan) in turn.

68. Liton further stated that he, Masud Rana, Saddam, Sabuj and Mijan planned to kill Rahmat but could not succeed due to lack of coordination.

69. Liton further stated that on 10.11.2015 at about 8.45 pm he and Saddam went to a place with a motorcycle. There they met Hasan, Bijoy and Masud Rana with a motorcycle. Hasan was riding the motorcycle. 1 km away from Chaiter Mor, Saddam gave three pistols to Bijoy, Hasan and Masud Rana. Saddam also gave a folding knife to Bijoy and a large dagger to Masud Rana. Saddam was their leader. Saddam instructed them not to use the pistols if the job could be done with knives. Liton and Saddam stayed there. Bijoy, Hasan and Masud Rana left the place. At around 10 pm, they returned and said that they had killed Rahmat with knives. They returned the pistols and the folding knife to Saddam. Masud Rana kept the large dagger with him. Thereafter, they left the place.

70. Liton further stated that not all of JMB's plans are disclosed to everyone. He had heard before this incident that Saddam, Masud Rana, Hasan and Bijoy had killed a Japanese national.

Analysis of confessional statements of C1 and C3:

71. C1 Masud Rana and C3 Liton, in their confessional statements, admitted to their involvement with JMB. They clearly spelt out the motive for killing Rahmat. They also admitted to their involvement and physical presence in the meeting where the plan to kill Rahmat was hatched. C1 Masud Rana admitted to striking the right side of Rahmat's head twice with the long dagger on the fateful night of 10.11.2015. At the time of killing Rahmat, C3 Liton and Saddam (killed in crossfire) were waiting somewhere near the place of occurrence with a motorcycle as part of the exit plan.

72. In ***Md. Humayun Kabir***, 15 SCOB [2021] AD 76 (*supra*), the Apex Court observed at para 20 that the satisfaction of the Court as to the truth and trustworthiness of the confessional statement is a *sine qua non* for the admissibility of the same and that true and complete disclosure of the offence is the soul of a true confessional statement.

73. The Court adopts various tests in determining the truth and trustworthiness of a confessional statement. One of the tests is whether the post mortem report and/or medical evidence corroborates the confessional statement [***Hazrat Ali***, 44 DLR

(AD) (1992) 51 para 10]. In the instant case, C1 Masud Rana's confessional statement so far as it relates to inflicting injuries on Rahmat by him is corroborated by injury No. 2 mentioned in the post-mortem report (ext. 12) which states, "One incised wound 3" x 1 ½ " x 1" was present on the right temporo-occipital region (behind the ear) on the head obliquely with cutting of lower and of right ear lobe". The other injuries, according to the confession of C1 Masud Rana, were caused by C2 Bijoy, which are also corroborated by the post-mortem report.

74. Another test is to examine the contents of the confessional statement and then to compare them with other prosecution evidence and apply to them the test of probability (***Sarwar Singh Rattan Singh***, AIR 1957 SCJ 637). The confessional statement of C1 Masud Rana, so far as it relates to using a large dagger in killing Rahmat, throwing away the same and two other daggers at the pond next to his house, is corroborated by evidence as to the recovery of those pursuant to his disclosure statement, which is admissible under Section 27 of the Evidence Act. The confessional statement of C3 Liton in

respect of staying in a house at Choto Nurpur with others and running an auto-rickshaw is corroborated by PWs 22-24.

75. Where there is more than one confession, the Court can compare the confessional statements of the accused persons to determine whether they corroborate with each other. Confessional statements of C1 Masud Rana and C3 Liton are full of facts and minute details. They corroborate with each other on material particulars. It is true that a comparison of their confessional statements reveals some minor discrepancies which seem to be untrue or false. In ***Hazrat Ali*** (*supra*), the Apex Court observed at para 16:

> "… in a confessional statement an accused may implicate himself and also make some untrue statement regarding other part or implicate some other person falsely. So a confessional statement even if it is partly true or partly false or in other words does not disclose the full picture can be used against the maker and there is no legal bar in upholding the conviction on the basis of the confession. Appellant Hazrat Ali having made some untrue statement in his confessional statement Ext. 3, the part which implicates him with the offence and which finds support from the confession of the co-accused can very well be considered and in that basis his conviction can be maintained".

The statements of C1 Masud Rana and C3 Liton made in their respective confessions are self-incriminating, and thus, those are inculpatory in nature.

76. Learned Advocates of C1 Masud Rana and C3 Liton submit that their statements under Section 342 of the Cr.P.C. should be taken into consideration before deciding their fate based of the confessional statements. C1 Masud Rana stated, "পুলিশ গ্রেফতার করার পর আমাকে রিমান্ডে নিয়ে শারিরীক ও মানসিকভাবে নির্যাতন করেছে। ২য় দফা রিমান্ডের সময় আমার স্ত্রীকে নিয়ে আসে এবং পৃথকভাবে রাখে। নির্যাতনের কারণে আমি দোষস্বীকার করতে বাধ্য হই। আমার দেড় বছরের বাচ্চাকে বাড়ীতে রেখে আমার স্ত্রীকে নিয়ে আসে। আমরা ৩ জন তিন স্থানে ছিলাম। ১৬৪ ধারার জবানবন্দীতে আমি কি বলেছি সেই সময় শারিরীক ও মানসিক নির্যাতনের ফলে আমি বুঝতে পারি নাই". C-3 Liton stated, "পুলিশ ২০১৫ সালের ডিসেম্বর মাসের ২৩ তারিখ আমাকে বাড়ী থেকে গ্রেফতার করে। পুলিশ নির্যাতন করে আমার ১৬৪ ধারার জবানবন্দী আদায় করে। নির্যাতনের ফলে আমার নাকে সমস্যা হয়েছে". The plea of police torture, threat and coercion disclosed in the statements, in our view, was the product of afterthought. The suggestion as to threat and torture must be rejected since there is no material whatsoever to hold that the convicts were threatened or tortured, and the story on the face of it is incredible. Therefore, the statements of C1 Masud Rana and C3 Liton made under Section 342 do not destroy the voluntariness and truth and trustworthiness of their

confessional statements. They were rightly found guilty of the charge.

Confessional statement of C4:

77. Now, we turn to the confessional statement of C-4 Isahaque, which is reproduced below:

আমি পঞ্চম শ্রেণী পর্যন্ত লেখাপাড়া করি। আমি জে.এম.বি বা ছাত্র শিবির বুঝিনা তবে আমি মসজিদে হাদীস- কোরআনের আলোচনা শুনতাম। আমি মাসুদ রানা, আব্দুর রহমান চান্দু, কাশেম, এরশাদ, মেহেদীসহ একত্রে আলোচনা শুনতাম। কিন্তু জে.এম.বি এর কোন কার্য কলাপে জড়িত ছিলাম না। তবে আমি জানতাম তারা বোমা বাজি, খুন খারাবী করতো। আমি ০১৭৩৭৯৩৩৯৬১ নং মোবাইল নম্বরটি ব্যবহার করি। গত ০৮/১১/১৫ ইং এ মাসুদ রানা আমাকে সন্ধ্যা ৬.০০ টার দিকে মোবাইল দিয়ে আমাকে বাড়িতে থাকতে বলে। সেদিন আমাদের বাড়ীতে কেউ ছিলনা। সকাল ১০.০০ টার দিকে মাসুদ রানা আমার বাড়ীতে বাইসাইকেলে আসে। সে আমাকে একটি বাজারের ব্যাগে করে কাপড়ে মোড়ানো তিনটি পিস্তল রাখতে বলে। আমি তা পাতিলে করে গোপনে আমার ঘরের ছাঁদে রেখে দেই।

মাসুদ রানা ঐ দিন বিকাল ০৪.০০ টায় আমাকে ফোন দিয়ে বাড়ীতে থাকতে বলে এবং দুইটি বড় ছোড়া কাপড়ে পেঁচিয়ে নিয়ে এসে আমার কাছে রাখতে বলে সে চলে যায়। সে আমাকে আরো বলে, আব্দুর রহমান @ চান্দু চাকু ধার দেয়ার জন্য আসবে। আমি যেন ব্যবস্থা করি। আমি আপত্তি করলেও পরে তার চাপে আর কিছু বলতে পারি নাই। এই ঘটনার আধাঘণ্টা পর আব্দুর রহমান @ চান্দু বাইসাইকেল যোগে সিরিজ কাগজ নিয়ে আসে। আমি তাকে চাকু দুটি দিয়ে আমি আমার শ্বশুড় বাড়ীতে খেতে যাই।

পরবর্তীতে মাসুদ রানা আমাকে মোবাইল করে বলে, “পালিশ করা গুলো লাগবেনা” পালিশ ছাড়া গুলো নিয়ে বাড়ীর গেটে দাঁড়াও।” তখন রাত্রী অনুমান ৮.০০ কি ৮.১৫ ঘটিকা হবে।

আমি তখন আমার বাড়ীতে ফিরে এসে দেখি বাড়ীতে চান্দু নাই এবং ছোড়াগুলোও নাই। মাসুদ রানা মোবাইল করার ১০/১৫ মিনিট পর মোটর সাইকেলে করে আমার বাড়ীর গেটের সামনে নামে। তখন মোটর সাইকেল একটু সামনে পূর্বপার্শ্বে গিয়ে দাঁড়ায়। মাসুদ রানা আমার নিকট হতে তিনটি পিস্তল যা বাজারের ব্যাগে ছিল। তা নিয়ে পূর্ব দিকে চলে যায়।

আমি এই ঘটনার ৩/৪ দিন পর জাপানী হত্যা এবং অপর একজনকে জবাই করার বিষয় লোকমুখে এবং খবরে জানতে পেরে আমি মাসুদ রানা এবং আব্দুর রহমান @ চান্দুকে জিজ্ঞাসা করলে তারা ঐ কাজসমূহ করেছে মর্মে স্বীকার করেছিল।

Confessional statement of C7:

78. The confessional statement of C-7 Sarwar runs as under:

আমি কাটলা দিমুখী উচ্চ বিদ্যালয়ে ৬ষ্ঠ শ্রেণী পর্যন্ত লেখাপড়া করেছি। আমি 01991-045059 নং মোবাইল ব্যবহার করতাম। আমি মূলত: ভারতী ফলমূল এর ব্যবসা করতাম।

আমাদের গ্রামের ছেলে বাবুল আক্তার পিতা শফু দর্জি আমাকে নামাজ পড়তে বলতো এবং পান বিড়ি খাওয়া যাবেনা বলতো। তার কথা ভাল লাগতো। সে মাঝে মধ্যে আমার কাছ থেকে ১০/২০ টাকা নিতো।

গত রমজান মাসে সে আমাকে বলে যে গোবিন্দগঞ্জে যেতে হবে। কেন যেতে হবে তা বলে নাই। আমি ও বাবুল আক্তার রোজার মাসেই গোবিন্দগঞ্জ যাই। সেখানে সে আমার সাথে রাজিব, রিপন, সাদ, রাহুলদের সাথে আলাপ করিয়ে দেয়। সেখানে তারা আমাকে হাসপাতালে কোরআন হাদিসের কথা বলে।

এক পর্যায়ে তারা আমাকে একটি ডিসকভার মোটর সাইকেল কিনতে ৫০,০০০/- টাকা দিয়েছিল। আমি মোটর সাইকেল কিনতে কত টাকা লাগবে তা পরে জানাতে চাই। তারা বলে “মোটর সাইকেল নিয়ে আসেন, যত টাকা লাগে তা দিয়ে দিবো।"

আমি মহাজনের নিকট জানি যে, ৬০,০০০/- টাকা লাগবে। আমি মহাজনকে ৫০,০০০/- টাকা দিয়ে দেই। কিন্তু বর্ডারের অবস্থা খারাপ হওয়ায়, তিনি মোটর সাইকেল পাঠাতে পারে নাই। ফলে তারা টাকা ফেরত চাওয়ায় আমার জমানো DPS এর টাকা তুলে ১০,০০০/-টাকা তাদের দিয়ে দেই।

রোজার ঈদের পর একদিন রাজিব আমাকে গোবিন্দগঞ্জে ডাকে। আমি বাবুলের সাথে গোবিন্দগঞ্জে যাই এবং রাজিবের সাথে দেখা করি। সে আমাকে রংপুরের মডার্ন মোড়ে যেতে বলে। মোটর সাইকেল বিষয়ে কথা বলতে আমি মডার্নে আসি। মডার্নে রাহুলের সাথে আমার দেখা হয়। সে আমাকে তার সাথে যেতে বলে। আমি যেতে অস্বীকার করলে সে আমাকে হুমকী দেয়। আমি ভয়ে তার সাথে যেতে রাজী হই। সে আমাকে একটি ডায়াং মোটর সাইকেলে করে পীরের দোকান দেখতে নিয়ে যায়। কিন্তু গিয়ে দেখে দোকান বন্ধ। সে আমাকে একটা বাজারে নিয়ে যায় ও থাকতে বলে। ঐ দিনই সন্ধ্যার দিকে মন্ত্রী নামে এক অপরিচিত ছেলে আমার সাথে সাক্ষাত করে। এর পর রাহুল, লিটন ও অজ্ঞাত এক ছেলে আসে। আমাকে নিয়ে তারা একটি কালো ডিস কভার মোটর সাইকেল এবং ডায়াং মোটর সাইকেলে করে বের হই। এক পর্যায়ে আমি এবং রাহুল পীরের দোকানের এক/দেড় কি.মি. দূরে থাকি এবং অপর তিনজন ডিসকভার মোটর সাইকেল নিয়ে এগিয়ে যায়। রাত্রী ৭টা কি ৮ টার দিকে তারা ফিরে এসে বলে আজ কাজ হবে না। পরে পাঁচজনই বড় দরগা না কি নামক এলাকায় ফিরে আসে। মন্ত্রী আমাকে ও লিটনকে নিয়ে অপরিচিত এক লোকের বাড়িতে নিয়ে যায়। সেখানেই রাত্রী যাপন করি ও সকাল ৮.০০ টার দিকে মন্ত্রী আমাদের অটো ধরে দেয়। রংপুরে এসে লিটন আমাকে যেতে বলে। আমি তখন অটো ধরে দর্শনা যাই ও সেখান থেকে বাড়ী চলে যাই।

প্রায় ২০/২৫ দিন পর আমাকে বাবুল মাষ্টার বলে পীরকে কে বা কারা মেরে ফেলেছে আমি এটুকু জানি।

Analysis of confessional statements of C4 and C7:

79. A statement made by an accused person is not a 'confession' within the meaning of the Evidence Act, and cannot be used as a confession if, read as a whole, it is of an exculpatory character and it does not contain a direct admission in terms of the commission of an offence. A statement is not a confession merely because the Court considers that it can infer from the statement an admission of the commission of an offence, or if the statement merely contains an admission of an incriminatory circumstance not amounting to admission of a crime, however grave, it, may be (***Palvinder Kaur***, AIR 1952 SC 354). The confession must be a plenary admission of guilt in straight and clear terms (***Om Prakash***, AIR 1960

SC 409). A different approach was taken in ***Henry Westmuller Roberts***, AIR 1985 SC 823, wherein the Indian Supreme Court observed: (para 32)

> "A perusal of these confessional statements… shows they are more or less exculpatory of the maker, for Henry had attributed everything to Sunil and stated that he had done everything at the instance of Sunil while Sunil had attributed the important role in the crime to Henry. … The circumstantial evidence … lend assurance to the genuineness and voluntary nature of these confessions. They have no doubt been retracted, but in view of the fact that they are generally corroborated by the circumstantial evidence in ample measure, there is no satisfactory reason for the confessions not being accepted and acted upon".

80. A plain reading of the confessional statements of C4 Isahaque reveals that he was aware that C1 Masud Rana, C5 Chandu, and others, with whom he used to listen to the discussion on Quran and Hadith in the mosque, were involved in murder, bomb hurling, etc. He further stated some incriminating incidents. For example, C1 Masud Rana gave him knives and pistols which he had kept in his house. However, he was not aware of the purpose of those articles. His statements do not show that he was either involved in the planning to kill

Rahmat or in the operation resulting in the murder of Rahmat on 10.11.2015.

81. C7 Sarwar stated in his confessional statement that he was taken to a place by Saddam @ Rahul, C3 Liton and another unknown person on a motorcycle and waited at some place, and the other three persons left the place and returned afterwards and said that today the work would not be done (আজ কাজ হবে না). He was neither told the purpose of the visit nor was he aware of the same.

82. Learned AAG submits that since the confessions of C4 Isahaque and C7 Sarwar reveal some incriminating incidents, those are inculpatory in nature. We do not accept the argument for the reason that there is no plenary admission of guilt in straight and clear terms in their confessional statements. Since the real perpetrators did not tell C4 and C7 anything about the killing of Rahmat, they did not know the purpose of the acts done by them. The principles laid down in *Henry Westmuller Roberts* (*supra*) do not apply to their confessional statements. Therefore, we hold that their confessions are exculpatory in nature. In ***State of Tamil Nadu vs. J. Jayalalitha***, AIR 2000 SC 1589, the Supreme Court of

India observed at para 11 that the exculpatory statement can only lie in store and no Court can possibly treat it as evidence. The observation squarely applies to the exculpatory statements of C4 Isahaque and C7 Sarwar, and hence, those are kept out of consideration.

Section 30 of Evidence Act:

83. Learned AAG argues that even if the exculpatory statements of C4 and C7 are kept at bay, the conviction of C2, C4-C7 can be sustained under Section 30 of the Evidence Act based on the confessions of C1 and C3, which have been proven to be inculpatory in nature and have been corroborated by the prosecution witnesses and the attending facts and circumstances of the case. Learned defence Counsel advances a counter-argument that there is no scope either in law or on facts to accept the argument of the learned AAG.

84. Before a statement by one of the accused persons can be taken into consideration against the other accused under Section 30 of the Evidence Act, the following conditions must be fulfilled:

a. There must be a joint trial for the same offence.

b. It must be a confession.

c. The confession of guilt must affect himself and others, i.e. implicate the maker substantially to the same extent as the other accused.

d. The confession of guilt must be duly proved.

85. Now, let us examine whether the conviction of C2, C4-C7 can be sustained under Section 30 based on the confessional statements of C1 Masud Rana and C3 Liton.

Case of C2 Bijoy:

86. C2 Bijoy's case is taken up first. He did not make any confessional statement. C1 stated in his confession that Bijoy slit the throat of Rahmat, which is corroborated by the medical evidence. It is recalled that Bijoy's defence case is that of a willful mistaken identity at the instance of the police.

87. Bijoy was shown arrested in the case on 30.10.2017. An application was made before the Court on 19.11.2017 for holding the T.I. Parade of Bijoy, which was allowed on 30.11.2017. Meanwhile, the trial of the case had already commenced, and 29 PWs were examined. T.I. Parade was held on 18.12.2017 at Rangpur jail, in which PW22 identified Bijoy as one of the tenants staying at his house. Bijoy was sent for trial, vide supplementary charge-sheet dated 30.12.2017.

88. Regulation 282(a) of Police Regulations Bengal, 1943 (in short, the 'PRB') provides that the identification proceedings should be undertaken as soon after the arrest of the suspected person as possible. In ***Soni***, (1982) 3 SCC 368(1), the Indian Supreme Court held that the delay in holding the T.I. Parade after a lapse of 42 days from the arrest of the convict throws a doubt on the genuineness of the same. In ***State vs. Md. Musa alias Musaiya alias Sharif Bap***, 15 BLD (1995) 169, delay of 82 days in holding the T.I. Parade from the date of arrest of the convict was one of the grounds to doubt the identification of the convict. In this case, the T.I. Parade of Bijoy was held after a lapse of 48 days from his arrest. The prosecution failed to give any reasonable explanation for this inordinate delay.

89. The most important provision, which is relevant in this case, is contained in Regulation 282(c) of the PRB, which provides, inter alia, "*These regulations apply only to instances in which suspects have been arrested and have to be confronted with witnesses who express themselves able to recognise them by appearance, although not previously acquainted with them*". The PRB was referred to in ***Mirza Abdul Hakim and ors.***, 5 MLR (AD) 2000 27, wherein it was observed: (para 7)

> "It may be noted here that a T.I. parade to be dependable must satisfy certain conditions. In the first place, the accused should be unknown to the identifying witness by name, secondly he must not have had any opportunity to see the accused after the occurrence in connection with which he is put up for identification and thirdly the identifying witness makes no mistake, except to a most negligible character, in the matter of identification. If the accused was known to the witness by name from before occurrence he would disclose the name of the accused immediately after the occurrence and at any rate to the Investigating Officer and in that case the question of his figuring as a witness in a T.I. parade will not arise. His identification of the known accused in a test identification parade will thus become meaningless …".

90. PW22, who identified Bijoy in the T.I.P., also identified him in the dock on 31.01.2018. PW22 testified that Bijoy used to stay at his house as a tenant with others for 6 months. PW22 mentioned the names of C3, C4 and C6 with their respective first name and identified them in the dock, but he mentioned the name of C2 as 'Bijoy alias Mahaddes'. PW22 deposed in cross-examination that the I.O. brought Bijoy from Bogura to Kotwali police station. PW22 was not supposed to know this fact. This piece of oral evidence, considered with the defence suggestion that PW22 was taken to the police station where Bijoy was shown to him (suggestion denied by PW22), raises

a doubt as to the genuineness of the T.I. parade. PW22 further testified that the subsequent I.O. [referring to PW46 who submitted supplementary charge-sheet] did not record his statement. But PW 46 deposed that he recorded the statement of PW22 under Section 161 of the Cr.P.C. on 19.11.2017. PW23 also mentioned C2's name as 'Bijoy alias Mahaddes' while he could not mention the names of C3 and C4 in his deposition but identified them in the dock.

91. The identification of C2 Bijoy by PWs 22 and 23 raises a serious question. There was no requirement in law and on facts to hold the T.I. Parade of Bijoy. Bijoy's consistent defence is that he was not Bijoy, who was a tenant under PW22 and that he was not involved in the killing of Rahmat as stated in the confessional statement of C1 Masud Rana. A question arises as to why the police held the T.I. Parade? The answer can be traced in the statement given and documents submitted by C2 Bijoy during his examination by the Court under Section 342 of the Cr.P.C. The said statement runs as follows:

আমি মোঃ মোহাদ্দেস আলী, পিতা- মোঃ মজিবর রহমান ফকির, গ্রাম- কামারপাড়া দড়িয়া পাড়া, ডাকঘর- কারারপাড়া, থানা- শাজাহানপুর, জেলা- বগুড়া। এই মর্মে শপথ পূর্বক বলিতেছি যে,
১। আমার জাতীয় পরিচয় পত্র নং- ১০১৮৫১৯৭৫৮৮৬১, জাতীয় পরিচয় পত্র আমি গত ০৮/০৪/২০০৮ ইং তারিখ প্রাপ্ত হইয়াছি। পেশায় আমি একজন দর্জি। কামারপাড়া ভোলা বাড়ী ষ্ট্যান্ড আমার ডন টেইলার্স নামীয় দর্জির দোকান রহিয়াছে।

২। আমি কোন রাজনৈতিক দলের সঙ্গে যুক্ত নই বা কোন দলেরই আমি প্রকাশ্য কিংবা গোপন কোন কর্মীও নই। আমি মা-বাবা, স্ত্রী- সন্তান লইয়া দর্জির মত সাধারণ পেশায় সাধারণ ভাবে জীবন যাপন করি। আমার কোন উচ্চাভিলাশ নাই। অথচ পুলিশ আমাকে ধৃত করিয়া উদ্দেশ্য মূলকভাবে আমার নামের পূর্বে বিজয় নাম বসাইয়া আমাকে জে.এম.বি নামক জাঙ্গী সংগঠনের সদস্য ও সক্রীয় কর্মী হিসাবে প্রমাণের জন্য আমাকে বগুড়া হইতে রংপুর কোতয়ালী থানায় লইয়া আসে এবং সেইখানে থানা হাজতে থাকা অবস্থায় বেশ কয়েক জন ব্যক্তিকে আনিয়া আমাকে বিজয় হিসাবে পরিচয় করিয়া দেয়। ঐ ব্যক্তিদের মধ্যে একজন রংপুর জেল থানার ম্যাজিষ্ট্রেট মহোদয়ের নিকট আমাকে বিজয় হিসাবে চিনাইয়া দেয়। পরে ঐ একই ব্যক্তি আপনার আদালতে আমাকে বিজয় হিসাবে দেখাইয়া দিয়াছে। কোতয়ালী থানা হাজতে দেখা অপর এক ব্যক্তিও আমাকে বিজয় হিসাবে আদালতে দেখাইয়া তাহার অটো গ্যারেজে আমি অটো চার্জ দিয়াছি মর্মে উল্লেখ করিয়াছে। পরে জানিয়াছি তাহাদের নাম আঃ আজিজ [PW22] ও আঃ জলিল [PW23]। তাহারা পুলিশের শিখানো মতে মিথ্যা স্বাক্ষ্য দিয়াছে। তাহাদের মিথ্যা স্বাক্ষ্যের জন্য এক দিন তাহাদের সৃষ্টি কর্তার কাঠগড়ায় বিচারের মুখো-মুখি হইতে হইবে।

৪। পুলিশের কারসাজিতে জে.এম.বি সদস্য যে মাহফুজুর সুজন বিজয়ের অপকর্মের দায়ভার আমার উপর দেওয়া হইয়াছে সেই বিজয়ের বিরুদ্ধে টাংগাইল জেলার সদর থানায় **জে.এম.বি-র মামলায় উক্ত বিজয় ধৃত হইয়া ক্রস ফায়ারে নিহত হইয়াছেন ঐ একই বিজয়ের বিরুদ্ধে গাইবান্ধা জেলার গোবিন্দগঞ্জ থানার জি.আর-৬৩/১৬ নং মামলা চলমান আছে।** তাহার মৃত্যু সংবাদের প্রেক্ষিতে মামলায় বিজয়ের বিরুদ্ধে পুলিশ প্রতিবেদনের ভিত্তিতে কার্যক্রম রহিত করা হয়। এই সকল সুনির্দিষ্ট তথ্য থানাকে আমার আত্মীয়-স্বজন, শুভানুধায়ীগণ আমাকে জানাইয়াছেন। আমার বাবা বৃদ্ধ ও পক্ষাঘাতগ্রস্থ, মা বৃদ্ধা। আমি তাহাদের একমাত্র উপার্জনক্ষম পুত্র সন্তান। কোন রাজনৈতিক দল, জে.এম.বি কিংবা যে কোন জঙ্গী সংগঠনের অংশগ্রহণ পারিবারিক ভাবেই আমার পক্ষে অসম্ভব।

৫। অত্র এজাহারকারীর পিতৃবিয়োগের মর্মান্তিক ঘটনায় আমি তাহার ও তাহার শোকার্ত পরিবারের প্রতি সমব্যাথি। আমি এজাহারকারী, তাহার পরিবার ও তাহার এলাকার স্বাক্ষীগণের প্রতি কৃতজ্ঞ এই জন্য যে, সম্পূরক অভিযোগপত্রে আমাকে আসামী হিসাবে সন্নিবেশিত করার পর তাহারা বিজ্ঞ আদালতে পূণঃ জবানবন্দি কালে পুলিশের মত আমার বিরুদ্ধে মিথ্যা অভিযোগ আরোপের চেষ্টা করেন নাই। সৃষ্টিকর্তা তাহাদের মঙ্গল করুন।

পরিশেষে আমি বলতে চাই, আমি নির্দোষ, নির্দোষ, সম্পূর্ণ নির্দোষ। সত্যের জয় হউক।

এতদসহ সংযুক্ত কাগজপত্রঃ

১। আমার জাতীয় পরিচয় পত্রের ফটোকপি।

২। আমার এলাকা ৮ নং চোপীনগর ইউ/পি চেয়ারম্যান মহোদয় কর্তৃক প্রদত্ত নাগরিকত্ব ও চরিত্রগত সার্টিফিকেট।

৩। ৮ নং চোপীনগর ইউ/পি কর্তৃক প্রদত্ত সর্বশেষ ট্রেড লাইসেন্স।

উপরোক্ত বক্তব্য আমার কথিত মতে লিখিত ও টাইপ করিয়া আমাকে পড়িয়া শুনাইলে সঠিক মর্মে নিজ নাম সহি করিলাম।

92. In ***Minhaz and anr.***, 6 MLR (AD) 2001 166, the Apex Court observed: (para 6)

> "… at the time of recording a statement under section 342 of the Code of Criminal Procedure an accused may produce any paper in support of his statement and those papers are to be treated as part of his statement. It is well settled that no formal proof of such documents or papers are required for consideration by the trial court, those documents which were produced are to be treated as part of the statement of the

accused and these are not evidence within the meaning of section 3 of the Evidence Act and the statement of an accused made under section 342 of the Code of Criminal Procedure is for giving him an opportunity to explain circumstances appearing against him in the evidence adduced by the prosecution. This is entirely for the benefit of the accused and the accused only and it is also well settled that this statement cannot be used by the court against him nor the prosecution be permitted to use it to fill up any gap in the prosecution evidence. Reliance is placed in the case of *Shah Alam and others Vs. the State* reported in 42 DLR (AD) 31 and as such no proof of such documents is required …".

In ***Raj Kumar Singh***, (2013) 5 SCC 722, the Supreme Court of India observed that the statement under Section 313 of the Cr.P.C. (in Bangladesh, Section 342) is not recorded after administering an oath to the accused. It was further observed in the reported case that the statement is recorded to meet the requirement of the principles of natural justice, as it requires that an accused may be given an opportunity to furnish an explanation of the incriminating material which had come against him in the trial. The statement can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution.

93. Learned Counsel of C2 Bijoy refers to Section 375(1) of the Cr.P.C. which empowers the High Court Division, in a reference under Section 374, to make a further inquiry on any point bearing upon the guilt or innocence of the convicted person.

94. Being instructed by this Court, learned AAG inquired into the NID of Bijoy and informed us that the same is genuine. According to the said NID, his name is '**Md. Mohaddes Ali'**, son of Md. Mojibor Rahman Fokir, date of birth 17.08.1985, and place of birth and address Bogura.

95. PW46, who conducted further investigation, deposed that he had found a case against Bijoy @ Mohaddess under Section 6(2) of the Santras Birodhi Ain, 2009 in connection with Sahjahanpur, Bogura Police Station case No. 26 dated 31.07.2017. Learned defence Counsel produced before us the relevant documents of the case. Learned AAG verified those documents and confirmed that they are genuine. Bijoy was not named as an accused in the FIR of the said case. Charge-sheet No. 122 dated 31.07.2018 was submitted against Bijoy and another. In the charge-sheet, Bijoy was described as **'Md. Mohaddes Ali @ Bijoy @ Dorji'** (34), son of Md. Mojibor

Rahman Fokir, address Bogura. The said case was numbered as Santras Case No. 07 of 2018 (G.R. No. 145 of 2017) and is now pending before the Santras Daman Tribunal, Bogura. PW7 was examined on 03.04.2024. The Ministry of Home Affairs, vide memo No. 44.00.0000.224.10.340.25-59 dated 10.02.2016, took a decision under Section 494 of the Cr.P.C. not to prosecute (*nolle prosequi*) the case.

96. In the statement made on 09.02.2017 under Section 342, C2 Bijoy stated that Gobindaganj Police Station, Rangpur G.R. No. 63 of 2016 was pending against the real Bijoy who was killed in a crossfire. Learned Counsel for C2 Bijoy produced before us the FIR and charge-sheet of the said case. It appears from said FIR No. 15 dated 08.02.2016 (G.R. No. 63 of 2016) that the case relates to the murder of one Torun Dutta @ Torun. The FIR was lodged against unknown accused persons. Police submitted charge-sheet No. 326 dated 30.09.2016 in the case. It is stated in the said charge-sheet that Md. Nazrul Islam @ Bike Nazrul @ Bike Hasan (mentioned in the confessional statements of C1 and C3) was killed in a crossfire on 21.08.2016, and **Md. Mahfuzar Rahman @ Sohel @ Bijoy @ Sujon** (25), son of late Mizanur Rahman of Mymensingh,

was killed in a crossfire on 02.08.2016 in Tangail. Learned Counsel produced before us the charge-sheet No. 123 dated 03.07.2016 submitted in the Hoshi Kunio murder case (reported in BLC 28 729) in which Bijoy was described as 'Bijoy', father unknown, address unknown. The 2nd I.O. (PW45) of the present case was the 1st I.O. in the Hoshi Kunio murder case. In the charge-sheet dated 03.07.206 of the instant case submitted by PW45, C2 was simply described as 'Bijoy, son of unknown, address unknown'. In the supplementary charge-sheet dated 30.12.2017 submitted by PW 46, C2 was described as **'Bijoy @ Md. Mohaddes Ali @ Dorji'** (35), son of Md. Mojibor Rahman Fokir, address Bogura.

97. Learned Special Sessions Judge observed that C2 Bijoy did not submit any documentary proof in support of his claim that the real Bijoy was killed in a crossfire in Tangail. Now, we have the documentary proof. Learned Judge further observed that the identification of C2 Bijoy in the T.I. Parade by PW22 is relevant under Section 9 of the Evidence Act and that the said identification in the T.I.P. is a circumstance which corroborates Bijoy's identification in Court. The proposition of law as observed by the learned Judge is correct, but he

missed the point that the T.I.P. was not conducted in accordance with law and the same should have been discarded. The identification of C2 Bijoy in the dock by PWs 22 and 23 does not inspire confidence as the same seems to be a product of tutoring.

98. On a comparison of the prosecution case in respect of C2 Bijoy in juxtaposition to his defence case, as discussed above, we hold that C2 Bijoy's case was a case of willful mistaken identity at the instance of police. The real Bijoy was killed in a crossfire. Therefore, C2 Bijoy is liable to be acquitted.

Case of C4 to C7:

99. C4 to C7 have been convicted under Section 302 read with Section 109 of the Penal Code for abetment to the murder of Rahmat. Abetment has been defined in Section 107. To prove the charge of abetment, the prosecution must prove the following ingredients of Section 107:

    a. the accused instigated, aided, abetted, counselled, conspired or procured the commission of the principal offence;

    b. the principal offence was in fact committed; and

    c. he had the intent to aid or encourage its commission.

100. C1 Masud Rana, in his confessional statement, did not mention the names of C6 and C7. However, C1 stated that, as per his instruction, C4 Isahaque kept two daggers, three pistols and a magazine at his house. On 10.11.2015, C1 collected one dagger from the house of C4. C1 further stated that he asked C5 Chandu to sharpen two daggers with sandpaper. It appears from the confession of C1 that C4 and C5 did not know the plan to kill Rahmat. It further appears from the confession of C1 that C4 to C7 had no participation in the meeting where the plan to kill Rahmat was hatched and further that they were not involved in the operation to kill Rahmat.

101. C3 Liton, in his confessional statement, mentioned the name of C6 Shafique (Md. Sakhawat Hossain @ Shafique) as one of the tenants staying at the rented accommodation at Choto Nurpur. No further word was uttered by C3 in respect of C6. The statement of C3 so far as it relates to C6 cannot be taken into consideration to connect him with the murder of Rahmat in any manner.

102. In respect of C7 Md. Sarwar Hossain @ Sabu @ Mijan @ Driver, C3 stated in his confession that he, C1 Masud Rana, Rahul @ Saddam (killed in crossfire), Sabuj (acquitted) and

C7 Mijan had planned to kill Rahmat. The confession of C1 Masud Rana lends partial support to the statement of C3. C1 stated that he, Saddam, C2 Bijoy [real Bijoy killed in crossfire], Hasan (killed in crossfire) and an unknown person had planned to kill Rahmat. C1 did not mention the name of C7 Mijan. Learned AAG submits that the unknown person is C7 Mijan. Learned defence Counsel submits that, in the attending facts and circumstances of the case, it cannot be inferred that the unknown person is C7. In this regard, the oral testimony of PW 30 (ASI of police) is relevant. He deposed in cross-examination that he learnt the name of Sarwar Hossain alias Sabu (C7). He did not get any information as to his (C7) involvement with JMB.

103. It is a settled principle of law that when two equally probable inferences can be drawn, the inference which goes in favour of the defence has to be drawn unless there is overwhelming ocular or circumstantial evidence that only points to the guilt of the accused and no inference as to his innocence can be drawn. A reasonable inference, based on the confessional statements of C1, C3 and the oral testimony of PW 30, can be

drawn that the unknown person, as stated by C1, is not C7 Sawar. There is no other evidence against him.

104. In view of the above discussions on the confessional statements of C1 and C3 and other evidence, we can safely conclude that the conviction of C4 to C7 cannot be maintained. We have already held that the conviction of C2 Bijoy cannot be maintained on the ground of mistaken identity. However, the conviction of C1 Masud Rana and C3 Liton does not call for any interference.

Summary of findings:

105. The upshot of the above discussions is that Rahmat was a follower of Sureshwari Tarikat and was also a khadem of a Mazar. Rahmat's acts were considered by JMB as acts contrary to Sharia, and he was a Mushrik. Therefore, he was liable to be killed. Md. Saddam Hossain @ Rahul, Md. Nazrul Islam @ Hasan @ Bike Hasan, real Bijoy (three were killed in crossfire), C1 Masud Rana and C3 Liton conspired to kill Rahmat. They also got C4-C7 involved in preparing the killing operation without disclosing their plan and intention. C4-C7, without any knowledge of the plan of the real perpetrator, did some acts. They are, therefore, liable to be acquitted.

Eventually, C1 Masud Rana and the real Bijoy killed Rahmat using a dagger and a knife. At the time of killing Rahmat, Saddam, Hasan and C3 Liton stood guard at some other place with motorcycles as part of the exit plan. After the killing, Saddam, Hasan and real Bijoy were killed in separate crossfire. C2 Bijoy was implicated in the case by the police to bolster the case or to take credit, which has been proven to be a case of willful mistaken identity at the instance of the police. Now, C1 Masud Rana and C3 Liton are before us, who have been awarded the death penalty.

Sentencing:

106. JMB is a banned terrorist organization. Its members can be termed extremists or fanatics whose acts are driven by dogmatic belief. Rahmat was not personally known to the offenders. In their view, Rahmat was a Mushrik for his personal religious belief and acts which they considered opposed to Sharia. They decided to kill Rahmat, made meticulous plans, and executed the plan brutally. It's premeditated, cold-blooded murder. In ***State vs. Amjad Ali***, 72 DLR (AD) 2020 113 (case of bomb hurling in Lakshmipur Court by members of JMB), the Apex Court observed that, for

the accused who did not directly participate either in the explosion of the bomb or in the murder, it is not justified to award him the death penalty. The accused was awarded the sentence of imprisonment for life. In the instant case, 38 days before the murder of Rahmat, the offenders killed a Japanese national Hoshi Kunio in Rangpur. In that case, a Division Bench of the High Court Division upheld the death sentence of C1 Masud Rana, C3 Liton and another (acquitted in the instant case) [BLC 28 (HD) 729]. The matter is now pending before the Apex Court. Rahmat's murder is the 2nd offence of the same nature and pattern committed by them. They must face the rigour of justice for their acts. C1 Masud Rana was actively involved in the planning, *i.e.*, conspiracy to kill Rahmat as well as in the execution by giving him a dagger blow. C3 Liton was involved in the conspiracy, but he did not directly participate in the killing. He stood guard along with others (killed in crossfire) during the murder for a safe exit of C1 and real Bijoy (killed in crossfire), and thus, he was rightly found guilty of abetting the offence. Since this is his second offence of the same nature, in our view, C3 deserves no mercy. The death penalty is the appropriate punishment for them.

107. In the result, the death reference No. 33 of 2018 in respect of convict-1 **Md. Masud Rana @ Mantri** and convict-3 **Md. Liton Mia @ Rafique** is accepted. Jail Appeal No. 131 of 2018 and Criminal Appeal No. 4056 of 2021 filed by C1 Md. Masud Rana are dismissed. Jail Appeal No. 133 of 2018 filed by C3 Md. Liton Mia is also dismissed. The death sentence awarded to them is confirmed.

108. Death Reference in respect of convict-2 **Bijoy @ Md. Mahaddes Ali @ Darji**, convict-4 **Md. Isahaque Ali**, convict-5 **Md. Chandu Mia**, convict-6 **Md. Sakhawat Hossain @ Shafique**, and convict-7 **Md. Sarwar Hossain @ Sabu @ Mijan @ Driver** is rejected. The corresponding Jail Appeal and Criminal Appeal filed by them are allowed. They are acquitted of the charge levelled against them. Let them be set at liberty at once, if not wanted in connection with any other case(s).

109. Communicate the judgment and order at once. Send down the L.C.R.

Shathika Hossain, J.

I agree.