

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

And

Mr Justice Md Ali Reza

Death Reference No 59 of 2018

The State

-Versus-

Fatema Begum and another

With

Criminal Appeal No 5928 of 2018 with

Jail Appeal No 165 of 2018

Sahajahan Sheikh

-Versus-

The State

Mr Sheikh Atiar Rahman, Advocate with

Ms Syeda Maimona Begum, Advocate

..... For the appellant

with

Jail Appeal No 166 of 2018

Fatema Begum

-Versus-

The State

Mr Md Hafijur Rahman Khan, Advocate

....State Defence Lawyer for Fatema Begum

Mr Md. Monzurul Alam Sujon, DAG with

Mr S M Younus Ali Robi,

Mr Md Zobaidur Rahman Babu,

Mr Md Mashiur Rahman (Riad)

Mr Khalilur Rahman,

Mr Amran Hossain, AAGs

----- for the state

**Heard on 03.07.2025, 10.07.2025,
17.07.2025, 24.07.2025
and Judgment on 07.08.2025**

Md Atoar Rahman, J:

This death reference, being Death Reference No. 59 of 2018, has been made by the learned Additional Sessions Judge, 2nd Court, Bagerhat, under section 374 of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the Code”), for confirmation of the death sentences awarded to the condemned prisoners **Shahjahan Sheikh** and **Fatema Begum** by judgment and order dated 21.05.2018 in Sessions Case No. 268 of 2016, arising out of Morrelgonj Police Station Case No. 22 dated 18.06.2015, corresponding to GR Case No. 216 of 2015 (Morrelgonj).

By the aforesaid judgment and order, the learned Additional Sessions Judge convicted the condemned prisoners under sections 302 and 201 of the Penal Code. Each of them was sentenced to death and fined taka 20,000.00 under section 302, and to suffer rigorous imprisonment for seven (7) years and pay a fine of taka 10,000.00 under section 201, in default

of payment to suffer rigorous imprisonment for a further period of six (6) months. The co-accused, Saiful Islam, was acquitted of all charges.

Against the aforesaid judgment and order of convictions and sentences, Criminal Appeal No. 5928 of 2018 and Jail Appeal No. 165 of 2018 were preferred by condemned-prisoner-appellant Shahjahan Sheikh (hereinafter referred to as “Shahjahan”), while Jail Appeal No. 166 of 2018 was filed by condemned-prisoner-appellant Fatema Begum (hereinafter referred to as “Fatema”).

The death reference and the appeals have been heard together and are being disposed of by this common judgment.

In brief, the prosecution case is as follows:

The deceased, Alamin Sheikh alias Alam, aged about 55 years, a resident of Village Dakshin Kumaria Zola, Police Station Morrelgonj, District Bagerhat, had been residing in Keranigonj, Dhaka, for about eight years prior to the incident, leaving his family members in the village home. On 16.03.2015, he set out for his village residence but subsequently went missing. His son, Mohammad Ali, lodged a

General Diary Entry (GDE) with Keranigonj Police Station regarding his disappearance. The call record of his mobile phone revealed that on the said date, at about 10:13 pm, he had a conversation with his wife, Fatema, while connected to the Fulhata Tower network within the Morrelgonj Police Station area. Local gossip suggested that Fatema maintained illicit relationships with Shahjahan, Rafiqul Islam, and the co-accused Saiful Islam. The informant, being the deceased's brother-in-law, suspected that Fatema, in collusion with others, might have murdered her husband. Upon interrogation, Fatema allegedly confessed to the informant that she and Shahjahan had killed the deceased by smothering him with a pillow and subsequently concealed the dead body. On 17.06.2015, the informant verbally reported the matter to Morrelgonj Police Station. A police team led by Sub-Inspector Dilip Kumar Biswas immediately proceeded to the house of the deceased at about 6:45 pm. In presence of local witnesses, Fatema confessed to the police that on 16.03.2015, at about 10:15 pm, when the deceased had returned home and fallen asleep, she called Shahjahan. Acting in furtherance of their common intention, Shahjahan pressed a pillow over the deceased's face while Fatema stabbed him in the chest with a

gupti (knife). After confirming his death, they buried the dead body about one meter deep on the eastern side of the kitchen, covering it with bricks and later converting the site into a makeshift bathroom. She also produced the *gupti* and a torn *lungi*, which were seized by the police officer. Based on her confession, and at her indication, the decomposed dead body was exhumed from the described location. An inquest report was prepared holding inquest of the dead body and sent the same to the morgue of Bagerhat Sadar Hospital for post-mortem examination.

Subsequently, on 18.06.2015, at about 7:55 am, Md. Mobarok Akond, the deceased's brother-in-law, lodged the First Information Report (FIR) under sections 302/201/34 of the Penal Code against Fatema and Shahjahan, along with two/three unknown persons. Accordingly, Morrelgonj Police Station Case No. 22 dated 18.06.2015, was registered.

Sub-Inspector Dilip Kumar Biswas, who had earlier rushed to the place of occurrence and recovered the dead body, was appointed as the investigating officer (IO). He again visited the place of occurrence, prepared a sketch map and index, and seized material evidence under seizure lists. Fatema

was produced before a Judicial Magistrate, who recorded her confessional statement under section 164 of the Code. At one stage Inspector Saiful Islam of the CID was appointed as subsequent investigating officer who, upon completion the investigation, submitted a police report on 10.03.2016, finding a *prima facie* case against Fatema, Shahjahan and Saiful Islam recommending their trial under sections 302/201/34/114 of the Penal Code.

The accused persons were subsequently placed on trial before the learned Additional Sessions Judge, 2nd Court, Bagerhat. On 29.09.2016, after hearing both the parties, charges were framed against them under sections 302/201/34/114 of the Penal Code, which were read over and explained to the accused, to which they pleaded not guilty and demanded trial.

In order to bring home the charges the prosecution examined seventeen (17) witnesses out of twenty-two (22) cited in the police report, who were cross-examined. But the defence did not adduce any evidence.

Upon closure of the prosecution evidence, the accused persons were examined under section 342 of the Code, wherein they again pleaded innocence and declined to produce any defence evidence.

The defence case, as evident from the cross-examination of prosecution witnesses, was that the accused persons were innocent and falsely implicated in a fabricated case. It was asserted that the deceased had died a natural death, and the investigating officer had submitted a concocted report without conducting a proper investigation.

Upon careful consideration of the evidence on record and the surrounding circumstances, the learned trial Judge held that the prosecution had successfully established the charges beyond reasonable doubt against Fatema and Shahjahan. Consequently, they were convicted and sentenced as stated earlier, while the co-accused Saiful Islam was acquitted by the impugned judgment and order.

Being aggrieved and dissatisfied with the said judgment and order, Fatema and Shahjahan preferred the instant appeals, while the learned trial Judge made a statutory

reference to this Division for confirmation of the death sentences.

The only point for determination in the death reference and the connected appeals is, whether the impugned judgment and order are sustainable in law.

Mr. Md. Monzurul Alam Sujan, learned Deputy Attorney General, assisted by Mr. S.M. Younus Ali Rabi, Mr. Md. Zobaidur Rahman Babu, Mr. Md. Mashiur Rahman (Read), Mr. Khalilur Rahman, and Mr. Amran Hossain, learned Assistant Attorneys General, appearing for the State–petitioner–opposite party, opposed the appeals and supported both the reference and the reasoning of the learned trial Judge. He took us through the impugned judgment, the FIR, seizure lists, inquest report, autopsy report, police report, oral evidence, other relevant materials on record and particularly the confessional statement of Fatema.

He has then submitted that on a proper appreciation of the prosecution evidence together with Fatema’s self-inculpatory confession, recorded under section 164 of the Code by a competent Judicial Magistrate, and corroborating

circumstantial evidence, the trial court rightly found Fatema and Shahjahan guilty under sections 302 and 201 of the Penal Code and correctly imposed sentences.

The learned Deputy Attorney General has further argued that the prosecution proved, beyond reasonable doubt, an unbroken chain of circumstances from inception to culmination of the occurrence; that Fatema's confession is voluntary and true; and that there is no exculpatory material enabling the condemned prisoners to escape liability for murder and for causing disappearance of evidence. He has also contended that Fatema's conviction could validly rest on her confession alone, it having been found true and voluntary, relying on the cases of *Zakir Hossain and another vs. the State*, 55 DLR 137; *Shamim Beg @ Md. Shamim Beg vs. the State*, 27 BLD (AD) 74; *Hazrat Ali & Abdur Rahman vs. the State*, 42 DLR 177; *The State and another vs. Abdul Kader @ Mobile Kader and others*, 67 DLR (AD) 6; and *Hasmat Ali vs. the State*, 53 DLR 169. He has accordingly prayed for acceptance of the reference and dismissal of the appeals.

On the other hand, Mr. Md. Hafijur Rahman Khan, learned Advocate appointed by the State to defend Fatema, at

the outset has contended that the learned trial Judge erred in law in convicting Fatema under sections 302 and 201 of the Penal Code without properly weighing and sifting the evidence, thereby occasioning a failure of justice. He has argued that the purported confessional statement of Fatema is inadmissible as it was procured by inducement and threat, rendering it neither true nor voluntary; hence the conviction based thereon is unsustainable.

He has further submitted that the dead body, claimed to be that of Alamin Sheikh, ought to have been scientifically identified as the same was unrecognizable due to decomposition. But said dead body was not identified by any scientific method. Without ascertainment of the dead body, the appellants could not lawfully be manacled with liability for Alamin's murder, but learned trial Judge having ignored this most vital aspect convicted and sentenced them that should be set-aside.

He has criticized the conduct of the trial, pointing out that many witnesses were not cross-examined on Fatema's behalf. Referring to a note at the foot of the deposition of PW 6 Anarkali, he has argued that Fatema had no legal

representation at crucial stages and that the trial court ought to have appointed competent counsel at State expense under paragraph 1, Chapter XII of the Legal Remembrancer's Manual, 1960.

He has also submitted that, during examination under section 342 of the Code, all incriminating facts and circumstances—especially Fatema's alleged confession—were not fairly put to her, causing serious prejudice; reliance was placed on the case of *Rahim Baksha vs. Crown*, 4 DLR (FC) 53.

He again citing the case of *Manu Miah vs. the State*, 8 MLR 66, has contended that if Fatema is convicted for the principal offence under section 302, she could not also be convicted under section 201; the concurrent conviction and sentence under section 201 are therefore bad in law.

In a last-ditch effort, Mr. Khan has submitted that even if the conviction under section 302 is maintained, the sentence of death, imposed upon Fatema, is unduly severe. Considering her clean antecedents, sex, old age, and prolonged incarceration—ten years, including seven years in the

condemned cell—her sentence should be commuted to imprisonment for life and the reference rejected. In support of his contentions he has cited to the case of *Nalu vs. the State*, 17 BLC (AD) 204.

Mr. Sheikh Atiar Rahman, learned Advocate, with Ms. Syeda Maimona Begum, learned Advocate, appearing for Shahjahan in Criminal Appeal No. 5928 of 2018 and his jail appeal, has contended that the learned trial Judge manifestly erred in law in convicting and sentencing Shahjahan to death. He argued that Fatema's confession is neither true nor voluntary and, in any event, any implication of Shahjahan therein is not substantive evidence under section 3 of the Evidence Act, 1872; Shahjahan's conviction cannot rest on that confession in the absence of independent, conclusive, incriminating circumstances connecting him to the offence, but no such evidence exists. In this respect he has relied upon the case of *the State and another vs. Abdul Kader @ Mobile Kader and others*, 67 DLR (AD) 6. He therefore prayed for acquittal.

We have heard the submissions of the learned Deputy Attorney General and the counter-submissions of the learned

Advocates for Fatema and Shahjahan. To reach a correct decision, we must examine and scrutinize the relevant evidence and surrounding circumstances, juxtaposing the prosecution and defence versions of the case.

We have already noted that, at trial, the prosecution examined seventeen (17) witnesses, while the defence called none. Among the prosecution witnesses, the informant, Md. Mobarok Akond (PW 1), testified that his brother-in-law (his wife's brother), the deceased Alam Sheikh, left Keraniganj for his village home on 16.03.2015 and then disappeared. They searched for him but could not find him. After some days, he asked Fatema, who told him that the deceased had reached home and, while he was asleep, she called Shahjahan and they together smothered him to death. He lodged the FIR with the local police station. Police arrested Fatema, and the deceased's dead body was exhumed from the eastern side of the deceased's kitchen. He proved the FIR (Ext. 1) and his signature (Ext. 1/1).

In cross-examination, the informant stated that he did not witness the occurrence. He lodged the FIR on 18.06.2015. Fatema confessed before a Magistrate. He heard about the

deceased's disappearance two months after it happened. He denied the suggestion that Shahjahan was uninvolved and that he was falsely implicated because of family disputes.

PW 2, Anwar, nephew (sister's son) of the deceased, stated in examination-in-chief that on 17.06.2015, upon information, police went to the deceased's house. During interrogation, Fatema disclosed that she was involved in killing of his uncle and that the dead body had been hidden at the eastern side of the kitchen, buried below the normal level with brick soling laid over it. She also produced a *gupti* and a *lungi* to the police officer. On the basis of that information and at Fatema's pointing, in his presence and in presence of local residents, the soil was dug up and the decomposed body was recovered. He assisted in the digging. After conducting an inquest, the police prepared an inquest report and seized the *gupti* and *lungi* under a seizure list, taking his signatures. He proved the inquest report (Ext. 2) and his signature (Ext. 2/1), the seizure list (Ext. 3) and his signature (Ext. 3/1). He also exhibited the *gupti* and *lungi* (Mat. Ext. 1 series).

In cross-examination, PW 2 said that the deceased returned home on 16.03.2015, and he (PW 2) talked to him

that day. The following day, the deceased could not be found. His (PW 2)'s house is in the same village. He did not inform police about the disappearance. He did not meet his uncle again after his return. Fatema produced the *gupti* and *lungi* from her dwelling house. The dead body was found beside the kitchen. He denied the suggestions that his uncle was not killed, that he died a natural death, that the burial was normal and that he (PW 2) participated in it, and that the case was fabricated to capitalize on the death.

PW 3, Mohammad Ali Sheikh (son of the deceased and Fatema), testified that he was not at home and heard of his father's death on 16.06.2015. The dead body was recovered from beside the kitchen and taken to Morrelgonj. It was subsequently buried. Some household items—a cot, a mattress, and a quilt—were seized and kept under his custody by a *zimmanama* (Ext. 5).

In cross-examination, he stated that after hearing the news, he went home the next day and the dead body was buried.

PW 4, Rahima (daughter of the deceased and Fatema), stated in examination-in-chief that on 16.03.2015 her father went home and disappeared the next day. On 17.06.2015, the dead body was recovered from beneath the bathroom. She also said, Saiful, Rafiqul, and Shahjahan killed her father with the help of her mother. Police seized a cot, a mattress, and a knife (*gupti*) from her mother's dwelling house under a seizure list, and she signed it. She proved her signature (Ext. 3/2) and the knife (Mat. Ext. I).

During cross-examination, PW 4 said, she went to her parents' house on 16.03.2015. She saw the *alamats* three months after her father's death. There were blood stains on the cot. She was at her father's house during recovery of the dead body. Anwar was also present. She denied the suggestions that her father died a natural death, that the accused persons were not involved, or that she gave false evidence.

PW 5, Babul Sheikh (neighbor and cousin of the deceased), testified that after the case was filed, police went to the scene. Upon interrogation, Fatema confessed to police. At Fatema's pointing, the dead body was exhumed, and an

inquest report was prepared on which he signed. He proved the inquest report (Ext. 2) and his signature (Ext. 2/2).

In cross-examination, PW 5 said that on 16.06.2015, after *Asr* prayer, police went to the place of occurrence, and the dead body was exhumed during *Magrib* prayer. Police interrogated Fatema in presence of many locals. He denied giving false evidence.

PW 6, Anarkali (the deceased's brother's wife), testified that police went to the deceased's house at *Asr* prayer time, and within 5–6 minutes Fatema confessed to police and, in presence of many locals, produced a knife. At Fatema's showing, police recovered the dead body from beneath the bathroom. Fatema indicated the spot by removing bricks.

During cross-examination, PW 6 said that there were 4–5 houses between her house and the deceased's. She was standing near the fence. She denied giving false evidence.

PW 7, Md. Jahidul Sheikh (nephew of the deceased), stated in examination-in-chief that earlier his uncle having seen Fatema and Saiful in an illicit relationship attempted to strike Saiful, but the blow instead landed on Fatema's hand.

After some days, his uncle left the house, again returned home and disappeared. A GDE was made in this respect. On 17.06.2015, the dead body was exhumed, an autopsy was performed, and then the dead body was buried; he participated in the funeral.

In cross-examination, PW 7 said, the dead body was buried on 18.06.2015. He did not witness the killing; he only heard about the cause of death. He denied that his uncle died a natural death.

PW 8, Md. Solaiman Sheikh (local Union Parishad member), testified that on 17.06.2015 he was at the Union Council office. Upon being called by police, he went to the deceased's house. At Fatema's showing, the dead body was recovered from beneath the bathroom's soil. In his presence, Fatema confessed to police that she had killed her husband. He himself also asked Fatema, how she alone had killed the deceased; she replied that she inflicted knife blows. Police seized a knife and a *lungi* under a seizure list, which he signed. He exhibited the seizure list (Ext. 3), his signature (Ext. 3/2), and the knife and *lungi* (Mat. Ext. I series).

During cross-examination, PW 8 said, the digging took place in his presence. The dead body was unrecognizable. Fatema produced the knife and *lungi*. The bathroom was 25–30 cubits from the dwelling house. Many locals had gathered before his arrival. He denied suggestions that the dead body was not recovered in his presence, that no seizure list was prepared, or that he gave false evidence due to proximity with police.

PW 9, Reshma Begum (another Union Parishad member of the ward), stated in examination-in-chief that on 17.06.2015 the dead body was recovered. She also asked the woman (Fatema) who confessed that she herself had killed her husband and hidden the dead body under soil at the eastern side of the kitchen, covering it with brick soling. Fatema produced a knife and a *lungi*, which were seized under a seizure list; she (PW 9) signed it. She proved the seizure list (Ext. 3), her signature (Ext. 3/3), and the knife and *lungi* (Mat. Ext. I series). This witness was not cross-examined.

PW 10, Fuljan Bibi (sister of the deceased), testified that on 16.03.2015 her brother disappeared and on 16.06.2015 his dead body was recovered from beside the kitchen in her

presence. Upon interrogation, Fatema disclosed to police that she had committed the murder and pointed out where the dead body was hidden. Shahjahan was a friend of her brother. According to her, Fatema, Saiful, and Rafique committed the murder, and they had been in an illicit relationship for five years.

In cross-examination, PW 10 stated that she did not witness the killing. She denied giving false evidence.

PW 11, Saijuddin Sheikh (a villager), stated that on the date of the occurrence he went to the deceased's home. Police exhumed the dead body and prepared an inquest report on which he signed (Ext. 2/3).

In cross-examination, he said, he had heard the matter from Fatema.

PW 12, Mahtab Sheikh (neighbor), testified that Alamin was murdered. After three months of his disappearance, on 17.06.2015, police recovered the dead body; he signed the inquest report (Exts. 2, 2/4). He was not cross-examined.

PW 13, ASI Monowar Hossain, was tasked with verifying the addresses and the PC and PR of the accused, which he found correct; PC and PR were nil. He was declined for cross-examination.

PW 14, Constable Tuhin Roy, carried the body to the morgue of Sadar Hospital, Bagerhat. In examination-in-chief, he said that on 17.06.2015 he handed the dead body of Alam over to the Bagerhat Sadar Hospital morgue, and on 18.06.2015 he handed the deceased's vest (sleeveless undershirt) to Sub-Inspector Dilip, who seized it under a seizure list on which he (PW 14) signed. He proved the seizure list and his signature, which, instead of being given the next number, were marked as Ext. 3 and Mat. Ext. I series.

During cross-examination, PW 14 said that the *alamat* was given to him by the *dom* (mortuary attendant). He denied that the *alamat* had not been on the dead body.

PW 15, Saiful Islam, Sub-Inspector, CID, Bagerhat (the second investigating officer), testified that on 22.10.2015, having been assigned subsequent investigation, he revisited the place of occurrence, prepared a sketch map with index,

examined witnesses, recorded statements under section 161 of the Code, and seized a mobile set. After examining the relevant papers and finding a *prima facie* case, he submitted the police report against Fatema, Shahjahan, and Saiful, recommending trial. He exhibited the sketch map (Ext. 6) and his signature (Ext. 6/1), the index (Ext. 7) and his signature (Ext. 7/1), the seizure list (Ext. 8) and his signature (Ext. 8/1), and the mobile set (Mat. Ext. II).

In cross-examination, PW 15 stated that the cause of death was not mentioned in the autopsy report. The seized mobile belonged to Fatema. The deceased had a mobile phone. He did not mention who used SIM No. 01940831694. That SIM was last used under the Morrelgonj tower. He denied submitting a false police report.

PW 16, Md. Rezwanuzzaman, Senior Assistant Judge, Khulna, stated in examination-in-chief that on 18.06.2015, as Senior Judicial Magistrate, Bagerhat, he recorded Fatema's confessional statement under section 164 of the Code, following the provisions of section 364. He proved the confessional statement (Ext. 9) and his signatures (Ext. 9/1 series). He was declined for cross-examination.

PW 17, Dr. Sheikh Md. Mosharraf Hossain, testified that on 18.06.2015 he was a Medical Officer at Bagerhat Sadar Hospital. He was also a member of the board that performed the autopsy on the dead body of Alamin Sheikh @ Alam and recorded the following findings:

“As the body was decomposing, there was no bone of hand and feet. There was no muscle in all four limbs, with absence of scalp. On detailed dissection—No internal injury could be detected.”

He also stated that the decomposed stomach with its contents, part of the decomposed liver, half of each decomposed kidney, along with the decomposed heart and part of the great vessels were preserved and handed over to Constable No. 1175 Tuhin Roy for chemical analysis and histopathology.

The cause of death was kept pending until receipt of the chemical analysis and histopathology reports. He proved the autopsy report (Ext. 10) and his signature (Ext. 10/1).

In cross-examination, he said the dead body was identified by Constable Tuhin Roy. He denied that he did not conduct the autopsy or that he issued a fictitious report.

These are all the items of evidence adduced by the prosecution to substantiate its case.

At the outset, we consider whether Fatema was represented by any lawyer at the trial. On scrutiny of the trial court's record, it reveals that on 29.09.2016 the case record was received by the trial court; on that date, Mr. Sheikh Bahadur Islam, learned Advocate of the Bagerhat Bar was appointed by Fatema to defend her. He participated in the charge hearing and the bail hearing that day. It further appears that on 23.04.2017, learned Advocate Mr. Sheikh Abul Kalam Azad, of the same Bar, was also appointed by Fatema; on 09.08.2017 he filed an application to recall some prosecution witnesses for cross-examination, which was rejected. Thereafter, three formal and vital prosecution witnesses (PWs 15, 16, and 17) were examined on different dates, but they were not cross-examined on her behalf, although on 17.01.2018 a petition seeking her bail was filed and moved. There is nothing in the record showing that the appointments

of those learned Advocates were cancelled or that they revoked their *vakalatnamas*; this indicates that both appointments remained in force until pronouncement of judgment, as reflected in the impugned judgment. Although some of the prosecution witnesses were not cross-examined for Fatema, because she had two advocates appointed by herself, the provision in paragraph 1 of Chapter XII of the Legal Remembrancer's Manual, 1960, did not apply.

It appears that all incriminating facts, circumstances, and details of the evidence of almost all prosecution witnesses were put to Fatema during her examination under section 342 of the Code, except the confessional statement and the evidence of its recording Magistrate (PW 16). The evidence of PW 16 was put to her in a very concise manner. Nevertheless, since Fatema was present at each hearing, heard the prosecution witnesses, and answered the learned trial Judge's questions under section 342 of the Code, it cannot be said that she was prejudiced in any way during such examination. In this perspective, the citation of the case of *Rahim Baksha vs. Crown*, 4 DLR (FC) 53, by Mr. Khan, is of no assistance.

This is a case of an unseen murder. Both the appellants were convicted and sentenced primarily on the basis of Fatema's confessional statement recorded under section 164 of the Code; the recovery of the dead body based on information given by her and at her pointing; her production of the *gupti* (knife) used to kill the deceased; the witnesses' evidence; and the connecting facts and circumstances.

PW 2, Anwar (the deceased's nephew), is a vital witness who, supporting the prosecution case stated categorically that on 16.03.2015 his uncle reached home. On 17.06.2015, on information, police went to the deceased's house. Upon interrogation, Fatema confessed to involvement in killing her husband and said the dead body was hidden on the eastern side of the kitchen, buried beneath the surface and covered with brick soling. She also produced the *gupti* and *lungi* to the police officer. On the basis of this information, and in presence of PW 2 and locals, digging was carried out at Fatema's pointing, and the decomposed body was exhumed. After the inquest, the police prepared an inquest report and seized the *gupti* and *lungi* under a seizure list, taking his signature. He exhibited the inquest report (Ext. 2) and his

signature (Ext. 2/1), the seizure list (Ext. 3) and his signature (Ext. 3/1), and the *gupti* and *lungi* (Material Ext. 1 series). He (PW 2) was thoroughly cross-examined on behalf of Fatema and others, but nothing emerged to discredit his evidence.

PW 5 Babul Sheikh, PW 6 Anarkali, PW 8 Md. Soleman Sheikh, PW 9 Ms. Reshma Begum, PW 10 Fuljan Bibi, and PW 12 Mahtab Sheikh—relatives, neighbors, or local public representatives—corroborated the material parts of PW 2’s testimony. They were cross-examined, but we find no reason to disbelieve them.

However, the inquest report (Ext. 2), prepared by the first investigating officer, Dilip Kumar Bishash, and proved by PW 5, PW 11, and PW 12, clearly states that on 17.06.2015 at about 9:05 pm, the decomposed corpse of Alamin @ Alam, aged about 55 years, was recovered at Fatema’s pointing from the eastern side of the kitchen of his house by digging in presence of the above witnesses. The sketch map (Ext. 6) and the index (Ext. 7) show that the place from where the dead body was recovered lies within the homestead of the deceased, adjacent to the kitchen.

There are four seizure lists in this case (Exts. 3, 3, 5, and 8). It appears that two seizure lists—Seizure List No. 1 dated 17.06.2015 and Seizure List No. 3 dated 18.06.2015—have both been marked as Ext. 3, which may be a bona fide mistake. Of these, the seizure list dated 17.06.2015 (Ext. 3) is the most significant by which the sharp *gupti* (knife) and a torn *lungi* (Material Ext. I series), produced by Fatema, were seized. The seizure list dated 17.06.2015 and Material Exhibit I series were proved by PW 2, PW 4, PW 8, and PW 9. According to their evidence, during producing the *gupti*, Fatema admitted that she had used it to kill the deceased. Under Ext. 5, a wooden cot, a mattress, a mat, and a spade were seized from Fatema's house and kept in the custody of her son, PW 3, Mohammad Ali Sheikh. Fatema's daughter, Rahima (PW 4), stated that the cot among those seized items bore blood stains. In her testimony, she implicated her mother in the killing.

The decomposed body was autopsied by a three-member board. PW 17, Dr. Sheikh Md. Mosharef Hossain, then a Medical Officer at Bagerhat Sadar Hospital, also a member of the board, proved the autopsy report (Ext. 10),

which shows that the board could not ascertain the cause of death even after considering the chemical analysis. The unrecognizable decomposed body was recovered at Fatema's pointing from beneath 2–3 feet of earth, covered with brick soling, in the makeshift bathroom at her house. Some of the prosecution witnesses, such as, PWs 2, 4, and 7, stated that the deceased reached home on 16.03.2015, which the defence did not dispute in cross-examination. Under section 106 of the Evidence Act, Fatema, who lived in the same dwelling on whose premises the dead body was found, bore the obligation to explain how, after the deceased's return, he disappeared from that very house and who buried the dead body at such an unusual location. In her confessional statement, she provided such an explanation, establishing that the dead body was that of her unfortunate husband, Alamin Sheikh @ Alam, who was murdered.

Apart from this, the prosecution's specific case is that the deceased had been residing at Keraniganj, Dhaka, and started for his village home on 16.03.2015, after which he disappeared. Three months later, on 17.06.2015, his decomposed body was recovered from beneath 2–3 feet of

earth with brick soling in the makeshift bathroom of his house. The defence produced no evidence to support the claim of a natural death, a claim put to witnesses during trial and denied by them. The dead body was not exhumed from a graveyard or any normal burial site. In our society in normal situation no family member of a dead person would immediately construct a bathroom over a natural burial. The location from which the dead body was recovered indicates it was concealed. Notably, instead of a shroud, a vest was found on the dead body. These facts show that the deceased did not die a natural death and the dead body was not buried in the ordinary manner.

In view of the above, we are of the opinion that Alamin Sheikh was murdered within the meaning of section 300 of the Penal Code.

Fatema's confessional statement (Ext. 9) was recorded by PW 16, Md. Rezwanuzzaman, then Senior Judicial Magistrate, Bagerhat, who proved it. On scrutiny of Ext. 9, it is found that all columns have been properly filled in the Magistrate's handwriting. Ext. 9 further shows that on 18.06.2015, when Fatema was produced for recording her confession, no marks of hurt or injury were found on her

person. The Magistrate carefully explained to her each matter in column 5 and granted her three hours for reflection. Thereafter, following the provisions of sections 164 and 364 of the Code, he recorded her statement in the prescribed columns, took her signature, and signed it himself. He also made a memorandum in the appropriate column stating his satisfaction regarding voluntariness. It is thus, evident that the confession was not made under threat, coercion, or inducement. In this confessional statement she stated—

“আমার স্বামী আলামিন শেখ। সে ঢাকায় রিক্সা চালাত। মা-
ঝে মাঝে বাড়ী আসত। আমার সাথে বেশি করে মেলামেশা
করতে চাইত। আমার শরীর ভাল না বলে আমি বেশি রাজী
হতাম না। প্রতিবেশী শাহজাহান ও সাইফুলের নামে আমার
বিরুদ্ধে অপবাদ দিত-যে, আমি নাকি তাদের সাথে অবৈধ
মেলামেশা করি। আমাকে মারপিট করত। প্রায় তিনমাস আ-
গে রাতের বেলায় আমার স্বামী আমাকে মারপিট করে
মেলামেশা করত। কিছুক্ষণ পর আবার মেলামেশা করতে
চাইলে আমি রাজি হইনা। আমি শাহজাহানের সাথে মেলা-
মেশা করি বলে তার সাথে (স্বামীর) সাথে মেলামেশায়
রাজী হচ্ছি না-মর্মে অভিযোগ/ অপবাদ দেয়। আমাদের ম-
ধ্যে ঝগড়া, মারামারি হয়। আমার স্বামী ঘুমিয়ে পড়লে প্রায়

রাত ১২টার সময় প্রতিবেশী শাহজাহান কে ডেকে এনে সব বলি। শাহজাহান পূর্ব থেকেই তার বিরুদ্ধে আমার স্বামীর দেয়া অভিযোগ সম্পর্কে জানত। শাহজাহানকে বলি আমার স্বামীকে মেরে ফেলতে। সে প্রথমে রাজী হয় নাই। তার হাত পা ধরে রাজী করায়। ঘটনার সময় আমার খাটে ঘুমন্ত আমার স্বামীর নাকে মুখে শাহজাহান প্রথমে বালিশ চেপে ধরে। তখন আমি আমার স্বামীর বুকে ছোঁরা টুকিয়ে দেই। কোন শব্দ করতে পারে নাই। স্বামী মারা গেলে রান্না ঘরের পাশে গর্ত খুঁড়ে স্বামীকে মাটি চাপা দিয়ে উপরে ইট বিছিয়ে দেই আমি ও শাহজাহান মিলে। রক্তমাখা কাপড় চোপড় ধুয়ে ফেলি। তারপর শাহজাহান বাড়ী চলে যায়। আমার আত্মীয়-স্বজন স্বামীর খোঁজ করছে কিন্তু কাউকে কিছু বলি নাই। (প্রায়) পনের দিন আগে আমার ননদের স্বামী মোবারক আমাদের বাড়ীতে আমার সাথে কথাবার্তায় আমার কিছু হবে না এবং আমাকে বাঁচিয়ে দেবে আশ্বাস দেয়ায় মোবারককে আমি সব খুলে বলি। আমার পোলা মেয়ে এনে তার নামে ১০ কাঠা জমি রেজিস্ট্রি করে দিতে বলে। আমি রাজী হই কিন্তু পোলা মেয়ে আসতে সময় লাগবে বললে সে অধৈর্য্য হয়ে এই মামলা করে দিলে পুলিশ যায় বাড়িতে। আমার দেখানো মতে আমার স্বামীর লাশ উদ্ধার করেছে পুলিশ। আমাকে পুলিশ আটক করে থানায় নিয়ে যায় গতকাল। আমি অনুতপ্ত হয়ে জবানবন্দী দিলাম”।

In the above confessional statement, Fatema explains the circumstances in which she decided to kill her unfortunate husband. Considering the confession, PW 16's evidence, and the surrounding facts and circumstances, we are clearly of the view that the learned trial Judge rightly found Fatema's confession to be true and voluntary.

It is well-established principles of law that a conviction can rest solely on a confession if it is found to be true and voluntary against its maker. Further, we have seen that the concealed dead body of Alamin Sheikh was recovered three months after his disappearance at Fatema's pointing from an unusual and unnatural place. At the time she disclosed the facts regarding the killing, she produced the knife (gupti) used in the crime.

In view of the above discussions and considering all the facts and circumstances, we hold that the learned trial Judge committed no error in convicting Fatema under section 302 of the Penal Code.

As to the capital sentence imposed upon Fatema, we have considered the case of *Nalu vs. the State*, 17 BLC (AD)

(2012) 204, cited by learned Counsel for Fatema. In that judgment, their Lordships commuted the death sentence to life imprisonment upon considering four mitigating circumstances:

“(a) The condemned prisoner has no significant history of prior criminal activity.

(b) Youth of the condemned prisoner at the time of commission of the offence.

(c) Record reveals that the condemned prisoner would not be likely to commit acts of violence if released.

(d) Confinement of the condemned prisoner in the condemned cell from 9-6-2005 till date, i.e., for more than seven years, during which period the sword of death has been hanging over his head.”

In the present case, it appears that Fatema was a middle-aged woman of 44 at the time of the occurrence and has now grown old. She has no prior criminal record, and her custody exceeds ten years, including confinement in the

condemned cell since 21.05.2018. Although the second circumstance—youthfulness—does not apply to Fatema, the other mitigating factors are present. Moreover, in her confession she stated, “আমি অনুতপ্ত হয়ে জবানবন্দি দিলাম” (“I gave my confession out of repentance”). Her repentance, old age, and sex should therefore be taken into account. Besides, in our view, this case does not fall within the “*rarest of rare*” category that mandates capital punishment. Following the principles settled by the apex court, and considering her repentance, old age, and sex, we are inclined to commute the death sentence to imprisonment for life.

Another issue is whether a conviction under section 201 of the Penal Code is sustainable against a person already convicted of the principal offence. For proper interpretation of section 201, including its illustration, we quote the relevant portion:

“201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or

with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

.....

.....

Illustration:

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.”

A plain reading shows that this section does not apply to an offender who causes the evidence of his own offence to disappear; it applies to another person who intentionally conceals evidence of the principal offence to shield the principal offender from punishment. The illustration, integral to the section, clarifies that A knowingly assists murderer B in

hiding Z's dead body—i.e., after the murder, B hides the dead body with A's assistance. In other words, B and A jointly hide the dead body, but section 201 punishes A, not B, for that conduct.

Moreover, section 201 and the adjacent sections 202 and 203 begin with identical words: “*Whoever, knowing or having reason to believe that an offence has been committed...*” In our country there is no law compelling a criminal to provide information that would incriminate himself; accordingly, sections 202 and 203 do not apply to the principal offender. These sections, like section 201, should be construed similarly, as they share a common purpose.

We have also considered the case of *Manu Mia vs. the State*, 8 MLR (HC) 2003 66, cited for Fatema, and the cases of *Kalawati vs. the State* of Himachal Pradesh, 1953 SCR 546; *Farid Muhammad vs. the State*, PLD 1959 (WP) Peshawar 12; *Gulzar Khan vs. the State*, PLD 1963 (WP) Peshawar 178; and *Kudaon vs. Emperor*, AIR 1925 (Nagpur) 407.

In *Manu Mia*'s case a Division Bench of this Division, relying on *Kalawati*, *Farid Muhammad*, and *Gulzar Khan*'s cases, observed:

“It appears that section 201 does not provide for punishment of the principal offender but of another person who intends to screen the offence of the said principal offender by causing the evidence of the commission of that offence to disappear. Besides, it would be an intrusion on the principle that no accused can be placed in circumstances where he is compelled to produce evidence incriminating himself. As such, if a person found guilty of an offence is himself the person who is also held guilty of causing the disappearance of the evidence of that offence, the combination of such convictions is not permissible. But if the commission of the principal offence could not be proved against the accused, then of course, he can be convicted under the provisions of section 201 of the Penal Code.”

In that case, the trial Judge had convicted the appellant under both sections 302 and 201. On appeal, the conviction under section 201 was set aside for the reasons quoted above, stating that, once convicted of the principal offence, a person cannot also be convicted under section 201.

In *Kudaon's* case the same view was taken: section 201 does not apply to the criminal who causes evidence of his own crime to disappear; it applies to a person who screens the actual offender.

In light of the foregoing, and the observations and decisions of our own, Pakistani, and Indian jurisdictions, we hold that a person convicted of a principal offence cannot be convicted under section 201. This section applies only to a person other than the principal offender.

Accordingly, since Fatema stands convicted under section 302 of the Penal Code, her conviction under section 201 must be set aside.

Regarding Shahjahan's convictions and sentences, the learned trial Judge relied on (i) Fatema's confession implicating Shahjahan and (ii) the premise that Fatema could

not alone have killed the deceased and concealed the dead body, further assuming an extramarital relationship between Fatema and Shahjahan.

Although the learned trial Judge correctly cited authorities—reported in 25 BCR (AD) 239, 44 DLR (AD) 10, 45 DLR (AD) 175, 55 DLR 382, 7 BLC 362, and 3 BLC (AD) 53—holding that a co-accused cannot be convicted solely on another's confession without independent corroborative evidence, he erred in finding that Fatema stated in her confession that she had an extramarital relationship with Shahjahan, said to be corroborated by local witnesses. But neither Fatema's confession nor the witnesses expressly stated that Fatema had any extramarital relationship with Shahjahan. Only PW 10 stated that Fatema, Saiful, and Rafique had an illicit relationship for five years. That undifferentiated statement alone does not, beyond reasonable doubt, prove an extramarital relationship between Fatema and Shahjahan.

Even if Fatema alone could not have killed the deceased and hidden the dead body, this does not, without more, establish Shahjahan's involvement in the absence of incriminating substantive evidence corroborating Fatema's

confession. There is no such corroboration regarding either the killing or the concealment. We therefore hold that the learned trial Judge manifestly erred in convicting and sentencing Shahjahan under sections 302 and 201 of the Penal Code. Thus, he is entitled to acquittal.

In the result, the death reference is rejected.

The Criminal Appeal No. 5928 of 2018, filed by condemned prisoner Shahjahan Sheikh, is allowed. The portion of the impugned judgment and order relating to his convictions and sentences under sections 302 and 201 of the Penal Code are set aside. He is acquitted of the charges. The Jail Superintendent, Bagerhat, is directed to release him forthwith if he is not required in any other case(s). The Jail Appeal No. 165 of 2018 filed by Shahjahan Sheikh is accordingly disposed of.

The Jail Appeal No. 166 of 2018, filed by condemned prisoner Fatema Begum, is dismissed with modification. The death sentence under section 302 of the Penal Code is commuted to imprisonment for life. The Jail Superintendent, Bagerhat, is directed to move her from the condemned cell

immediately. Her conviction and sentence under section 201 of the Penal Code are set aside.

Let the lower court record, along with a copy of this judgment, be sent to the Court of the Additional Sessions Judge, Second Court, Bagerhat, and another copy be sent to the Jail Superintendent, Bagerhat, forthwith for information and necessary actions.

Md Ali Reza, J

I agree.