

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

Present:

**Mr Justice Md Atoar Rahman
And
Mr Justice Biswajit Debnath**

Death Reference No 138 of 2018

The State

-Versus-

Salma Begum and others

With

Criminal Appeal No 13926 of 2018

With

Jail Appeal No 350 of 2018

Salma Begum

-Versus-

The State

Mr Md Emran Khan, DAG with

Mr Muhammad Safwan,

Mr Zillur Rahman,

Mr Khalilur Rahman,

Mr Amran Hossain, AAGs

----- for the state

Mr M Sayed Ahmed (Raza), Senior Advocate with

Mr Mohammad Shaiful Alam, Advocate

Mr Billal Hoissain Lijohn, Advocate

.....For the appellant

With

Criminal Appeal No 9917 of 2022

With

Jail Appeal No 237 of 2022

Md Alal Mia

-Versus-

The State

Mr Md Shamsuzzaman, Advocate with

Mr Md Lutfur Rahman, Advocate

.....For the appellant

Mr Md. Hafijur Rahman Khan, Advocate

....For the absconding convict

**Heard on: 27.01.2026, 29.01.2026,
01.02.2026, 02.02.2026 and 16.02.2026**

Judgment on: 19.02.2026

Md Atoar Rahman, J:

This death reference, being Death Reference No. 138 of 2018, has been made by the learned Additional Sessions Judge, 2nd Court, Brahmanbaria, 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 Mst. Salma Begum (hereinafter referred to as “Salma”), Alal Miah (hereinafter referred to as “Alal”), and absconding Sajol Debnath (hereinafter referred to as “Sajol”) by judgment and order dated 14.11.2018 passed in Sessions Case No. 217 of 2013, arising out of Brahmanbaria Police Station

Case No. 20 dated 07.06.2011 corresponding to G.R. Case No. 564 of 2011.

By the said judgment and order, the learned trial Judge convicted the above named accused persons under sections 302/34 of the Penal Code and sentenced each of them to death, while co-accused Liton Debnath was acquitted.

Against the said judgment and order, Criminal Appeal No. 13926 of 2018 and Jail Appeal No. 350 of 2018 have been preferred by Salma, while Criminal Appeal No. 9917 of 2022 and Jail Appeal No. 237 of 2022 have been filed by Alal.

The death reference and all the appeals were heard analogously and are being disposed of by this common judgment.

The prosecution case, in brief, is that on 07.06.2011 at about 09:15 pm, Sheuli Begum, first wife of the deceased Abdul Karim, lodged a First Information Report under sections 302/34 of the Penal Code with Brahmanbaria Police Station against Alfaz, Chandra Namosudra and Bollram Rishi. It was alleged that the deceased, who had two wives, used to stay alternately at

his paternal home with the informant and at the house of his second wife Salma at Bhadughor Munshibari.

On 05.06.2011 at about 7:00 pm, the FIR named accused called the deceased from his residence and took him away, after which he did not return. The informant initially presumed that he had stayed with Salma. On the following morning, upon inquiry, it was learned that he had not gone there. Subsequent searches failed to locate him. On 07.06.2011, upon receiving information that a sack-bound body had been found near the Cumilla-Sylhet Highway, the informant went there and identified the partially decomposed body with injuries as that of her husband. The police held inquest and sent the body for autopsy.

On the basis of the FIR, Brahmanbaria Police Station Case No. 20 dated 07.06.2011 was started. The Investigating Officer, Md. Atiqur Rahman, Sub-Inspector, took up the investigation and arrested Salma, Sajol and Liton, who later made confessional statements under section 164 of the Code before a Magistrate.

Upon completion of investigation, charge sheet was submitted on 31.12.2011 against Salma, Sajol, Alal and Liton under sections 302 and 201/34 of the Penal Code. The case was transferred for trial to the learned Additional Sessions Judge, 2nd Court, Brahmanbaria, who on 12.05.2014 framed charges under sections 302/34 of the Penal Code. The charge was read over and explained to Salma, who pleaded not guilty and claimed trial, while the others remained absconding.

In order to prove the charge, the prosecution produced seven witnesses out of nineteen cited, of whom six were examined and cross-examined and one was tendered. The defence did not adduce any evidence.

PW 1, the informant Sheuli Begum, stated that on 05.06.2011 the FIR-named accused took her husband, who thereafter went missing, and that his dead body was recovered on 06.06.2011. She proved the FIR (Ext. 1) and her signature (Ext. 1/1). In cross-examination, she stated that she had not lodged any case against Salma and had no allegation against her.

PW 2, Soniya Akter, daughter of the deceased, stated that her father went missing on 05.06.2011 and her mother filed the case on 06.06.2011. She was not cross-examined.

PW 3, Liakot Ali, was tendered and not cross-examined.

PW 4, Md. Harunur Rashid, the then Senior Judicial Magistrate, deposed that on 09.06.2011 accused Sajol and Salma were produced before him for recording confessional statements. After explaining the consequences and allowing time for reflection, he recorded their statements under section 164 following section 364 of the Code. He proved the confessional statements of Salma (Ext. 2) and Sajol (Ext. 3) along with signatures. In cross-examination, he admitted that although assurance regarding non-remand to police custody was given, it was not recorded.

PW 5, Md. Shariful Alam Bhuiyan, Judicial Magistrate, recorded the statement of acquitted accused Liton under section 164.

PW 6 Dr ASM Musa Khan, testified that on 08.06.2011 as Resident Medical Officer Sadar Hospital, Brahmanbaria he

held autopsy of the dead body of Abdul Karim and found following injuries:

“Injuries: (1) 1 (one) ligature mark placed circularly round the neck which is continuous the diameter of ligature mark is about ½". The floor of ligature mark parchmentised. The margin of ligature mark is ecchymosed.

(2) One superficial burn in the left side of face (3"×2") and one superficial burn in the Rt side of the face (4" ×3"). One superficial burn in the forehead (3" ×4"). One superficial burn in anterior chest-wall (10" ×8").

(3) One abrasion on the external surface on the Lt arm (3" ×2").

(4) One abrasion on the external surface in the forearm (3" × 1/2").

(5) One haematoma on the occipital region of the head (4" ×4").

(6) Body is diffused swollen and is advanced state of decomposition and skin pilled off. Maggots appeared.

On deep dissection:- All the viscera is found partially decomposed and congested.

One hematoma detected on the scalp of head.

The soft tissues in and around the neck found congested, lacerated and infiltrated minor clots of blood which are resisted to washing test. The burns described above are ante mortem in nature.”

In his opinion the death was due to the combined effects of asphyxia with strangulation at the neck and shock and haemorrhage resulting from the above noted injuries which were ante mortem and homicidal in nature.

He prove the autopsy report (Ext 5) and his signature thereto. He was declined to cross examine.

PW-7, Md. Atiqur Rahman, Sub-Inspector of Police, testified that on 07.06.2011 he was posted at Brahmanbaria Sadar Police Station. Upon lodgment of the First Information

Report (FIR), he was entrusted with the responsibility of investigating the case. In the course of the investigation, he visited the place of occurrence and prepared a sketch map along with an index. He proved the said sketch map as Exhibit 6 and identified his signature thereon as Exhibit 6/1. He further deposed that he arrested accused Liton Debnath, and on the basis of the information provided by him, he subsequently arrested the co-accused Sajol and Salma. Thereafter, he produced them before the learned Judicial Magistrate for the purpose of recording their confessional statements, and they made such statements under Section 164 of the Code of Criminal Procedure. He also stated that immediately after the occurrence, Sub-Inspector Harun or Rashid conducted an inquest of the dead body and sent it for post-mortem examination. During the course of his investigation, he collected the confessional statements, the inquest report, and the post-mortem (autopsy) report. He further stated that upon completion of the investigation, having found a prima facie case against the accused persons, namely Sajol, Liton, Salma, and Alal, he

submitted the police report on 31.12.2011, recommending that they be put on trial.

During cross examination he said that in the FIR salma was witness No 2. He denied that confessions of the confessing accused were procured under threat and physical torture.

These all are the evidence adduced by the prosecution.

After closure of the prosecution evidence, only Salma was examined under section 342 of the Code, as the others were absconding.

The defence case, as gathered from cross-examination, was that the accused were innocent and falsely implicated. It was further asserted that the alleged confessional statements were not voluntary but obtained through coercion and that the investigation was defective.

Upon consideration of the evidence and circumstances, the learned trial Judge found that the prosecution had proved the charges under sections 302/34 of the Penal Code beyond reasonable doubt against Salma, Sajol and Alal, and accordingly convicted and sentenced them to death, while acquitting Liton.

Being aggrieved, Salma and Alal preferred the present criminal appeals and jail appeals, and the learned trial Judge made the statutory death reference for confirmation of the sentences.

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

Mr. Md. Emran Khan, learned Deputy Attorney General, assisted by the learned Assistant Attorneys General, opposed the appeals and supported the death reference as well as the judgment and reasoning of the learned trial Judge. He submitted that the trial Court, upon proper appreciation of the evidence on record, rightly convicted and sentenced the condemned prisoners and the absconding convict. Accordingly, the death reference deserves to be accepted and the appeals dismissed.

In support of his submissions, the learned Deputy Attorney General contended that although there is no ocular witness in the case, two accused persons, namely Salma and

absconding Sajol, made confessional statements under section 164 of the Code of Criminal Procedure, clearly describing the commission of the murder of Abdul Karim with the assistance of the condemned prisoner Alal. The learned Magistrate recorded the confessions in strict compliance with sections 164 and 364 of the Code, after satisfying himself that the statements were voluntary and true, as affirmed during his deposition as PW-5. As such, the confessional statements are lawful, voluntary, and reliable. He further submitted that it is well settled that a voluntary and truthful confession may form the sole basis of conviction, as held in *Islam Uddin vs State*, 13 BLC (AD) 81 and *Ismail Hossain vs State*, 28 BLC (AD) 11.

The learned Deputy Attorney General further contended that the condemned prisoner Alal remained absconding throughout the trial and surrendered only in 2022, long after the pronouncement of judgment. His prolonged abscondence

constitutes a relevant incriminating circumstance. The confessional statements of Salma and Sajol clearly describe his participation, which is corroborated by the inquest report, post-mortem report, and the testimony of PW-6. The principle that absence may be considered as corroborative evidence has been affirmed in *Shukur Ali vs State*, 74 DLR (AD) 11.

He also submitted that the defence contention regarding non-compliance with section 342 of the Code is untenable. In *Khorshed (Md.) vs State*, 73 DLR (AD) 83, it has been held that unless prejudice is shown, such omission does not vitiate the trial, and no such prejudice has been demonstrated in the present case. Referring to the statement of Salma under section 342 of the Code, the learned Deputy Attorney General submitted that she admitted that the occurrence took place in her residence. Since the deceased died in her house, she had special knowledge of the circumstances of death and was under an obligation to

explain the same under section 106 of the Evidence Act, as settled in *Mamun @ Mamun-Ar-Rashid vs State*, 74 DLR (AD)

36. Accordingly, she explained the killing of her husband both in her confessional statement and during her examination under section 342 of the Code which clearly proves that she had direct involvement with the killing of her husband.

He further submitted that the defence argument that the confessions do not attract liability under section 302 of the Penal Code is misconceived. In *Mishon Chandra Das vs State*, 68 DLR (AD) 39, it has been held that participation in the killing, as disclosed in a confession, clearly establishes liability under section 302 of the Penal Code.

The learned DAG also stated that as per the autopsy report the death was caused by asphyxia and superficial burn marks noted in the report can reasonably be explained as having been caused by friction while dragging the body after placing it in sacks, as

described in the confessional statements. Thus, the medical evidence does not contradict but rather supports the prosecution case.

He further submitted that Sajol also remained absconding throughout the trial, and such conduct corroborates his voluntary confession and supports the prosecution case.

In view of the voluntary and lawful confessions, corroborative medical and circumstantial evidence, and the prolonged abscondence of the accused, the convictions and sentences imposed by the learned trial Judge are lawful and justified. He therefore prayed for acceptance of the death reference and dismissal of the appeals.

On the other hand, Mr. Md. Hafijur Rahman Khan, learned Advocate appointed by the State to represent the absconding convict Sajol, contended that the learned trial Judge

erred in law in convicting the accused under sections 302/34 of the Penal Code without properly scrutinizing the evidence, thereby occasioning a failure of justice. He argued that the alleged confessional statements are inadmissible, as they are neither true nor voluntary, and are contradictory and inconsistent in material particulars.

He further contended that the mandatory safeguards under section 364 of the Code were not followed. The learned Magistrate (PW-4) admitted that both confessing accused were produced together and kept in the custody of his peon prior to the recording of their statements, thereby depriving them of independent reflection and creating a risk of influence. He also admitted that he failed to record that the accused were assured that they would not be remanded to police custody if they declined to confess. This omission strikes at the root of

voluntariness, rendering the confessions legally defective and inadmissible.

He also submitted that Sajol retracted his statement at the earliest opportunity by filing an application, and therefore the conviction based on such a statement is unsustainable. He contended that the case is one of no evidence and that the learned trial Judge, without proper judicial consideration, wrongly convicted the accused and imposed capital punishment, which is liable to be set aside.

Mr. M. Sayed Ahmed (Raza), learned Senior Advocate, along with Mr. Mohammad Shaiful Alam, appearing for the condemned prisoner Salma, submitted that although an FIR sets the criminal law in motion, it is neither sacrosanct nor an encyclopedia. Any material contradiction, discrepancy, or deviation from the FIR in the subsequent prosecution case is fatal and entitles the accused to the benefit of doubt.

He further submitted that the Investigating Officer failed to conduct a fair and proper investigation by not adequately identifying the place of occurrence, recovering material exhibits, or explaining inconsistencies between the medical findings and the prosecution case. These deficiencies create reasonable doubt and render the trial defective.

He also contended that the confessional statements of Salma and Sajol are invalid, having been recorded in violation of sections 164 and 364 of the Code. The recording Magistrate admitted that although he verbally assured the accused that they would not be sent back to police custody, such assurance was not recorded. He also failed to mention the time of commencement and completion of the recording, and the accused were kept together prior to recording. Moreover, the mandatory memorandum under section 164(3) was not properly

recorded. These defects render the confessions unreliable and inadmissible.

He further submitted that a comparison of Salma's statement under section 161 and her alleged confession under section 164 shows striking similarity in language, casting doubt on its voluntariness. No independent corroboration has been produced. Even if the confession is accepted, it does not disclose her participation in the killing; at most, it suggests involvement in disposing of the dead body, which would attract liability under section 201 of the Penal Code, not sections 302/34. The prosecution also failed to produce the alleged jute bags.

He further contended that section 342 of the Code was not properly complied with, as all incriminating circumstances were not put to the accused, thereby causing prejudice and vitiating the trial. He also pointed out inconsistencies in the

medical evidence, including multiple unexplained injuries, which undermine the prosecution case.

In view of the above, he submitted that the prosecution failed to prove the charge beyond reasonable doubt and that the conviction and sentence are liable to be set aside.

Mr. Md. Shamsuzzaman, learned Advocate, together with Mr. Lutfur Rahman, appearing on behalf of Md. Alal, contended that in the FIR although certain persons were specifically named as having called the deceased out immediately prior to his death. Those individuals were subsequently discharged without meaningful investigation. The Investigating Officer failed to verify their involvement and, without any rational basis, shifted suspicion to the second wife and an alleged paramour, from whom confessional statements were obtained.

He submitted that the appellant made no confession and that his conviction rests solely upon the confessions of co-accused, which are self-exculpatory, contradictory, and unsupported by independent evidence. In the absence of corroboration, such statements are unsafe to rely upon.

He further contended that no motive or nexus between the appellant and the alleged offence has been established, thereby weakening the prosecution case. The medical evidence, indicating multiple injuries, suggests an alternative scenario consistent with the FIR version, which was not properly investigated.

He also argued that the learned trial Judge failed to identify any specific overt act attributable to the appellant, and that the conviction is based on conjecture rather than evidence, which is impermissible in a case involving capital punishment. Finally, he submitted that the appellant voluntarily surrendered

in 2022 despite the sentence of death, which is inconsistent with guilt and indicative of innocence.

In view of the above, he prayed that the conviction and sentence be set aside.

We have heard the submissions of the learned Deputy Attorney General and the counter-submissions of the learned Advocates for Salma, Sajol and Alal. 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.

The inquest report, prepared by Sub inspector Harun Or Rashid has not formally been proved and marked as exhibit. However it is not disputed and this inquest report clearly states that on 07.06.2011 at about 1:30 pm, a sack-bound dead body was found at the western side of the Cumilla-Sylhet Highway and the police officer in presence of the informant and Fatema, two wives of the deceased, and other witnesses opening the bag

brought out a partially decomposed dead body with several marks of injury. Both the wives and locals identified the same as deceased Abdul Karim, aged about 45 years. The above dead body was autopsied by PW 6, Dr. ASM Musa Khan, the then Resident Medical Officer at Sadar Hospital, Brahmanbaria who proved the autopsy report (Ext. 5). It is pertinent to mention that the Ext 5 shows that the death was caused by asphyxia. In the same report superficial burn marks were noted. In this regard we accept the submission of the learned DAG that as having been caused by friction while dragging the body after placing it in sacks, as described in the confessional statements. Thus, the medical evidence does not contradict but rather supports the prosecution case.

The inquest report and autopsy report clearly prove that the deceased was killed mainly by strangulation which falls within the purview of murder as defined under section 300 and punishable under section 302 of the Penal Code.

This is a case of an unseen murder. The appellants were convicted and sentenced primarily on the basis of confessional statements made by Salma and Sajol, recorded under section 164 of the Code and the connecting facts and circumstances.

The confessional statements of Salma and Sajol (Exts 2 and 3 respectively) were recorded by PW 4, Md. Harunur Rashid, the then Senior Judicial Magistrate, Brahmanbaria, who proved these. On scrutiny of Exts 2 and 3 it is found that all columns of both of these have properly been filled in by the recording Magistrate. The evidence of the recording Magistrate and Exts 2 and 3 further show that on 09.06.2011, when Salma and Sajol were produced for recording their confessions, the Magistrate carefully explained to them each matter in column 5 and granted them three hours for reflection. Thereafter, following the provisions of sections 164 and 364 of the Code, he separately recorded their statements in the prescribed columns, which were separately read over to them and having found correct they put their signatures in respective statements and the Magistrate himself signed these. He also made memoranda in the appropriate columns stating his satisfaction regarding

voluntariness. It is thus, evident that both the confessions were not made under threat, coercion, inducement or physical torture. However, to have a better view of the matter we would like to reproduce both the confessional statements.

The confessional statement of Salma runs as follows:

“আমার নাম সালমা বেগম (৩০ বছর)। ১০/১২ বছর আগে আঃ করিমের সাথে আমার বিয়ে হয়। এইটা আমার স্বামীর ২য় বিয়ে। বিয়ের সময় ভাদুঘর মুন্সী বাড়ি আমার নামে আমার স্বামী দলিল করে দেয়। আমার সতীন শিউলী বেগম আমার স্বামীর পৈত্রিক বাড়ি ভাদুঘর দক্ষিণপাড়ার বাড়িতে থাকে। আমার বাড়ির দোকানঘর সজলের কাছে মাসিক ৬০০/- হারে বাড়্য দেয় গত ৪ বছর আগে। সজল স্বর্ণের কাজ করে। আমার স্বামী নেশা করত। সে দিনের বেলা শহরে মুদি দোকানে থাকত। সজল আমাকে ভাবী ডাকত। অনুমান ২ বছর আগে সে আমাকে বলে, “তোমার স্বামী তো নেশা টেশা খাইয়া অত্যাচার করে। তুমি হেরে ফালাইয়া দিয়া আমার সাথে লইয়া লও; আমি তোমারে বিয়া করুম।” আমি বলি, “তুই হিন্দু তোর সাথে আমি যাইতাম কিয়ারে।” সে আমার সাথে শারীরিক সম্পর্ক করার চেষ্টা করছে আমি ধরা দিছি। বছর খানেক আগে আমার স্বামী একবার সজলকে চর খাপ্পর দিছে রাতের বেলা দোকান ঘরে থাকার কারণে। রাতের বেলা দোকানে থাকা আমার স্বামী নিষেধ করেছিল। গটনার ৫/৬ দিন আগেও আমার স্বামী সজলকে মারধর করছে। আমাকে সজল এরপর বলে, “নড়ির পুতে আমারে হুদা কামে মারছে। লও আমরা বিয়া কইরা লাই। আমরা ইন্ডিয়া চইল্যা যামু।” আমি বলি, “আমার বাচ্চা কাচ্চা আছে আমি যাইতাম না। তুই হিন্দু বেটা।” তখন সে বলে, “তারে না মাইরা ভাতই খামুনা। তুমি আমার লগে থাকবা।” আমারে বলছে যে, হে লোক লইয়া আমার সআবমীরে মারব। আমি যেসন কোন রাও না কির। হরতালের দিন রাতের বেলা ২ টার দিকে

আমার স্বামী নেশা কইরা আইসা ঘরে ঢুকে আমাকে ডাইকা তুলে। আমারে নেশার ঘোরে গালাগালি করে। বজল আমার মোবাইল নং এ ফোন করই জিজ্ঞাসা করে আমার স্বামী আসছে কিনা। আমি বলে আসছে। আমি দরজা খুলিয়া প্রসাব করতে যাইয়া দেখি সজল আর আলাল আসছে। হেরা দুইজন ঘরে ঢুকছে; দুইকাইয়া হেরা দুইজন আমার স্বামীর গলায় চীপা দিয়া ধরছে। আমি দরজা বরাবর বাইরে দাড়ানো ছিলাম। দেখি রশি দিয়া গলায় বাইকা দুইজনে দুইদিকে টান দিছে। কিছুক্ষণ পরে আমর কাছে তারা ছালা চায় (বস্তা)। আমি ২ টা বস্তা দেই। বস্তায় দুকাইয়া হেরা লাশ হেচরাইয়া লইয়া গেছেগা। আমি অজ্ঞান হইয়া পইড়া গেছি আর কিছ কইতে পারি না। এক দিন পরে আমার সতীনের ছেলে অনিক খবর নিতে আমার কাছে আসছে। আমি ডরে ভয়ে কিছু কইছি। সবাই বছরাইতছ। থানার মধ্যে ঋঈ করতে যাওয়ার পর ফোন গেছে লাশ পাওয়া গেছে। থানায় লাশ নিয়া গেছে। আমি আমার সতীন বাসায় যাই। কান্দাকাটি করি। পরদিন সকালে আমি আমার মামা মাহফুজেরে সকল ঘটনা খুলিয়া কই। পরে পুলিশ আমারে নিয়া থানায় আইছে। এই আমার জবানবন্দী।”

The confessional statement made by Sajol reads as under:

“ভাদুঘর আমার স্বর্নের দোকান। সালমা হইল আমার দোকানের মালিক। তাইনের দোকান ভাড়া নিয়া আমি ব্যবস্থা করি। প্রায় চার থেকে সাড়ে চার বছর যাবত হইছে দোকান নেওয়া হইছে। প্রায় দুই বছর যাবত তাইনের সাথে আমার প্রেমের সম্পর্ক। তাইনের স্বামী মদ-টদ খাইয়া তাইনেরে রাত-দিন অত্যাচার করত। অত্যাচার সহ্য করতে না পাইরা আমারে বলে যে, তাইনেরে মারার ব্যবস্থা করতে হইবে নাহইলে আমার পক্ষে বাইচা থাকা অসম্ভব। ঘটনা ঘটছে গত রবিবার দিন রাত অনুমান দুইটা/আড়াইটা’য়। এর তিন/চার দিন আগে থেকে সালমা আমারে বলতছে যে, পার্শ্ববর্তী আলালের বাড়িতে তুমি ঘুমাও; ২/৩ দিনের ভিতরে একটা সুবিধা হবে আমি সাথে সাথে ফোন দেব। আনুমানিক ২/২.৩০ টার দিকে সামলামর মোবাইল থেকে নং ০১৯১৬-

২৪৪০৫৬ থেকে আমাকে ফোন দিচ্ছে আমার নং ০১৯২৮৭১২৬৩৫-তে। বলতাকে যে, আলালের কাছে দে। আলালে আমারে বলে তাড়াতাড়ি ল। পরে বাড়ি পেছন দিয়া দরজা খোলা। আলাম প্রথমে ঘরের ভিতরে ঢুকছে। আমি একটু দূরে দাড়াইয়া রইছি। আমি শোনতাই আলালরে করিম(স্বামী) বকাবকি করতাকে। সালমা ঘর থাইকা বের হইয়া আমার কাছে আইয়া কয় তাড়াতাড়ি যা। আমি ঘরে ঢুকছি। সালমাও আমার সাথে সাথে আসছে। ভিতরে যাওয়ার পরে আলালে করিমরে আঞ্জা দিয়া ধরছে। আমি করিমরে হাতে ধরছি। আলালে গলার মধ্যে রশি লাগাইছে। সালমা আর আলালে রশি টান দিছে। আমি আঞ্জা দিয়া ধরইয়া রাখছি। প্রায় ৮/১০ মিনিট পরে তার দম গেছে। সালমা রশি আইনা দিছে। আমি আর আলালে লাশ বস্তায় ঢুকানোর জন্য দুই পায়ের হাঁটু ভাঁজ কইরা রশি দিয়া বানছি। সালমা ছালা আইনা বলছে ছালায় ঢুকাও কিছুক্ষণ রাখি। আলাল আর আমি রামারাইল ভ্যান আনতে গেছি। পরিচিত ভ্যাচনচালক লিটনকে ঘুম থাইক্যা ডাইকা উঠাই। আলালে লিটনরে বুদ্ধি কইরা কইছে মেশিন আর চালের বস্তা নিয়া ২ টা কুড়ার বস্তা এবং লাশ ভ্যাগে উঠাই। লিটনে (ভ্যান চালক) কুড়ার বস্তা উঠায়। আলাল আর আমি ভ্যানে উঠি। লাশ নিয়া আঙুরা রাস্তার পাশে ফলাই। লিটন কুড়ার বস্তা লইয়া বাড়িতে চইল্যা গেছে। তারে ৫০০/- গাড়ি ভাড়া দেই। এই আমার দোষ স্বীকারোক্তিমূলক জবানবন্দী।”

In the above confessional statements, Salma and Sajol explained the circumstances in which Sajol decided to kill the deceased and how he was killed. However, Salma in her statement stated that while Sajol and Alal were killing her husband by strangulation in her dwelling house she was standing at the door without raising any alarm or hue and cry. Before that about returning home of her husband she informed Sajol, who

had disclosed to her his plan to kill the deceased and sought her assistance earlier in this regard. After killing of the deceased she supplied two bags for disappearance of the dead body. But Sajol stated that Salma directly participated to kill the deceased and disappearance of the dead body. Be that as it may, so far narration and admission of Salma and the confession of Sajol it discloses that both of them along with Alal were involved with the killing of the deceased and disappearance of the dead body. It is also found that both confessional statements almost similar. Considering the confessional statements and surrounding facts and circumstances, we are clearly of the view that the learned trial Judge rightly found both the confessions to be true and voluntary.

It is pertinent to mention here that during her examination under section 342 of the Code Salma's attention was drawn to her confessional statement, recorded under section 164 of the Code, in details. But she did not say that such confession was made under threat, coercion, inducement or physical torture. Rather, she reiterated such confessional statement very precisely before the learned trial Judge.

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.

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 Salma and Sajol under section 302, read with section 34, of the Penal Code.

The conviction and sentence of Alal have already been examined, and it is evident that he did not make any confession. Notwithstanding this, he was convicted and sentenced solely on the basis of the confessional statements of his co-accused, namely Salma and Sajol. Although the learned trial Judge correctly cited the authority reported in *55 DLR 137* and acknowledged the settled principle that a co-accused cannot be convicted solely on the basis of another's confession without independent corroborative evidence and surrounding circumstances, he erred in its application. In the absence of any independent corroboration, the trial Judge found Alal guilty by treating the confessions of the co-accused as mutually corroborative, which is a manifestly erroneous view.

It is a well-established principle of law that confessions made by co-accused persons in a joint trial cannot corroborate each other. Rather, independent and substantive evidence is required to establish the guilt of an accused who has not made any confession. In the present case, apart from the confessional statements of the co-accused, there is no independent piece of evidence implicating Alal.

The learned Deputy Attorney General contended that Alal's alleged abscondence lends support to the confessions of the co-accused and, on that basis, the conviction may be sustained. In support of this submission, reliance was placed on the case of Shukur Ali vs State, *74 DLR (AD) 11*. However, this contention is untenable. Alal cannot be characterized as a fugitive, as he voluntarily surrendered before the trial court following the pronouncement of the impugned judgment.

Moreover, in the subsequent decision of Ismail Hossain Babu vs State, *28 BLC (AD) 6*, the Appellate Division reiterated the well-settled principle that the confession of one accused may be used against a non-confessing co-accused in a joint trial only when there exists independent substantive evidence establishing

the latter's involvement in the commission of the offence, such confession being merely an additional circumstance.

Further, in *Amir Hossain Howlader vs State, 1984 BLD (AD) 193*, it was held that abscondence may serve as corroboration of direct evidence, such as eyewitness testimony, connecting an accused with the crime; however, it cannot be treated as corroboration of a co-accused's confession so as to sustain a conviction.

In view of the foregoing discussion, it is evident that the prosecution has failed to prove the charge against Alal beyond reasonable doubt. The learned trial Judge, therefore, erred in convicting and sentencing him, and such conviction and sentence cannot be sustained in law.

As to the capital sentences imposed upon Salma and Sajol we have considered the case of *Nalu vs. the State, 17 BLC (AD) (2012) 204*, cited by learned Counsels. 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 Salma was a middle-aged woman of 40 years at the time of her examination under section 342 of the Code on 30.01.2018 and she is now of 50 years. She has no prior criminal record, and her custody exceeds seven years, including confinement in the condemned cell since 14.11.2018. Although the second circumstance, youthfulness, does not apply to Salma, the other mitigating factors are found present. Moreover, she all along was present after released on bail till pronouncement of judgment and in her confessional

statement recording Magistrate has written that she gave confession out of repentance. Her repentance and sex should also be taken into account. Following the principles settled by the apex court, and considering her repentance and sex, we are inclined to commute the death sentence to imprisonment for life.

It appears that during investigation Sajol was granted bail and he before commencement of trial had become fugitive. Although he has no significant history of prior criminal activities, other mitigating circumstances do not applicable for him. Moreover, he was the mastermind of the killing and took vital role of such killing of the deceased. Thus we are of the opinion that the learned trial judge rightly imposed him capital punishment which should to be maintained.

In view of the discussions made above and for the reasons described earlier, orders are as follows:

1. The death reference, so far as it relates to Sajol Debnath (absconding), is accepted. His death sentence shall be executed in accordance with the impugned judgment and order passed by the learned trial Judge.

2. The death reference, so far as it relates to Salma Begum and Alal Miah, is rejected.
3. The Criminal Appeal No. 13926 of 2018, filed by condemned prisoner Salma Begum, is dismissed with modification. The death sentence inflicted upon her under section 302 read with section 34 of the Penal Code is commuted to imprisonment for life and to pay a fine of taka 10,000.00 (ten thousand), in default, to suffer simple imprisonment for a term of six months. She shall be entitled to get benefit under section 35A of the Code in calculation of sentence and other remissions permissible under the Jail Code. The Jail Superintendent, Brahmanbaria, is directed to move her from the condemned cell to normal cell immediately. Accordingly, the Jail Appeal No 350 of 2018 filed by Salma Begum is disposed of.
4. The Criminal Appeal No. 9917 of 2022, filed by condemned prisoner Alal Miah, is allowed. The portion of the impugned judgment and order, relating to his conviction and sentence under section 302 read with

section 34 of the Penal Code is set aside and he is acquitted of the charge labeled against him. The Jail Superintendent, Brahmanbaria, is directed to release him forthwith if he is not required in any other case(s). The Jail Appeal No. 237 of 2022 filed by Alal Miah is accordingly disposed of.

Let the lower court's record, along with a copy of this judgment, be sent to the Court of Additional Sessions Judge, Second Court, Brahmanbaria, and another copy be sent to the Jail Superintendent, Brahmanbaria, forthwith for information and necessary action(s).

Biswajit Debnath, J

I agree.