

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

Present:
Mr. Justice Md. Atoar Rahman
And
Mr. Justice S. M. Saiful Islam

Death Reference No. 82 of 2018
State Vs. Md. Iqbal Hossain and Others
With

Criminal Appeal No. 3551 of 2023
Sohag Vs. State
With

Jail Appeal No. 80 of 2023
Sohag Vs. State
With

Jail appeal No. 157 of 2023
Babu Kazi Vs. State
With

Criminal Revision No. 2396 of 2018
Md. Shamim Vs. State and others

1. Mr. Md. Hafizur Rahman, Advocate
--- For the State Defence Lawyer
(In the Death Ref. No. 82 of 2018).
2. Mr. Liton Datta with
Mr. Md. Shishir Monir, Advocates
---For the Appellant-Sohag
(In the Crl. Appeal No. 3551 of 2023).
3. Mr. A. K. M. Shamsuddin with
Mr. M. A. Karim, Advocates
---For the Informant-Petitioner

(In the Crl. Revision No. 2396 of 2018).

Mr Md. Emran Khan, DAG with
 Mr . Muhammad Safwan,
 Mr. Md. Khalilur Rahman,
 Mr. Amran Hossain and
 Mr. Md. Zillur Rahman, AAGs

----- For the State
 (In all the Cases).

Heard on: 03.12.2025, 04.12.2025,
07.12.2025, 08.12.2025, 09.12.2025 and
Judgment on: 15.12.2025

S. M. Saiful Islam, J:

This death reference, being Death Reference No. 82 of 2018, has been made by the learned Sessions Judge, Narayanganj, 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 **Sohag, Babu Kazi** and absconded condemned convicts **Md. Iqbal Hossain, Sadeq Rahman** by judgment and order dated 18.7.2018 in Sessions Case No. 349 of 2017, arising out of Fatulla Police Station Case No. 52 (8) 2014, corresponding to GR Case No. 678 of 2014.

By the aforesaid judgment and order, the learned Sessions Judge convicted the condemned prisoners and absconding condemned convicts under sections 302/34 and 201/34 of the Penal Code. Each of them was sentenced to death under section 302, and to suffer rigorous imprisonment for seven (7) years and pay a fine of taka 50,000.00, in default of payment to suffer rigorous imprisonment for a further period of six (6) months under section 201. The co-accused Mokter Hossain, Abul Hossain and Md. Mehedi were acquitted of all charges.

Against the aforesaid judgment and order of convictions and sentences, Criminal Appeal No. 3551 of 2023 and Jail Appeal No. 80 of 2023 were preferred by condemned-prisoner-appellant Sohag, while Jail Appeal No. 157 of 2023 was filed by condemned prisoner-appellant Babu Kazi (hereinafter referred to as “Babu”). Against the judgment and order of acquittal of 3 accused informant of the case Md. Shamim has filed the Criminal Revision No. 3551 of 2023. Upon that revisional application a Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order of acquittal dated 18.07.18 passed by the

learned Sessions Judge, Narayanganj in Sessions Case No. 349 of 2017 arising out of Fatulla Model Police Station Case No. 52 dated 17.08.2014 corresponding to GR No. 678 of 2014 under sections 302/201/34 of the Penal Code so far it relates to acquittal to the opposite party Nos. 2-4 from the charge should not be *set aside* and/ or pass such other or further order or orders as to this Court may seem fit and proper.

As the death reference, appeals and criminal revision originate from the same judgment and order; all these have been heard together and are being disposed of by this common judgment.

In brief, the prosecution case is as follows:

Victim Md. Abdul Halim, brother of the informant Md. Shamim, had the trade of AC, fridge, electrical equipment repairing at Muslim Nagar Naya Bazar under Fatulla Police Station, Narayanganj. Alongside he had trade of coal with his friend accused Iqbal. Iqbal took Tk. 5,00,000/- (five lac) from victim Halim for his business. Victim Halim decided to go abroad and then put pressure upon Iqbal to give back the money he had taken. Finally, Iqbal asked victim Halim to come at

BISIC on 16/08/2014 at 9:00 pm to take back the money. Accordingly, Victim on that day went to Iqbal to take back money. At about 10:00 pm on that night victim's wife Sonia called victim on his cell phone but call was not received. After 10:00 pm victim's cell phone was switched off. Victim did not return home in that night and his family could not trace him. Then victim's father filed GD No. 892 dated 17/08/2014 with the Fatulla Police Station. At about 4:00 pm on 17/08/2014 informant came to know that an unidentified dead body in a sack was lying in a ditch of a under construction abandoned building near Kashipur Road between Fashion Tex Garments and one Shahabuddin's house. Police took the dead body to Victoria General Hospital Morgue. Informant and other members of the family rushed to the hospital and identified the dead body of the victim. Sharp cutting injuries were found on the head and mouth of the dead body and both the hands and legs of the victim were amputated at ankles and knees and were missing. Then younger brother of victim Md. Shamim lodged the FIR with the Fatullah Police Station against accused Md. Iqbal Hossain and anonymous others alleging that the accused persons in collaboration with each other have killed the victim

within the time between 10:00 pm of 16/08/2014 to 5:00 am of 17/08/2014. That FIR was registered as Fatullah Police Station Case No. 52 dated 17/08/2014 corresponding to GR Case No. 678 of 2014.

Sub-Inspector Md. Ali Akbor who had earlier rushed to the place of occurrence and recovered the dead body, prepared the inquest report, was appointed as the Investigating Officer (IO). He again visited the place of occurrence, prepared a sketch map and index thereof. He arrested accused Sadek and produced him before a Judicial Magistrate, who recorded his confessional statement under section 164 of the Code. At one stage, Sub-Inspector Gias Uddin of the CID was appointed as subsequent Investigating Officer, who upon completion of the investigation, submitted a police report on 07/04/2016, finding a *prima facie* case against seven accused namely, (1). Md. Iqbal Hossain, (2). Sohag, (3). Babu Kazi, (4). Sadek Rahman, (5). Md. Mehedi, (6). Moktar Hossain and (7). Abul Hossain recommending their trial under sections 302/201/34 of the Penal Code.

The accused persons were subsequently placed on trial before the Sessions Judge, Narayanganj. On 29.03.2017, after hearing both the parties, charges were framed against them under sections 302/201/34 of the Penal Code, which were read over and explained to the present accused to which they pleaded not guilty and demanded trial. Accused Md. Iqbal Hossain, Sohag and Babu Kazi were absent at the time of trial and that's why charges could not be read over to them.

In order to bring home the charges, the prosecution examined 21 (twenty one) witnesses out of 25 (twenty five) 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 who were present were examined under section 342 of the Code, wherein they again pleaded innocence and desired to produce defence evidence. But subsequently they declined to produce defence witness. Accused Md. Iqbal Hossain, Sohag and Babu Kazi were absent at the trial and that's why they could not be examined under section 342 of the Code.

The defence case, as evident from the trend of cross-examination of prosecution witnesses, was that the accused persons were innocent and falsely implicated in a fabricated case.

Upon careful consideration of the evidence on record, confessional statement of accused Sadek and the surrounding circumstances, the learned trial Judge held that the prosecution had successfully established the charges beyond reasonable doubt against accused Md. Ikbal Hossain, Sohag, Babu Kazi and Sadek. Consequently, they were convicted and sentenced as stated earlier, while the co-accused Md. Mehedi, Moktar Hossain and Abul Hossain were acquitted by the impugned judgment and order.

Being aggrieved and dissatisfied with the said judgment and order, convicts Sohag and Babu Kazi preferred the instant appeals, while the learned trial Judge made a statutory reference to this Division for confirmation of the death sentences of aforesaid four accused. On the other hand, informant, being aggrieved by the judgment and order of acquittal of the

aforesaid three accused, preferred Criminal Revision No. 2396 of 2018.

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

Mr. Md. Emran Khan, learned Deputy Attorney General, assisted by Mr. Muhammad Safwan, Mr. Md. Khalilur Rahman, Mr. Md. Amran Hossain and Mr. Md. Zillur Rahman, learned Assistant Attorney Generals, appearing for the State-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 accused Sadek.

He has then submitted that on a proper appreciation of the prosecution evidence together with Sadek'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 Md. Iqbal Hossain,

Sohag, Babu Kazi and Sadek 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. He submits that Sadek's confession is voluntary and true; and supported by sufficient corroborative evidence. Convicts were absconding for a long time after the incident. Convicts Iqbal and Sadek are still absconding. Such long absconson of these accused also indicates their involvement in the alleged offence and also act as corroboration of the confessional statement. He also contends that conviction of the four accused could validly rest on the confession of Sadek, it having been found true and voluntary, relying on the cases of *Shukur Ali Vs. State*, 74 DLR (AD) 11, *Dr. Mia Md. Mohiuddin Vs. State*, 75 DLR (AD) 9, *Babor Ali Mollah Vs. State*, 44 DLR (AD) 11, *Mobarok Hossain Vs. State*, 33 DLR (HC) 274 and *State Vs. Saidul Haq*, 8 BLC (HC) 132. He has accordingly prayed for acceptance of the reference and dismissal of the appeals.

On the other hand, Mr. Md. Hafijur Rahman, learned Advocate appointed by the State to defend absconding Convicts Md. Iqbal Hossain, Sadeq Rahman and condemned prisoner Babu Kazi, at the outset has contended that the learned trial Judge erred in law in convicting the accused 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 confessional statement of Sadek is not inculpatory and it is not true and voluntary. It is not corroborated by other evidence and so it cannot be relied on. There is no eye-witness of the incident. Confessional statement is contradictory with the depositions of other witnesses. Learned trial Judge has convicted the accused persons only on the basis of confessional statement of a co-accused without any substantive evidence against them. Hence the conviction based thereon is unsustainable.

He has further submitted that prior to lodging FIR, a GD entry was made by the father of the victim at Fatulla Police Station. But in that GD, nothing was mentioned regarding that the victim went to Iqbal for recovering money. Nature of injury as described in the confessional statement does not confirm

with the injury found on the dead body of the victim. Learned trial Judge having ignored this most vital aspect convicted and sentenced them and that should be *set-aside*.

Mr. Md. Shishir Monir, the learned Advocate, appearing on behalf of the condemned prisoner Sohag submits that the learned trial Court has convicted Sohag without any legal evidence. There is no substantive evidence against that convict. Confession is not a substantive evidence and without sufficient corroboration by substantive evidence, conviction cannot be given relying on confessional statement of a co- accused. Appellant Sohag was a day labour who worked in Chattagram. He did not know about the alleged offence when he was arrested on 20.01.2023 by the police. He further submits that not a single witness told anything or deposed against convict Sohag. All the witnesses deposed as hearsay witness. In these circumstances, conviction awarded to Sohag relying only the confessional statement of co-accused Sadek is not sustainable at all and as a result, the impugned judgment and order of conviction is liable to be *set aside*. In support of his submissions, he refers to the cases of *State Vs. Shafique and*

others [43 DLR (AD) 203] and *Alamgir Hossain and another Vs. State* [22 BLC (AD) 155].

The learned Advocate Mr. M. A. Karim along with the learned Advocate Mr. A. K. M. Shamsuddin appearing on behalf of the petitioner of the Criminal Revision No. 2396 of 2018 submits that the prosecution proved the case against the accused-opposite party Md. Mehedi, Muktar Hossain and Abul Hossain and learned trial Court has acquitted them illegally. These accused were present while the victim was killed and they took active part in killing of the victim. In the police report it is clearly stated that these accused guarded in the road to assist other accused in killing the victim. Considering all these, learned Advocate for the petitioner prays for *setting aside* the impugned judgment and order of acquittal and imposition of lawful punishment upon them.

We have heard the submissions of the learned Deputy Attorney General and the counter-submissions of the learned Advocates for Appellants Sohag, Babu and State defence Advocate for absconding convicts and advocates for the petitioner of the revisional application. 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 21 (twenty one) witnesses, while the defence called none. Among the prosecution witnesses, the informant, **Md. Shamim (PW- 1)**, brother of the victim, deposed that victim had trade of fridge, AC repairing and he also traded coal with accused Iqbal. Iqbal took =5.00.000/- (five lac) taka from victim before one year of the occurrence. Accused Iqbal did not repay the money and victim put pressure on him to repay the money. On the day of incident on 16.08.2024, accused Iqbal called the victim to his residence to give back the money. Victim asked his cousin Delwar to go with him, but Delwar could not go. Victim took the road to Iqbal's residence at about 7:30 pm. Victim's wife Sonia ringed the victim on mobile at about 10:00 pm, but the call was not received. They could not trace the victim till morning and his father made a GD entry on 17.08.2014 regarding the disappearance of the victim. At about 04:00 pm on 17/08/2014 he came to know from different media that an unidentified dead body in a sack was lying in a ditch of

an under construction abandoned building near Kashipur Road between Fashion Tex Garments and one Shahabuddin's house. Police took the dead body to Victoria General Hospital Morgue. He along with some family members rushed to the hospital and identified the dead body of the victim. Victim's head was slaughtered and injuries were found on the mouth. Both the hands and legs of the victim were amputated and missing. He suspected that accused Iqbal and anonymous others have killed the victim due to pre-enmity regarding financial transactions. He proved the FIR (Exhibit- 1) and his signature (Exhibit- 1/1).

In cross-examination, the informant stated that FIR was typed at Fatulla Police Station. Names of the accused were not mentioned in the GD. He denied the suggestion that Iqbal did not take =5,00,000/- (five lac) taka from the victim or he did not call the victim to his residence to take back that money.

PW- 2. Mst. Sonia Akter (Victim's Wife), stated in examination-in-chief that on 16.08.2014 at about 09:00 pm she gave phone call to her husband and victim then informed her that he would go to Iqbal to bring money. Later on, she again gave phone call to her husband and then the phone was

switched off. Then they searched for her husband but could not found him. On 17.08.2014 accused Iqbal came to their residence in quest of victim and made bad comment about him. At about dawn on 17.08.2014 dead body of the victim was found in a ditch of abandoned house near Kashipur Road. Accused Iqbal took five lac taka from her husband by a deed for coal business and accused asked her husband to take back that money on the day of occurrence. Victim went out from home accordingly. Accused Iqbal, Mehedi, Moktar, Abul, Sadek and Babu have killed her husband. She came to know about the killing from the statement of accused Sadek given under section 164 of the Code.

In cross-examination, PW 2 said that she did not go to the police station at the time of lodging FIR. She denied the suggestions that Iqbal did not go to their residence on 17.08.2014 or taka =5,00,000/- (five lac) was not due from him.

PW- 3. Md. Al-Amin Shamol, a local witness testified that on 16.08.2014 victim Halim came to his office at about 07:45 to 08:00 pm. Then they had refreshments and Halim then left his office. On the next day he came to know from Halim's

younger brother that Halim has been killed. Police came to know after inquiry that Sadek, Iqbal and others have killed victim Halim.

In cross-examination, he told that he heard the name of Sadek through folk.

PW- 4. Md. Anwar Hossain, a local witness, stated in examination-in-chief that on 16.08.14 in the afternoon at about 03:00 to 03:15 pm victim Halim came in front of his shop with an apple in his hand. Victim told that he would then go to Iqbal to take money and with that money he would go abroad closing his business. On the next morning he heard that Halim has not returned and he has been murdered. He heard from people that Iqbal took Halim to roof and killed him. Iqbal took sack from bakery.

During cross-examination, PW- 4 denied the suggestion that Halim did not tell him that Iqbal would give him money.

PW- 5. Md. Delwar Hossain (cousin of the deceased), testified that he went Iqbal's house on 14.08.2014 and 15.08.2014 with victim Halim to bring =5,00,000/- (five lac)

taka. When he went with Halim on 15.08.2014, Halim told him after discussion that Iqbal would give back his =5,00,000/- (five lac) taka on 16.08.2014. On 16.08.2014 Halim called him to go to Iqbal's house with him. But he could not accompany him and Halim alone went to Iqbal's house. As Halim did not return that night, he went to Iqbal's house in the next morning in search of Halim. Iqbal told him that Halim came but from there he went toward Kashipur. He went to Kashipur with Iqbal to trace Halim and at that time Iqbal told him that Halim took back his money by turns and gave back the deed to him. After recovery of victim's dead body, Mehedi, Iqbal, Moktar, Abul, Sadek and Sohag flew from that area.

In cross-examination, PW- 5 said that Abul Hossain and Moktar are full brother of accused Iqbal. On the day of occurrence Halim went to Iqbal's house after talking with him.

PW- 6. Md. Shahabuddin, a local witness, testified that three or four days before the occurrence he was talking with Halim and Ratan at Halim's workshop. At that time Iqbal and Mehedi came and asked for the deed and told that Halim would get the money very soon. Then Halim gave the deed to Iqbal.

Halim told him that he had partnership business with Mokter, Mehedi, Iqbal, Abul and the deed was that partnership deed. After two or four days he heard the news of Halim's death. He came to know later that Iqbal, Mehedi, Moktar, Abul and Sadek killed Halim.

During cross-examination, PW- 6 said that he heard from local people and relatives that Iqbal, Mehedi, Abul, Moktar and Sadek killed Halim.

PW- 7. Tara Mia, neighbour of the deceased, stated in examination-in-chief that Halim told him that he lent money to Mokter, Iqbal, Mehedi, Abul and if he get back that money, he would go abroad. On 16.08.2014 Iqbal, Sadek, Abul, Moktar and two others killed Halim.

In cross-examination, PW- 7 Said that he did not witness the killing. He heard from a woman that the accused persons had killed Halim.

PW- 8. Haji Afsar Uddin, father of the deceased, testified that on 16.08.2014 his son victim Halim went out from home at about 04:00 or 05:00 in the afternoon. Halim had partnership

business with Iqbal, Abul, Mehedi and Moktar. Victim invested money and had a deed regarding the partnership business. The accused trickishly took back the deed. On the night of occurrence Halim did not return home and he filed GD Entry No. 892/14, dated 17/08/2014 regarding his disappearance. He saw the photo of the dead body of the victim and could recognize that it was his son Halim. Police arrested Sadek who described the incidence of killing in his statement given to magistrate.

During cross-examination, PW- 8 said, he did not mention the names of accused Mehedi, Moktar, Abul and Sadek in the GD Entry.

PW- 9. Abdul Wahab Mia, a local witness, stated in examination-in-chief that Halim had partnership business of coal with Iqbal, Mehedi, Abul, Moktar and they had partnership deed accordingly. After few days he came to know that Halim would go Malaysia for job. Then Halim went to Iqbal for taking back his money in the partnership business. Iqbal phoned Halim in the afternoon on 16/08/2014 to take money. Halim went accordingly but did not return home.

In cross-examination PW- 9 stated that he told to CID police that victim had business with Moktar, Mehedi and Sadek. Victim Halim went to Iqbal on receiving phone call from Iqbal in front of him at the time of *Asor* (আসৰ) prayer. Iqbal did not give phone call in front of him, but Halim told him the matter of phone at the time of going.

PW- 10. Masum Billah, a neighbour and relative of the deceased, testified that one year before the occurrence, friendship between Halim and Iqbal started. Through Iqbal, good relationship grew between Halim and Moktar, Abul and Mehedi. There was a partnership deed for =5,00,000/- (five lac) taka between Halim and Iqbal regarding coal business. After investing money Halim could realize that Iqbal and others are worst persons and it would be difficult to realize money from them. Halim told it to him. On 17/08/2014 at 10:00 in the morning, he heard that Halim could not be traced. Then he went to Halim's residence and heard that Halim went to Iqbal's residence to bring money at the evening on 16/08/2014. He heard that Iqbal, Mehedi, Moktar and Abul killed Halim.

In cross-examination, PW- 10 denied the suggestion that Halim had no business with Iqbal or he had not heard the fact of going Halim to Iqbal's residence to bring money.

PW- 11. Md. Ratan Ali Pramanik, a local witness, stated that six or seven days before the occurrence, Iqbal and Mehedi came to the workshop of Halim and he was then present there. Mehedi told Halim to give the deed and then Halim handed over the deed to Iqbal. Iqbal told Halim not to worry and promised to give the money within few days.

In cross-examination, he denied that Halim had no business with Moktar, Mehedi and Abul.

PW- 12. Md. Rakibul Hasan, a worker of the deceased, testified that he worked at the Halim's workshop. Accused Iqbal, Moktar, Abul and Mehedi used to visit there. He heard from Halim that they owe money to Halim and Halim needed that money to go abroad. Knowing that Halim would go abroad, he left the job.

In cross-examination he stated that he left the job before five or six days of the occurrence.

PW- 13. Dr. Md. Asadujjaman stated in his examination-in-chief that he was RMO at Narayanganj General Hospital on 17/08/2014 and on that day he held autopsy of an unidentified dead body. He described the injuries found on the dead body. He stated that in their opinion death was due to shock and hemorrhage from mentioned injuries which was ante mortem and homicidal in nature. He proved his signature in the autopsy report [Exhibits- 2, 2(1) and 2(2)].

In the cross-examination he denied the suggestion that they did not duly performed the autopsy.

PW- 14. Judicial Magistrate Saidujjaman Sharif stated in his examination-in-chief that he was Judicial Magistrate in Narayanganj on 23/10/2014 and on that day being directed by the Chief Judicial Magistrate, he recorded confessional statement of accused Sadekur Rahman complying all legal provisions. He proved his six signatures in the confessional statement [Exhibits- 3, 3(1)-3(6)], seven signatures of accused Sadek Mia [Exhibits- 3(7)-(13)].

During cross-examination, PW- 14 said that the accused was brought to him at 11:30 am. by I/O. He completed

recording under section 164 at 05:20. Starting time of recording the statement is not mentioned. In the given certificate the word 'Voluntary' has not been mentioned. He denied the suggestion that he had not recorded the statement under section 164 in compliance with the legal provisions.

PW- 15. Md. Najrul Islam, police Constable, testified that on 17/08/2014 he was posted at Fatulla Thana and on that day he brought the dead body of an unidentified person to Narayanganj General Hospital as per direction of SI Ali Akbar and after completion of autopsy he came back to Thana with *alamat* (আলামত).

In cross-examination, PW- 15 stated that he knew nothing more than carrying the dead body.

PW- 16. Md. Nazim, a seizure list witness, stated in examination-in-chief that on 18/08/2014, on an empty land beside Deovog Volail Road, police showed them two hands, two legs, vest (ganji-গাঁজি), pant and a underwear from a cement bag. Police prepared inquest report and took his signature. He proved the inquest report and his signature [Exhibits- 4 and 4(1)].

In cross-examination he stated that he did not read the paper which he signed.

PW- 17. Md. Kabir testified that on 17/08/14 at 7-00 in the morning he found a dead body near road which was without hands and legs. Later on he could recognize the body which was of Halim of North Norsinghapur. Police prepared inquest report before him and took his signature. He proved inquest report and his signature [Exhibits- 5 and 5(1)]. He came to know later on that Iqbal and Mehedi committed the murder.

In cross-examination, he said that he did not give any statement to police. He could not mention the name from whom he heard the names of Iqbal and Mehedi.

PW- 18. Dr. Abu Saeed Mohammad Firoj Mostafa stated in his examination in chief that on 19/08/2014 he did the autopsy of victim Halim's amputated hands and legs. He proved the autopsy report and his signature [Exhibits- 6 and 6(1)].

In the cross-examination he said that DNA test of the victim was not done.

PW- 18. Dr. Jalil Ahmed stated in his examination-in-chief that on 19/08/2014 he along with Dr. Abu Saeed Mohammad Firoj Mostafa did the autopsy of victim Halim's amputated hands and legs. He proved the autopsy report and his signature [Exhibit- 6(2)].

In his cross-examination he stated that the post-mortem report and the injuries mentioned therein is not written in his own hand.

PW- 19. SI Ali Akbar, the first I/O, stated in his examination-in-chief that he was posted at Fatulla Police Station and in the morning of 17/08/2014, he got the news that a dead body was lying Near Kashipur road under that Police Station. Then he prepared the inquest report of the dead body. Informant identified the dead body and the case was filed. He proved his signatures in the two inquest reports [Exhibits- 5(2) and 4(2)]. He then got the charge of investigation and prepared sketch map, index of the place of occurrence. He proved the sketch map, index and his signatures [Exhibits- 7, 7(1), 8 and 8(1)]. He arrested three suspected accused. Accused Sadek Mia described the facts and he then produced him before the

Magistrate to record his confessional statement. Then the case was transferred to CID for investigation and he handed over the case docket on 06/12/2014. He proved the seizure list dated 17/08/2014 and 18/08/2014 and his signatures [Exhibits- 9, 9(1), 10 and 10(1)].

In cross-examination he stated that he got the charge of investigation on 17/01/2014. He went to the place of occurrence on 18/01/2014. He recorded statement of two witnesses on that day. Names of Mehedi, Abul and Moktar are not mentioned in the statement under section 164.

PW- 21. SI Md Gias Uddin, the second I/O, stated in his examination-in-chief that he was posted in the CID Narayanganj at the time of occurrence. He received the case docket from previous IO on 09/12/2014. He then visited the place of occurrence and prepared sketch map, index of the place of occurrence. He proved the sketch map, index and his signatures [Exhibits- 11, 11(1), 12 and 12(1)]. He interrogated accused Sadek at the Jail Gate. He recorded the statement of the witnesses under section 161 of the Code. He submitted charge sheet against seven accused including Iqbal.

In cross-examination he stated that in the statement of Ratan Ali Pramanik, the names of Mehedi, Abul Hossain and Sadek are not mentioned. In the statement of Masum Billah, the names of Mehedi, Abul Hossain and Sadek are not mentioned. He has not interrogated any one of Fashion Tex, Nishat Enterprise. He has not interrogated any one from the house of Shahabuddin Mia, Fazal Mia and Omar Ali. He denied the suggestion that investigation was not duly done.

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

This is a case of an unseen murder. Both the appellants and other convicts were convicted and sentenced primarily on the basis of Sadek's confessional statement recorded under section 164 of the Code and other connected circumstantial evidence. Recording magistrate of the confessional statement of Sadek has deposed as PW- 14 and that confessional statement has been marked as exhibit- 3. That confessional statement of Sadek may read as follows:

“আমি সুইং ফ্লোর ইনচার্জ হিসেবে বিসিকে কাজ করতাম। ঘটনার তারিখ হল ১৬/ ০৮/ ২০১৪। এর অনুমান ৫/ ৬ মাস আগে আমি

পরিবার সহ শাসনগাও এনায়েত নগরস্থ মোহাম্মাদ ইকবালের বাড়ির ৪র্থ তলায় ভাড়াটিয়া হিসেবে উঠিত। আমি এর আগে একই এলাকায় ছিলাম। সেই সুত্রে মোহাম্মাদ ইকবাল (৩২) পিতা- মৃতঃ ফুলচান এর সহিত ৩/ ৪ বছর ধরে একই এলাকার বাসিন্দা হিসাবে পরিচিত। ভিকটিম আব্দুল হালিম এক সময় আমার সাথে একই গার্মেন্টেসে কাজ করতো। সেই সুত্রে আমি তাকে ৫/ ৬ বৎসর ধরে চিনি। আব্দুল হালিম খুব নম্ব, ভদ্র এবং ভাল মানুষ ছিল। ইকবালদের বাড়িতে ওঠার পর জানতে পারি যে, ইকবাল এবং আব্দুল হালিম পরম্পর বন্ধু। হালিম প্রায় সময় ইকবালের বাড়িতে আসতো এবং ছাদে গল্প গুজব করতো। আমার সাথেও কুশল বিনিময় হইতো। তাদের কথাবার্তা শুনে আমার মনে হয়েছিল যে, আব্দুল হালিম এবং মোহাম্মাদ ইকবালের মধ্যে টাকা পয়সা নিয়ে লেনদেন ছিল। কিন্তু প্রকাশ্যে কোনোদিন কোনো বিরোধ দেখি নাই। মাঝে মাঝে বাবু (৩৫), পিং- অজ্ঞাত, সাং- মুসলিম নগর (সম্মুখত) এবং সোহাগ (৩০), পিং- অজ্ঞাত, সাং- দেওভোগ নামে দুই ব্যক্তি ইকবালের সাথে তার ছাদে আড়ডা দিত। ঘটনার দিন অর্থাৎ ১৬/ ০৮/ ২০১৪ ইং রাত অনুমান ০৭:৪৫ মিনিটে ইকবাল আমাকে বাসা থেকে ডেকে নিয়ে ছাদে যায়। ছাদে যেয়ে দেখি উপরে উল্লেখিত বাবু এবং সোহাগ মাদুড়ে বসে আছে। ইকবাল আমাকে ১৫০ টাকা দিয়ে এক প্যাকেট গোল্ডলীফ সিগারেট এবং ১০ টাকার চা আনতে পাঠায়। আমি অনুমান ১৫/ ২০ মিনিট পরে চা সিগারেট নিয়ে ছাদে ফেরত আসি। আমি এসে দেখি সেখানে আব্দুল হালিমও তাদের সাথে বসে আছে। আমরা সবাই মিলে চা সিগারেট পান করি। এখানে উল্লেখ্য যে, সিগারেট আনার আগে আমি ইকবালকে আমাকে ডাকার কারন জিজ্ঞাসা করলে সে জানায় যে, একটি কাজ আছে, যা সে আমাকে পরে জানাবে। যাই হোক, চা খাওয়া শেষে প্রস্তাবের কথা বলে ইকবাল আড়ডা থেকে উঠে ছাদের কোনায় যায়। আমরা গোলাকার হয়ে মাদুড়ে বসে ছিলাম। আমার ডান পার্শ্বে আব্দুল হালিম বসা

ছিল। ২/ ৩ মিনিট পরে হঠাত হালিমের মুখে 'মা' আওয়াজ শুনতে পাই। ডানে ফিরে দেখি হালিমের পিছনে ইকবাল হাতুড়ি দিয়ে ২/ ৩ বার হালিমের মাথায় আঘাত করে। হালিম মাটিতে ঢলে পড়ে। তখন সাথে সাথে বাবু চেপে ধরে, ইকবাল হাতুড়ি ফেলে পা চেপে ধরে সোহাগ কোমড় চেপে ধরে। আমি হতবাক হয়ে দাঢ়িয়ে যাই এবং নীচে ঢলে আসতে চাইলে বাবু সিড়ির কোনা থেকে বটি নিয়ে এসে আমাকে গালিগালাজ করে কোপ দেওয়ার ভয় দেখায় এবং আমাকেও তাদের সাথে আব্দুল হালিমকে চেপে ধরতে বলে। আমি বাধ্য হয়ে কোনরকম ভাবে হালিমের পেটে ধরি। তখন সোহাগ হালিমের মাথা চেপে ধরে। বাবু হালিমের ঘাড়ের নীচে ইট বসিয়ে উক্ত বটি দিয়ে ২/ ৩ বার পোচ দিয়ে জবাই করে। আমি খুবই নার্ভাস হয়ে পড়ি এবং বারংবার আমাকে ঢলে যাওয়ার অনুমতি দিতে অনুরোধ করি। তখন ইকবাল আমাকে গালিগালাজ করে বলে যে, ভয় পাওয়ার কিছু নাই। পাশের ছাদে, গেইটে এবং নীচে পাহাড়ের আরো ৪/ ৫ জন লোক আছে। আমি তখন দাঢ়িয়ে থাকি। অন্যান্যরা প্রায় ৩০ মিনিট বসে থেকে সময় অতিবাহিত করে। এরপর ইকবাল শাটের পকেট থেকে ঢটি রেলেড বের করে। আমাকে একটি দিতে চাইলে আমি নিতে অঙ্গীকৃতি জানাই। তখন বাবু সোহাগ এবং ইকবাল তিন জনে তিনটি রেলেড নেয়। বাবু রেলেড দিয়ে আব্দুল হালিমের দুই হাতের সংযোগের মাংস কাটে। সোহাগ বাম পায়ের এবং ইকবাল ডান পায়ের হাতুর মাংস কাটে। এরপর বাবু আব্দুল হালিমের হাত এবং পা মোচড় দিয়ে দিয়ে আলাদা করে। এরপর ইকবাল একটি চটের বস্তা এবং একটি সিমেন্টের ছোট বস্তা নিয়ে আসে। আমাকে চটের বস্তা ধরতে বাধ্য করলে আমি চটের বস্তা ধরে রাখি এবং অপর তিনজন আব্দুল হালিমের শরীর বস্তার মধ্যে তুকিয়ে সোহাগ দড়ি দিয়ে উক্ত বস্তার মুখ বন্ধ করে। ইকবাল হাত, পা, জামা-কাপড় সিমেন্টের ছোট বস্তায় তুকায় এবং মুখ বেধে ফেলে। এরপর প্রায় ৪০ মিনিট আমরা ছাদে বসে থাকি। রাত অনুমান তিনটায়

আমি সোহাগ এবং বাবু বড় বস্তা এবং ইকবাল ছেট বস্তা নিয়ে সিডির নীচে নামি। এরপর বাবু সোহাগকে গাড়ী আনার জন্য পাঠায়। আমি তখন খুব নার্ভাস ছিলাম। বাবু ইকবালকে বলে যে, আমি তাদের সাথে থাকলে আমি রাস্তা-ঘাটে বিপদে ফালাবো। কারন আমি ভয়ে খুব নার্ভাস ছিলাম। তখন ইকবাল আমাকে চলে যেতে বলে। যাওয়ার সময় বাবু আমাকে হমকী দেয় যে, আমি ঘটনার বিষয়ে মুখ খুললে সে আমার দুই সন্তানকে মেরে ফেলবে। এরপর আমি উক্ত বাড়ির ৪র্থ তলায় নিজের বাসায় চলে আসি। ঘটনা সম্পর্কে আমি এর বেশী কিছু জানিনা। আমি খুবই অনুতপ্ত। সবসময় আব্দুল হালিমের চেহারা চোখে ভাসে। বিবেকের তাড়নায় স্বেচ্ছায় থানায় এসে ঘটনা সম্পর্কে সব খুলে বলি। এই আমার জবানবন্দী।”

Learned State Defence lawyer submits that the above mentioned confessional statement should not be treated as inculpatory confession because as per his statement he had no intention to do the offence and he was forcefully compelled to do it and thus it does not amount to any offence. It may be mentioned here that if a person is compelled to do an act under a threat of causing his instant death, that act does not amount to an offence under the provision of section 94 of the Penal Code. But this provision of section 94 does not apply to the offence of murder. Section 94 provides as follows:

“94. Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence: Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraints.”

So, if a person is compelled, by threat to cause his instant death, to participate in committing a murder, he is not exempted from his criminal liability under section 94 of the Penal Code, because the section does not apply to the case of murder. According to the confessional statement, maker Sadek held the tummy of the victim when the victim was slaughtered. If we take it as true that Sadek was compelled to do it, then also he cannot be exempted from his criminal liability as it was an offence of murder. So, we cannot accept the submission of learned State defence lawyer that the confessional statement does not disclose any offence on the part of the maker of it or the confessional statement is exculpatory. We firmly hold that the confessional statement of Sadek is inculpatory in nature.

It is now settled principle of law that if a judicial confession is found to be true and voluntary, it can form the sole basis of conviction as against the maker of the same without any further corroborative evidence. This principle has been affirmed in the case of *Islamuddin Vs. State* [13 BLC (AD) 81], *Jhumur Ali and Others Vs. State* [7 BLC 62], *Saiful Islam (Md) Vs. State* [10 BLC 258].

Now, let us see whether the confessional statement of Sadek can be treated as true and voluntary.

On perusal of the confessional statement of Sadek (Exhibit- 3) as well as the case record, it appears that accused Sadek was arrested on 22.10.2014 at 07:45 pm and he was produced before the magistrate to record his confessional statement on 23.10.2014 at 11:30 am. Accused Sadek gave his confessional statement without being taken to any police remand. On perusal of record it also appears that Sadek never prayed for retraction of his statement. Recording Magistrate of that confessional statement has deposed as PW- 14 and the concerned investigation officer has deposed as PW- 20. Both these witnesses have been cross-examined by accused Sadek

and others. No suggestion has been given to those witnesses on the point that Sadek was subjected to any torture for procuring the statement or the statement was procured through the manners like threat, coercion, inducement etc. Recording Magistrate PW- 14 stated that he recorded the confessional statement complying with all legal provisions. So, we hold that there is no reason to believe that the statement was involuntary.

To determine the truthfulness of the statement, we can compare the statement with other evidence of this case. According to the confessional statement, the victim was stroke on his head, then he was slaughtered at throttle, amputated at elbow and knee, body was stuffed in a sack, hands, legs and wearing apparels were packed in a cement bag. According to the inquest report [Exhibit- 4 and seizure list Exhibit- 10] victims amputated hands, legs and his wearing apparels were recovered from a plastic cement bag. According to the inquest report [Exhibit- 5 and seizure list Exhibit- 9] victim's body other than amputated hands and legs, was recovered from a sack and that body was found slaughtered at throttle and there were three injuries in his head. According to the depositions of the prosecution witnesses, victim Halim had financial

transactions with Iqbal and on the day of occurrence victim went to Iqbal's residence to recover money. According to the confessional statement victim was murdered at the roof of Iqbal's residence. It is also stated in the confessional statement, "তাদের কথাবার্তা শুনে আমার মনে হয়েছিল যে, আব্দুল হালিম এবং মোহাম্মদ ইকবালের মধ্যে টাকা পয়সা নিয়ে লেনদেন ছিল।" So, the statement conforms with the other evidence and circumstances. Of course, some discrepancies between the confessional statement and depositions of other witnesses are found regarding the time of occurrence. According to confessional statement victim went to the place of occurrence at about 08:00 pm. But according to the deposition of PW- 2 Sonia Akter and PW- 5 Delwar Hossain victim went to the place of occurrence after 09:00 pm. But we hold that this discrepancy regarding time is very minor and normal. Human memory, perception, power of understanding vary from person to person. If several persons are asked about the particular time of a past event, normally their answers may not be the same and it may vary. So, we think that the statement should not be disbelieved only because of this minor discrepancy. Both the confessional statement and the depositions of the witnesses have consistency on the point that

the victim went to Iqbal's house at night on 16.08.2014 and he was murdered on that night. Besides, when an inculpatory confessional statement is given voluntarily, it is difficult to decide it as untrue because a man of sound mind normally shall not embrace severe punishment of murder by giving untrue statement regarding his involvement with the offence. Considering all these points, we are of the view that the confessional statement of Sadek is true and voluntary and he can be convicted on the basis of his confession. Accordingly, learned Trial Judge has rightly convicted Sadek under section 302 of the Penal Code.

Now the question is whether the other co-accused can be convicted on the basis of that confessional statement of Sadek. According to the provision of section 30 of the Evidence Act, 1872 inculpatory confession of one accused may be taken into consideration against the other co-accused in case of joint trial. But it is also settled principle of law that confession of an accused is not a substantive piece of evidence against the co-accused who did not confess and such evidence alone without any substantive corroborative evidence cannot form the basis of conviction of co-accused. This principle has been affirmed in a

large number of reported cases such as *State Vs Sumaiya Kanij Sagorica* [22 BLC 292], *State Vs Md. Shamsul Islam alias Matin* [24 BLC 248], *Mujibor Rahman Vs. State* [10 BLC 183], *Fakir Md. Moshahedulla Vs. State* [25 BLC 644], *State Vs. Amir Hossain alias Khokon* [27 BLC 758] and in many other cases. Now, we see whether the confessional statement of Sadek regarding the participation of the other co-accused in the murder of the victim has any corroboration by other independent witnesses.

At first we look into the evidence regarding the involvement of accused Iqbal. It may be mentioned here that Iqbal is the only FIR named accused in this case. In the FIR [Exhibit- 1] it has been stated that victim had some business relation with accused Iqbal and on that account Iqbal owed Tk. 5,00,000/- (five lac) to the victim. It is also stated in the FIR that Iqbal asked Halim to come at 09:00 pm on 16.08.2014 to take back that money and accordingly Halim went to collect that money at the time of occurrence. Informant Md. Shamim has deposed as PW- 1 supporting the statement in the FIR. He deposed that Iqbal owed Tk. 5,00,000/- (five lac) to the victim and he asked victim Halim to come at 09:00 pm on 16.08.2014

to take back that money. PW- 1 further stated that accordingly victim Halim went to Iqbal to collect that money and he set forth at about 07:30 pm for that purpose on the day of occurrence. Victim's wife Mst. Sonia Akter as PW- 2 has deposed that he phoned victim on the day of occurrence at about 09:00 pm and victim then told her that he would go to Iqbal to collect money and she further phoned him at about 10:00 pm on that day and found his phone switched off. She further stated that in the next morning after the occurrence Iqbal came to their house in quest of Halim and made some bad comments about him. PW- 4 stated in his deposition that victim Halim came in front of his shop in the afternoon on the day of incident and he told that he would go to Iqbal for bringing money. PW- 5 cousin of the victim Delwar Hossain stated in his deposition that Halim called him at the time of *magrib ajan* (মাগরিব আযান) on the day of incident to accompany him to go to Iqbal, but he could not go and then Halim went alone to Iqbal's house. He further stated that he phoned Halim at 09:00 pm on that day and Halim then told him that he was in a tea stall in front of Iqbal's house. He further stated that he went in the next morning to Iqbal's house and Iqbal then admitted that Halim

came to him in the previous night but he left that house for Kashipur on that night. PW- 9 stated in his deposition that Halim went to Iqbal to recover owing money on the day of incident and he didn't return any more.

From the depositions of above mentioned witnesses it is well established that victim Halim had business transaction with Iqbal and on that night of occurrence victim went to Iqbal to recover owing money from Iqbal and became untraced from there. In the confessional statement of Sadek it is similarly stated that victim Halim had financial transaction with Iqbal, victim went to Iqbal on that night of incident and Iqbal killed victim with the help of others. It has already been mentioned that the manner of killing and subsequent activities regarding the disposal of the dead body as stated in the confessional conforms with the inquest report, post mortem report, seizure list and other circumstantial evidence. Though, there are some discrepancies regarding the particular time at when the victim went to Iqbal, but it has been mentioned earlier that these discrepancies are very normal and in describing particular time of a past event by different persons, naturally it may vary. But it is common in the depositions of all witnesses mentioned earlier

that on the night of occurrence victim went to Iqbal to collect due money and became untraced from there and subsequently his dead body was found. Thus, we find sufficient corroboration, by independent witnesses, of the confessional statement of Sadek regarding the involvement of co-accused Iqbal. Besides, as per the deposition of PW- 5, accused Iqbal became absconded immediately after the recovery of the dead body of the victim and still he is absconded. His full brother accused Mokter Hossain and Abul Hossain contested the case being present all along in the trial. But absconcence of accused Iqbal immediately after recovery of the dead body of victim, his trial *in-absentia* and absconcence till today is a strong incriminating circumstance which can be considered as strong corroboration of his participation in commission of crime. In this regard, the cases of *State Vs Saidul Haq* [8 BLC 132], *Mobarak Hossain Vs State* [33 DLR (HC) 274], *State Vs. Moslem* [55 DLR 116], *State Vs. Md. Monir Mridha* [14 BLC 532] and *Shukur Ali Vs State* [74 DLR (AD) 11] may be referred.

Considering all these, we are of the opinion that Iqbal can be convicted on the basis of the confessional statement of the co-accused Sadek which is sufficiently corroborated by other

independent witnesses and circumstantial evidence. On perusal of evidence it is also clear that Iqbal was the mastermind of the murder and the offence was done for his benefit and according to his evil design.

Learned State Defence Lawyer has submitted that victim's father filed a General Diary on the next day of the incidence and in that GD, it was not mentioned that victim went to Iqbal to recover money on that night and thus statement in the GD differs from statement in the FIR and consequently it creates doubt on the truthfulness of the statement in the FIR. It may be mentioned here that both the General Diary and the FIR was filed on 17.08.2014 *i.e.* on the next day of the occurrence. The purpose of GD was to inform the police station about disappearance of the victim without accusing any one. It was written very shortly within few lines and the victim's family had no idea then that the victim could have been murdered. Sometimes such GD is written as per dictation of somebody at the police station or some other else. So, it was not unnatural that such important information might be over looked or missed in the GD. FIR was lodged on the same date after recovering the dead body of the victim and it was within few hours after

filling GD. The FIR then contained the details of the incident and the information regarding the involvement of the accused Iqbal. We hold that this matter is not very vital and it does not disprove the case regarding involvement of Iqbal with the incident.

Now, we come to decide the question that whether other co-accused Babu and Sohag can be convicted on the basis of confessional statement of Sadek. It has already been mentioned that law is well settled on the point that confession of an accused is not a substantive piece of evidence against the co-accused who did not confess and such evidence alone without any substantive corroborative evidence, cannot form the basis of conviction of co-accused. In case of Iqbal we found sufficient corroboration from the deposition of independent witnesses, FIR and other circumstantial evidence. But in case of accused Sohag and Babu there is no such corroboration from any independent witness. Among the witnesses none, except PW- 2, mentioned the name of Sohag and Babu regarding their involvement in the murder. PW- 2 Stated in her examination-in-chief that Iqbal, Mehedi, Moktar, Abul, Sadek and Babu killed her husband i.e. victim, but at the same time he stated that she

came to know about that murder from the confessional statement of Sadek. So, it appears that PW- 2 had no independent knowledge about the involvement of Babu and Sadek other than the confessional statement of Sadek. No witness disclosed any link of Babu and Sohag with the incident of murder. Other than the confessional statement of Sadek, there is no evidence regarding that Babu and Sohag were present at the place of occurrence at that time or Iqbal hired them or otherwise managed them to commit the murder. So, no corroboration of the confessional statement of Sadek regarding involvement of Babu and Sohag is found on perusal of the evidence on record. Only one thing is found that Babu and Sohag were absconded at the time of trial. But it is well settled principle of law that absconson itself is not an evidence and is not the conclusive proof of guilt of the accused in absence of legal evidence. In the case of *State Vs. Ashraf Ali*, it was held that absconson can not treated as corroborative evidence of judicial and extra-judicial confession in the absence of any other direct evidence [16 BLC 310]. In the case of *Amir Hossain Howlader Vs State* our Apex Court held that absconson of an accused is corroboration of direct evidence of

eye-witness connecting the accused with the crime but it is no corroboration of confessional statement of a co-accused [1984 BLD (AD) 193]. Learned DAG referred to the case *Dr. Miah Md Mohiuddin Vs. State* [75 DLR (AD) 8] and *Shukur Ali Vs State* [74 DLR (AD) 11] and submitted that a co-accused can be convicted on the basis of confessional statement given by other co-accused. But in both the cases, our Apex court held that corroboration by direct or circumstantial evidence is required to convict a non- confessing accused on the basis of confession of a co- accused.

In view of the above discussions, we are of the opinion that accused Sohag and Babu cannot be convicted on the basis of the confessional statement given by co-accused Sadek, because there is no substantive evidence to corroborate the confessional statement and without corroboration by direct or clear circumstantial evidence, it is unsafe and unlawful to convict a non confessing accused on the basis of confessional statement of another co-accused. We therefore hold that the learned trial Judge manifestly erred in convicting and sentencing Sohag and Babu under sections 302 and 201 of the Penal Code. In these circumstances death reference regarding

these two accused Sohag and Babu is liable to be rejected and they are entitled to be acquitted of the charges brought against them.

Now, the question is whether death sentence imposed upon the accused Iqbal and Sadek is proper and whether the reference made regarding them is acceptable. On perusal of evidence and record, it appears that this is case of an atrocious murder. The victim was brutally killed and his hands and legs were a butcherly amputated. Accused Iqbal was mastermind of the murder. The murder was committed at his residence and as per his pre-plan. He called the victim at the place of occurrence; hit the victim first by giving several fatal blows on his head and the murder was done only for his unscrupulous gain. In the case of *Shukur Ali Vs State* [74 DLR (AD) 11] our Apex Court held that, it is the duty of the Court to award appropriate sentence considering the nature and gravity of the offence and undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence on the judiciary. In the present case, considering the nature and gravity of the offence committed by Iqbal, the cruelty and violence with which he killed the victim Halim, ends of justice demands

his death sentence. Thus, we hold that the sentence imposed on Iqbal by the trial Court is just and proper and does not call for any interference.

But regarding the capital sentence imposed upon Sadek, some points require to be considered. Sadek confessed the case and only through his confessional statement, mystery of the case was unveiled. According to his confessional statement, he participated in the murder being compelled on the spot and he unwillingly held the tummy of the victim when the victim was slaughtered. His participation in the murder was minimum and insignificant according to his confessional statement. He has no previous record of committing any offence. He expressed his repentance in his statement in this way, "আমি খুবই অনুত্তম। সব সময় আব্দুল হালিমের চেহারা চোখে ভাসে। বিবেকের তাড়নায় স্বেচ্ছায় থানায় এসে ঘটনা সম্পর্কে সব খুলে বলি।" In such circumstances, considering the gravity of the offence committed by Sadek, his subsequent conduct, previous record we are of the view that justice would be sufficiently met if the sentence of death of condemned convict Sadek be commuted to one of imprisonment for life. Though, the accused Sadek is absconding now, but considering

the above mentioned aspects, we think that his death sentence should be commuted and there are precedents of such commutation. The case of *State Vs. Faruque Hossain* [27 BLC 68] may be referred to in this respect.

Apart from death sentence, learned trial Court has convicted the condemned convicts under section 201 of the Penal Code. Now, the question is whether a conviction under section 201 of the Penal Code is sustainable against a person already convicted of the principal offence.

In a recent case *State Vs Fatema Begum* and another [*Criminal Appeal No. 5928 of 2018*] a Bench of this Division has held that section 201 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. Author Judge of that judgment is also the Judge of this Bench. In the case of *Manu Mia vs. the State*, [8 MLR (HC) 66], similarly it was held 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. In light of the decisions and observations of the foregoing cases, 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 Iqbal and Sadek stand convicted under section 302 of the Penal Code, their conviction under section 201 must be *set aside*.

Now, the last issue is the Rule issued in Criminal Revision No. 2396 of 2018. The petitioner of that revisional application contends that in spite of having sufficient evidence regarding the involvement of Md. Mehedi, Mokter Hossain and Abul Hossain, learned Trial Court illegally acquitted them of the charges brought against them. To be mentioned here again that the instant case is a case of unseen murder and there is no eye-witness of the incident. Among the accused persons Sadek gave a confessional statement in which he vividly described the incident of murder. In that confessional statement of Sadek, nothing is mentioned regarding the involvement these three accused Mehedi, Mokter and Abul Hossain. Among the witnesses PW- 2 mentioned the names of Mehedi, Mokter and

Abul as the killer of the victim. But she is not the eye-witness of the incident and she told that she came to know it from the confessional statement of Sadek. But as stated earlier that Sadek has not mentioned the names of Mehedi, Mokter, Abul. PW- 6 Stated in his examination in chief that Iqbal, Mehedi, Mokter, Abul and Sadek have killed the victim. He is also not an eye-witness and in the cross-examination he stated that he heard it from local people and his relatives. So, in fact he is a hearsay witness and does not seem to be reliable. PW- 7 Stated in his examination-in-chief that Iqbal, Mokter, Abul, Sadek and two others have killed the victim. He is also not an eye-witness and in the cross-examination he stated that he heard it from a woman. But no such woman has been examined. So, this witness is also a hearsay witness. PW- 10 stated in his examination-in-chief that he heard that Iqbal, Mehedi, Mokter and Abul, have killed the victim. But it is not clear that from whom he heard it. Thus, he is also a hearsay witness and does not seem to be reliable. No other witness mentioned anything regarding the involvement of these three accused with the incident. Thus, on perusal of evidence on record, no reliable incriminating evidence is found regarding the involvement of

accused Md. Mehedi, Mokter Hossain and Abul Hossain. In these circumstances, we hold that learned Trial Judge has rightly acquitted these three accused. We do not find any illegality, legal infirmity or miscarriage of justice in that acquittal. Therefore, the Rule bears no merit and is liable to be discharged.

In view of the discussions made above and for the reasons mentioned earlier, orders are as follow;

- i) Death reference regarding condemned convict Md. Iqbal Hossain, (absconding) Son of Late Haji Fulchan Mia is accepted. His death sentence be executed in accordance with the judgment passed by the learned Trial Judge.
- ii) Death Reference regarding condemned prisoner Sohag Mia, son of Md. Shahjahan Mia, Babu Kazi, son of late Harun Kazi, condemned convict Sadek Rahman (absconding), son of Abdul Hannan, is rejected.
- iii) The sentence of death of condemned convict Sadek Rahman (absconding), son of Abdul Hannan, is

commuted to imprisonment for life and also to pay a fine of Taka =25,000/- (twenty five thousand), in default to suffer rigorous imprisonment for 1 (one) year more. He will get the benefit of section 35A of the Code in calculation of his sentence. Trial Court is directed to issue his conviction warrant accordingly.

- iv) Criminal Appeal No. 3551 of 2023 preferred by condemned prisoner Sohag, Son of Md. Shahjahan Mia is allowed. He is acquitted of the charges labeled against him and be set at liberty if not wanted in connection with any other case. The Jail Appeal 80 of 2023 preferred by the same condemned prisoner Sohag is accordingly disposed of.
- v) Jail Appeal No. 157 of 2023 preferred by condemned prisoner Babu Kazi, son of late Harun Kazi, is allowed. He is acquitted of the charges labeled against him and be set at liberty if not wanted in connection with any other case.
- vi) Convictions and sentences of the condemned convict Md. Iqbal Hossain (absconding), Son of late Haji Fulchan Mia and Sadek Rahman (absconding), son of

Abdul Hannan, under section 201 of the Penal Code are *set aside*.

vii) Rule issued in Criminal Revision No. 2396 of 2018 is hereby discharged. Order of acquittal of the accused Md. Mehedi, son of Kalachan, Moktar Hossain and Abul Hossain, both sons of late Haji Fulchan, in the impugned judgment is hereby upheld and confirmed. Their sureties are discharged from the liabilities of the bail bonds.

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

Md. Atoar Rahman, J:

I agree.