

**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 109 of 2018

The State

-Versus-

Rezaul Karim @ Sujon and others

With

Criminal Appeal No 10433 of 2018

Saiful Islam @ Md Saiful Islam

-Versus-

The State

With

Jail Appeal No. 272 of 2018

Dulal Matbor

-Versus-

The State

with

Jail Appeal No. 273 of 2018

Saiful Islam

-Versus-

The State

Mr S M Shahjahan, Advocate

.....For the condemn prisoners

Mr Md Hafizur Rahman Khan, State Defence Lawyer

....For the Absconding accused

Mr Md Emran Khan, DAG with

Mr Muhammad Safwan,

Mr Zillur Rahman,

Mr Khalilur Rahman,

Mr Amran Hossain, AAGs

----- for the state

**Heard on 13.01.2026, 14.01.2026,
15.01.2026, 18.01.2026, 19.01.2026,
20.01.2026, 21.01.2026, 22.01.2026**
Judgment on 10.02.2026

Md Atoar Rahman, J:

This Death Reference, being Death Reference No. 109 of 2018, has been made by the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Shariatpur (hereinafter referred to as “the Tribunal”), under section 374 of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the Code”) read with section 29 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (hereinafter referred to as “the Ain”), for confirmation of the death sentences awarded to the absconding accused Rezaul Karim @ Sujon, Saiful Islam, and Dulal Madbar by judgment and order dated 12.09.2018 in Nari-O-Shishu Case No. 08 of 2015 arising out of Palong Police Station Case No. 28 dated 22.08.2014, corresponding to GR Case No. 226 of 2014.

By the aforesaid judgment and order, the learned Judge of the Tribunal passed the following convictions and sentences:

(1) Convictions and sentences imposed upon the absconding accused, Rezaul Karim @ Sujon (hereinafter referred to as “Sujon”):

(a) He was convicted under section 9(2) of the Ain and sentenced to death, and also to pay a fine of Tk. 1,00,000 (one lakh);

(b) He was further convicted under section 7 of the Ain and sentenced to suffer rigorous imprisonment for 14 (fourteen) years, and to pay a fine of Tk. 20,000 (twenty thousand), in default whereof to suffer simple imprisonment for 2 (two) years;

(c) He was also convicted under section 201 of the Penal Code and sentenced to suffer simple imprisonment for 5 (five) years, and to pay a fine of Tk. 20,000 (twenty thousand), in default whereof to suffer simple imprisonment for a further period of 6 (six) months; and

(d) He was further convicted under section 379 of the Penal Code and sentenced to suffer simple imprisonment for 2 (two) years.

(2) Convictions and sentences imposed upon the condemned prisoners, Saiful Islam (hereinafter referred to as “Saiful”) and Dulal Madbar (hereinafter referred to as “Dulal”):

(a) Each of them was convicted under section 9(2) read with section 30 of the Ain and sentenced to death, and also to pay a fine of Tk. 1,00,000 (one lakh) each; and

(b) Each of them was further convicted under section 201 of the Penal Code and sentenced to suffer simple imprisonment for 5 (five) years, and to pay a fine of Tk. 2,000 (two thousand) each, in default whereof to suffer simple imprisonment for a further period of 6 (six) months.

Against the aforesaid judgment and order of convictions and sentences, Criminal Appeal No. 10433 of 2018 and Jail Appeal No. 273 of 2018 have been preferred by the condemned prisoner Saiful, and Jail Appeal No. 272 of 2018 has been preferred by the condemned prisoner Dulal.

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

The prosecution case, in brief, is that the deceased, Shamsun Nahar @ Tanu, had married the informant's younger brother, Esahaq Mollah, about 3 (three) years prior to the

lodging of the FIR dated 22.08.2014. After the marriage, Esahaq Mollah went to Dubai for employment and had been residing there. The deceased was a student of B.A. (Honours) at Golam Haidar Khan Girls College, Shariatpur. On 17.08.2014 at about 4:00 pm she went out of her house stating that she was going to attend private tuition, but she did not return. The informant searched for her and informed her parental family about her disappearance. Failing to trace her, he lodged a General Diary being No. 791 dated 17.08.2014 at Palong Police Station, upon which the police initiated steps to locate her. Subsequently, using technological means, the police apprehended Sujon on 22.08.2014. Upon interrogation, he narrated the entire occurrence, stating that he, along with the help of two co-accused persons had raped and killed the deceased. On the basis of the information provided by Sujon and at his instance, in the presence of witnesses, the dead body of the deceased, bearing multiple injuries and with her hands and feet tied with nylon rope, was recovered from a ditch situated on the eastern side of the house of Sarder Nasiruddin Kalu. The dead body had been fastened with a plastic bag filled with bricks and concealed

under water hyacinth. The police conducted an inquest and sent the dead body to the Shariatpur Sadar Hospital morgue for post-mortem examination.

Thereafter, on 22.08.2014 Md. Abul Kashem Molla, the brother-in-law of the deceased, lodged the First Information Report (FIR) under sections 7/9(2)/30 of the Ain along with sections 379/201 of the Penal Code against Sujon, Saiful, and Dulal with the Palong Police Station, which was registered as Palong Police Station Case No. 28 dated 22.08.2014.

Sub-Inspector Md. Emarat Hossain, who had earlier recovered the dead body, was appointed as the Investigating Officer. He visited the place of occurrence, prepared a sketch map with an index, and seized relevant items under seizure lists. Upon completion of the investigation, he submitted a charge sheet on 12.12.2014 under sections 7/9(2)/30 of the Ain along with sections 379/201 of the Penal Code against Sujon, Saiful and Dulal.

They were subsequently placed on trial before the learned Judge of the Tribunal. On 25.03.2015, after hearing both sides,

charges were framed against Sujon under sections 7/9(2) of the Ain along with sections 379/201 of the Penal Code, and against Saiful and Dulal under sections 7/9(2)/30 of the Ain along with sections 379/201 of the Penal Code. The charges were read over and explained to them, to which they pleaded not guilty and claimed to be tried.

In order to prove the charges, the prosecution examined 17 (seventeen) witnesses out of 19 (nineteen) cited in the charge sheet, who were duly cross-examined. The defence did not adduce any evidence.

The evidence of the prosecution witnesses is as follows:

PW 1, Md. Abul Kashem Molla, the informant, stated that the deceased was the wife of his younger brother. On 17.08.2014 at about 4:00 pm she went out for private tuition but did not return. He searched for her, informed relatives, and ultimately lodged a General Diary being No. 791. The police, using technology, traced Sujon, who was arrested on 22.08.2014. Upon interrogation, Sujon disclosed the occurrence. At his (Sujon) instance and in his (PW 1) presence, the police

recovered the dead body of the deceased from a ditch, with hands and feet tied with nylon rope and fastened with bricks in a plastic bag beneath water hyacinth of a ditch, situated at the easter side of Sardar Nasiruddin Kalu's house. The police prepared an inquest report and seized the materials. He proved the inquest report (Ext. 1), FIR (Ext. 2), seizure lists (Exts. 3 and 4), and material exhibits. He further stated that on 30.08.2014, at the instance of Sujon, the deceased's vanity bag containing personal articles was recovered from a pond. In cross-examination, he admitted that Saiful and Dulal were not present during recovery of the dead body and denied all suggestions of false implication.

PW 2, Shafiqul Islam, brother-in-law of the deceased, corroborated that after the victim went missing, a GD was lodged. The police traced Sujon through mobile tracking. Upon interrogation, Sujon confessed and, at his instance, the police recovered two mobile phone sets, one of those was used by the deceased, and money obtained by selling her ornaments from his (Sujon) paternal house. He also witnessed recovery of the dead body and proved the relevant seizure lists and inquest report. In

cross-examination, he denied that he signed blank papers or gave false evidence.

PW 3, Kamrul Hasan, brother of the deceased, testified that the police apprehended Sujon through mobile tracking and recovered money and mobile sets from his house. At the instance of Sujon, the dead body of his sister was recovered which was identified him. He also witnessed recovery of the vanity bag from a pond at Sujon's pointing out. He stated that Sujon lured the victim with a promise of marriage, raped her, and later killed her with the help of Saiful and Dulal. In cross-examination, he denied suggestions of false implication and alternative theories.

PW 4 testified that Sujon purchased a knife from his shop on 17.08.2014. PW 5 stated that Sujon purchased a nylon rope on the same date from him.

PW 6 stated that the police seized the apparels of the deceased in his presence.

PW 7 and PW 12 stated that at the instance of Sujon they recovered the vanity bag of the deceased from a pond.

PW 8, PW 10, and PW 11 corroborated that Sujon was apprehended and, at his instance, the dead body was recovered in their presence.

PW 9 stated that he rented a room to Sujon, where he stayed in the night following 17.08.2014 bringing the deceased.

PW 13, Aminul Islam, the Judicial Magistrate, stated that he on 23.08.2014 recorded the confessional statements of Sujon, Saiful, Dulal and Sujon under section 164 of the Code, which he proved as Exts 7, 7(Ka) and 7(Kha) respectively and his signatures thereto as Exts 7/1, 7(Ka)/1 and 7(Kha)/1. He stated that the statements were recorded after due caution. In cross-examination, he denied allegations of coercion or procedural irregularity.

PW 14, a police constable, stated that upon arrest of Sujon, money and mobile sets were recovered at his instance from his paternal house. He also stated that Sujon disclosed the occurrence.

PW 15 carried the dead body for post-mortem examination.

PW 16, Emarat Hossain, the Investigating Officer, stated that on the basis of GD Sujon was arrested by him finding his connection by mobile call list and Saiful and Dulal were arrested on the basis of information given by Sujon. He also stated how and from where he recovered the dead body on the basis of extra judicial confession made by Sujon to him and at his pointing out. He further described the entire investigation process, including arrest, recovery, inquest, seizure, recording of statements, and submission of charge sheet. He also stated Sujon, Saiful and Dulal made confessional statements before the Magistrate. He proved the inquest report, concerned seizure lists, seized materials, sketch map and index. In cross-examination, he denied all allegations of coercion, fabrication, or defective investigation.

PW 17, the doctor, stated that he conducted the post-mortem examination and found multiple ante-mortem injuries. He opined that death was due to haemorrhagic shock and was homicidal in nature.

Upon closure of the prosecution evidence, the accused Saiful and Dulal were examined under section 342 of the Code, wherein they pleaded innocence and declined to adduce any defence evidence. Sujon, having absconded after being released on bail, could not be examined.

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

Upon consideration of the evidence and circumstances, the learned Judge of the Tribunal held that the prosecution had proved the charges beyond reasonable doubt against all three accused and accordingly convicted and sentenced them as stated above.

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

Mr. Md. Emran Khan, learned Deputy Attorney General, assisted by Mr. Muhammad Safwan, Mr. Zillur Rahman, Mr. Khalilur Rahman, and Mr. Amran Hossain, learned Assistant Attorneys General, appearing for the State as petitioner-opposite party, opposed the appeals and supported both the reference and the reasoning of the learned trial Judge. He took the Court through the impugned judgment, the FIR, seizure lists, inquest report, autopsy report, police report, oral evidence, and other relevant materials on record.

He then submitted that the learned Judge of the Tribunal rightly convicted and sentenced the convicts, namely Sujon, Saiful, and Dulal, upon proper consideration of the evidence, and that Death Reference No. 109 of 2018 should be accepted and the appeals dismissed.

He further argued that although there was no eyewitness, the prosecution successfully proved the case beyond reasonable doubt through material and circumstantial evidence, supported by the testimony of 17 witnesses.

He again stated that on 17.08.2014, upon the victim Mst. Shamsun Nahar Tanu going missing, the informant lodged a General Diary at Palong Model Police Station (GD Entry No. 791) and in connection of such GD the principal accused, Sujon, was arrested and made an extra-judicial confession implicating himself and the co-accused Saiful and Dulal. Based on his statement, the Investigating Officer recovered the deceased's body and other incriminating materials, including cash obtained from the sale of the victim's ornaments and mobile phones belonging to both the victim and the accused. These recoveries were corroborated by prosecution witnesses.

He also submitted that on 23.08.2014, Sujon made a voluntary confessional statement under section 164 of the Code before a Magistrate, detailing the events, including deception, rape, and murder, as well as the disposal of the body. The statement was recorded in compliance with legal requirements and corroborated by other evidence. He contended that a voluntary and truthful confession alone is sufficient to sustain a conviction.

The learned Deputy Attorney General further submitted that the co-accused Saiful and Dulal also made confessional statements under section 164, which were consistent with each other, with Sujon's statement, and with the surrounding evidence. These statements were recorded in accordance with the law and without any allegation of coercion, threat, inducement or physical torture at the time.

Regarding the issue of age, he argued that although the recording forms mentioned the ages of Saiful and Dulal as 18 and 17 years respectively, they did not raise any claim of juvenility during the trial and are therefore not entitled to such benefit at this stage.

He concluded by submitting that, in the light of the evidence and relevant judicial precedents, the death reference should be accepted and the appeals dismissed.

On the other hand, Mr. Md. Hafijur Rahman Khan, learned Advocate appointed by the State to defend Sujon (absconding), contended that the Tribunal erred in convicting

the accused without properly evaluating the evidence, resulting in a miscarriage of justice.

He further submitted that the mandatory provisions of sections 164(3) and 364(2) of the Code were not followed during the recording of the confessions. The accused were arrested late at night following 21.08.2014 and produced before the Magistrate on 23.08.2014 raising doubts about compliance with legal safeguards. He also pointed out that all accused later retracted their confessions, alleging torture and coercion.

He further argued that the allegation of rape was not supported by medical or ocular evidence, making the conviction under the relevant provisions of the Ain unsustainable.

He concluded that the prosecution failed to prove the case beyond reasonable doubt and prayed that the death reference be rejected and the accused be acquitted in the interest of justice.

In a last-ditch effort, Mr. Khan submitted that even if the conviction under section 9(2) of the Ain or section 302 of the Penal Code is maintained, the sentence of death, imposed upon

the condemned prisoner, is unduly severe. Considering his clean antecedents, youthfulness and repentance his sentence should be commuted to imprisonment for life and the reference rejected. In support of his contentions he cited to the *cases of Nalu vs. the State, 17 BLC (AD) 204 and Bangladesh Legal Aid and Services Trust (BLAST) and another Vs Government of Bangladesh, 68 DLR (AD) 1.*

Mr. S.M. Shahjahan, learned Senior Advocate, appearing for Saiful and Dulal in their respective appeals, contended that the learned trial Judge erred in law in convicting and sentencing them to death as were minors at the time of the offence they ought to have been tried separately by the Juvenile Court under the Shishu Ain, 2013. Instead, they were tried jointly with an adult accused, which is a clear violation of law, rendering the trial vitiated and entitling them to acquittal.

In support of his contention Mr Shahjahan submitted that, according to the record, their ages were recorded as 20 (twenty) years during examination under section 342 of the Code on 27.08.2018, whereas the occurrence took place on 17.08.2014

which proves that both were minors at the time of the occurrence. In *Jaibar Ali Fakir Vs the State 28 BLD (HCD) 2008*, it was held that the age recorded during examination under section 342 of the Code may be treated as more reliable.

He also argued that, as the entire trial was conducted without jurisdiction, the accused were deprived of the assistance of guardians as required under the Shishu Ain, 2013. Consequently, their confessions have no evidentiary value. In support, he refers to the cases of *Md Anis vs State, 29 BLT 215*, and *Jaibar Ali Fakir Vs. The State, 28 BLD (2008) 627*.

He further contended that the appellants have been in the condemned cell since 12.09.2018 and had earlier undergone 1 (one) year and 07 (seven) months of custody, totaling nearly 09 (nine) years. Considering their minority at the time of the occurrence, a retrial by the Juvenile Court would be unjustified, as they have already served a substantial portion of the maximum sentence of 10 (ten) years prescribed under the Shishy Ain, 2013. Such retrial would amount to double jeopardy and cause prejudice. In the case of *Asiman Begum Vs. State 51 DLR*

18 (AD) 1999, it was held that retrial should not be ordered in the absence of legal evidence. As there is neither ocular nor circumstantial evidence against them, retrial is unwarranted.

Mr Shahjahan having referred to the case of *Gopinath Ghosh vs State of West Bengle reported in 1984 (Supp) Supreme Court Cases 228*, submitted that in that case neither the appellants nor his learned counsel appearing before the trial Judge as well as at the hearing of his appeal in the High Court ever questioned the jurisdiction of trial court to hold the trial of the appellants, nor it was ever contended that he was a juvenile delinquent within the meaning of the concerned law and therefore, the court had no jurisdiction to try him, as well as the court had no jurisdiction to sentence him to suffer imprisonment for life and for the first time this contention was raised in the Supreme Court of India, which was accepted by that court. He has further submitted that apart from this, it is well settled, an appeal against a conviction or sentence or an order of acquittal is essentially continuation of the original proceedings and all provisions applicable to the trial of the proceedings are also applicable in an appeal.

He finally prays that the death reference be rejected and the appeals be allowed.

We have considered the submissions of the learned advocates for both sides, examined the evidence and connected materials on record, and gone through the cited decisions along with other relevant authorities and laws.

At the very outset, we would like to address the issue raised by Mr. S.M. Shahjahan regarding the joint trial of Saiful and Dulal by the Tribunal along with Sujon.

It appears that on 23.08.2014, confessional statements under section 164 of the Code of Criminal Procedure of the condemned prisoners Saiful and Dulal {Exts. 7 and 7(Ka) respectively} were recorded. In Ext. 7, Saiful's age was recorded by the Judicial Magistrate as approximately 18 years, and in Ext. 7(Ka), Dulal's age was recorded as approximately 17 years. On 27.08.2018, during their examination under section 342 of the Code, the ages of both were mentioned as 20 years, which indicates that at the time of the occurrence they were about 16 years old, as the occurrence took place on 17.08.2014.

In the reported case of *Jaibar Ali Fakir vs. the State*, 28 BLD (HCD) 2008, it was held that the age of the convict as recorded during examination under section 342 of the Code could be considered more reliable. However, in view of the recorded ages during recording confessional statements as well as during examination under section 342 of the Code it is evident that on the date of occurrence, both of them were not above 18 years of age. It is pertinent to mention that the learned Deputy Attorney General could not produce anything to contradict this finding.

The Shishu Ain, 2013 came into force on 21.08.2013 prior to commission of alleged offences, repealing the Children Act, 1974. Section 4 of the Shishu Ain, 2013 provides that a child, for the purpose of this law, is a person whose age does not exceed eighteen years. Section 20 of the said law provides that for the purpose of determining the age of a child, the date of occurrence shall be the relevant date.

In view of the above definition and provisions, it is clear that on the date of occurrence, both Saiful and Dulal were juveniles. As per section 17 of the Shishu Ain, 2013, the trial of

any child in conflict with the law, under any law whatsoever, shall be conducted exclusively by a Juvenile Court established under the Shishu Ain, and joint trial of a child with an adult is prohibited. Therefore, both the condemned prisoners ought to have been tried separately by a Juvenile Court. However, in violation of the mandatory provisions of this special law and the beneficial provisions applicable to juveniles in conflict with the law, they were tried jointly and awarded capital punishment along with an adult accused, Sujon, by the Judge of the Tribunal, who had no jurisdiction to try the case against juveniles. As a result, they were seriously prejudiced, and the trial, insofar as it relates to Saiful and Dulal, is vitiated.

It is to be noted that, for the first time, the plea of juvenility of Saiful and Dulal has been raised before this Court. During the investigation or trial, neither their engaged advocates raised this issue, nor did the learned Magistrate or the Judge of the Tribunal take this matter into consideration.

The question now arises whether, at this stage, an objection regarding mis-trial can be raised.

We have examined the case of *Gopinath Ghosh vs. State of West Bengal*, reported in 1984 (Supp) Supreme Court Cases 228, referred to by Mr. Shahjahan. In that case, the plea of juvenility of the appellant and the objection regarding jurisdiction of the court were raised for the first time before the Supreme Court of India, which accepted the same. Thus, we find substance in the submissions of the learned senior counsel for Saiful and Dulal. Moreover, in our jurisdiction, it is well established that an appeal is a continuation of the original proceedings, and all provisions applicable to the trial are also applicable in appeal. Therefore, we are of the opinion that in the present appeals, the plea of juvenility of these two appellants, namely Saiful and Dulal, as well as the challenge to the jurisdiction and proceedings of the Tribunal, can be raised at this stage and duly considered by this Court.

In connection of the above situation observation and decision of the Apex Court made in the case of *Asiman Begum vs. State*, 51 DLR (AD) 18, are relevant. In that case their Lordships were pleased to make the following observations and decisions:

“The better view is that when it is found after a full trial that there was a mis-trial or a trial without jurisdiction, the appellate court, before directing a fresh trial by an appropriate court, should consider whether such a direction is warranted in the facts and circumstances of the particular case. For example, if it is found that there was no legal evidence to support the conviction, then it would be wholly improper to direct a retrial, as it would be a futile exercise. Furthermore, the prosecution should not be given an opportunity to fill up its lacunae by producing new evidence which it did not or could not produce in the first trial.

Even if the court finds that there is prima facie evidence warranting a fresh trial by a proper court, there may still be considerations which would render it inappropriate to require the accused to undergo a second trial. For instance, if the accused has already suffered a substantial portion of the sentence imposed in the mis-trial, the court may, in the interest of justice, decline to order a retrial. There may be other extenuating circumstances which may

persuade the court to take a lenient view in favour of the accused. However, there is no doubt that the court has the unquestionable authority to direct a retrial where the trial has not been conducted in accordance with law. A balance must, however, be maintained, which is essentially an exercise of judicial discretion in the facts and circumstances of each case. A Judge's mind always swings- "To be or not to be."

In the present case, the condemned prisoners Saiful and Dulal have been in the condemned cell since 12.09.2018, the date of pronouncement of the judgment imposing the death sentence, and prior to that they had been in custody for 1 year and 7 months. Thus, in total, they have already spent nearly 9 years in custody. Since their trial has been found to be a mis-trial, sending the case back for retrial before the Juvenile Court would not be justified, as they have already served a substantial portion of the maximum sentence. Section 34(1) of the Shishu Ain, 2013 provides that if any child is found guilty of committing an offence punishable with death or imprisonment

for life, the Juvenile Court may order detention for a maximum period of 10 years and not less than 3 years.

In view of the above decision of the Apex Court in *Asiman Begum's* case, this case, insofar as it relates to Saiful and Dulal, should not be remanded to the Juvenile Court for retrial, as doing so would amount to double jeopardy and would prejudice them, since they have already undergone a period of detention which could have been imposed upon them had they been properly tried by a Juvenile Court.

Considering the discussions made above, we find merit in the appeals preferred by Saiful and Dulal.

Now we proceed to examine the propriety of the convictions and sentences awarded against Sujon by the Tribunal.

The confessional statement of Sujon was recorded by PW 13, Md. Aminul Islam, the then Judicial Magistrate of Shariatpur, who proved the same, which has been marked as Ext. 7 (Kha). Upon careful scrutiny of Ext. 7 (Kha), it appears that all the necessary columns were duly and properly filled in

by the recording Magistrate. It is also evident that Sujon was apprehended on 22.08.2014 at the early hours of the day and was produced before the Judicial Magistrate at 10:00 am on 23.08.2014. Although this exceeds 24 hours on the face of it, such delay cannot be termed illegal detention, since the completion of 24 hours occurred beyond office hours and he was produced immediately upon the reopening of the court of the learned Magistrate. It further appears that when he was produced for recording his confession, no complaint of hurt, injury, torture, coercion, or intimidation was made by him. The Magistrate carefully explained to him all the matters contained in column 5 and granted him three hours for reflection. Thereafter, following the provisions of sections 164 and 364 of the Code, he recorded his statement in the prescribed manner, obtained his signatures, and affixed his own signature. He also recorded a memorandum in the appropriate column expressing his satisfaction regarding the voluntariness of the confession. It is thus evident that the confession was not made under threat, coercion, or inducement.

The contents of the confessional statement of Sujon are as follows:

“২০১১ সনের মাঝামাঝি সামসুনাহারের সাথে আমার প্রেমের সম্পর্ক হয়। ২০১২ সালে তার বিবাহ হয় ইছাহাক এর সাথে। সে দুবাই থাকে। আমার সাথে যোগাযোগ বন্ধ হয়ে যায়। এরপর আমি বিবাহ করি। একটা মেয়ে হয়। ২০১৪ সালের এপ্রিলের দিকে পুনরায় সামসুনাহারের সাথে মোবাইলে যোগাযোগ হয়। এই রমযানের আগে ব্যবসার কথা বলে আমি তার কাছে টাকা চাই। ২ ভরির গলার হার দেয়। বিক্রি করে টাকা যোগাড় করি। তার সাথে আমার দেখা হত। মোবাইলে সব সময় কথা হত। ঈদের পরে সামসুনাহার আমাকে বিয়ে করার জন্য চাপ দেয়। আমি সাইফুল ও দুলালকে জানাই। আমার স্ত্রী সরকারী চাকরী করে। সামসুনাহারের টাকায় আমি একটা মোটর সাইকেল ক্রয় করি। বিয়ের জন্য বেশি চাপ দেওয়ায় আমি টাকা, গহনা ফেরত দিতে চাই। বিয়ে করব না বলি। সে সকল কথাবার্তা রেকর্ড করে রাখে মোবাইলে। দুলাল, সাইফুলকে সব বিষয় শেয়ার করি। এক পর্যায়ে সাইফুল বলে যে বিয়ে কর নয়তো সামসুনাহারকে মেরে ফেলতে হবে। তারা দুজনে শর্ত দেয় যে, তার সাথে যা যা থাকবে তা তারা নিয়ে যাবে। এরপর আমি রাজি হয়ে তিনজনে মিলে তাকে হত্যা করার জন্য পরিকল্পনা করি। ১৭.৮.১৪ ইং সকালে সামসুনাহার মনোহর বাজারে এসে তার ব্যাগ দিয়ে যায়। তাকে বিয়ে করবো বলে মিথ্যা প্রলোভন দেই, সাইফুল বাসা দেখে এসেছে। সোমবার সকালে তানিয়া ও আমি গাড়িতে উঠে বিয়ে করার জন্য শরীয়তপুর ছাড়ব বলে সামসুনাহার তানিয়াকে বুঝাই। চাকু, দড়ি, টেপ সংগ্রহ করি। বস্তা আগেই আমার বাসায় ছিল। পাচটার দিকে সামসুনাহার ফোন করে বলে আমি মনোহর বাজারে এসেছি। তখন আমি, সাইফুল,

দুলাল বাড়িতে এসে কিভাবে কি করব তা আলোচনা করতে থাকি। আমি ফোন পেয়ে মনোহরবাজার সিনেমা হলের উল্টো দিকে রূপসি বিউটি পার্লারে বসতে বলি। সে ঐ খানে বসে আমরা তিনজনে এসে আমি তানিয়াকে নিয়ে সিনেমা হলের উপরে ও তারা দুজন নিচে বসে সিনেমা দেখে শেষ হওয়ার কিছুক্ষন পূর্বে আমরা প্রথমে ও সাইফুল, দুলাল পরে বের হয়। সাইফুল মোবাইলে মেসেজ দেয়। আমি ওদেরকে আগে যেতে বলি। আমি মোটর সাইকেলে করে তানিয়া কে নিয়ে আসি আমার ভাড়া বাসায় আসি। আমার স্ত্রীর সাথে গ্যাঞ্জামের কারনে আমি ভিন্ন বাসায় ছিলাম ভাড়া করে। আমি তানিয়াকে নিয়ে আসার কিছুক্ষন পরে তারা দুজনে আসে। কলা, কেক, ফ্লুটিকা নিয়ে আসে তারা। ঐগুলো খেয়ে শুয়েপড়ি। ১০/১০.৩০ টার দিকে তানিয়ার সাথে আমার শারিরীক সম্পর্ক হয়। সাইফুলের মোবাইলে এলার্ম দেওয়াছিল। ২.০০ টার দিকে আমরা উঠি। পরিকল্পনা মোতাবেক সাইফুল সহ আমি বাহিরে গিয়ে কথাবলি। সাইফুল ঘরের ভিতরে গিয়ে রিংটোন বাজায়। আমাকে ও তানিয়াকে বাইরে যান, তানিয়ার ভাসুরের ছেলে ধরতে আসতেছে। তাকে বের করাই ছিল লক্ষ্য। আমি তানিয়াকে নিয়ে কালু MP এর বাড়ির পিছনে যাই। পিছনে ঐ দুজনআসে। যেখানে লাশ ফালাই তার পাশে আমি তানিয়াকে ঘুরাইয়া দেয়ে আমি মুখ চেপে ধরি, সাইফুল ও দুলাল দড়ি দিয়ে গলায় পেচিয়ে দুজনে দুইপাশ দিয়ে টান দেয়। সাইফুল পিছন থেকে ধাক্কা দিয়ে ফেলে দেয়। এর মধ্যেই ২/৩ মিনিটের মধ্যে মারা যায়। আমি ও সাইফুল লাশ নিয়ে নামি পানিতে। তিনজনে মিলে পাশ থেকে ইট আনি। চাকু দিয়ে আমি তানিয়ার পেট কেটে দেই। দড়ি দিয়ে তার হাত পা বাধা হয়। বস্তুর সাথে ওড়না দিয়ে বেধে তানিয়ার কোমড়ে বেধে পানিতে ফেলে আমরা তিনজন চলে আসি। তানিয়ার পার্স ব্যাগ বাসায় ছিল। তার গলার

চেইন। কানের দুলা, পায়ের নুপুর খুলে নিয়ে আসি। পার্স ব্যাগে ৩,০০০/= টাকার বেশি ছিল। দুলালকে ১,০০০/= টাকা, সাইফুল ১২০০/= টাকা নেয়। স্বর্নেরজিনিস, পার্স ব্যাগ নিয়ে সকালে বের হই। রাতে একসাথে ঐ বাসায় ছিলাম। বড় ব্যাগ শিশুসদনে একটা ছেলেকে দিয়ে পোড়াই। ব্যাগের ভিতরেররুলি সহ স্বর্নালংকার আমি মনোহর বাজারে কমলের দোকানে বিক্রি করিয়া ৬৬,০০০/= টাকাপাই। কিছু স্বর্ণে জিনিস আমার বাসায় থাকে। তিনজন পরিকল্পনা করে আমরা সামসুন্নাহার তানিয়াকে হত্যা করি। এই আমার জবানবন্দি। আমার দেখানো মতে লাশ উদ্ধার হয়। কিছু টাকা খরচ করার পর বাকি টাকা পুলিশকে দিয়েছি।”

Upon examination of the above confessional statement, it appears to be inculpatory in nature, wherein he narrated the entire sequence of events. He described how, as the principal offender, he, by deception, assured the victim of marriage, induced her to leave her residence, and thereafter committed acts of rape. He further stated that, with the assistance of others, he intentionally killed the victim according to a premeditated plan, concealed the dead body, and caused its disappearance at the relevant place of occurrence. He also described how the dead body was subsequently recovered at his instance. Considering the facts and circumstances, we are of the clear opinion that the confession of Sujon is true and voluntarily made,

notwithstanding the subsequent submission of an application for retraction.

It is a well-established principle of law that a conviction can rest solely on a confession if it is found to be true and voluntary as against its maker.

Apart from this, it is evident from the testimony of PWs 1, 2, 3, 8, 10, 14, and 16 that, on the basis of General Diary (GD) Entry No. 791 dated 17.08.2014, the accused, Sujon, was apprehended by the Investigating Officer, PW 16, on 22.08.2014 at approximately 12:45 am. Upon interrogation, the accused disclosed that, on the night following 17.08.2014, he had raped the deceased and, thereafter, at about 2:00 am. on 18.08.2014, he, in concert with two accomplices, deceitfully took the deceased to a secluded location behind the eastern side of the residence of Ex-MP Nasiruddin Kalu. There, they killed her and subsequently concealed the dead body in a ditch, fastening it with bricks inside a plastic bag and submerging it beneath water hyacinth.

Following this disclosure, the police, in the presence of the informant and other witnesses, escorted the accused to the indicated location. Acting upon his pointing out, a partially decomposed dead body bearing multiple injuries was recovered. The body was subsequently identified by PW 3, Kamrul Hassan, the brother of the deceased.

Furthermore, PWs 1, 2, 3, 8, 10, and 14, 16 in their respective testimonies, corroborated one another regarding the recovery of the dead body and supported the prosecution's case in this regard, affirming that the body was recovered in their presence. It further appears that, among them, PWs 1, 2, 3, and 10 acted as witnesses to the inquest report (Ext 1), which was prepared by PW 16 and duly proved through their testimony.

More so, the seizure list dated 22.08.2014 (Ext 5), proved by its witnesses, namely PWs 2, 3, and 14, shows that immediately after the arrest of Sujon on 22.08.2014, on the basis of his disclosure, the police officer took him to his paternal house and, at his pointing out, an amount of Tk. 20,000, obtained from the sale of the victim's gold ornaments, and two

Nokia mobile sets, one of which, containing SIM No. 01947725796 (Mat Ext III), had been used by the deceased, were recovered from underneath a mattress in Sujon's house. Among the witnesses to Ext. 5, the brother of the deceased identified the mobile set used by her. Another seizure list dated 30.08.2014 (Ext. 3), proved by its maker (PW 16) and its witnesses PWs 3, 7, and 12, shows that the deceased's vanity bag, containing articles such as lipstick, a small purse, and a comb, was recovered from a large pond belonging to Kalu Sardar at the instance of Sujon and identified by PW 3. The above recoveries clearly corroborated the prosecution case.

Moreover, in view of the evidence of PW 4, Kashem Talukdar, it appears that on 17.08.2014 at about 10:00 am Sujon purchased a knife from his shop. PW 5 stated that on the same day at about 10:00/10:45 am Sujon purchased a rope from him. PW 9, Alkas Sardar, stated that on the night following 17.08.2014, Sujon, being his tenant, stayed in his rented room along with the victim. These testimonies of PWs 4, 5, and 9 corroborate the allegations brought against Sujon.

In view of the foregoing discussions, it is manifestly clear by the confessional statement of Sujon and above circumstantial evidence that the victim was a married woman aged about 22 years, whose husband, Isahaq, the younger brother of the informant, had been abroad for a long time. Sujon, though himself a married person took advantage of the situation, developed a paramoural relationship with her, and continued such relationship for a considerable period, deriving financial benefits from her from time to time. When she pressured him to marry her, he falsely assured her and induced her to leave her husband's residence on 17.08.2014 with cash money and substantial gold ornaments. Thereafter, she met him, and he took her to his rented house, owned by PW 9, where, on the night following 17.08.2014, he raped her on the false promise of marriage. Subsequently, with the assistance of two others, at about 2:00 am on 18.08.2014, he tactfully took her to a secluded place behind the eastern side of the residence of Ex-MP Nasiruddin Kalu, brutally killed her, tied her hands and feet, and disposed of the dead body in a ditch by fastening it with a plastic bag filled with bricks under water hyacinth.

Be that as it may, the learned Judge of the Tribunal convicted and sentenced Sujon under sections 7 and 9(2) of the Ain, as well as under sections 379 and 201 of the Penal Code. For a clearer appreciation of the matter, we deem it appropriate to reproduce section 9 of the Ain as it stood at the time of the occurrence.

“ধর্ষণ, ধর্ষণজনিত কারণে মৃত্যু, ইত্যাদির শাস্তি।—(১) যদি কোন পুরুষ কোন নারী বা শিশুকে ধর্ষণ করেন, তাহা হইলে তিনি যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্ধদণ্ডেও দণ্ডনীয় হইবেন।

ব্যাখ্যা।— যদি কোন পুরুষ বিবাহ বন্ধন ব্যতীত [মোল বৎসরের] অধিক বয়সের কোনা নারীর সহিত তাহার সম্মতি ব্যতিরেকে বা ভীতি প্রদর্শন বা প্রতারণামূলকভাবে তাহার সম্মতি আদায় করিয়া, অথবা [মোল বৎসরের] কম বয়সের কোন নারীর সহিত তাহার সম্মতিসহ বা সম্মতি ব্যতিরেকে যৌন সঙ্গম করেন, তাহা হইলে তিনি উক্ত নারীকে ধর্ষণ করিয়াছেন বলিয়া গণ্য হইবেন।

(২) যদি কোন ব্যক্তি কর্তৃক ধর্ষণ বা উক্ত ধর্ষণ পরবর্তী তাহার অনাধিক কার্যকলাপের ফলে ধর্ষিতা নারী বা শিশুর মৃত্যু ঘটে, তাহা হইলে উক্ত ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য এক লক্ষ টাকা অর্ধদণ্ডেও দণ্ডনীয় হইবেন;

(৩) যদি একাধিক ব্যক্তি দলবদ্ধভাবে কোন নারী বা শিশুকে ধর্ষণ করেন এবং ধর্ষণের ফলে উক্ত নারী বা শিশুর মৃত্যু ঘটে বা তিনি আহত হন তাহা হইলে ঐ দলের প্রত্যেক ব্যক্তি মৃত্যুদণ্ডে বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য এক লক্ষ টাকা অর্ধদণ্ডেও দণ্ডনীয় হইবেন;

(৪) যদি কোন ব্যক্তি কোন নারী বা শিশুকে-

(ক) ধর্ষণ করিয়া মৃত্যু ঘটানোর বা আহত করার চেষ্টা করেন, তাহা হইলে উক্ত ব্যক্তি যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন;

(খ) ধর্ষনের চেষ্টা করেন, তাহা হইলে উক্ত ব্যক্তি অনধিক দশ বৎসর কিন্তু অনূন পাঁচ বৎসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন;

(৫) যদি পুলিশ হেফাজতে থাকাকালীন সময়ে কোন নারী ধর্ষিতা হন, তাহা হইলে যাহাদের হেফাজতে থাকাকালীন উক্তরূপ ধর্ষণ সংঘটিত হইয়াছে, সেই ব্যক্তি বা ব্যক্তিগণ ধর্ষিতা নারীর হেফাজতের জন্য সরাসরিভাবে দায়ী ছিলেন, তিনি বা তাহারা প্রত্যেকে, ভিন্নরূপ প্রমাণিত না হইলে, হেফাজতের ব্যর্থতার জন্য, অনধিক দশ বৎসর কিন্তু অনূন পাঁচ সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অনূন দশ হাজার টাকা অর্থদণ্ডেও দণ্ডনীয় হইবেন;”

It transpires that the offences of rape and killing committed by Sujon do not fall within the purview of sub-section (2) of section 9 of the Ain, as the death of the deceased was not caused in consequence of the rape. In fact, the killing of the deceased was the primary objective, and prior to the killing, Sujon raped her incidentally. Since the consent of the deceased for sexual intercourse was obtained by fraud through a false assurance of marriage, such intercourse falls within the

definition of rape under the explanation to sub-section (1) of section 9 of the Ain and is punishable thereunder. As the act of killing does not fall within sub-section (2) of section 9 or any other provision of the Ain, it falls within the definition of murder under section 300 and is punishable under section 302 of the Penal Code.

In the case of *State vs Nurul Amin Baitha*, 75 DLR (AD) 187, their Lordships held that offences under the Ain and offences defined in the Penal Code may be tried jointly by the Tribunal. In the same case, the Apex Court further held:

“Our final decision is that the High Court Division, as the Appellate Court, has the jurisdiction to convert a conviction under section 11(Ka)/30 of the Ain to one under section 302/34 of the Penal Code, as an appeal is a continuation of the original case. An Appellate Court possesses the same powers as the trial court, i.e., the Tribunal, and therefore is competent to convert the conviction to secure the ends of justice. Such conversion shall not prejudice either the accused or the State; otherwise, remand would result in unnecessary expenditure of time, money, and effort. Similarly, the Tribunal, being deemed a Court of Sessions, is entitled to

alter or amend the charge under section 11(Ka) of the Ain to one under section 302 of the Penal Code and dispose of the case finally in accordance with law, provided no prejudice is caused to the accused.”

In view of the above discussion and following the aforesaid decision of the Apex Court, the convict Sujon, instead of being found guilty under section 9(2) of the Ain, is found guilty under section 9(1) of the Ain and section 302 of the Penal Code for committing offences of rape and murdering. In our view, justice will be best served if he is sentenced to life imprisonment and fined for each of the two offences committed.

Another issue arising in the present case is whether, when Sujon is being convicted for the principal offences of rape and murder, the conviction and sentence imposed upon him under section 201 of the Penal Code for causing the disappearance of evidence by concealing the dead body are sustainable in law. This issue arose before this Division in *Death Reference No. 59 of 2018 (unreported)*, where one of us was the authoring Judge. In that case, after thoroughly examining section 201, along with its illustrations and the related sections

202 and 203 of the Penal Code, and considering decisions from our jurisdiction as well as from Pakistani and Indian jurisdictions, namely *Manu Mia vs the State*, 8 MLR (HC) 2003, 66 (Bangladesh), *Farid Muhammad vs the State*, PLD 1959 (WP) Peshawar 12, *Gulzar Khan vs the State*, PLD 1963 (WP) Peshawar 178, *Kalawati vs the State of Himachal Pradesh*, 1953 SCR 546, and *Kudaon vs Emperor*, AIR 1925 (Nagpur) 407, the view was taken that a person convicted of the principal offence cannot be convicted under section 201 of the Penal Code, as this provision applies only to persons other than the principal offender. We are in agreement with that view in the present case.

Accordingly, we hold that since Sujon is being convicted and sentenced under section 9(1) of the Ain and section 302 of the Penal Code, his conviction and sentence under section 201 of the Penal Code are liable to be set aside.

In the result, the death reference is rejected. The convictions and sentences imposed upon accused Rejaul Karim @ Sujon under section 9(2) of the Nari O Shishu Nirjaton

Daman Ain, 2000 and under section 201 of the Penal Code by the Nari O Shishu Nirjaton Daman Tribunal are set aside. He is convicted under section 9(1) of the Nari O Shishu Nirjaton Daman Ain, 2000 and section 302 of the Penal Code, and is sentenced under section 9(1) to suffer rigorous imprisonment for life and to pay a fine of Tk. 20,000.00, in default whereof to suffer simple imprisonment for one year, and under section 302 to suffer imprisonment for life and to pay a fine of Tk. 20,000.00, in default whereof to suffer simple imprisonment for one year. However, the convictions and sentences imposed upon him under section 7 of the Nari O Shishu Nirjaton Daman Ain, 2000 and section 379 of the Penal Code by the Tribunal shall remain undisturbed. All sentences shall run concurrently. He shall be entitled to the benefit of section 35A of the Code and other remissions admissible under the Jail Code.

The concerned jail authority is directed to shift him from the condemn cell immediately.

Criminal Appeal No. 10433 of 2018 preferred by Saiful Islam, in conflict with the law, and Jail Appeal No. 272 of 2018

preferred by Dulal Matbar, also in conflict with the law, are allowed. They are acquitted of the charges, and the convictions and sentences imposed upon them are set aside.

The concerned jail authority is directed to release them forthwith, if not required in connection with any other case. Accordingly, Jail Appeal No. 273 of 2018 preferred by Saiful Islam is disposed of.

Let the records of the lower court, along with a copy of this judgment, be sent to the Nari O Shishu Nirjaton Daman Tribunal, Shariatpur, and another copy be sent to the Jail Superintendent, Shariatpur, forthwith for information and necessary actions.

Biswajit Debnath, J:

I agree.