District: Kushtia.

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

Present:
Mr. Justice Md. Zakir Hossain
And
Mr. Justice Md. Toufiq Inam

Death Reference No.116 of 2018.

The State.
-Versus-

Md. Atiar Rahman (absconding),
----- Condemned-Convict.

Mr. Mohammed Abdul Baset, DAG with
Ms. Anjuman Ara Begum, A.A.G,
Ms. Selina Parvin (Setu), A.A.G.
Mr. Md. Syedur Rahman Mainul, A.A.G.
Mr. Kazi Mohammad Moniruzzaman Dablu, A.A.G.
Mr. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.
----- For the State.

Ms. Nargis Akter, Advocate (State Defence Lawyer)
----- For the Condemned-Convict.

Heard On: 19.01.2026, 20.01.2026.
And
Judgment Delivered On: 26.01.2026.

Md. Toufiq Inam, J:

Pursuant to Section 374 of the Code of Criminal Procedure, 1898 ["the CrPC"], the instant Death Reference No. 116 of 2018 has been made to this Division by the Nari-O-Shishu Nirjatan Daman Tribunal, Kushtia, following pronouncement of its judgment dated

26.09.2018 in Nari-O-Shishu Case No. 48 of 2007. By the said judgment, the Tribunal convicted the accused, Md. Atiar Rahman, under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) [“the Ain 2000”] and sentenced him to death with a fine of Tk.50,000. The reference has been heard at length and is being disposed of by this judgment.

The prosecution case, in summary, is that the informant Md. Moniruzzaman Monir gave his youngest sister, Shahanara, in marriage to the accused Md. Atiar Rahman. After marriage, the accused, along with his brothers Bazlu, Fazlu, and Mejbar, allegedly subjected the victim to repeated physical and mental torture over demands for dowry. It is alleged that the accused demanded Tk. 50,000/- and at one point assaulted and drove the victim out of the house wearing only her clothes. Following local arbitration and compromise, the victim returned to live with the accused.On the night of 27.09.2006 at about 9:00 p.m., the informant heard from neighbors that his sister had been killed by the accused after assault. On visiting the house, he learned that the accused allegedly pressured his sister to bring the dowry amount, and upon refusal, physically assaulted her. It is further alleged that

the accused strangulated her to death and then poured poison into her mouth to simulate suicide.

The informant lodged an FIR with Kushtia Sadar Police Station, on the basis of which Case No. 36 of 2006 (G.R. No. 377 of 2006) was registered under sections 11(ka)/30 of the Ain, 2000. Upon completion of investigation, the police submitted charge-sheet against the accused Md. Atiar Rahman under section 11(ka) of the Ain, 2000, while his brothers were discharged from the case. The accused pleaded not guilty. After commencement of trial, he absconded, necessitating appointment of a State Defence Lawyer to conduct cross-examination of the remaining prosecution witnesses.

The defence case, as elicited through cross-examination, is that the accused never demanded dowry; that the victim was sick and infirm; and that she sustained a fatal head injury after falling while coming out of the latrine. Upon conclusion of the trial, the learned Tribunal convicted the accused Md. Atiar Rahman under section 11(ka) of the Ain, 2000 and sentenced him to death, giving rise to the present Death Reference.

Mr. Mohammed Abul Baset, learned Deputy Attorney General, appearing for the State, supports the Death Reference. He submits

that the prosecution has proved the charge beyond reasonable doubt through clear, consistent, and cogent evidence. He argues that the victim suffered a brutal homicidal death inside her matrimonial home and that the medical evidence fully corroborates the prosecution case as to the nature and cause of death. According to him, the circumstantial evidence forms an unbroken chain pointing unequivocally to the guilt of the accused. He further submits that the accused failed to offer any plausible explanation for the death occurring within his exclusive domain and instead put forward a false plea, which stands disproved by medical and scientific evidence. His abscondence after the occurrence, it is argued, constitutes an additional incriminating circumstance. He finally submits that the offence was committed in a cruel and inhuman manner, warranting confirmation of the sentence of death.

Conversely, Mrs. Nargis Akter, learned defence lawyer, contends that the prosecution has failed to prove the essential ingredient of demand of dowry under section 11(ka) of the Ain, 2000. She submits that none of the prosecution witnesses has testified to any specific, consistent, or direct instance of dowry demand. She further argues that although PW-1 and PW-2 claimed to have seen injury marks on the body of the deceased, neither the inquest report,

prepared in presence of PW-2, nor the post-mortem report records such injuries, creating a material contradiction that undermines the prosecution case.

She further submits that there is no eyewitness to the alleged occurrence and that the prosecution has failed to explain the manner of death. Neither oral nor medical evidence, according to her, discloses how, when, or in what manner the victim was assaulted. The case rests entirely on suspicion, and the circumstantial evidence does not constitute a complete or unbroken chain. She also points to serious investigative lapses, including failure to prepare or prove any seizure list or to recover any blood-stained apparel, weapon, or other incriminating material. In absence of proof of dowry demand, clear manner of killing, ocular testimony, or reliable corroboration, she prays for acquittal and rejection of the Death Reference.

Upon careful, dispassionate, and holistic consideration of the oral and documentary evidence and the submissions of the parties, this Court finds it necessary to reassess the prosecution case. It is evident that there is no direct eyewitness to the occurrence. The issue of demand of dowry, which constitutes a foundational

element of the offence under section 11(ka) of the Ain, 2000, therefore requires close scrutiny.

PW-1, the informant Md. Moniruzzaman, deposed that the occurrence took place at about 8:00 p.m. on 27.09.2006 at the accused's house. At around 8:30 p.m., he came to know that his sister was lying dead there. Upon arrival, he heard from local people that the accused had assaulted and killed his sister for dowry of Tk. 50,000/-. He stated that earlier the accused and his brothers had attempted to kill the victim by drowning her over dowry demands. He claimed to have seen bruises on the body, neck, and waist of the deceased and stated that she was strangulated. He identified the FIR and his signature. In cross-examination, he admitted that he did not witness the occurrence and that his knowledge was based on what he heard from others. He denied the defence suggestion that the victim died due to illness and accidental fall.

PW-2 Kubat Ali stated that he heard about the death at around 9:00 p.m. and went to the accused's house thereafter. He also stated that he heard the victim was killed for dowry and that previously a cow had been given to the accused. He claimed to have seen bruises on

the body of the deceased and stated that he signed the inquest report prepared the following morning. In cross-examination, he admitted that he was not present at the time of occurrence and that his statements were based on what he heard.

PW-3 Dr. Matiar Rahman, who conducted the post-mortem examination, found one swelling with hematoma on the forehead associated with fracture of the frontal bone and intracranial hemorrhage. He opined that death was caused by shock and hemorrhage resulting from the antemortem injury and was homicidal in nature. Although he stated in cross-examination that such injury might theoretically occur from a fall, he clarified that the injury in the present case was not caused by a fall. The chemical examiner’s report detected no poison in the viscera.

PW-4 Abdul Alim stated that the accused Atiar Rahman was his neighbour and that disputes used to arise between the couple over dowry after the marriage. About 8–9 years ago, during Ramadan at around 8:00 p.m., while he was in the mosque, he heard screams from the accused’s house. After prayer, he went there and found the dead body of Shahanara lying on the veranda. At that time, the accused claimed that his wife had committed suicide by taking

poison, while others stated that she had been beaten to death over dowry. In cross-examination, he admitted that he did not know how Shahanara died and that police did not question him.

PW-5 Abdul Gafur deposed that the accused was his neighbour and that he used to hear that the accused assaulted his wife over dowry demands. During Ramadan, at the time of Esha prayer, he heard screams from the accused's house and, after prayer, saw the dead body of Shahanara lying on the veranda. He stated that some people said she committed suicide by poison, while others claimed she was beaten to death. He further stated that the accused absconded thereafter. In cross-examination, he admitted that he did not know how the victim died and that police did not examine him.

PW-6 Afaz Uddin stated that during Ramadan 2006, while he was offering Esha prayer, he heard screams from the accused's house. After prayer, he went there and saw Shahanara's dead body lying on the veranda. He stated that some people said she committed suicide, while others alleged that she was killed over dowry. He did not find the accused at home at that time. In cross-examination, he admitted that he did not know the cause of death and that police did not question him.

PW-7 Faruk Mondal stated that Shahanara died about eight years ago at her husband's house. He heard two versions after her death—one alleging murder by her husband and the other alleging suicide. In cross-examination, he admitted that he did not visit the accused's house after the occurrence and could not say how the victim died.PW-8 Harun Mondal deposed that Shahanara died at her husband's house about eight years earlier. He also heard conflicting versions—some saying she was killed, others saying she committed suicide. In cross-examination, he stated that he attended the burial and heard that Shahanara committed suicide due to illness.

PW-9 SI Md. Nazrul Islam, the Investigating Officer, stated that after registration of the case on 28.09.2006, investigation was entrusted to him. He visited the place of occurrence, prepared the sketch map and index, held the inquest, and sent the dead body for post-mortem examination. He recorded statements of witnesses under section 161 CrPC and attempted to arrest the accused. Upon receipt of the post-mortem and viscera reports, he found that the victim died due to injuries and, finding prima facie truth in the allegations against accused Md. Atiar Rahman, submitted Charge-

sheet No. 10 dated 18.01.2007. He proved the relevant documents and exhibits. In cross-examination, he stated that no accused was present at the time of inquest and denied suggestions that witnesses did not speak of cries or assault. He further stated that no injury was found on the private parts of the victim.

The prosecution witnesses comprise the informant, neighbouring and local witnesses, witnesses who arrived after the occurrence, hearsay witnesses, the medical expert, and the Investigating Officer. Their testimonies, therefore, fall within recognized categories of competent witnesses, subject to appreciation of their evidentiary value.

The case record has been meticulously examined, and both the oral and documentary evidence have been carefully analyzed.The prosecution case, as set out in the FIR, is that the accused, Md. Atiar Rahman, subjected his wife, Shahanara Begum, to torture on account of dowry and ultimately caused her death on 27.09.2006. The post-mortem report (Exhibit-2) discloses injuries on the victim’s forehead and head, and opines that death was caused due to hemorrhage and shock resulting from those injuries. The chemical examiner’s report (Exhibit-7) conclusively shows that no

poison was detected in the viscera, thereby excluding death by poisoning. PW-3, the doctor who conducted the post-mortem examination, stated that although such injuries might theoretically occur from a fall, the injuries found on the victim were not consistent with a fall. From the medical evidence, it is therefore clearly established that the injuries were inflicted by assault and were sufficient to cause death.

As regards proof of the death through oral evidence, PW-1 stated that on the night of 27.09.2006 at about 8:00 p.m., the accused strangulated and killed the victim inside his house and that he noticed bruises on her body, neck, and waist. He further deposed that earlier the accused and his brothers had attempted to kill the victim by drowning over dowry-related demands. PW-2 also stated that the victim was killed at about 8:00 p.m. on the same date and that he heard the accused killed her for Tk. 50,000/- as dowry. He like wise noticed bruises on her body.PW-3, the doctor, testified that he found blood clots and fractures on the head of the victim and opined that the death was homicidal in nature. PW-4 to PW-8 consistently stated that they heard screams from the accused’s house, subsequently saw the dead body lying there, and heard that the victim had either been beaten to death over dowry or that a false

plea of suicide was being propagated. PW-9, the Investigating Officer, stated that upon investigation and on the basis of medical evidence, the allegation against the accused was found to be prima facie true.

At the outset, it must be stated that the medical and forensic evidence unequivocally establish that Shahanara Begum died a homicidal death. PW-3 found a fracture of the frontal bone with antemortem hemorrhage and clotting in the brain cavity and opined that death was caused by shock and hemorrhage resulting from the said injuries. He clearly stated that the death was homicidal. The viscera report (Exhibit-7) ruled out poisoning, thereby negating the defence plea of suicide. The Court, therefore, has no hesitation in holding that the death was homicidal and unnatural.

The crucial question, however, is whether the prosecution has been able to prove beyond reasonable doubt that the death occurred as a result of demand of dowry. The prosecution mainly relied on the testimonies of PW-1 and PW-2 to establish dowry demand. Upon close scrutiny, their evidence suffers from serious legal infirmities. Firstly, PW-1 admittedly did not witness any demand of dowry. His testimony regarding dowry demand is entirely hearsay, derived

from what he allegedly heard after the occurrence. Secondly, PW-2 also did not witness any demand of dowry. His statement that he “heard” about a demand of Tk. 50,000/- is likewise hearsay and lacks probative value.

No independent witness testified to having personally seen or heard the accused demanding dowry. None of the neighboring witnesses (PW-4 to PW-8), who were natural and independent witnesses, stated that they had ever witnessed any specific demand of dowry. Their evidence is confined to general assertions of “quarrels" or “disputes” between husband and wife, which by themselves do not amount to proof of dowry demand. Notably, no specific date, place, or occasion of any alleged dowry demand has been proved. The alleged demand of Tk. 50,000/- is unsupported by any contemporaneous complaint, village arbitration record, or testimony of any mediator, salishdar, or respectable person.

Section 11(ka) of the Ain, 2000 requires proof of two essential elements: (i) demand of dowry, and (ii) murder committed for or in connection with such demand. Therefore, a causal nexus between the dowry demand and the murder must exist. Upon reappraisal of the evidence, although a background of marital discord has been

suggested, the prosecution has failed to establish a proximate and compelling link between any alleged dowry demand and the act of murder. The prosecution failed to produce any corroborative material such as records of village arbitration or testimony of persons who allegedly intervened earlier. No evidence was adduced to show that any dowry was paid shortly before the occurrence or that the death was immediately preceded by a refusal to meet such demand. Mere allegation of dowry demand, without cogent and independent corroboration, cannot satisfy the standard of proof required in criminal law.

The circumstantial evidence clearly establishes that the victim died inside the matrimonial home of the accused and that the accused failed to offer any plausible explanation. His abscondence and the false plea of suicide are incriminating circumstances. However, these circumstances relate to the commission of homicide and not to the motive of dowry demand. Where dowry demand constitutes an essential statutory ingredient of the offence, motive must be specifically proved. Accordingly, while the prosecution has proved homicidal death, it has failed to establish the essential element of dowry demand beyond reasonable doubt. The charge under section 11(ka) of the Ain, 2000 therefore cannot be sustained.

Nonetheless, failure to prove dowry demand does not ipso facto result in acquittal where the evidence otherwise establishes the commission of murder. It is settled law that the Court may alter conviction to a proper section if the facts warrant, and doing so causes no prejudice to the accused.The medical evidence conclusively establishes death by antemortem injuries. The viscera report falsifies the plea of suicide. PW-4 stated that cries were heard from the accused's house shortly before the body was found. The accused was present at the relevant time, offered a false explanation of suicide, and thereafter absconded. No plea of alibi was taken. In such circumstances, the burden lay heavily upon the accused to explain how the victim sustained fatal injuries inside his house. His failure to do so permits to draw an adverse inference.

The absence of seized weapons or blood-stained articles does not negate homicidal death. Minor inconsistencies between oral testimony and inquest or post-mortem reports do not detract from the overall consistency of the prosecution case. Lack of direct eyewitnesses is not fatal where the circumstantial evidence forms a complete chain pointing unerringly to the guilt of the accused.The evidence on record supports the conclusion that the victim was

killed inside the accused's dwelling house and that the accused bears responsibility for the homicidal death.

The prosecution has proved beyond reasonable doubt that—

(i) the victim sustained fatal ante-mortem injuries, which were intentionally inflicted;

(ii) the injuries were sufficient in the ordinary course of nature to cause death;

(iii) the occurrence took place inside the dwelling house of the accused, a place where no outsider could reasonably have access at the relevant time; and

(iv) the accused, instead of offering a truthful explanation, furnished a false and evasive account and thereafter absconded during the course of trial, which conduct is wholly inconsistent with innocence and lends further assurance to the prosecution case.

Taken together, these proved facts unerringly establish the commission of an intentional and culpable homicide amounting to murder and squarely satisfy the ingredients of section 300 of the Penal Code, rendering the offence punishable under section 302 thereof.

Where a statutory offence requires proof of a specific motive, such as dowry demand under section 11(ka) of the Ain, 2000, failure to prove that motive does not preclude conviction for murder under section 302 of the Penal Code, provided the homicidal act itself is conclusively established.Circumstantial evidence- such as fatal ante-mortem injuries, the location of death within the accused's exclusive control, false explanations, and abscondence- can form a complete chain pointing irresistibly to the accused's guilt. In such circumstances, the Court may alter the conviction to the similaroffence of murder without prejudice to justice.

Under the settled principles of criminal jurisprudence and the enabling provisions of the Code of Criminal Procedure, the Court is competent to alter a conviction to a lesser or appropriate offence where the facts so justify and no prejudice is caused to the accused. In the present case, although the charge of dowry-related offence has not been proved, the offence of murder stands fully established. The factual matrix remains the same and no new or distinct case is introduced. Consequently, such alteration of conviction occasions no prejudice or failure of justice. Accordingly, the conviction of the accused Md. Atiar Rahman, awarded under section 11(ka) of the

Ain, 2000, is alteredto section 302 of the Penal Code for the murder of his wife, Shahanara Begum.

In determining the appropriate sentence, this Court has taken into consideration the entire evidentiary landscape and the manner in which the prosecution case has unfolded. Section 302 of the Penal Code provides for two alternative punishments, death or imprisonment for life, both standing on equal statutory footing. The law does not prescribe either punishment as the rule or the exception; rather, it vests the Court with the discretion to impose a sentence that is just, proportionate, and commensurate with the facts proved on record.In the present case, the accused is not a hardened criminal and has no previous criminal antecedents. Having regard to the totality of the circumstances, this Court is of the view that the case does not warrant the imposition of the extreme penalty. The sentence of imprisonment for life is well within the lawful discretion of the Court and is itself a grave and substantial punishment.

Accordingly, **the Death Reference is rejected**. The conviction of the absconding accused, Md. Atiar Rahman, son of late Sona Sheikh, is altered to one under section 302 of the Penal Code for

murder, and he is hereby sentenced to suffer imprisonment for life thereunder and to pay a fine of Tk. 50,000/-.

The accused shall be secured forthwith to serve out the sentence and shall be entitled to the benefit of section 35A of the Code of Criminal Procedure.

Let a copy of this judgment be transmitted forthwith to the court concerned along with the lower court records for information and necessary compliance.

(Justice Md. Toufiq Inam)

Md. Zakir Hossain, J:

I agree.

(Justice Md. Zakir Hossain)

Ashraf/ABO.