

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.03 of 2019

The State petitioner

-Versus-

Md. Abdullah condemned-prisoner

with

Criminal Miscellaneous Case No.40470 of 2022

And

Jail Appeal No.133 of 2022

Md. Abdullah appellant

-Versus-

The Staterespondent

Mr. Syed Ejaz Kabir with Mr. Mohammad
Imam Hossain (Tarek), Deputy Attorney
Generals with Ms. Mahbuba Taslim Akhi, Mr.
Mustafizur Rahman Mukul, Mr. Ashraful Alam,
Ms. Rohani Siddiqua, Mr. Al-Amir Siddiqui,
Assistant Attorney Generals for the State

(In the reference, the appeal and the Rule)

Mr. Md. Tasaddar Raihan Khan, Advocate

.....for the condemned-prisoner-petitioner

(in Crl. Misc Case 40470 of 2022)

Judgment on 16.06.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman
Tribunal-1, Jashore (the Tribunal) on trial found the
condemned-prisoner guilty of offence under section 11(Ka)

of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) in Nari-o-Shishu Case 211 of 2008 and sentenced him thereunder to death with fine of Taka 20,000/- and sent this reference to this Division under section 29 of the Ain, 2000 read with section 374 of the Code of Criminal Procedure (the Code) for its acceptance. The condemned-prisoner subsequently filed the aforequoted jail appeal and obtained Rule in the Miscellaneous Case filed under section 561A of the Code challenging the judgment and order of conviction and sentence passed in the aforesaid case. Therefore, these have been taken together and are being disposed of by this Judgment.

The facts of the prosecution case, in brief, are that Md. Samsur Rahman, father of deceased Mst. Sabura Begum (the victim) lodged a First Information Report (FIR) with Avoy Nagar police station at about 18:30 hours on 21.01.2008 alleging, inter alia, that he gave his victim daughter in marriage with accused 1 Abdullah on 13.04.2007. After marriage, the husband (accused 1), his father Injil Sarder (accused 2) and mother Mst. Marjina Begum (accused 3) started creating pressure upon the victim for dowry of Taka

40,000/-. He tried to make them understand about their inability but failed. In the meantime, his victim daughter became pregnant of 8 months. Accused 1 came to informant's house with the victim on 06.01.2008 and demanded dowry to him. He again expressed his inability and consequently the accused returned to his house with the victim. But the accused persons continued torturing her daughter for dowry. The accused assaulted her daughter at about 3:00 pm on 15.01.2008 for dowry. They tied her hands, gagged the mouth with cloths, wrapped her with a quilt, poured kerosene oil on her and setting her on fire left the house closing the door. The fire spread-out, burnt the roof of the house. The neighbours rushed there, cut the ties of victim's hands and rescued her in dying condition. They sent her to Khunla 250 Bed Medical Hospital for treatment. There his daughter gave birth to a dead male child on 16.01.2008. The victim had been lying in the hospital with burn injury on her person who might have died at any time. Witnesses Rahila Begum, Abdullah Sheikh and Abdur Rahman had seen the occurrence. He was busy with the treatment of his daughter and as such the lodgment of the FIR was belated.

The aforesaid FIR was registered as Avoynagar Police Station Case 15 dated 21.01.2008 under sections 4(2) and 30 of the Ain, 2000 against three accused.

PW7 Sheikh Humayun Kabir, a Sub-Inspector of police investigated the case. In course of investigation he examined some witnesses, recorded their statements under section 161 of the Code, arranged for recoding statement of the victim. A Judicial Magistrate PW 8 recorded the statements on 22.01.2008 under section 22 of the Ain, 2000. In the statement she implicated the condemned-prisoner in the similar manner as described in the FIR. Subsequently, the victim died in the Upazila Health Complex on 28.01.2008. Thereafter the doctors held postmortem examination of the deceased. Police then submitted a charge sheet on 05.08.2008 under sections 4(1), 11(Ka) and 30 of the Ain, 2000 against all the accused named in the FIR. However, on further investigation the IO submitted a supplementary charge sheet on 26.08.2008 under the selfsame sections of the Ain, 2000.

The record of the case was then transmitted to the Tribunal for holding trial. The Tribunal on 11.11.2008

framed charge against the condemned-prisoner under sections 4(1) and 11(Ka) of the Ain, 2000. The charge so framed was read over to the accused, to which he pleaded not guilty and claimed to be tried. The charge in respect of other 2 co-accused could not be read over to them owing to their aboscontion.

During trial, the prosecution examined 8 witnesses out of 18 cited in the charge sheet. The witnesses were cross-examined by the defence. However, the State Defence Lawyer appointed for other 2 co-accused adopted the cross-examination of the learned Advocate for accused 1. The defence case as it transpires from the trend of cross-examining the prosecution witnesses is of innocence and that accidentally the fire caught the victim from kitchen and finally she died.

After conclusion of examination of the prosecution witnesses, the condemned-prisoner could not be examined under section 342 of the Code owing to his aboscontion. However, the learned Judge of the Tribunal found the condemned-prisoner guilty of offence under section 11(Ka) of the Ain, 2000 and sentenced him thereunder to death with

fine of Taka 20,000/- but acquitted other 2 accused from the charges levelled against them.

Subsequently, police arrested the condemned-prisoner on 17.04.2022 and then he filed the aforesaid jail appeal. At the same time he filed an application under section 561A of the Code challenging the legality and propriety of the judgment and order of conviction and sentence passed against him by the Tribunal. Accordingly, the Rule in aforesaid criminal miscellaneous case was issued.

Mr. Mohammad Imam Hossain (Tarek), learned Deputy Attorney General takes us through the materials on record and submits that this is a wife killing case. The victim (wife) died in the house of her condemned-prisoner husband while she was under his custody. According to the provisions of section 106 of the Evidence Act in such a case, the husband has to explain the cause of her death. As per the settled proposition of our Apex Court in numerous cases the condemned-prisoner was obliged to explain as to how his victim wife met with death. He refers to the cases of Mamun alias Mamun or Rashid (Md.) vs. the State, 74 DLR (AD) 30 and Rajia Ahmed alias Raja Miah vs. the State, 21 ADC 661

and relied on the principle laid therein. He refers to the medical certificate Exhibit-6 issued by PW6 and autopsy report Exhibit-3 issued by PW4 and submits that in this case it is admitted fact that the victim died in the result of burn injury. Her body was 70% burnt. The aforesaid two doctors proved burn injuries on victim's body resulting her death. Since PW5 rescued the victim from the house of the condemned-prisoner and sent her to hospital and the explanation of the condemned-prisoner by way of cross-examining the witnesses is found not convincing, the irresistible conclusion would be that none but he is the killer of his wife. The chain of circumstances coupled with the medical evidence on record is complete and unbroken. The learned Judge of the Tribunal correctly appraised the evidence of the witnesses and sentenced the condemned-prisoner to death. The reference, therefore, would be accepted, the jail appeal would be dismissed and the Rule issued in the criminal miscellaneous case be discharged.

Md. Tasaddar Raihan Khan, leaned Advocate for the condemned-prisoner in Criminal Miscellaneous Case 40470 of 2022 and appellant in Jail Appeal 133 of 2022 takes us

through the materials on record, particularly the FIR, the statements made by the victim recorded under section 22 of the Ain, 2000, the evidence of witnesses, the medical certificate and the post mortem examination report and submits that after the occurrence the condemned-prisoner did not abscond. He was with the victim in the hospital and received the body of new born dead child. After lodgment of the FIR he voluntarily surrendered before the Court on 23.04.2008 and was sent to jail. Since the condemned-prisoner did not abscond and faced trial, therefore, it is to be presumed that he is not guilty of the offence charged with. He then submits that the fact as stated in the FIR that the hands and mouth of the victim were tied by the condemned-prisoner has not been proved because none of the witnesses in evidence stated the said fact. The existence of kerosene oil which was alleged to have been used for setting fire on the victim was not also proved by the seizing almos. The alleged dying declaration made by the victim cannot be believed because it was disclosed by the victim at the belated stage. He refers to the cases of Mahabur Sheikh alias Mahabur vs. State, represented by the Deputy Commissioner,

Narail, 67 DLR (AD) 54 and State vs. Shahin and others, 16 BLC 772 and relying on the principle laid therein submits that the prosecution hopelessly failed to prove that the condemned-prisoner was in his house at the time of occurrence. He further submits that since 70% of the victim's body was burnt and as such he was not able to speak and cannot disclose the fact to anyone. The victim's statement is found doubtful which cannot be the sole basis of conviction. The learned Judge of the Tribunal travelled beyond the evidence and materials on record and convicted the petitioner sentencing him to death which cannot be sustained in law.

To dispose the reference as well the Rule and jail appeal, let us have a blink on the evidence of prosecution witnesses.

PW1 Sukkur Ali, the uncle of the victim and brother of the informant stated that accused Abdullah came to the house of informant at about 3:00 pm on 06.01.2008 with victim Sabura. He demanded Taka 40,000/- as dowry from him and consequently there was an altercation between them. His brother refused to pay the amount and consequently the accused went home with the victim. The accused tied the

hands and legs of her niece at about 3:00 pm on 15.01.2008. He gagged her mouth with cloth, wrapped her with a quilt, poured kerosene oil on her body and set fire. The neighbours came forward and rescued the victim. The victim made a statement to the learned Magistrate which was recorded under section 22 of the Ain, 2000. Subsequently, the victim died. The informant died after lodgment of the FIR. He proved the FIR exhibit-1 and identified the signature of his brother therein. In cross-examination he stated that he did not go to the hospital. He deposed in the Court as per the version which he heard from others. He told the fact to the IO that accused went to the house of his brother on 06.01.2008 and demanded dowry. He could not remember whether he told the IO of gagging the victim's mouth with cloth. He denied the suggestion that the victim was caught fire in the kitchen and consequently she died. He further denied that accused did not pour kerosene oil on the person of victim and set fire.

PW 2 Mst. Rahima Begum stated that the occurrence took place 7/8 years ago. The house of her father was situated at Shingari village where the occurrence took place. She went to her parents' house on the day of the occurrence.

She heard from her sister Harisun that accused Abdullah had tied the hands and legs of the victim, poured kerosene oil on her person and set fire. Hearing the said news, she rushed to the house and found the victim lying on banana leaf with burn injury. The victim was taken to 250 bed Hospital, Khulna. After 3 days of occurrence, the victim gave birth to a dead child and after some days she died. In cross-examination she stated that she returned her husband's house after making *asar* prayer. She went to the occurrence house at noon. She found the victim lying on the banana leaf with burn injury. She knew nothing more. Police did not record her statement under section 161 of the Code. She denied the defence suggestion that the victim died due to accidental fire caught from kitchen.

PW 3 Md. Abdullah, a cousin of the victim stated that the occurrence took place at about 3:00 pm on 15.01.2008. He received the news from Rahima Begum that the victim was set on fire. He rushed to the house of the victim's husband and found nobody there. He found the house almost burnt. He heard the occurrence from the tapper of date palm tree that he and other men broke the door and rescued the

victim with burn injury and sent her to Fultala hospital. He went to the hospital. After one day victim Saburan was shifted to the hospital at Khulan but after three days she was again shifted to a private clinic. But before that she was taken to the Magistrate Court with ambulance and her statement was recorded. The victim died there after 3/4 days of taking place the occurrence. Police held inquest on the dead body. He proved the inquest report exhibit-2 and identified his signature thereon. In cross-examination he stated that he received information at about 5:00 pm and thereafter reached the occurrence village. He found accused Abdullah absent there. He could not remember whether police examined him under section 161 of the Code. He saw the victim with burn injury. He denied the defence suggestion that the victim was burnt due to the accidental fire which caught in the house. He denied all other material suggestions put to him.

PW 4 Mohammad Salahuddin Khan, was a doctor of Jashore General Hospital and a member of the Board who held autopsy on the victim on 28.01.2008. He found the following injuries on the dead body-

1. Extensive burn of various depth (Mostly deep) of 70% over whole of the lower limbs, lower abdomen, lower part of both breast.
2. Early stage of granulation tissue formation noted over front of the neck, chin, around the trunk, both scapular region, upper part of the inter scapular region, back of right side of waist, both lips, various parts of face, lateral aspect of the right thigh, right fore-arm; after dissection no subcut congestion found.

Opinion: In my opinion, death was due to cardio respiratory arrest due to chronic debilitation condition mentioned above which were *ante mortem*.

He proved the autopsy report exhibit-3 and identified his signature and the signatures of board members thereon. In cross-examination by the defence he stated that the age of injury was not mentioned in the postmortem report. At the time of holding autopsy he found 70% burn injury. He denied the suggestion that he did not do the post mortem examination correctly.

PW 5 Halim Sheikh, a tapper (গাছি) stated that the occurrence took place at about 3:00 pm on 15.01.2008 in the house of accused Abdullah. At the time of occurrence, he went there to dress date palm trees in order to collect juice therefrom while he climbed on a date palm tree he found fire and smoke in the house of accused Abdullah. He with other men went there and started spilling water to control the fire. He found a groaning/moaning sound inside the house. He entered there and found the victim with burn injury. He brought her out of the house. Subsequently, the victim and her issue in the womb died in Khulan Hospital. In their family life there was disagreement between accused Abdullah and the victim. In cross-examination by the defence he stated that he was dressing the date palm tree which was about 50 cubits' distance from the occurrence house. Police did not examine him but subsequently he stated that he told the SP that Saburan was caught on fire and consequently she died.

PW 6 Syed Mosharraf Hossain, an Inspector of Police and the Investigating Officer (IO) stated that during investigation he visited the place of occurrence, prepared

sketch map and index, and recorded the statements of witnesses under section 161 of the Code. He arranged to record the statement of the victim under section 22 of the Ain, 2000. The victim died on 28.01.2008. He held inquest and prepared a report and sent the dead body to the morgue through constable for holding autopsy. He collected the report and finding allegation against the accused *prima face* to be true submitted a charge sheet against all the accused under sections 4(1),11(Ka) and 30 of the Ain, 2000. Subsequently, he submitted a supplementary charge sheet under the selfsame sections. He proved FIR form exhibit-4, the sketch map with index exhibit-5 and inquest exhibit-2. In cross-examination by the defence he stated that the houses of Islam and Imran were situated at the western side of the occurrence house but he did not cite them as witnesses. The house of Rafique was situated at the eastern side of the PO house but he did not cite him as witness. He did not seize the quilt, cloths and burning roof of the house as alamots. He denied the suggestion that he did not record the statements of Rahima and Halima under section 161 of the Code. He further denied that witness Abdullah and Sukur Ali did not

make any statement to him. He further denied the defence suggestion that at the time of cooking in the kitchen the victim was caught fire and died of it or that the accused persons did not set her on fire. He further denied that the accused did not wrap the victim with quilt and burnt her to death.

PW 7, Md. Moinuddin Mollah, the than RMO of Khulna Medical College Hospital stated that as per instruction of the superintendent of the hospital he examined the record kept in the hospital and issued the medical certificate of victim Sabura finding 48% of her body burnt. In the certificate the injury on the person of the victim were as under-

Site-Different parts of the body.

Shape-Burn

Size-48% burn injury

The victim was taken to their hospital on 15.01.2008 from Avoy Nagar Health Complex. He referred the victim to Dhaka Medical College Hospital on 20.01.2008. As per injury certificate the patient delivered a stillborn baby at about 1:30 am on 16.01.2008 which was handed over to the

baby's father, paternal grandfather, mother and maternal grandmother. The age of injuries were 8 hours back and grievous in nature. He proved the injury certificate exhibit-6 and identified his signature thereon. In cross-examination by the defence he stated that nobody identified the victim in the hospital. He himself did not examine the victim but issued certificate as per the record of the hospital. He denied that the injury certificate was not correct.

PW8 Sheikh Humayun Kabir, an Additional Chief Judicial Magistrate posted to the Judiciary of Jashore at the material time recorded the statement of victim under section 22 of the Ain, 2000. He stated that he recorded the statement at about 2:15 hours on 21.01.2008. He proved the statement exhibit-7 and identified his signature thereon. He read over the statement to the victim who put her thumb impression on it. In cross-examination by the defence he stated that SI Syed Mosaraf Hossain brought the victim to him through a jeep car. The victim did not tell him the time and date of occurrence. The victim was in the car while he recorded her statement. He denied the defence suggestion that the victim made statement at the instruction of police.

These are all evidence of prosecution witnesses.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocate for the condemned-prisoner and petitioner of the miscellaneous case. We have also gone through the materials on record, the provisions of section 22 of the Ain, 2000, provisions of sections 32(1) and 106 of the Evidence Act and *ratio* of the cases cited by the parties.

It appears that the occurrence took place at about 3:00 pm on 15.01.2008 in the house of the condemned-prisoner. PW5 found fire and smoke on the roof of the occurrence house. He and others rushed there and tried to put off fire by spilling water on the house. The above factum means that the fire caught almost the whole house of the condemned-prisoner.

It has been alleged in the FIR that the condemned-prisoner and his parents demanded dowry of Taka 40,000/- to the informant. The informant expressed his inability to meet up the demand the condemned-prisoner and his family members started creating pressure on the victim for it. The

condemned-prisoner assaulted the victim at about 3:00 pm on 15.01.2008 for it. He tied her hands and legs, gagged her mouth and pouring kerosene oil on her body set fire. The condemned-prisoner then locked the door from outside and left the house. The neighbours including PW5 rushed there, entered into the occurrence house, cut the ties of the hands of the victim, rescued her and sent her to the hospital. The above fact of demand of dowry by the condemned-prisoner and tying the hands and legs of the victim and setting her on fire after pouring kerosene oil in the time of occurrence and day has not been corroborated by the evidence of witnesses both oral and documentary. None of the witnesses including PW5 who rescued the victim from the PO house told that victim's hands, legs and mouth were tied or he entered into the house by breaking the door. Although charge sheet was submitted and charge was framed against the condemned-prisoner under sections 4(1) and 11(Ka) of the Ain, 2000 but the IO did not seize any alamots from the house even wearing apparels of the victim and send it to the expert to prove the existence of kerosene oil or corrosive substance which was alleged to have been used in committing the

crime. The doctor who examined the victim in the hospital or attendants of the victim did not tell that they found smell of kerosene oil from the body of the victim. The autopsy report exhibit-3 do not disclose that the death was homicidal or accidental or suicidal in nature although they opined that the death was due to cardio respiratory arrest due to debilitation condition mentioned above which were ante mortem. It means it was subsequent result of burn injury but does not mean that it was homicidal. He kept open to prove the reason of death in evidence. The defence suggested the prosecution witnesses that the victim was caught fire from kitchen which was accidental. Considering the nature of burn injury (upward) and all other aspect that the house was almost burnt, we find every possibility that it may be accidental as claimed by the defence.

The demand of dowry as claimed by the prosecution has also not been corroborated by the evidence of witnesses. PW 1 in his evidence although stated that the condemned-prisoner demanded dowry from the informant but in cross-examination he stated, “আমি যা জবানবন্দিতে বলেছি উহা আমার শোনা কথা।” To prove the charge of offence under sections 4(1) of

the Code, existence of corrosive substance used in the crime and under section 11(Ka) of the same Ain demand of dowry and committing murder for it are to be proved otherwise the conviction and sentence in either of the sections cannot be passed. In this case the prosecution alleges that the condemned-prisoner murdered the victim by setting fire on her body after pouring kerosene oil which they have hopelessly failed to prove. However, if the prosecution can prove that the victim was killed by the condemned-prisoner in that case the conviction may be altered under section 302 of the Penal Code for murder and the accused may be sentenced for it.

The learned Deputy Attorney General submits that this is a wife killing case and onus heavily lies upon the condemned-prisoner to explain how his wife met with death while she was under his custody which is totally absent in this case. The defence failed to make out any case that he was not in the house at the material time, no suggestion to that effect was put to the witnesses. He relied on the cases reported in 21 ADC 661 and 74 DLR 36. Yes it is well settled by our Apex Court in numerous cases that under

section 106 of the Evidence Act the onus shifts upon the condemned-prisoner husband to explain the death of his wife while she was under his custody. In both the cited cases it is found that the occurrence took place at night. It can be safely presumed that at night husband and wife would be under the same roof. But in the instant case, the occurrence took place at about 3:00 pm *i.e.*, in the day. Generally an accused has no obligation to explain his position as to the cause of death of any victim. But in a case where the allegation is of wife killing onus squarely lies as per the provisions of section 106 of the Evidence Act upon the husband to explain the death of his wife. In the case of State vs. Md. Sadequl Islam Tusar and others, 63 DLR (AD) 134 it has been held-

“As a husband the accused was to explain as to how the victim met her death but the minimum that the prosecution must prove is that the husband was present in the house at the time of occurrence.”

In this case, none of the prosecution witnesses told that the condemned-prisoner entered into the house before the occurrence took place or he went out from the house after committing the offence. Therefore, the above requirement of the prosecution is found absent in this case.

Therefore, it remains only the statement of victim recorded by PW8, a Judicial Magistrate, under section 22 of the Ain, 2000. The provisions of section 22 of the Ain, 2000 provides that a learned Magistrate can record statement of a witnesses or victim, if IO or anyone else who was entrusted with investigation finds it necessary. The Magistrate was examined as PW8 and the statement of the victim was exhibit-7. Although section 22 provides recording of statement of the victim who was acquainted with the fact of the case and it can be used against an accused as evidence but it was provided in that section “তবে শর্ত থাকে যে, শুধুমাত্র উক্ত সাক্ষীর সাক্ষ্যের উপর ভিত্তি করিয়া ট্রাইবুনাল অভিযুক্ত ব্যক্তিকে শাস্তি প্রদান করিতে পারিবে না।”. The above law prescribe that such statement of victim recorded under section 22 of the Ain cannot be the sole basis of conviction unless its corroboration is found from other sources. Since the victim died after making the statement it is to be treated as a dying declaration. Section 32 of the Evidence Act provides for recording of dying declaration and use of it against the accused. In the case of *Alais Mia @ Ilias Miah vs. The State*, 20 BLC (AD) 341 our Appellate Division held that if a dying declaration is found

true and genuine, the Court can safely rely upon the same as it provides good basis for conviction. But as there always remains the possibility of misusing the provisions relating to dying declaration, court always scrutinizes it meticulously and until it seems to the Court that the dying declaration is trustworthy, declines to solely rely upon it to award a conviction to the accused persons. In the case of *Sk. Shamsur Rahman @ Shamsu vs. the State*, 42 DLR (AD) 200 it has been held-

“A dying declaration although a piece of substantive evidence has always been viewed with some degree of caution as the matter is not liable to cross-examination. It stands on the same footing as any other piece of evidence and has to be judged in the light of surrounding circumstances and common human experience. When there is a record of such statement of the deceased the court has to satisfy itself, in the first place, as to the genuineness of the same keeping in view all the evidence and circumstances in which the statement of the deceased was said to have been recorded.”

In the case of *State vs. Shahin and others*, 15 BLC (AD) 140 it has been held-

“The dying declaration was disbelieved considering the physical capability of the victim of making such dying

declaration and further the facts that the victim was admitted in the hospital for last seven days but did not disclose anything to the attending doctor, nurse or ward body.”

In the case in hand, we find that the occurrence took place at about 3:00 pm on 15.01.2008 and then and there she was sent to the hospital. The FIR was lodged on 21.01.2008 but even in the FIR the informant did not state that the victim told him the fact of setting her on fire by the condemned-prisoner. He made the statement to PW8 on 22.01.2008 *i.e.*, after 7 days of the occurrence. It is found that he was shifted to different hospitals up to 28.01.2008 but for 13 days before her death she never disclosed to anyone else either to her relatives or to the neighbours or to the doctors or nurses or to the ward boys of the hospital. We further do not find in evidence including evidence of PW5 who first rescued her, or in medical evidence that her hands and legs were tied. No such mark was found in the medical report exhibit-6 and autopsy report exhibit-3. The use of kerosene oil in setting fire was not proved. Receiving 74% burn injury on the person of the victim it was almost difficult for her to make any statement. Moreover, the statement was made after 7 days of the occurrence. Therefore, we must keep such

isolated statement recorded under section 22 of the Ain, 2000 out of consideration to sustain the conviction basing on it.

The condemned-prisoner absconded after conclusion of examination of prosecution witnesses and before examining him under section 342 of the Code. But he took the dead body of his new born son from hospital as it appears in exhibit-6 and voluntarily surrendered in the Court which also proves his fairness. In the jail appeal we find some explanation for his absconding at the last stage of the trial. Absconding by itself is not the proof of guilt unless the prosecution prove the charge against an accused beyond reasonable doubt. Yes we find that IO did not perform his job in the investigation of the case rather very casually he did it and submitted the charge sheet. Even he did not take any step to seize the alib or incriminating articles related with the alleged crime. We also find that the case was conducted by the learned Advocate for the condemned-prisoner very casually and the material suggestions were not put to the witnesses. But those do not help the prosecution to prove the charge against the condemned-prisoner beyond reasonable doubt.

In view of the discussion made hereinabove, we find no legal evidence against the condemned-prisoner to sustain the conviction. Accordingly, the reference is rejected. The Rule issued in Criminal Miscellaneous Case 40470 of 2022 is hereby made absolute. The judgment and order of conviction and sentence passed by the learned Judge of the Tribunal convicting the condemned-prisoner under section 11(Ka) of the Ain, 2000 and sentencing him thereunder to death is hereby set aside. The condemned-prisoner is acquitted of the charge levelled against him.

The concerned authority is directed to release the condemned-prisoner Md. Abdullah, son of Injil Sarder of Village-Shingari, Police Station-Avaynagar, District-Jashore from jail forthwith, if not wanted in any other cases. The jail appeal is accordingly disposed of.

Communicate this judgment and send down the record of the Tribunal.

K.M. Rasheduzzaman Raja, J.

I agree.