

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

Present:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 05 of 2019

The State

...petitioner

-Versus-

Subir Kumar Roy alias Babu and 3 others

...condemned-convicts (Absconding)

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-Amin Siddiqui, Assistant Attorney Generals

...for the State

Mr. Md. Hafizur Rahman Khan, Advocate

...appointed as a State Defence Lawyer

**Heard on: 14.06.2026, 15.06.2026, 16.06.2026
and 17.06.2026**

Judgment on 18.06.2026

K.M. Rasheduzzaman Raja, J:

This reference under section 29 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) read with section

374 of the Code of Criminal Procedure is (the Code) for confirmation of the death sentence awarded under sections 11(Ka) and 30 of the Ain, 2000 upon the accused persons by the learned Judge, Nari-o-Shishu Nirjatan Daman Tribunal-1, Sirajganj (the Tribunal) in Nari-o-Shishu Case No. 535 of 2007 arising out of GR No. 22(Ka)/2001 corresponding to Sirajganj P.S. Case No. 12 dated 15.01.2001 by the judgment and order passed on 22.01.2009.

The prosecution case, in short, is that P.W.1 Gopinath Biswas married off his daughter victim Sumi Rani to accused Subir Kumar Roy alias Babu. The accused Subir Kumar Roy alias Babu and the other accused started putting pressure upon his daughter for dowry of Taka 5,00,000/- since after marriage. He paid Taka 2,50,000/- to the accused persons but they continued persecution upon his daughter for the remaining amount of dowry. Therefore, he paid another amount of dowry of Taka 50,000/- to accused Sunil Kumar Roy on 29.06.2000. Yet the accused persons continued persecution on his daughter and following the refusal of his daughter to pay the further amount of dowry, the accused persons killed his daughter after

beating her severely at around 7.00 p.m. on 12.01.2001 at their residence. Sending the dead body to Sirajganj Sadar Hospital accused Sunil Kumar Roy and others went his home and informed him that his daughter was seriously ill and got admitted in hospital. He along with his wife and other relatives went to Sirajganj Sadar Hospital and found his daughter lying dead having injuries on several parts of her body. On such occurrence he lodged the First Information Report (FIR) with Sirajganj Sadar Police Station.

Before filing of the FIR by P.W.1 Gopinath Biswas on 17-01-2001 another FIR was filed on the occurrence by Sub Inspector (S.I.) Monirul Islam of Sirajganj Police Station (PS) on 15-01-2001 whereupon Sirajganj PS Case No. 12 dated 15.01.2001 was registered against the accused persons. Police investigated both the FIR and submitted charge sheet against the accused persons under Sections 11(Ka) and 30 of the Ain, 2000. The learned Magistrate sent the case to the Tribunal who took cognizance of the offence and registered as Nari-o-Shishu Case No. 535 of 2007. The Tribunal framed charge against the

accused persons under sections 11(Ka) and 30 of the Ain, 2000 but it could not be read over to them as they were absconding.

The prosecution has examined 11 witnesses to bring home the charge brought against the accused persons. But after trial the accused persons could not be examined under Section 342 of the Code as they continued the absconsion.

The defence case as it transpires from the trend of cross examination of the prosecution witnesses is that of innocence. The accused never persecuted the victim demanding dowry. She died of getting injured falling upon *Khat* of the bed room going to commit suicide by hanging.

After recording of evidence and hearing the Public Prosecutor and the state defence lawyer the Tribunal found accused Subir Kumar Roy guilty under Section 11(Ka) and other accused Sunil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy under sections 11(Ka) and 30 of the Ain, 2000 and sentenced each of them thereunder respectively to suffer death penalty by the impugned judgment and order whereupon this reference has been made.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General appearing for the state submits that the prosecution has succeeded in adducing sufficient evidence to prove the charges brought against the accused persons. Out of them P.W.4 Ratna Kundu and P.W.5 Madhobi Kundu are the independent witnesses of the locality and they are also neighbours to the house of the accused wherefrom the dead body of the victim was recovered. Both the independent and disinterested witnesses have found the dead body lying in the bed room of accused Subir Kumar Roy alias Babu. Since the dead body was recovered from the bed room of the husband of the victim and in the house of the accused persons, therefore, they are to explain the cause of death of the victim which they have utterly failed. Moreover, absconsion of the accused persons in a body also supports their guilty mind. Mr. Kabir finally submits that the prosecution has been able to prove the case beyond reasonable doubt and, therefore, the reference would be accepted. He has relied on the principles enunciated in the cases of State Vs. Md. Nazrul Islam, 21 BLC 741; Mahabur Sheikh alias Mahabur Vs State, 67 DLR (AD) 54; State Vs Rafiqul

Sheikh and others, 72 DLR 334 and Abul Hossain Khan Vs. State 8 BLC (AD) 172 in support of his submissions.

On the other hand, Mr. Md. Hafizur Rahman Khan learned Advocate appearing for the absconding convicts as the State Defence Lawyer has opposed the reference submitting that there are lapses in treating the convicts as absconding because procedures were not followed properly in declaring them absconding. Their absconsion was not published and notified in the well circulated National Dailies. Although three accused persons were in bail but upon found them absent subsequently, their sureties were not called upon to produce them before the Tribunal. Apart from that, the prosecution could not prove the demand of dowry by producing sufficient evidence. Finally, Mr. Khan submits that the State Defence Lawyer could not defend the accused persons properly during trial because of his inexperience and, therefore, he sought for sending the case on remand for fresh trial giving the accused persons opportunity to defend them before the Tribunal. Mr. Khan relied on the ratio of the cases of State Vs. Hanif Gani, 45 DLR 400 and Shahin Ahmed Vs. State, 12 BLC 165.

We have heard the learned Deputy Attorney General and the State Defence Lawyer and perused the materials on record. Let us examine the propriety of the submissions of the learned counsels as made above.

P.W.1 Gopinath Biswas, the informant has deposed that he married off his daughter Sumi Rani to accused Subir Kumar Roy alias Babu. But just after the marriage, the accused persons started putting pressure upon her for dowry of Taka 5,00,000/- and he paid Taka 2,50,000/- to the accused. He subsequently paid dowry of Taka 50,000/- to the accused. The accused persons continued torturing his daughter for the remaining amount of dowry and as his daughter failed to satisfy the demand of dowry, the accused persons killed her after beating severely at around 7.00 p.m. on 12.01.2001 at their residence. Sending the dead body to Sirajganj Sadar Hospital accused Sunil Kumar Roy along with others went his home and informed him that his daughter was seriously ill and got admitted in hospital. On such information, he along with his wife and other relatives went to Sirajganj Sadar Hospital and

found his daughter Sumi Rani lying dead there. Thereafter he lodged the FIR.

In cross examination he has stated that although he went to Sirajganj at 9.00 p.m. on 12.01.2001 but he lodged FIR on 17.01.2001. He, however, has no direct knowledge about the death of his daughter. He has denied that his daughter was ill tempered or she died of getting injured falling on the *Khat* while going to hang herself from the ceiling fan.

P.W.2 Nirmol Biswas has deposed that the informant is his paternal uncle. His uncle gave Taka 50,000/- dowry to the accused persons to satisfy their demand of dowry. The accused persons killed the victim at around 7.00/8.00 p.m. on 12.01.2001 at their house persecuting her for realization of the remaining amount of Taka 2,00,000/- dowry. They got information remaining at Tangail and going to Sirajganj Sadar Hospital they found the victim lying dead having injuries on her body. In cross examination he has stated that the accused were living in a rented house at Sirajganj. As the accused persons threatened them when they went to Sirajganj, they returned Tangail on that day.

P.W. 3 Mohammad Ali has deposed that the informant is his neighbour and he knew Sumi Rani who got married with accused Subir Kumar Roy. The accused persons demanded dowry of Taka 5,00,000/- out of which the informant paid Taka 2,50,000/-. The accused persons informed the informant that his daughter got admitted in hospital. He went to Sirajganj Sadar Hospital along with the informant and found the victim lying dead having injuries on her body. The accused persons killed the victim beating severely for realization of dowry.

P.W. 4 Ratna Kundu, a neighbour of the accused persons, has deposed that she knew the victim and the accused persons as they live contiguously. She heard hue and cry at around 7.00 p.m. on 12.01.2001 in the house of the accused and going there found Sumi Rani, wife of Subir Kumar Roy, lying dead in their house. Later she came to know that Subir Kumar Roy killed his wife. In cross examination she has stated that she found Sumi Rani lying dead inside the house but she did not know who killed her and how.

P.W. 5 Madhobi Kundu, another neighbour of the accused persons, has deposed that hearing commotion she went to the house of the accused persons at around 7.00 p.m. on 12.01.2001 and found Sumi Rani lying dead in the house of accused Subir Kumar Roy. Later on she came to know that she was killed. In cross examination she has stated that she did not know how the victim died.

P.W. 6 Goshto Bihari Kundu was tendered by the prosecution but the defence declined to put him under cross examination.

P.W. 7 Chandan Kumar Bhowmick, a brother of the informant, has deposed that deceased Sumi Rani was his niece who got married with accused Subir Kumar Roy alias Babu. The accused persons killed Sumi Rani at around 7.00 p.m. on 12.01.2001 at their house on her failure to satisfy their demand of dowry. In cross examination he has stated that accused Sushil Kumar Roy was an M.B.B.S. doctor and he was a govt. doctor and accused Monaranjon Roy was their paternal uncle. He did not witness how his niece Sumi Rani died. He has denied that his niece was a mental patient or she committed suicide by

hanging or she got injured when the inmates of the house brought down her from hanging resulting in her death.

P.W. 8 S.I. Bishnu Brata Mollick, one of the investigating officers (I.O.), has deposed that receiving the charge of investigation he perused the investigation works of the previous I.Os., visited the place of occurrence and found the sketch map and index prepared by earlier I.O. correct. He recorded statements of the witnesses under section 161 of the Code and submitted charge sheet against the accused persons under sections 11(Ka) and 30 of the Ain, 2000 read with sections 302/201 of the Penal Code.

In cross examination he has stated that he was I.O. No. 7 in the case. Six other I.Os. investigated the case earlier. He perused the U.D. case record, inquest report and other materials properly. He has denied that he submitted false charge sheet against the accused persons.

P.W. 9 Monaranjon Saha has deposed that he knows the informant who married off his daughter to accused Subir Kumar Roy. The accused persons used to persecute deceased Sumi Rani demanding dowry. As Sumi Rani refused to pay dowry of

Taka 2,00,000/- the accused persons killed her beating severely. He with the informant and his relatives went to Sirajganj Sadar Hospital getting information that the daughter of the informant was sick and got admitted in hospital. They found Sumi Rani Roy lying dead in the chamber of accused Dr. Sushil Kumar Roy at Sirajganj Sadar Hospital. On queries of informant Gopinath Biswas regarding the death of his daughter the accused persons did not reply. They found injuries on the body of the victim and blood on her wearing cloths. The informant wanted to carry the dead body to Tangail but the accused persons threatened them and cremated the dead body at Sirajganj. Accused Monaranjon Roy filed a GD in police station with false information about the death of the victim.

P.W. 10 Dr. Md. Akramuzzaman has deposed that receiving the dead body at 10.00 a.m. on 13.01.2001 from Constable Abul Hashem he held autopsy on the dead body of Sumi Rani Roy as a member of the Medical Board in presence of the other members and found the following injuries on her body:

1. One abrasion on the right side neck measuring about $1'' \times \frac{1}{4}''$
2. One abrasion on the left side neck measuring $1\frac{1}{2}'' \times \frac{1}{2}''$
3. One faint blackish area on the right lumbar region of abdomen measuring $4'' \times 3''$

On dissection huge amount of blood and blood clots found in the abdominal cavity (right). Right kidney with associated structures found injured.

Huge haematoma surrounded the right kidney which resist washing.

Ascending colon and coils of intestine found injured.

Opinion: As to the cause of death was due to haemorrhage and shock as a result of above mentioned injuries mainly injury No. 3 which was antemortem and homicidal in nature.

In cross examination he has stated that he did not mention the age of injury as there was no column in the form. He denied that injury No. 3 could be caused falling upon *khat* while

bringing down the body from hanging. He has denied that he prepared a false report without following the medical procedure.

P.W. 11 Shyamol Kumar Saha has deposed that the accused persons are the members of a joint family. The informant is his neighbour who married off his daughter Sumi Rani to accused Subir Kumar Roy. The informant told him on 12.01.2001 that his daughter was at Hospital and he accompanied the informant to Sirajganj Hospital with other members of the family of the informant. They found the dead body of Sumi Rani lying on a stretcher in the hospital in the room of accused Dr. Sushil Kumar Roy. They found several injuries on the body of the deceased. Upon found such injuries, they suspected that the accused persons killed the victim for her failure to give them dowry of Taka 2,00,000/-. In cross examination he has stated that they went to police station from the hospital and disclosed the occurrence to the Officer-in-Charge. But without paying any heed to them the daroga of the police station drove them away and they returned home from there.

P.W. 12 Mohammed Abdul Jalil, the then S.I. of Sirajganj Police Station, has deposed that before recording of this case S.I. Monirul Islam investigated a U.D. case and, thereafter he lodged an FIR on the occurrence. Father of the victim has filed the subsequent FIR. Charge sheet was submitted under sections 302/201 of the Penal Code upon the FIR filed by S.I. Monirul Islam. But after lodgment of the subsequent FIR both the FIRs were investigated together by him. Receiving the charge of investigation, he visited the place of occurrence, prepared sketch map, index and seized alamot from the house of the accused Subir Kumar Roy. He recorded statements of the witnesses under section 161 of the Code and after investigation submitted a charge sheet under sections 302/201 against the accused persons. In cross examination he has stated that no name was mentioned as accused in the FIR of S.I. Monirul Islam. He seized the broken door from the room of accused Subir Kumar Roy. Accused Sushil Kumar Roy was a doctor and Sunil Kumar Roy a college teacher. He has denied that he submitted false charge sheet or the victim died of getting

injured behind her back falling upon the *khat* while she was bringing down from hanging.

On perusal of the above depositions of the witnesses of the prosecution it appears that almost all the witnesses have deposed supporting that the victim was tortured to death by the accused persons at their house on her failure to satisfy the demand of dowry. Although the accused took defence that the deceased died of getting injured falling on the *khat* of their bed from the hanging point of electric fan while going to commit suicide but P.W. 10 Dr. Md. Akramuzzaman, who held the autopsy on the dead body has denied such probability. Moreover, the defence case is not straight in nature. Other than the above version, sometimes it has been suggested that the deceased committed suicide and while the dead body was bringing down from the ceiling fan it fell on the *khat* of the bed room resulting in injury No. 3 as mentioned in postmortem report, Ext. 2. So, the defence is not certain whether the dead body got injured or the victim received injury when she was alive. Be that as it may, we have found that the defence case has reasonably been negated by the Medical Evidence i.e. the

postmortem report wherein it has been opined that injury No. 3 was antemortem and homicidal in nature.

Out of the aforesaid 12 witnesses P.W. 4 Ratna Kundu and P.W. 5 Madhobi Kundu are the close neighbours of the accused persons who appeared at the place of occurrence i.e. house of the accused persons and found the deceased lying dead in their house. Witnesses P.W. 2 Nirmol Biswas, P.W. 3 Mohammed Ali, P.W. 9 Monaranjon Saha and P.W. 11 Shamol Kumar Saha have cohesively deposed that the accused persons persecuted the deceased demanding dowry and at around 7.00 p.m. on 12.01.2001 the accused persons beat her severely resulting in her death. Some of them have supported the payment of Taka 50,000/- to accused Sunil Kumar Roy. Although all of these witnesses were accompanying the informant from Tangail but the defence could not detract them from their evidence putting under cross examination. So, the submissions of the learned State Defence Lawyer Mr. Khan to the effect that the demand of dowry or killing the deceased on her failure to pay dowry by the accused is not proved, has no substance.

However, the allegation of torturing the deceased by the accused persons as the aforesaid witnesses have said is nothing but a lump and common allegation against all the accused persons. The direct participation of the accused persons in torturing the deceased either independently or jointly or the manner of torture has not been proved by the evidence of above mentioned witnesses. However, the factum of torturing the deceased demanding dowry by her husband can reasonably be presumed in consideration of the surrounding circumstances of the case. The witnesses including the two independent witnesses of the locality have consistently deposed that the deceased was recovered dead from the house of the accused persons. It appears in the sketch map, Ext. 3, that the place of occurrence was the living room of accused Subir Kumar Roy, husband of the deceased. Therefore, the accused was to explain how his wife met the death. There is no scope to deny the absence of Subir Kumar Roy at the time and place of occurrence as his uncle of their joint family accused Monaranjon Roy filed an UD case on the occurrence disclosing that his nephew accused Subir Kumar Roy was remaining dumfounded at the death of his wife.

It appears that the victim died in the living room of her husband accused Subir Kumar Roy who failed to explain how his wife met the death. He is rather, found to be absconding since the very inception of the case leaving his dumfoundedness aside quickly. If we assume the defence case as a kind of explanation as to the death of the deceased; that has been falsified by the medical evidence as we have mentioned above. If the defence case is falsified or negated by the reasonable medical evidence or any other direct or circumstantial evidence then it loses its leg to stand and becomes unworthy of use. Since the husband is bound to explain how his wife met the death at his house remaining under his custody but he failed to give satisfactory explanation therefore, he has no scope to escape the consequence of killing of his wife. We get support of this finding in the case of *Abul Hossain Khan Vs. State*, 8 BLC (AD) 172 wherein their Lordships have opined hereunder—

The undenied position is that death of the petitioner's wife occurred in the house of the petitioner. It is not the case of the petitioner that he was away from the home while the death occurred to his wife or that some

miscreants whom he could not resist caused death of his wife. The petitioner tried to explain the cause of death by stating that the deceased committed suicide by hanging. The explanation offered as to how death occurred to the petitioner's wife was found to be not correct because of the evidence of P.W. 12 and P.W. 13, the Medical Officers who held post mortem examination of the dead body of petitioner's wife. The Medical Officers have stated that the cause of death of the victim was homicidal and not suicidal. Since death to the wife was caused while she was living in the house of her husband the convict petitioner, he is competent to say how death occurred to his wife and that the explanation which he offered having been found untrue, the conviction and sentence that was passed by the learned Sessions Judge has rightly been affirmed by the High Court Division.

We find applicability of the above mentioned propositions of law enunciated by their Lordships in the context of the instant case.

But the learned Judge of the Tribunal awarded same sentence i.e. death sentence upon the three other accused persons namely, accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy, members of the joint family of accused Subir Kumar Roy, under sections 11(Ka) and 30 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, on the ground that they abetted accused Subir Kumar Roy in killing his wife on her failure to satisfy the demand of dowry. Now, let us examine to what extent the allegation of committing abetment by co-accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy in killing the wife of the convict Subir Kumar Roy has been proved.

Learned Deputy Attorney General submits that the witnesses have supported delivery of Taka 50,000/- to accused Sunil Kumar Roy which sufficiently supports the offence of committing abatement. He further submits that accused Monaranjon Roy hurriedly filed an UD case concealing the facts of committing murder and that is also supportive to abetment.

In reply Mr. Md. Hafizur Rahman Khan, learned State Defence Lawyer, has confronted the above submissions submitting that there was no specific occurrence of demanding dowry by the accused and none of the accused was involved in demanding dowry. Although no specific occurrence of demanding dowry has been described by the witnesses but they steadily deposed that the accused tortured the deceased demanding dowry and we have found that the defence could not detract them from their depositions. We should now examine whether the actions of accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy constituted the offence of abetment in the instant case. Section 30 of Nari-o-Shishu Nirjatan Daman Ain, 2000 runs hereunder:

“যদি কোন ব্যক্তি এই আইনের অধীন কোন অপরাধ সংঘটনে প্ররোচনা যোগান এবং সেই প্ররোচনার ফলে উক্ত অপরাধ সংঘটিত হয় বা অপরাধটি সংঘটনের চেষ্টা করা হয় বা কোন ব্যক্তি যদি অন্য কোন ব্যক্তিকে এই আইনের অধীন কোন অপরাধ সংঘটনে সহায়তা করেন, তাহা হইলে ঐ অপরাধ সংঘটনের জন্য বা অপরাধটি সংঘটনের চেষ্টার জন্য নির্ধারিত দণ্ডে- প্ররোচনাকারী বা সহায়তাকারী ব্যক্তি দণ্ডনীয় হইবেন।”

On perusal of the above mentioned section 30 of the Ain, 2000 it appears that to constitute an offence of abetment under the aforesaid section there must be at least two ingredients; a) instigation and b) assistance to commission of the offence. Unlike the murder under section 302 of the Penal Code the offence of killing of a victim under section 11(Ka) of the Ain is a compound offence in nature. It consists of two offences such as; a) demanding dowry and b) failure of satisfying the demand by the victim resulting in her subsequent killing. In the offence under section 11(Ka) of the Ain killing of the victim is the major offence and demand of dowry to her is the minor offence. However, both the offences should be present in the offence punishable under section 11(Ka) of the Ain. Filing of an UD case by accused Monaranjon Roy after the occurrence of killing of the wife of convict Subir Kumar Roy and alleged receiving of Taka 50,000/- by accused Sunil Kumar Roy is unable to satisfy the conditions to make up the ingredients of the offence of abetment as mentioned above. On the other hand, accused Sushil Kumar Roy has not been implicated in such actions.

Although the witnesses have deposed in favour of demanding dowry by the accused but it can be presumed so far it relates to convict Subir Kumar Roy. The instigation or assistance of other accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy in committing the offence of demanding dowry or killing of the deceased has not been proved. For the sake of argument if we assume that the other accused persons were also directly or indirectly involved with demanding dowry but that does not mean that the killing of the victim as a consequence of her failure to pay the dowry was in their conscious knowledge. The other accused persons may not have been aware what was in the mind of the husband of the deceased. So, in absence of any active role of the co-accused in assisting or instigating the principal accused in committing the major offence i.e. the killing of the deceased we are unable to hold that accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy have committed the offence under section 30 of the Ain, 2000 making them worthy of being sentenced with death.

Now, let us examine the sustainability of the other submissions of Mr. Khan, learned State Defence Lawyer regarding sending the case on remand for retrial on the ground that the accused were not properly defended by the State Defence Lawyer due to his inexperience and inefficiency. Mr. Khan has relied on the decision of the case of State Vs. Hanif Gani, 45 DLR 400 in support of his submissions. In that case it was not clear to this Division whether the State Defence Lawyer cross-examined some prosecution witnesses. He declined to cross examine some witnesses and adopted the cross examination of the other accused. On such consideration it was held that those lapses prejudiced the accused persons and their defence was materially affected. As such, the case was sent on remand allowing the appeal of the absconding convict who were apprehended after passing of the sentence.

In the instant case the State Defence Lawyer appointed in the Tribunal has put all the witnesses under cross-examination almost on all points during trial. There is no perfect standard of defence in a criminal case. Therefore, the allegations of inexperience or inefficiency brought against a State Defence

Lawyer cannot not be a ground for sending a criminal case on remand for retrial after lapse of long time, if it does not appear that such inexperience or inefficiency caused miscarriage of justice. The conduct of the accused deserves paramount consideration in determining the miscarriage of justice as well. We have found the convict accused Subir Kumar Roy absconding from very inception of the case. Although accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy were released on bail but none of them appeared before the Tribunal any more. They are in absconsion till date. Such bonafide fugitives can get no benefit of law like rehearing of the case on remand. Their absence has been properly notified and published in the enlisted Daily News papers. Standard of circulation of such papers has no bearing in fulfilling the requirements of publication of the names of fugitives before starting trial in absentia. We also find no difficulty in treating the convicts as absconders or fugitives.

Referring to the case of Shahin Ahmed Vs. State, 12 BLC 165 learned State Defence Lawyer Mr. Khan further submits that the informant failed to lodge FIR within 24 hours of the

occurrence leading it to be in doubt of reliability on the ground of subsequent embellishment. On perusal of record it appears that the occurrence took place on 12-01-2001. Accused Monaranjon Roy filed a U.D. case on the same day. S.I. Monirul Islam of Sirajganj P.S. lodged the FIR on 15-01-2001 after investigating the U.D. case and the informant lodged another FIR on 17-01-2001. So, the occurrence is not found to be unattended. Although the informant lodged FIR after almost 3 days later of the occurrence but we have found that P.W. 11 Shyamol Kumar Saha who accompanied the informant to Sirajganj Hospital has stated that they went to police station from the hospital and disclosed the occurrence to the Officer-in-Charge. But without paying any heed to them the daroga of the police station drove them away and they returned home from there. The original fact of recovery of the dead body of the victim from the house of the accused persons has not been changed in any manner in the belated FIR. In absence of any specific story of embellishment and any reasonable probability of embellishment an FIR cannot be maligned only for causing

delay in it's lodgment. We find no substances in the submissions of Mr. Khan.

In view of the above discussions, we find that since deceased Sumi Rani was found dead in the living room of her husband accused Subir Kumar Roy and the injuries found on her body were homicidal in nature and convict Subir Kumar Roy did not turn-up before the Court to explain how his wife died, therefore, he cannot escape the liability of committing the offence of killing his wife. As such, we hold that the Judge of the Tribunal has rightly awarded death penalty upon accused Subir Kumar Roy. But we find no legal firmity in the sentence awarded upon the other accused Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy in absence of proof of committing offence of abetment against them. As a result, we hold that the reference should be accepted in part.

Accordingly, the reference is accepted in part so far it relates to condemned-convict Subir Kumar Roy. The death penalty awarded upon convict Subir Kuar Roy by the Judge, Nari-o-Shishu Nirjatan Daman Tribunal-1, Sirajganj is hereby confirmed and upheld. Convicts Dr. Sushil Kumar Roy, Sunil

Kumar Roy and Monaranjon Roy are found not guilty of the charges leveled against them under sections 11(Ka) and 30 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and, therefore, they are acquitted of the same. Let the conviction warrant or warrant of arrest issued against Dr. Sushil Kumar Roy, Sunil Kumar Roy and Monaranjon Roy be recalled.

Communicate the judgment and order and transmit the lower Court records.

Bhishmadev Chakraborty, J:

I agree