

District: Meherpur.

**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. 129 of 2018.

The State.

-Versus-

Md. Alamgir Hossain and others,
----- Condemned-Prisoners.

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. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.

----- For the State.

Mr. Md. Hamedur Rahman Mollick, Advocate with
Mr. Md. Ashif Hasan, Advocate
----- For the Condemned-Prisoners.

With

Criminal Appeal No. 11464 of 2018.

And

Jail Appeal No. 338 of 2018.

And

Jail Appeal No. 339 of 2018.

And

Jail Appeal No. 340 of 2018.

Md. Alamgir Hossain and others ,
----- Condemned-Prisoner-Appellants.

-Versus-

The State.

----- Respondent.

Mr. Md. Hamedur Rahman Mollick, Advocate with
Mr. Md. Ashif Hasan, Advocate
---- For the Condemned-Prisoner-Appellants.

Criminal Appeal No. 11652 of 2018.

Md. Firoz Ali alias Firoz and another ,
----- Convict-Appellants.

-Versus-

The State.
----- Respondent.

None appears.
---- For the Convict-Appellants.

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. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.
----- For the Respondent.

Heard On: 03.02.2026, 15.02.2026 and 16.02.2026.

And

Judgment Delivered On: 09.07.2026.

Md. Toufiq Inam, J:

This Death Reference has been made under section 374 of the Code of Criminal Procedure, 1898 (the Code), for confirmation of the sentence of death awarded to the condemned-prisoners, namely, Alamgir Hossain, Mamun Hossain and Wasim, who were convicted under section 302 read with section 34 of the Penal Code and sentenced to death, together with a fine of Tk. 50,000/- each. They were further convicted under section 394 read with section 34 of the Penal Code and sentenced to imprisonment for life and to pay a fine of Tk. 20,000/- each, in

default to suffer rigorous imprisonment for a further period of 2 (two) years, by the learned Additional Sessions Judge, Meherpur, in Sessions Case No.104 of 2017.

The reference has been heard analogously with Criminal Appeal No.11464 of 2018 arising out of Jail Appeal Nos.338 of 2018, 339 of 2018 and 340 of 2018 preferred by the aforesaid condemned-prisoners, and Criminal Appeal No.11652 of 2018 filed by appellants Firoz Ali and Kablu Islam, who were convicted under section 411 read with section 34 of the Penal Code and sentenced to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Tk.20,000/- each, in default to suffer rigorous imprisonment for a further period of 6 (six) months. Since all the matters arise out of the same judgment and order of conviction and sentence, they have been heard together and are being disposed of by this common judgment.

The prosecution case, in brief, is that on 28.10.2016 the informant, Rokeya Akter Ruma, lodged a First Information Report with Meherpur Sadar Police Station alleging, inter alia, that her husband, Enayet Khan Khokon alias Prittim, aged about 50 years, an easy-bike driver by profession, left home on 27.10.2016 at about 3:30 p.m. after taking lunch for the purpose of driving his easy-bike and did not return home at night. His mobile phone was found switched off. On the following morning, she received information that a dead body was lying beside a vacant plot at TengramariPartala Mor under Meherpur Police Station. Upon reaching the place of occurrence, she identified the body as that of her husband and noticed that his

neck and hands had been tied with a black rope. She also observed injuries on different parts of his body, including bleeding from the ears, black marks around the neck, rope marks on the wrists, bleeding from the urethra and swelling on the scrotum and left ankle. She suspected that unknown miscreants had hired the easy-bike, murdered her husband by strangulation and taken away the easy-bike valued at approximately Tk.1,60,000/-.

On the basis of the said First Information Report, the police registered the case and took up investigation. During investigation, the Investigating Officer visited the place of occurrence, prepared the sketch map and index, held inquest over the dead body, examined witnesses, seized relevant alamats and sent the dead body for post-mortem examination. The post-mortem surgeon opined that the death was caused by ante-mortem homicidal strangulation resulting in asphyxia.

During the course of investigation, the call detail records of the victim's mobile phone disclosed communication with accused Alamgir Hossain immediately prior to the occurrence. The police thereafter arrested accused Alamgir Hossain, Mamun Hossain, Wasim, Firoz Ali and Kablu Islam. Pursuant to information furnished by the accused and their confessional statements recorded under section 164 of the Code, the victim's Nokia mobile phone was recovered from the possession of accused Mamun Hossain and the stolen easy-bike was recovered from the possession of accused Kablu Islam.

The investigation further revealed that accused Alamgir Hossain, Mamun Hossain and Wasim, acting in furtherance of their common intention, had conspired to rob an easy-bike and, if necessary, to kill its driver. In execution of the said plan, accused Alamgir Hossain contacted the victim over mobile phone and hired his easy-bike. Thereafter, the accused persons took the victim to Tengramari Pakur Gach Tala, where Mamun and Wasim allegedly pulled a rope around the victim's neck from behind, causing the easy-bike to overturn. When the victim attempted to escape, Wasim restrained him while Alamgir and Mamun tightened the rope around his neck until he succumbed. The accused thereafter tied the hands of the deceased, concealed the body in nearby bushes and fled away with the easy-bike. Thereafter, Alamgir drove the stolen easy-bike to Gopalpur. Subsequently, Mamun took the vehicle to Khalishakundi and handed it over to accused Firoz Ali for sale. Firoz Ali thereafter sold the easy-bike to his brother-in-law, accused Kablu Islam, for a consideration of Tk.40,000/-.

Upon completion of investigation and on consideration of the evidence collected, the confessional statements of the accused, the medical evidence and the recoveries made during investigation, the Investigating Officer found a prima facie case under sections 302, 394 and 411 read with section 34 of the Penal Code against all the accused persons and accordingly submitted Charge Sheet No.39 dated 08.02.2017.

The learned Chief Judicial Magistrate, upon taking cognizance of the offences, committed the case to the Court of Sessions for

trial. Thereafter, charges under sections 302, 394 and 411 read with section 34 of the Penal Code were framed against the accused persons. The charges having been read over and explained to them, the accused pleaded not guilty and claimed to be tried.

In order to prove the charge, the prosecution examined 15 witnesses. Upon closure of the prosecution case, the accused persons were examined under section 342 of the Code. In their examinations, the accused denied the allegations brought against them, claimed innocence and declined to adduce any evidence in defence.

From the trend of cross-examination and the answers given by the accuseds under section 342 of the Code, the defence case appears to be that the accuseds have been falsely implicated in the case. It was contended that the confessional statements were obtained through coercion and were not voluntary. It was further contended that accused Firoz Ali and Kablu Islam had purchased the easy-bike without any knowledge that it was stolen property and had no connection whatsoever with the occurrence. The defence further suggested that the deceased had been murdered over a land dispute and that the Investigating Officer, without conducting a fair and proper investigation, had submitted a false charge sheet against the accused persons.

Among the witnesses examined by the prosecution, PW-1 is the informant and wife of the deceased; PW-3 and PW-4 are brothers of the deceased; PW-5 is a neighbour; PW-6 is the owner of the

land where the dead body was found; PW-7 is the brother-in-law of the deceased; PW-8 is the shopkeeper from whom the nylon rope was allegedly purchased; PW-9 is a local witness who first saw the dead body; PW-10 is the learned Magistrate who recorded the confessional statements under section 164 of the Code; PW-11, PW-12 and PW-13 are formal witnesses; PW-14 is the doctor who proved the post-mortem report; and PW-15 is the Investigating Officer of the case.

The evidence of PW-1, PW-3, PW-4, PW-5, PW-6, PW-7 and PW-9 consistently establishes that the deceased went missing on the evening of 27.10.2016 and that his dead body was recovered on the following morning with rope marks around the neck and his hands tied behind his back. PW-8, Milon Khan, deposed that on the night of the occurrence accused Mamun Hossain and Wasim purchased a black nylon rope from his shop. He identified the said accused both before the Investigating Officer and in Court. PW-10, the learned Magistrate, proved the confessional statements of accused Alamgir Hossain, Mamun Hossain, Wasim, Firoz Ali and Kablu Islam and stated that the same were recorded after due observance of the legal formalities prescribed under section 164 of the Code.

PW-14, the doctor, proved the post-mortem report and opined that the death of the victim was caused by asphyxia resulting from ante-mortem homicidal strangulation. PW-15, the Investigating Officer, stated that the call detail records of the victim's mobile phone revealed communication with accused Alamgir Hossain immediately prior to the occurrence. Acting

upon that information, he arrested Alamgir Hossain and subsequently arrested Mamun Hossain and Wasim. The victim's mobile phone was recovered from the possession of Mamun Hossain, while the stolen easy-bike was recovered through the chain of events leading to the arrests of Firoz Ali and Kablu Islam.

Upon consideration of the evidence on record, the learned trial Judge found that although there was no direct eyewitness to the occurrence, the prosecution had succeeded in establishing a complete chain of circumstances which, when read together with the confessional statements of the accused and the recoveries made during investigation, unmistakably pointed to the guilt of the accused persons.

The learned Judge further found that the confessional statements of accused Alamgir Hossain, Mamun Hossain and Wasim were voluntary, truthful and mutually corroborative. In their respective confessional statements, they consistently narrated the planning of the offence, the hiring of the easy-bike, the purchase of the rope, the strangulation of the victim, the disposal of the dead body and the subsequent removal and sale of the easy-bike. The trial Court also noted that the confessions received substantial corroboration from the medical evidence, the recovery of the victim's mobile phone and easy-bike and the surrounding circumstances proved by the prosecution witnesses.

Regarding accused Firoz Ali and Kablu Islam, the trial Court found that the evidence did not disclose their participation in the

actual murder. However, their involvement in dealing with the stolen easy-bike after the occurrence stood established by the evidence on record.

Upon consideration of the entire evidence, the learned trial Judge held that the prosecution had succeeded in proving the charges beyond reasonable doubt and that the confessional statements, being voluntary and truthful, were sufficient to sustain the conviction of the accused persons in accordance with law.

The learned trial Judge further observed that the confessional statements of accused Alamgir Hossain, Mamun Hossain and Wasim had been recorded in strict compliance with the requirements of sections 164 and 364 of the Code of Criminal Procedure. The Court found that the confessions were voluntary, truthful and free from any threat, coercion or inducement. Significantly, at no stage of the proceedings did any of the confessing accused allege the existence of any circumstance contemplated under sections 24, 25 or 26 of the Evidence Act prior to the recording of their confessions. Nor did they retract or challenge the confessional statements either during the trial or while being examined under section 342 of the Code of Criminal Procedure.

In arriving at the above conclusion, the Court held that there was no legal or factual basis to disbelieve the confessional statements of accused Alamgir Hossain, Mamun Hossain and Wasim, whereby they implicated not only themselves but also each other in the murder of Enayet Khan Khokon alias Prittim. The learned

Judge further found that the confessions were mutually corroborative in all material particulars and constituted substantive evidence against their respective makers. Accordingly, notwithstanding the absence of any direct eyewitness to the occurrence, the Court held that the confessional statements, read in the light of the surrounding circumstances and other evidence on record, conclusively established that accused Alamgir Hossain, Mamun Hossain and Wasim had strangled the victim to death and thereafter abandoned his body at the place of occurrence with his hands tied behind his back.

The Court also attached considerable weight to the testimony of PW-15, SI Md. Rafiqul Islam, the Investigating Officer. Although he was not an eyewitness to the occurrence, the learned Judge observed that through a careful and effective investigation he had succeeded in unraveling the mystery of the murder, tracing the perpetrators, recovering the victim's mobile phone and stolen easy-bike, and collecting the evidence which ultimately led to the successful prosecution of the case. Referring to section 134 of the Evidence Act, the Court reiterated the settled principle that it is the quality and not the quantity of evidence which is material, and that a conviction may lawfully be founded upon the testimony of a single witness if such testimony is found to be reliable and trustworthy. The Court, therefore, accepted the testimony of the Investigating Officer as credible and as lending substantial assurance to the prosecution case.

The learned trial Judge further observed that PW-15 had no personal interest in the outcome of the case and stood before the Court as an independent witness performing his official duty. The Court found that his testimony remained consistent throughout and that nothing substantial could be elicited in cross-examination to impair his credibility. Consequently, his evidence was found to be of considerable evidentiary value.

Upon a cumulative assessment of the evidence on record, the Court found that accused Alamgir Hossain, Mamun Hossain and Wasim had voluntarily confessed before the Magistrate under section 164 of the Code of Criminal Procedure and had also made extra-judicial confessional statements before several prosecution witnesses after their arrest. In those confessions, they consistently admitted that, acting pursuant to a pre-arranged plan, they had murdered Enayet Khan Khokon alias Prittim by strangulation and thereafter abandoned his dead body at the place of occurrence.

The Court further noted that PW-8, Md. Milon Khan, the shopkeeper from whom Mamun Hossain and Wasim had purchased the nylon rope used in the commission of the offence, identified both accused as well as the rope before the Court. PW-6, Mokhlechur Rahman, in whose land the dead body was recovered, also supported the prosecution case regarding the recovery of the body. Moreover, the medical evidence adduced through PW-14 conclusively established that the victim died as a result of ligature strangulation, thereby lending strong corroboration to the prosecution version.

The learned Judge further found that the prosecution had succeeded in establishing an unbroken chain of circumstances beginning with accused Alamgir Hossain contacting the victim over mobile phone and hiring his easy-bike on 27.10.2016; continuing through the murder of the victim by Alamgir, Mamun and Wasim; the abandonment of the dead body at the place of occurrence; the robbery of the easy-bike; its transfer to accused Firoz Ali; the subsequent sale of the vehicle by Firoz Ali to accused Kablu Islam for Tk.40,000/-; and finally the recovery of the easy-bike from the possession of Kablu Islam. According to the Court, each link in this chain was established through the investigation conducted by PW-15 and was corroborated by the surrounding evidence on record.

The learned trial Judge therefore concluded that, notwithstanding the absence of any direct eyewitness, the prosecution had succeeded in proving beyond reasonable doubt that accused Alamgir Hossain, Mamun Hossain and Wasim, acting in furtherance of their common intention and pursuant to a pre-conceived plan, had strangled Enayet Khan Khokon alias Prittim to death and thereafter left his body at the place of occurrence with his hands tied.

The Court thereafter examined the extent of the involvement of accused Firoz Ali and Kablu Islam. Upon scrutiny of their confessional statements recorded under section 164 of the Code of Criminal Procedure, the Court found that both accused admitted only their participation in the subsequent sale and

purchase of the victim's easy-bike. Neither of them confessed to any role in the planning or execution of the murder, nor did either disclose any prior knowledge of the killing.

The learned Judge further observed that the confessional statements of Alamgir Hossain, Mamun Hossain and Wasim likewise did not implicate either Firoz Ali or Kablu Islam in the murder itself. Rather, the confessions consistently disclosed that after the victim had been killed and the easy-bike had been robbed, Mamun Hossain delivered the vehicle to Firoz Ali for disposal, and Firoz Ali thereafter sold it to his brother-in-law, Kablu Islam, for Tk.40,000/-.

The Court also noted that neither the charge-sheet nor the testimony of PW-15 contained any allegation that Firoz Ali or Kablu Islam had participated in the conspiracy to murder the victim, in the commission of the murder or in the robbery itself. On the contrary, the Investigating Officer admitted in cross-examination that he had found no evidence connecting either of them with the planning or commission of the murder and that no telephone communication had been traced between them and the principal offenders either before or after the occurrence. None of the remaining prosecution witnesses implicated them in the homicide.

The Court, therefore, rejected the prosecution contention that Firoz Ali and Kablu Islam formed part of the murderous enterprise merely because they were related to one another and had subsequently dealt with the easy-bike. The learned Judge

held that the prosecution had failed to establish any evidentiary link connecting the transaction involving the easy-bike with the prior conspiracy to murder the victim.

At the same time, the Court was unable to accept the defence contention that Firoz Ali and Kablu Islam had acted entirely innocently. The evidence disclosed that an easy-bike valued at approximately Tk.1,50,000/- had been transferred for only Tk.40,000/-, a circumstance which the Court found wholly inconsistent with a bona fide commercial transaction. The learned Judge reasoned that a person purchasing or facilitating the sale of such a valuable vehicle at a fraction of its market value must reasonably have known, or at least have had sufficient reason to believe, that the property had been unlawfully obtained.

The Court further observed that Mamun Hossain had directly entrusted the easy-bike to Firoz Ali for sale and that the vehicle was subsequently recovered from the possession of Kablu Islam pursuant to information supplied by the accused themselves. These circumstances, coupled with their own confessional statements, convinced the Court that both accused had knowledge, or at least reason to believe, that the easy-bike constituted stolen property.

Accordingly, the learned trial Judge held that although the prosecution had failed to prove any involvement of Firoz Ali and Kablu Islam in the planning or commission of the murder, it had succeeded in proving beyond reasonable doubt that both accused

knowingly received and dealt with stolen property, thereby attracting criminal liability under section 411 of the Penal Code.

The Court further found that the murder of Enayet Khan Khokon alias Prittim squarely fell within the definition of “murder” as contemplated under section 300 of the Penal Code. The evidence disclosed that Alamgir Hossain, Mamun Hossain and Wasim, pursuant to a pre-conceived plan to rob the victim's easy-bike, intentionally strangled him to death and thereafter carried away the vehicle. The Court found that none of the statutory exceptions to section 300 of the Penal Code was attracted in the facts and circumstances of the case. The subsequent taking away of the easy-bike after causing the victim's death clearly constituted the offence of robbery punishable under section 394 of the Penal Code.

The learned trial Judge ultimately concluded that the prosecution had proved beyond reasonable doubt that, between the evening of 27.10.2016 and the early hours of 28.10.2016, accused Alamgir Hossain, Mamun Hossain and Wasim, acting in furtherance of their common intention, murdered Enayet Khan Khokon alias Prittim and robbed his easy-bike. They were accordingly found guilty under sections 302/34 and 394/34 of the Penal Code. Accused Firoz Ali and Kablu Islam were found guilty under section 411/34 of the Penal Code for knowingly receiving and dealing with stolen property.

Consequently, accused Alamgir Hossain, Mamun Hossain and Wasim were convicted under section 302/34 of the Penal Code

and sentenced to death, together with a fine of Tk.50,000/- each. They were further convicted under section 394/34 of the Penal Code and sentenced to imprisonment for life and to pay a fine of Tk.20,000/- each, in default to suffer rigorous imprisonment for a further period of 2 (two) years. Accused Firoz Ali and Kablu Islam were convicted under section 411/34 of the Penal Code and sentenced to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Tk.20,000/- each, in default to suffer imprisonment for a further period of 6 (six) months.

The learned trial Judge further directed that the proceedings be transmitted to the High Court Division for confirmation of the sentence of death in accordance with section 374 of the Code of Criminal Procedure. The convicted accused were remanded to custody to serve out their respective sentences. The Court also directed that the seized articles be handed over to the informant, Rokeya Akter Ruma, wife of the deceased, upon proper identification and claim, and in the event of no such claim being made, the same should be disposed of in accordance with law.

Mr. Mohammad Abdul Baset, the learned Deputy Attorney General appearing on behalf of the State, supports the Death Reference and submits that the prosecution has succeeded in proving the charge against the condemned-prisoners beyond all reasonable doubt by adducing clear, cogent and consistent evidence. He submits that the homicidal nature of the death stands conclusively established by the inquest report, post-mortem report and the evidence of the medical witness, which unmistakably demonstrate that the victim met a violent and

unnatural death. According to the learned Deputy Attorney General, the conviction of the condemned-prisoners is primarily founded upon their judicial confessional statements recorded under section 164 of the Code of Criminal Procedure, which were made voluntarily, truthfully and in strict compliance with the requirements of law. The learned Magistrate (PW-10), who recorded the confessions, has been examined before the Court and categorically testified that all statutory safeguards were duly observed before recording the statements.

The learned Deputy Attorney General further submits that the confessional statements are not only voluntary and truthful but are also corroborated by independent evidence, including the medical evidence, the recovery of the victim's mobile phone and easy-bike, the evidence relating to the purchase of the nylon rope used in the commission of the offence, and the surrounding circumstances established by the prosecution witnesses. According to him, the confessions furnish a complete and coherent account of the planning, execution and aftermath of the offence and are fully consistent with the objective evidence on record.

He further contends that the motive disclosed in the confessions, namely the intention to rob the victim of his easy-bike, has been proved by the subsequent conduct of the accused in carrying away and disposing of the stolen vehicle. The defence plea that the confessions were obtained by coercion is, according to him, a mere afterthought unsupported by any reliable evidence. He submits that no material irregularity has been shown in the

recording of the confessions and that the trial Court rightly relied upon them.

With regard to sentence, the learned Deputy Attorney General submits that the murder was committed in a cold-blooded and premeditated manner solely for gain. The victim was lured to a secluded place, strangled to death and his easy-bike was thereafter taken away. Such a brutal and calculated killing, according to him, warrants the extreme penalty of law. He therefore prays that the Death Reference be accepted, the convictions and sentences be affirmed and the sentence of death be confirmed.

On the other hand, Mr. Md. Hamedur Rahman Mollick, learned Advocate appearing on behalf of the condemned-prisoners in Death Reference No.129 of 2018 and Criminal Appeal No.11464 of 2018, assails the impugned judgment principally on the ground that the conviction rests substantially upon confessional statements which, according to him, were neither recorded in accordance with law nor voluntary and truthful.

Firstly, he submits that the confessional statements are inadmissible in evidence as the confession-recording Magistrate failed to comply with the mandatory requirements of section 164(3) of the Code of Criminal Procedure. According to the learned Advocate, the memorandum required by law was not recorded in the prescribed form at the foot of the confessions. He contends that compliance with section 164(3) is mandatory and that non-compliance renders the confessions legally invalid.

Such defect, he argues, is not curable under section 533 of the Code of Criminal Procedure. In support of his contention, he has referred to the decisions reported in 63 DLR (AD) 10, 46 DLR 77 and 60 DLR 347.

Secondly, the learned Advocate submits that the record does not disclose the actual period allowed to the accused for reflection prior to the recording of their confessions. Although the Magistrate stated during cross-examination that approximately thirty minutes were allowed for reflection, he contends that such a period was wholly inadequate to ensure that the confessions were voluntary and free from external influence. According to him, the subsequent oral testimony of the Magistrate cannot cure inherent defects in the recording process. Reliance has been placed upon the decisions reported in 37 DLR 67, 7 DLR 633 and 60 DLR 347.

Thirdly, it is contended that the provisions of section 342 of the Code of Criminal Procedure were not properly complied with. The learned Advocate argues that all incriminating circumstances relied upon by the prosecution ought to have been specifically put to the accused during their examination under section 342. According to him, the evidence of the confession-recording Magistrate regarding the voluntariness and truthfulness of the confessions was not brought to the notice of the accused, thereby causing serious prejudice to the defence. In support of this submission, reliance has been placed upon the decision reported in 16 SCOB (AD) 22.

Fourthly, it is argued that accused Alamgir Hossain was arrested on 29.11.2016 and was produced before the Magistrate only on 30.11.2016, beyond the period of twenty-four hours prescribed by law. Such detention, according to the learned Advocate, was in violation of Article 33(2) of the Constitution as well as section 57 of the Code of Criminal Procedure. He submits that a confession obtained in such circumstances cannot be regarded as voluntary and that the prosecution seeks to rely upon evidence tainted by illegality.

Fifthly, the learned Advocate contends that the accused persons were deprived of an effective opportunity to defend themselves. He submits that had the incriminating materials, including the prosecution case regarding the voluntariness and truthfulness of the confessions, been specifically brought to their notice during examination under section 342 of the Code, they would have been able to furnish an effective explanation. Reliance has been placed upon the decisions reported in 41 DLR (AD) 157 and 54 DLR (AD) 60.

Lastly, it is submitted that Rules 79(4) and 79(5) of the Criminal Rules and Orders, 2009 were not complied with. According to the learned Advocate, all five accused were produced before the Magistrate under a single forwarding letter and remained together under the custody of a single peon. It is further argued that the Magistrate did not specifically certify that the co-accused persons or police personnel were absent at the time of recording the confessions. These circumstances, according to him, cast serious doubt upon the voluntariness and reliability of the

confessional statements and entitle the accused to the benefit of doubt.

On the aforesaid grounds, the learned Advocate submits that the confessional statements are legally inadmissible and unreliable and that once the confessions are excluded from consideration, the remaining evidence on record is wholly insufficient to sustain the convictions. He therefore prays that the convictions and sentences recorded by the trial Court be set aside and that the accused be acquitted of the charges.

None appears on behalf of the appellants-Md. Firoz Ali alias Firoz and Md. Kablu Islam alias Kablu.

In reply, Mr. Mohammad Abdul Baset, learned Deputy Attorney General, has strenuously opposed the submissions advanced on behalf of the appellants. He submits that the impugned judgment suffers from no illegality, infirmity or procedural irregularity warranting interference by this Court. According to him, the prosecution has succeeded in establishing the charge beyond reasonable doubt through a coherent and consistent body of evidence which remained substantially unshaken in cross-examination. He submits that the evidence adduced by the prosecution witnesses is natural, reliable and mutually corroborative. The alleged contradictions and discrepancies highlighted by the defence are, in his submission, minor and relate only to insignificant details concerning time, place or manner of occurrence. Such discrepancies, being the normal

consequence of human recollection, do not affect the substratum of the prosecution case.

He further submits that the defence has failed to impeach the credibility of any material witness or to suggest any plausible motive for false implication of the accused. The medical evidence, according to him, fully supports the prosecution version regarding the cause and manner of death and is entirely consistent with the confessional statements and other surrounding circumstances. He further contends that the recovery of the victim's mobile phone and easy-bike, together with the evidence relating to the purchase of the nylon rope and the conduct of the accused following the occurrence, form a complete and unbroken chain of circumstances pointing irresistibly towards the guilt of the appellants and excluding every reasonable hypothesis consistent with innocence.

He lastly submits that the learned trial Judge meticulously considered the entire evidence on record, assigned cogent reasons in support of the findings arrived at and correctly applied the settled principles of law governing the appreciation of confessional statements and circumstantial evidence. Accordingly, he prays that the Death Reference be accepted, the appeal be dismissed and the convictions and sentences be affirmed.

We have given our anxious consideration to the submissions advanced on behalf of the condemned-prisoners and have independently examined the confessional statements, the

evidence of the confession-recording Magistrate, the surrounding circumstances and the other materials on record. Upon such scrutiny, we find no substance in the objections raised by the defence.

The principal attack of the learned Advocate for the appellants is directed against the confessional statements recorded under section 164 of the Code of Criminal Procedure. Since the conviction of the condemned-prisoners substantially rests upon those confessions, it is incumbent upon this Court, sitting in Death Reference jurisdiction, to satisfy itself independently that the confessions were recorded in accordance with law, were voluntary and truthful, and inspire confidence.

A careful examination of the confessional statements and the evidence of PW-10, the learned Magistrate, reveals that before recording the statements the accused persons were duly cautioned that they were not bound to make any confession and that any confession made by them might be used as evidence against them. The Magistrate further afforded them time for reflection and ensured that they were kept away from police influence before the statements were recorded. The statutory memorandum appended to the confessions demonstrates compliance with the essential requirements of section 164 of the Code.

The contention that the confessions are inadmissible due to non-compliance with section 164(3) of the Code does not commend itself to us. The object of section 164 is to ensure that a

confession emanates from the free will of the maker and is not the result of inducement, threat or coercion. The test is not one of technical perfection but of substantial compliance coupled with proof of voluntariness. Where the Court is satisfied from the record and surrounding circumstances that the accused made the confession voluntarily after understanding its consequences, minor objections relating to form cannot outweigh the substantive reliability of the statement. In the present case, the defence has failed to point out any material omission which could reasonably give rise to an inference that the confessions were involuntary or improperly recorded.

The argument regarding insufficiency of time for reflection is equally unpersuasive. The law does not prescribe any inflexible duration for reflection. What is required is that the Magistrate must satisfy himself that the accused has had adequate opportunity to free his mind from external influence and to consider the consequences of making a confession. The adequacy of such opportunity necessarily depends upon the facts of each case. In the instant matter, the Magistrate has categorically testified that he afforded time for reflection and recorded the confessions only after being satisfied as to their voluntariness. Nothing has been elicited in cross-examination to discredit that testimony.

More importantly, the intrinsic features of the confessional statements themselves furnish strong assurance regarding their truthfulness. The confessions are detailed, coherent and natural. They disclose the genesis of the plan, the hiring of the easy-bike,

the purchase of the rope, the manner in which the victim was overpowered and strangled, the disposal of the body and the subsequent removal and sale of the easy-bike. The statements are mutually corroborative in material particulars and bear the imprint of truth. It is difficult to conceive how three separate accused could have furnished substantially similar accounts of the occurrence unless those accounts reflected the true facts of the incident.

The truthfulness of the confessions receives further assurance from independent evidence. The medical evidence establishes that the victim died a homicidal death due to strangulation. The rope marks found on the body are consistent with the manner of killing described in the confessions. PW-8 corroborated the prosecution case regarding the purchase of the nylon rope by Mamun and Wasim shortly before the occurrence. The recovery of the victim's mobile phone from the possession of Mamun Hossain and the recovery of the stolen easy-bike through the chain involving Firoz Ali and Kablu Islam furnish additional corroboration. These are not matters which could have been fabricated by the prosecution after the event; rather, they constitute objective circumstances lending assurance to the truth of the confessional statements.

Significantly, the accused persons did not retract their confessions at the earliest available opportunity. During their examination under section 342 of the Code, they merely denied the allegations in a general manner. No specific allegation of torture, coercion or inducement was made. No complaint was

lodged before the Magistrate, the trial Court or any other authority. Such silence assumes significance when the accused subsequently seek to challenge the voluntariness of the confessions.

The defence has also contended that the provisions of section 342 of the Code were not properly complied with. We have examined the record and find that the accused persons were confronted with the substance of the incriminating evidence appearing against them. The object of section 342 is to afford the accused an opportunity to explain the circumstances appearing in evidence. It does not require a meticulous reproduction of every sentence spoken by every witness. Unless prejudice resulting in failure of justice is demonstrated, a conviction cannot be set aside on such a technical objection. No such prejudice has been shown in the present case.

Likewise, the argument regarding alleged detention beyond twenty-four hours does not advance the defence case. Even assuming, for the sake of argument, that there was some irregularity in production before the Magistrate, such irregularity would not by itself render the confession inadmissible. The decisive consideration remains whether the confession was voluntary. Unless a nexus is established between the alleged illegal detention and the making of the confession, the confession cannot be discarded solely on that ground. No such nexus has been established in the instant case.

The objection founded upon Rules 79(4) and 79(5) of the Criminal Rules and Orders, 2009 is equally devoid of merit. The purpose of those Rules is to ensure that the accused remains free from police influence at the time of recording the confession. The Magistrate's evidence and certification clearly indicate compliance with that objective. In the absence of any convincing evidence to the contrary, the Court cannot presume that the confessions were involuntary merely because the accused were forwarded under a common forwarding letter.

Having considered the confessions both individually and collectively, we are satisfied that they are voluntary, truthful and reliable. They are further corroborated by medical evidence, recovery of incriminating articles and other surrounding circumstances. The confessions therefore constitute substantive evidence of a highly incriminating character and provide a safe foundation for conviction.

We are also satisfied that the prosecution has succeeded in establishing a complete and unbroken chain of circumstances. The evidence shows that the victim was contacted and hired by the accused; he thereafter disappeared; his dead body was recovered with rope marks around the neck; the medical evidence confirms homicidal strangulation; the rope used in the commission of the offence was traced to the accused; the victim's mobile phone was recovered from one of the accused; and the stolen easy-bike was subsequently recovered through the chain of transactions disclosed in the confessions. These circumstances

are incapable of explanation on any reasonable hypothesis other than the guilt of the condemned-prisoners.

Accordingly, we have no hesitation in holding that the prosecution has succeeded in proving beyond reasonable doubt that Md. Alamgir Hossain, Md. Mamun Hossain and Md. Wasim, acting in furtherance of their common intention, murdered Enayet Khan Khokon alias Prittim and thereafter robbed his easy-bike. Their conviction under sections 302/34 and 394/34 of the Penal Code is therefore affirmed.

Upon careful scrutiny of the materials on record, we find that although the participation of the said appellants in the occurrence stands conclusively established, even where the offence of murder stands proved, the Court is required to balance the aggravating and mitigating circumstances before affirming the extreme penalty. The ends of justice would be sufficiently met if the sentence is modified to imprisonment for life.

Insofar as the convict-appellants, in Criminal Appeal No. 11652 of 2018, Md. Firoz Ali alias Firoz and Md. Kablu Islam alias Kablu are concerned, we find no legal infirmity in the findings of guilt recorded by the court. The prosecution has succeeded in proving the charge against them beyond reasonable doubt and, accordingly, their conviction is maintained. However, having regard to the totality of the facts and circumstances of the case, particularly, the absence of any criminal antecedents, the nature of their participation, the long lapse of time since the occurrence, and the fact that they have already undergone a substantial period

of incarceration, we are of the considered view that the ends of justice would be adequately met by reducing their sentence to the period already undergone. Accordingly, while affirming their conviction, the sentence imposed upon Md. Firoz Ali alias Firoz and Md. Kablu Islam alias Kablu is modified to the period already undergone by them. They shall be treated as having served out their sentence and be discharged from their respective bail bonds.

Consequently, it is orderd that-

- i) The Death Reference No.129 of 2018 is rejected. Criminal Appeal No.11464 of 2018 arising out of Jail Appeal Nos.340 of 2018, 339 of 2018 and 338 of 2018 is dismissed with modification of sentence. Criminal Appeal No.11652 of 2018 is dismissed with modification to the period already undergone by them.
- ii) The conviction of Md. Alamgir Hossain, Md. Mamun Hossain and Md. Wasim under sections 302/34 and 394/34 of the Penal Code is maintained. However, the sentence of death awarded to them under section 302/34 of the Penal Code is commuted to imprisonment for life.
- iii) The Jail Authority is directed to take immediate steps for shifting the condemned-prisoners from the condemned cells to ordinary prison in accordance with law.
- iv) The sentence imposed upon Md. Firoz Ali alias Firoz and Md. Kablu Islam alias Kablu is modified to the period already undergone by them. However, the fine imposed

shall remain unaltered. They shall be treated as having served out their sentence and be released from their respective bail bonds upon payment of fine.

- v) The convicts shall be entitled to the benefit of section 35A of the Code of Criminal Procedure as well as all remissions and benefits admissible under law.

Let the lower Court records be sent down at once together with a copy of this judgment.

(Justice Md. Toufiq Inam)

Md. Zakir Hossain, J:
I agree.

(Justice Md. Zakir Hossain)