

**District: Barishal.**

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

**Present:**

**Mr. Justice Mohammad Ullah  
And  
Mr. Justice Md. Toufiq Inam**

**Death Reference No.72 of 2018**

The State.

-Versus-

Md. Yusuf Sikder.

----- Condemned-Prisoner.

Mr. M. Masud Rana, DAG with  
Mr. Mohammad Zeeshan Hyder, D.A.G,  
and Mr. M. Soliaman Hossain, A.A.G.  
Mr. Md. Habibur Rahaman Sarker, A.A.G.  
Mr. Kazi Mohammad Moniruzzaman Dablu A.A.G.  
Mr. Md. Al Amin, A.A.G. and  
Mr. Sarwar Alam Chowdhury, A.A.G.

----- For the State.

Mr. Mirza Salah Uddin Ahmed, Advocate, with  
Ms. Helena Begum, Advocate, and  
Mr. Mirza Zia Uddin Ahmed, Advocate,

----- The Condemned-Prisoner.

With

**Criminal Appeal No. 6532 of 2018.**

And

**Jail Appeal No. 214 of 2018.**

Md. Yusuf Sikder,

---- Condemned-Prisoner-Appellant.

-Versus-

The State.

----- Respondent.

Mr. Mirza Salah Uddin Ahmed, Advocate, with

Ms. Helena Begum, Advocate, and  
Mr. Mirza Zia Uddin Ahmed, Advocate  
----- For the Condemned-Prisoner.

Mr. M. Masud Rana, DAG with  
Mr. Mohammad Zeeshan Hyder, D.A.G,  
Mr. M. Soliaman Hossain, A.A.G.  
Mr. Md. Habibur Rahaman Sarker, A.A.G.  
Mr. Kazi Mohammad Moniruzzaman Dablu A.A.G.  
Mr. Md. Al Amin, A.A.G. and  
Mr. Sarwar Alam Chowdhury, A.A.G.  
----- For the Respondent.

**Heard On: 23.04.2025, 24.04.2025, 27.04.2025.**  
**and**  
**Judgment Delivered On: 02.06.2025.**

**Md. Toufiq Inam, J:**

**Background:**

The accused, Md. Yusuf Sikder, has been sentenced to death for the alleged murder of his wife, Kulsum Begum ('the deceased'). Pursuant to Section 374 of the Cr.P.C., the Tribunal has referred the Death Sentence for confirmation by this Court. According to the FIR lodged by the victim's father, Faruk Fakir, on 12.02.2016, Kulsum had allegedly endured years of dowry-related abuse, culminating in her death, which was falsely portrayed as a suicide.

**FIR, Investigation and Charges:**

Faruk Fakir (PW1), the informant, lodged an FIR with Hizla Police Station, Barishal (Case No. 04 dated 12.02.2016), alleging that his daughter, Kulsum Begum (24), had been married to accused no. 1, Yusuf Sikder, about four years earlier. They had a two-year-old son named Sifat. Since the marriage, Yusuf and

others had repeatedly subjected Kulsum to physical and mental abuse over dowry demands. To ensure her safety, he had provided Tk. 200,000 in cash and three cows worth around Tk. 100,000, but the accused remained dissatisfied and recently demanded another Tk. 200,000.

On 11.02.2016, when Faruk visited to bring his daughter and son-in-law home, Yusuf refused, saying that unless the money was paid, neither would Kulsum be allowed to leave nor would he go. When Faruk expressed his inability to pay, Yusuf allegedly threatened that Kulsum would be killed and buried if the money was not paid by the next day. On 12.02.2016 around 12:15 PM, Faruk received a phone call informing him of Kulsum's death. He rushed to Yusuf's house with witnesses and found her body lying on a bed. He claims that Yusuf and his family, in a premeditated manner, beat and strangled Kulsum to death over dowry, and then attempted to cover it up by claiming she had committed suicide by drinking poison before fleeing the scene.

Police prepared an inquest report and sent the body for autopsy. During the investigation, Yusuf Sikder voluntarily surrendered before the court on 18.04.2016. Upon completion of the investigation, police found the allegation against Yusuf to be true and submitted Charge Sheet No. 26 dated 09.05.2016 against him under Section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003). On 10.08.2016, the Tribunal framed charge against Yusuf under Section 11(Ka) of the Ain

2000. The charge was read over to him, and he pleaded not guilty.

**Course of Trial:**

The case proceeded to trial, during which the prosecution examined thirteen witnesses, including the informant, medical officer, and investigating officer. As the sole accused, Yusuf Sikder was present during the trial, and the prosecution witnesses were duly cross-examined by the defence. However, the defence failed to produce any evidence in support of its case.

From the nature of the cross-examinations and the suggestions made, it appears that the defence attempted to establish the accused's innocence by claiming that he was not present at the scene during the alleged murder and that the victim had committed suicide due to an affair with an individual named Saiful. Upon completion of the prosecution's evidence, Yusuf Sikder was examined under Section 342 of the Cr.P.C., during which the incriminating evidence was put to him. He denied the allegations and pleaded not guilty.

**Tribunal's Decision and Reference:**

Upon conclusion of the trial, the Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Barishal, by **judgment and order dated 26.06.2018** passed in Tribunal Case No. 205 of 2016, convicted Md. Yusuf Sikder under Section 11(Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, sentencing him to death and imposing a fine of Tk 50,000. Pursuant to the pronouncement, a

statutory reference was made to this Court under Section 374 Cr.P.C., which was registered as Death Reference No. 72 of 2018. Simultaneously, the condemned prisoner filed Jail Appeal No. 214 of 2018, later registered as Criminal Appeal No. 6532 of 2018.

In support of the Reference, Mr. Mohammad Zeeshan Hyder, learned Deputy Attorney General for the State, submits that the prosecution has proved the case beyond reasonable doubt. Citing consistent witness testimonies and corroborating circumstantial evidence, he prays for confirmation of the death sentence. He emphasizes that there are no discrepancies regarding the date, time, place, or manner of the incident. Referring to PW1, PW2, and PW3, who discovered the victim's body on the bed inside Yusuf's room, he further asserts that the cause of death was violent asphyxia due to manual strangulation. On the contrary, Mr. Mirza Salahuddin Ahmed, the learned Counsel appearing on behalf of the convict-appellant, Md. Yusuf Sikder, prays for his acquittal on the benefit of doubt. He contends that the prosecution, having failed to establish the presence of the accused at the relevant time and place, cannot invoke Section 106 of the Evidence Act to shift the burden of proof onto the defence.

**Prosecution's Evidentiary Record:**

In order to arrive at a just and reasoned conclusion in the Death Reference and the connected Criminal Appeal, it is imperative to

undertake a comprehensive re-evaluation of the prosecution evidence on record:

**PW1: Md. Faruk Fakir (Informant)** stated that on 12.02.2016, around 12:00–12:15 PM, the accused, Yusuf Sikdar, demanded Tk. 2 lakhs from his daughter, Kulsum Begum. When she failed to meet the demand, Yusuf strangled her and later informed him, saying, “If you won’t give dowry, I’ve killed your daughter.” About four years prior, he had married his daughter Kulsum to Yusuf. They had a son, Sifat, aged 3 years and 3 months. Following the marriage, he gave Yusuf Tk. 2 lakhs in cash and three cows as dowry. On the previous day (11.02.2016), when he went to bring his daughter home, Yusuf refused, saying she would only go if more money was paid. After hearing of Kulsum’s death on 12.02.2016, his sons Solaiman and Noman went to Yusuf’s house first. He arrived shortly afterward and found his daughter’s body on the bed in Yusuf’s room. There were visible injuries on her neck. He fainted upon seeing the body. Police prepared the inquest report in his presence, took photographs after the postmortem, and seized the victim’s clothes and underskirt. He later buried his daughter at their residence and filed the case on the same day. He identified the FIR, inquest report, seizure lists, and seized items, which were marked as exhibits.

In cross-examination, he confirmed that the FIR was typed by police, and he could not recall whether Yusuf had called him on the day of the incident. He is illiterate and could not say how

long it took to prepare the FIR. He confirmed that he went to the scene with witnesses after receiving the news and signed the seizure lists along with a policeman and a village guard. He stated he did not witness the murder directly and that Yusuf was not present when he arrived. He denied all defense suggestions, including the claims that Yusuf was absent on the day of the incident, that Kulsum committed suicide, that there were no dowry demands, and that the case was false. He firmly claimed that Yusuf strangled and killed his daughter over dowry.

**PW2: Solaiman** stated that the informant is his father and the accused is Yusuf Sikdar. On 12.02.2016, around 12:15 PM., while he and his brother Noman were at their grocery shop near Tekarhat Bazaar, they heard that Yusuf was beating their sister. They rushed to the accused's house, forced open the door, and saw Yusuf strangling their sister. Upon seeing them, Yusuf fled through the back door. Their sister was already dead. They could not apprehend him. Soon after, neighbors, relatives, and their father arrived. Police later took the body to the police station and then to Sher-e-Bangla Medical College Hospital in Barisal for postmortem. She was buried at their home.

In cross-examination, he said he gave his statement to the police on 07.03.2016 and informed them that he and Noman had witnessed Yusuf strangling their sister. We were chasing the accused towards the Char Durgapur market. The accused started running. When my father was lodging the case at the police station, he and one of his paternal uncles went to the police

station. While filing the case, they discussed and advised his father. He confirmed that they informed their father and that Yusuf fled upon their arrival. He stated there were no other family members present in the room except his sister, her child, and the accused. He did not smell any pesticide in the room. The body was later moved to the yard, where the police found it. He denied all defense suggestions that Yusuf did not kill his sister, that the case was false, or that his sister had a relationship with Saiful Sardar.

**PW3: Noman Fakir**(Tendered witness) in cross-examination, he stated that it takes about 3 minutes to reach the accused's house from theirs. On the day of the incident, he saw the accused, Yusuf, strangling his sister while she was lying on the bed. By then, she was already dead. He and his brother chased Yusuf for 10–15 minutes but failed to catch him. Upon returning, they found their father had fainted. He stated that Yusuf had informed their father after killing Kulsum. Village police later moved the body from the bed to the yard. He did not smell poison on her and observed marks on her neck and back. Police arrived around 4:00–4:30 PM and took the body to the station at around 6:00 PM.

He confirmed that Yusuf had previously received advice from Member Babul regarding dowry matters. He denied all defence suggestions, including the claims that his sister committed suicide, that the case was false, or that Yusuf was not responsible for the killing.



**PW4: Rani Begum** stated that the informant, Faruk Fakir, is her maternal uncle, and the accused, Yusuf Sikdar, is the husband of her cousin, Kulsum. On 12.02.2016, at around 12:15 PM, Yusuf strangled Kulsum and informed her uncle over the phone, saying, “I’ve killed your daughter, come and take her.” Her cousins, Solaiman and Noman, tried to catch Yusuf but failed. They found Kulsum’s body on the bed. Police later arrived and found visible marks and signs of beating on the body. She stated that Yusuf killed Kulsum over an unpaid dowry demand of Tk. 2 lakhs.

In cross-examination, she stated she gave her statement to the police on 22.04.2016 along with her cousin Abul Bashir. She did not witness the murder but heard about it. She reached the scene by around 12:30 PM and confirmed that voices could carry between their house and Yusuf’s if someone shouted. She saw a large crowd at the scene, including Yusuf’s parents and sisters, none of whom appeared to be grieving. Her son Al-Amin saw Yusuf (the accused) leaving the house. Al-Amin saw the accused running away from their house. The body was moved to the courtyard by Noman, Solaiman, and others after her arrival. She denied all defence suggestions, including that Kulsum committed suicide, there were no injury marks, or that the case was false.

**PW5: Hosneara Begum** stated that the informant, Faruk Fakir, is her husband. On 12.02.2016 at around 12:15 PM, in the house of the accused, Yusuf, their daughter Kulsum was strangled to

death by Yusuf after failing to meet a dowry demand of Tk. 2 lakhs. After Kulsum's marriage, they had already given Yusuf Tk. 2 lakhs and three cows, but he later demanded another Tk. 2 lakhs. Following the incident, Yusuf called her husband and said, "I have killed your daughter." Her sons rushed to the scene and saw Yusuf strangling Kulsum but failed to catch him. They found her body on the bed.

In cross-examination, she confirmed that she was at home during the incident and fainted upon seeing her daughter's body. She did not see Yusuf at the scene. There is a wetland between their home and Yusuf's, and it takes about half an hour to cross. Her sons learned of the incident from others and reached the scene from Teker Bazar. She confirmed that an earlier dowry dispute had led to informal arbitration, though not documented. She denied all defense suggestions, including claims that Yusuf did not kill Kulsum, that she committed suicide, or that her testimony was false.

**PW6: Jahangir Mal** stated that the incident occurred on 12.02.2016 between 12:00–12:15 PM at the accused Yusuf's house. Upon hearing of the incident, he and others went there and found Kulsum's dead body inside the house. He said Yusuf used to physically abuse Kulsum over dowry demands. Before the incident, Yusuf had received Tk. 2 lakhs and three cows, but later demanded another Tk. 2 lakhs. The day before the incident, the informant went to Yusuf's house, where Yusuf allegedly abused him and threatened not to return Kulsum without the

money and to kill her. The next day, the murder occurred. PW6 identified his signature on the inquest report [Exhibits 2 and 2(1)].

In cross-examination, he confirmed that the informant is his uncle-in-law and the deceased was his cousin-sister-in-law. On the day of the incident, he was milling rice near Yusuf's house when he heard the news and went to the scene around 12:40 PM. He saw Kulsum's body and several people including Faruk Fakir, Noman, Solaiman, and others. He stayed for 10 minutes and later returned after bathing. He did not see Yusuf at the scene and admitted he did not witness any beating - his statements were based on what he heard. He saw the body in the yard but could not say who moved it. He denied all defense suggestions, including claims of bias due to family relations or giving false testimony.

**PW7: Md. Abul Bashar** stated that the informant is his father and the accused is Md. Yusuf Sikder. The incident occurred on 12.02.2016 at about 12:15 PM in the accused's house. He was in Dhaka at the time and returned home around 10:00–10:30 PM that night, where he saw his sister Kulsum Begum's body at the police station. Yusuf began demanding dowry and physically abusing Kulsum two to three months after the wedding, which took place five years earlier. They had given Tk. 2 lakhs and three cows as dowry. The day before the incident, his father went to bring Kulsum home, but Yusuf threatened, "If I don't get Tk. 2 lakh by tomorrow, I'll kill and burn your daughter." The next

day, Yusuf strangled her to death. After the autopsy, they buried her. He saw black marks on her neck.

In cross-examination, he said he works as a sales officer in Dhaka and was at the police station that night. He gave his statement to the police on 22.04.2016 along with Rani Begum. He confirmed the dowry demands and abuse but had never filed a formal complaint. Local leaders tried to mediate but no written arbitration occurred. The incident happened after 12:15 PM. He could not confirm the exact time Yusuf fled the scene or the direction he took. He denied all defense suggestions that Yusuf did not kill Kulsum, that she committed suicide, or that he gave false testimony.

**PW8: Lokman Fakir** stated that the informant is his father and Yusuf Choudhury is the accused. The incident occurred on 12.02.2016 at 12:15 PM at the accused's house. About ten days prior, the accused demanded Tk. 2 lakh through his sister, who informed their father. The day before her death, their father went to bring her back, but Yusuf refused without payment. On the day of the incident, Yusuf strangled his sister because the money was not given. He came from the betel nut garden, did not find his parents at home, and heard about the incident from neighbors. He went to the accused's house but did not see Yusuf there.

In cross-examination, he said Yusuf lived with Kulsum for three years, and he visited them during that time. He heard about the dowry demand directly but did not remember exact amounts or

dates. They paid dowry about a year after the marriage. He did not file any complaints. He found his sister on the bed and did not take her to the hospital. His parents and relatives reached Yusuf's house before him.

The accused lives in a joint family with parents, siblings, and relatives. The witness saw the accused's mother, sister, and brother at the house but does not recall if Yusuf was present. Since marriage, Kulsum lived at the accused's house but also visited her parental home. He stated in his cross examination that “আসামীর সাথে বোনের আদবের সম্পর্ক ছিল । বোন স্বামীগৃহে থাকিবেনা বলিতনা ।”. He denied suggestions that the accused demanded dowry, failed to provide for his sister, or that the incident was staged or false.

**PW9: Md. Moksedur Rahman** testified that on 12.02.2016 around 12:15 PM, he heard at the marketplace that Yusuf (the accused) had beaten Kulsum with a stick. Around 1:30 PM, he went to Yusuf's house by boat and saw Kulsum lying in the courtyard. He, along with Kulsum's father and brother Lokman, took her by van to Hizla Hospital. From there, her body was taken to the police station, although he did not accompany it. He identified his signature on the inquest report marked as Exhibit 2(3).

In cross-examination, he stated that he did not see Yusuf at the house or hospital, nor did Yusuf accompany them. He had not heard of Yusuf beating Kulsum prior to that day. At Yusuf's house, he saw several locals including Chairman Afsar and

others. He heard that Yusuf beat Kulsum with a stick that day but did not witness it. He noticed a smell of poison from Kulsum's mouth but denied suggestions that she committed suicide or that the story was false. He did not see Yusuf murder her and denied giving false testimony.

**PW10: Constable 1261 Moushumi Begum** stated that she signed the seizure list for the photograph of the deceased Kulsum on 24.04.2016 while on duty at Hizla Police Station. She identified her signature on the seizure list marked as Exhibit 4(2). In cross-examination, she stated that the photo was taken with a mobile phone and showed blood on the deceased's head. Although it was not specifically recorded that she took the photo, it was seized at 4:15 PM on 12.02.2016. The seizure list was prepared by Officer Asaduzzaman, and the photos were taken at the police station. She denied the suggestion that the photos indicated accidental death.

**PW11: Constable 431 Ali Haidar** stated that on 13.02.2016 at 6:30 PM, while on duty at Hizla Police Station, he was present when SI Asaduzzaman seized a green cotton sari with red floral print and a red petticoat, and signed the seizure list. He identified the seized sari, petticoat, two copies of the deceased's photo, and the seizure list, marked as Exhibits 3(2), I, I(a), and 4(3). He also took the body for post-mortem. In cross-examination, he stated that he personally presented the seized items. The deceased was wearing the sari and petticoat at the time. He said he knew nothing else about the case.

**PW12: SI Asaduzzaman** Howlader stated that on 12.02.2016, while serving as SI at Hizla Police Station, he prepared the seizure list for the sari and petticoat in the presence of witnesses at the police station. He identified his signature on the seizure list (Exhibit 3(3)) and the seized items as Exhibits I and I(a). He visited the crime scene, drew the sketch map and index (Exhibits 5, 5(1), 6, and 6(1)), recorded witness statements under Section 161 Cr.P.C., and collected mobile call records of the complainant and accused. The post-mortem and viscera reports were added to the case docket. Based on a credible complaint, he registered Hizla PS Case No. 4 dated 12.02.2016 and began an investigation.

He found that the accused Yusuf Sikder demanded a dowry of taka 2 lakh and four cows after marriage, and later another taka 2 lakh. When the complainant refused, on 11.02.2016, the complainant visited Yusuf's house with his daughter and son-in-law, where threats were made. Yusuf allegedly strangled his wife and struck her on the head with a heavy object sometime before 12:14 PM on 12.02.2016, causing her death. He submitted Charge Sheet No. 26 on 09.05.2016.

In cross-examination, he stated that he was unaware of the case before the complaint was filed, which was typed on a computer. The FIR was filed within two and half hours of the incident. He received the investigation assignment at 2:45 PM and reached the scene at 4:15 PM. He could not confirm the condition or

location of the body before arrival and found many people at the scene but could not recall names. No public representatives were present during the inquest. The inquest report noted that the head, forehead, face, neck, shoulder, and genital areas appeared normal with no visible injuries, but mentioned a faint smell of pesticide. Witnesses listed were relatives of the deceased; no neighbors were listed. He prepared a seizure list on 13.02.2016 with local witness Nurul Amin and the complainant. Police and the Informant witnessed the photo seizure.

At the scene, the body was found on a bed with a mat underneath but no blood on the mat; blood was oozing from the mouth. The mat was not seized. Several neighbors were not questioned as they were absent. Two adjacent rooms were locked and unoccupied. He found no evidence that Kulsum was taken to the hospital. The cause of death was learned from the post-mortem report. He had worked at Hizla Police Station for about eight months. No prior dowry complaints had been filed there. He heard of dowry demands only from the complainant and witnesses, not firsthand. The charge sheet did not include dates or reasons for dowry transactions. He denied conducting an improper investigation or filing a baseless charge sheet alleging murder instead of suicide.

**PW13, Dr. Md. Aktaruzzaman Talukder**, testified that on 13.02.2016 at 10:00 AM, he conducted the post-mortem examination on the body of Kulsum Begum, brought by



Constable 567 Ali Haidar, related to Hizla PS Case No. 4 dated 12.02.2016. He found clotted blood injuries on both sides of the back, clotted blood in the dissection areas, near the trachea, and in the neck muscles. Injuries with clotted blood were also present on the forehead and scalp. Based on these findings and the chemical analysis report, he concluded that the victim was strangled to death by hand. He identified the post-mortem report, chemical analysis report, and his signatures, marked as Exhibits 7, 7(1), 8, and 8(1). In cross-examination, he confirmed the deceased was a woman and the body was described as fresh. The inquest report accompanied the body. He did not have a female doctor or female police personnel present during the post-mortem.

**Abandoned Defence Evidence:**

During his examination under section 342 Cr.P.C., the accused, Yusuf, expressed an intention to produce Defence Witnesses. Although the Tribunal permitted examination of two such witnesses, the defence failed to take timely and effective steps to present them. When a belated attempt was made, the Tribunal declined the prayer, as the case had already been fixed for arguments. Notably, the defence did not challenge this order before the higher forum and instead proceeded with final arguments. This inaction and acquiescence undermine the credibility of the defence and suggest a lack of diligence or bona fide intent in producing its witnesses.

**Defence Stand points:**

Mr. Mirza Salahuddin Ahmed, learned Counsel, appears on behalf of the convict-appellant, Md. Yusuf Sikder, and prays for his acquittal arguing that:

- i) The FIR, lodged shortly after the incident, was prepared in consultation with PW2 and PW3, both of whom are sons of the informant and key prosecution witnesses. However, notably, the FIR contains no mention that PW2 or PW3 actually saw the victim being chased, assaulted, or killed. This silence on such a critical issue strongly suggests that these witnesses had no direct knowledge of the incident at the time of filing the FIR, thereby raising serious doubts about the credibility of their later testimonies alleging the accused's presence or involvement. In support of this argument, reference is made to 14 BLD (1994) 477, paras 32–33.
- ii) All principal prosecution witnesses are close relatives of the deceased and the informant. Crucially, no independent or neutral witness has corroborated the presence of the accused at the scene or any alleged act of fleeing or being chased, as claimed by PW2 and PW3. In a case of such gravity, the prosecution's failure to produce even a single disinterested witness substantially weakens its case. The lack of neutral corroboration severely compromises the evidentiary value of the

prosecution's narrative. Reliance is placed on 15 ALR (AD) 2019, pp. 126–127.

- iii) PW8, a brother of the deceased, testified that “আসামীর সাথে বোনের আদরের সম্পর্ক ছিল । বোন স্বামীগৃহে থাকিবেনা বলিতনা ।” (“The accused and my sister had a respectful relationship. She never said she would not stay at her husband's house.”). This statement contradicts the prosecution's portrayal of an abusive and hostile domestic environment and instead supports the defence's case that the relationship was not as strained as alleged. It casts doubt on the consistency and reliability of the prosecution's broader narrative.
- iv) PW9, a brother-in-law of the informant, candidly admitted during cross-examination that he neither saw the accused at the house or hospital, nor witnessed the assault or death. His testimony is entirely hearsay, based on what he was told at the market and upon arrival at the house. Though he claimed to have smelled poison from the victim's mouth, this assertion is unsupported by medical evidence and appears speculative. He also failed to establish any direct link between the accused and the incident. His inability to place the accused at the scene significantly diminishes the probative value of

his evidence and highlights the prosecution's reliance on unverified secondhand information.

- v) The prosecution's case rests wholly on circumstantial evidence and testimonies from interested and related witnesses, marred by material omissions, and contradictions. There is a glaring absence of direct evidence linking the accused to the commission of the alleged offence. The initial FIR fails to mention key allegations introduced at trial, no independent witness has affirmed the accused's presence, and the investigation was neither comprehensive nor impartial. Given these deficiencies, the defence submits that the accused is entitled to the benefit of the doubt, consistent with the well-established principle that guilt must be proved beyond reasonable doubt. In this context, reliance is placed on 41 DLR (AD) 1989, p. 157, para 32.

**Prosecution's Contentions:**

Per contra, Mr. Mohammad Zeeshan Hyder, the learned Deputy Attorney General appearing for the State submits that:

- a) The testimonies of the prosecution witnesses clearly establish that attempts to resolve the ongoing marital discord through a local *Salish* (informal arbitration) were unsuccessful. The consistent and unresolved demand for dowry created a toxic and hostile marital environment, a

fact that has been proved beyond reasonable doubt through the oral evidence of key prosecution witnesses. In support of this contention, reliance is placed on the decision reported in 15 SCOB (2021) AD 58, paras 13 and 25.

- b) On the day preceding the incident, the informant, father of the victim, visited the residence of the condemned prisoner to bring his daughter home. At that time, the condemned prisoner reiterated his demand for dowry and refused to allow the victim to leave with her father unless the demand was met. This immediate context reflects the continuing dowry pressure and directly links the accused's conduct to the events leading to the victim's death.
- c) While an accused is generally not required to explain the cause of death, the legal burden shifts in cases where a wife dies in the custody of her husband. Under Section 106 of the Evidence Act, the husband is duty-bound to explain the circumstances of such death. Reference is made to 57 DLR (AD) (2005) 129, para 29 and 68 DLR (2016) 137, paras 36–37. Furthermore, as held in 63 DLR (AD) (2011) 134, para 14, the prosecution need only prove that the husband was present in the house at the time of the occurrence. In the present case, the testimonies of PW2 and PW3, both brothers of the deceased, clearly establish the presence of the condemned prisoner in the house during the relevant time. Yet, the accused has failed to

provide any explanation regarding the circumstances in which his wife died.

- d) The defence attempted to advance a theory of suicide during cross-examinations, inconsistently suggesting that the victim either ingested poison (as per the cross-examination of PW2) or died by hanging (as per PW4 and PW8). These inconsistent claims are not only contradictory but also unsupported by medical findings. The post-mortem report conclusively found the cause of death to be manual strangulation, effectively ruling out death by hanging. Moreover, the Chemical Examiner's Report confirmed the absence of poison in the victim's stomach, liver, and kidneys, thereby invalidating the defence theory of poisoning. These scientific findings negate the defence claim of suicide.
- e) The defence sought to rely on a plea of alibi, suggesting that the condemned prisoner was not present at the house at the relevant time. During cross-examinations of PW1 and PW4, it was proposed that the accused is a fisherman who only occasionally visited his home. These suggestions were categorically denied by the prosecution witnesses, and the defence failed to lead any credible evidence to support the plea. It is a well-settled principle that a plea of alibi must be proved beyond reasonable doubt and not merely on the balance of probabilities. Reliance is placed on 15 SCOB (2021) AD 58, paras 44 and 45. Given that

the alibi has been disbelieved, a heightened burden lies on the accused to explain the cause of death, particularly in light of the multiple injuries found on the victim's body. Reference is made to 17 BLD (AD) (1997) 120, para 7 in this regard.

- f) In cases involving the custodial death of a wife, direct eyewitnesses are rarely available, and household members often refrain from disclosing the truth due to emotional, familial, or societal constraints. Neighbours, too, may be reluctant to testify. Therefore, the law recognizes that such cases must be proved through circumstantial evidence, as acknowledged in 43 DLR (AD) (1991) 92, para 16. In the present case, the chain of circumstantial evidence, supported by consistent witness testimonies and corroborated by medical and forensic findings, proves the guilt of the accused, Yusuf, beyond all reasonable doubt. The Tribunal, therefore, rightly found him guilty.

**Appraisal of Evidence:**

PW, Faruk Fakir (Father of the deceased / Informant) claims that on 12.02.2016, the accused Yusuf demanded Tk. 2 lakhs from Kulsum, and when she failed to comply, he strangled her. The witness also claimed Yusuf later informed him of the killing, saying, "If you won't give dowry, I've killed your daughter." He mentioned a history of dowry payments and a prior attempt to bring Kulsum home the day before, which Yusuf refused without

more money. Second, he described that upon receiving news of Kulsum's death, his sons reached the scene first, and he arrived shortly after to find her body with neck injuries. He fainted upon seeing her, participated in police procedures (inquest, seizure), and filed the case the same day, identifying relevant documents and items seized. Third, in cross-examination, he admitted he is illiterate, that the FIR was typed by police, and he could not confirm whether Yusuf actually called him. He did not witness the murder himself, and Yusuf was not present when he arrived. Despite denying all defence suggestions, these gaps in direct knowledge and memory weaken the reliability of his claims. Overall, while his statement alleges motive and claims an extra-judicial confession, it lacks direct evidence and contains inconsistencies that reduce its evidentiary strength.

PW2, Md. Solaiman Fakir (Informant's son/Alleged Eyewitness) claims that on 12.02.2016 around 12:15 PM., while he and his brother Noman were at their grocery shop near Tekarhat Bazaar, they heard that Yusuf was beating Kulsum. They rushed to Yusuf's house, forced open the door, and saw him in the act of strangling their sister. Yusuf fled through the back door upon seeing them, and Kulsum was already dead. They were unable to catch him. Soon after, their father, neighbors, and relatives arrived. Police later took the body to the police station and then to the hospital for postmortem. Kulsum was buried at their residence. In cross-examination, Solaiman stated that he gave his police statement nearly a month later, on 07.03.2016, and claimed to have informed police that he and Noman had



witnessed the strangulation. He also mentioned that they chased Yusuf toward Char Durgapur market. He confirmed accompanying his father and paternal uncle to the police station during the filing of the case and that they discussed and advised his father during the process. He reiterated that only Kulsum, her child, and Yusuf were in the room at the time of the incident, and he did not detect any smell of pesticide, which is relevant in rejecting the theory of suicide by poisoning.

Overall, PW2 presents himself as an eyewitness, claiming to have seen the accused in the act of murder. First, PW2 Solaiman testified that he and his brother saw Yusuf strangling their sister Kulsum and that Yusuf fled when they arrived. He described this as a direct eyewitness account of the murder. However, this crucial fact that PW2 witnessed the actual killing, is notably absent from the FIR, which is the first official record of the incident filed by the informant and police. This raises questions about the timing and authenticity of PW2's claim to have seen the murder. His testimony appears manufactured or embellished.

PW3, Md. Noman Fakir (Informant's son / Alleged Eyewitness) claims to have seen the accused strangling Kulsum, he admits she was already dead at that time, which raises questions about whether the strangulation was ongoing or post-mortem. The timeline he gives places police arrival hours after the incident, allowing time for possible alterations. His denial of any smell of poison counters suicide theories. The confirmation of prior dowry advice supports a motive. However, the fact that he is a

“tendered witness” (usually a formal witness called just for cross) and that some details conflict with other testimonies may affect his weight as evidence. The failure to mention him in early statements or the FIR suggests afterthought fabrication. The reliability of two related persons claiming to have seen a murder through a window, but doing nothing, is highly questionable.

PW4, Rani Begum (Niece of the Informant)’s testimony is mostly hearsay, relying on what she heard and what others told her rather than direct observation. The alleged phone confession to her uncle is significant but uncorroborated. Her observation of Yusuf’s family’s behavior may suggest lack of remorse but is subjective. The mention of her son (Al-Amin)) seeing Yusuf flee provides some circumstantial support. However, the absence of her witnessing the murder weakens her testimony as direct evidence. Her denial of defence suggestions supports prosecution but does not add substantive proof.

PW5, Hosnara Begum's testimony largely relies on secondhand information from her sons and husband, not on her own direct observation. Her admission that she did not see Yusuf at the scene and that her sons learned about the incident from others weakens the immediacy and reliability of her account. The physical distance (wetland taking 30 minutes) also casts doubt on how quickly Yusuf could have acted or fled. Her testimony about prior dowry disputes supports motive but lacks documentary proof. Overall, the evidence here is mainly hearsay and indirect,

which limits its weight unless corroborated by other direct evidence.

PW3, Maksudur Rahman Khan (Uncle of the deceased) claims to have been present during the alleged threat on 11.02.2016, but offers no corroborating evidence. His testimony is hearsay-heavy and mirrors PW1 and PW2. The fact that multiple relatives visited the house and left Kulsum behind despite the alleged threats undermines the claim of imminent danger.

PW6, Jahangir Mal (Uncle-in-law of Informant) admits he did not witness any abuse or the incident and based his conclusion on hearsay. He reinforces the lack of any visible signs of injury on Kulsum and supports the fact that no complaints were previously made. His testimony adds nothing probative to the actual allegation and in fact supports the possibility of an alternate cause of death (e.g., poisoning or suicide). PW6's testimony mainly comprises hearsay and circumstantial information, with no direct observation of the murder or assault. He arrived after the incident and did not see the accused at the scene, which limits his value as a witness to the actual crime. However, his testimony about prior abuse and threats supports the prosecution's narrative of motive and prior harassment. His identification on the inquest report lends some credibility to procedural aspects but not to direct evidence of guilt. Overall, his evidence helps establish context but is not strong proof of the accused's direct involvement.

PW7, Md. Abul Bashar (Brother of the deceased) was not present during the incident. His claim about prior abuse and threats is hearsay, relayed from PW1. PW7's testimony primarily establishes a history of dowry demand and abuse, supporting motive. However, he was not present at the scene or time of the murder and his account of the incident is based on information received later. His inability to detail Yusuf's flight weakens the narrative of immediate escape. The lack of formal complaints or salish may weaken claims of sustained harassment. Overall, his testimony supports the prosecution's context and motive but is not direct evidence of the murder.

PW8, Lokman Fakir (Brother of the deceased)'s testimony provides context about dowry demands and family dynamics but is largely based on hearsay or indirect knowledge. He did not witness the murder or Yusuf's presence at the scene, weakening his evidentiary value on the core issue. His acknowledgment of an affectionate relationship between accused and sister may counter the prosecution's motive claims slightly. Overall, his evidence supports the narrative of dowry dispute but lacks direct observation or strong proof of the crime.

PW9, Md. Moksedur Rahman (Relative) in his testimony further supports the absence of Yusuf at the time. He did not witness the assault or murder, only heard about it. He mentions a smell of poison, which supports a possible suicide theory. He states that he did not observe injuries in detail, and that he only heard

rumors. This undermines the prosecution narrative of visible, fatal injuries inflicted by beating.

PW10, Constable Moushumi Begum's role was limited to signing the seizure list. She did not take the photo herself and offered no first-hand evidence. Her claim that there was blood on the deceased's head contradicts PW12's sketch map and inquest, which noted no visible injuries. This contradiction benefits the defence. Her denial of accidental death is opinion-based, not forensic.

PW11, Constable Ali Haidar transported the body and presented clothes. He admits the deceased was wearing the sari and petticoat, but provides no forensic insights. He does not know anything else about the case. His role is procedural only and does not contribute to proving murder.

PW12, SI Asaduzzaman Howlader (Investigating Officer)'s investigation appears flawed and superficial. No neighbors were interrogated; only relatives of the Informant gave statements. The inquest report noted no visible injuries on head, face, neck, or genitals. He admits the mat where the body lay was not seized, and there was no blood on it, raising doubt about head injury. Two rooms were locked, and he did not question occupants, losing possible neutral witnesses. He admits he relied on statements to conclude murder, and did not include any dates for the alleged dowry demands. There was no public representative

during inquest. These gaps seriously undermine the credibility of the investigation, making the charge sheet vulnerable.

PW13, Dr. Md. Aktaruzzaman Talukder (Post-mortem Doctor) opines death by strangulation, the inquest report (before autopsy) described no external injuries. There was no female officer present, potentially violating post-mortem protocol. His findings of blood clots are inconsistent with the inquest, creating doubt.

### **Discussions and Findings:**

The offence under Section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 is attracted only when the murder of a woman is committed in connection with a demand for dowry. To sustain a conviction under this provision, the prosecution must prove two essential ingredients:

1. That there was a demand for dowry; and
2. That the murder was committed because of, or in furtherance of, that dowry demand.

Therefore, a causal nexus between the dowry demand and the murder must exist.

Upon a close scrutiny of the testimonies of the prosecution witnesses, it appears that while a background of dowry-related demands and marital discord has been suggested, potentially indicating motive, the prosecution has failed to establish a compelling and proximate link between the alleged dowry demand and the act of murder. In particular, the prosecution has

not been able to prove that any specific demand for dowry was made by the accused on the day of the incident or on the previous day, as alleged. Even assuming a history of dowry payments or prior demands, such evidence alone cannot justify the presumption that the murder was committed because of such demand. The necessary causal nexus between the dowry demand and the murder remains unproven.

While the occurrence of the homicide itself may otherwise be proved, the failure to establish the dowry demand to the standard required in a criminal trial renders the charge under Section 11(Ka) unsustainable. In the absence of this essential element, a conviction under that provision cannot be upheld. However, if the evidence proves the murder independently and beyond reasonable doubt, the accused may still be held liable under Section 302 of the Penal Code.

This brings us to the next critical question: Has the murder itself been proved beyond reasonable doubt? PW2, Md. Solaiman Fakir, stated during cross-examination that “আমরা আসামীকে ধাওয়াইছিলাম চরদুর্গাপুর বাজারের দিকে, আসামী দৌড় দেয়। বাবা থানায় মামলা লেখা কালে আমিও আমার এক ফুফা থানায় গিয়েছিলাম; মামলা করাকালে বাবার সাথে আমাদের বুদ্ধি পরামর্শ হয়।” However, the FIR, lodged soon after the incident and admittedly after consultation with PW2, contains no mention that either PW2 or PW3 had witnessed the accused assaulting or killing the victim, nor that they saw the accused strangling and killing their sister; upon seeing them, the accused fled, and they chased him for 15 minutes in broad daylight, but

were unsuccessful. The FIR is entirely silent as to the appellant's presence at the scene or any act of violence committed by him. This omission is not minor; it is both material and significant, casting serious doubt on the veracity of the subsequent embellishments introduced by the witnesses.

In criminal jurisprudence, the FIR is expected to contain the core allegations forming the basis of the prosecution's case. Where such essential facts are missing, especially when the FIR is lodged promptly and by persons claiming direct knowledge of the event, subsequent improvements in witness testimony must be viewed with caution. In this case, both PW2 and PW3 are brothers of the deceased and played an active role immediately after the incident. They accompanied the victim's body, assisted in filing the FIR, and were present during the inquest and hospital formalities. If they had truly witnessed their sister being strangled by the accused and had chased him immediately afterward, it is wholly unnatural that such vital details would be omitted from the FIR.

A pivotal part of the prosecution's case hinges on the in-court testimonies of PW2 and PW3, who, after a lapse of about a year, claimed that:

- a) They rushed to the house upon hearing cries;
- b) They saw the accused strangling and killing their sister;



- c) The accused fled upon seeing them, and they pursued him for 15 minutes.

None of these assertions finds place in the FIR, despite it being lodged with their active input. No plausible explanation has been offered for this glaring and material omission. This belated introduction of highly incriminating facts raises a strong presumption of afterthought or embellishment. When a vital fact is introduced for the first time in court, long after the FIR and without any credible explanation, such testimony loses its probative value. It is consistently held that when witnesses, especially interested or related witnesses, introduce major new facts at a much later stage, such statements must be approached with utmost caution. In the absence of corroborative evidence or a credible explanation, the possibility of tutoring or fabrication cannot be ruled out. The credibility of PW2 and PW3, therefore, stands substantially diminished.

It is undisputed that all the alleged eyewitnesses are closely related to the deceased and the informant. The prosecution has failed to produce any independent or neutral witness to establish either (a) the presence of the accused at the scene at the relevant time or (b) that he fled and was chased by PW2 and PW3 after the incident, despite the fact that the occurrence took place in a rural setting where people are generally well-acquainted with one another. In a case resting substantially on circumstantial evidence, this absence of independent corroboration casts serious doubt on the reliability and impartiality of the prosecution's

version. Notably, no effort was made to examine neighbours or disinterested persons from the vicinity of the crime scene. This omission attracts an adverse presumption against the prosecution under Section 114(g) of the Evidence Act. In *Alkas Mia and others vs. The State*, reported in 25 DLR (SC) 399, it was categorically held that: "*non-examination of independent witnesses, particularly some of the neighbours, raises a presumption against the prosecution to the effect that had they been examined, they would not have supported the prosecution case.*"

Although the post-mortem report confirms that the cause of death was manual strangulation, there is no direct evidence linking the accused to that act. While the medical findings do establish the nature and cause of death, they do not identify the perpetrator. It is a well-settled principle that medical opinion, in the absence of cogent and corroborative evidence connecting the accused to the act, cannot by itself sustain a conviction.

The defence has raised a plea of alibi, asserting that the accused was not present at his home during the time of the occurrence. Although the defence failed to conclusively establish this alibi, such failure does not relieve the prosecution of its foundational burden. The prosecution remained under a legal obligation to prove beyond reasonable doubt that the accused was present and committed the offence. In the absence of such proof, the failure of the accused to prove his alibi cannot be treated as positive evidence of guilt.

The prosecution attempted to invoke Section 106 of the Evidence Act, 1872, contending that since the incident occurred within the accused's home, the burden was upon the husband to explain the cause of death. However, it is trite law that Section 106 does not displace the primary burden on the prosecution to establish the accused's presence at the scene of crime at the relevant time. Unless the prosecution first proves this foundational fact, the evidential burden under Section 106 cannot arise. As observed by the Appellate Division in 63 DLR (AD) 134, the prosecution must first establish that the accused was present in the house at the material time. Only then can Section 106 be validly invoked. We are of the considered view that in cases involving unnatural deaths within the confines of an accused's residence, the evidentiary burden under Section 106 can shift only after the prosecution has laid the requisite foundational facts. In the absence of such proof, reliance on Section 106 is legally impermissible.

In *Marbans Singh vs. State of Punjab*, AIR 1957 SC 637, the Supreme Court aptly held: "*It is no doubt a matter of regret that a foul, cold-blooded, and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true, but between 'may be true' and 'must be true' there is inevitably a long distance to travel, and the whole of this distance must be covered by the prosecution by legal, reliable*

*and unimpeachable evidence before an accused can be convicted."*

It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. In cases based on circumstantial evidence, the chain of circumstances must be complete and must point unerringly to the guilt of the accused. Any reasonable doubt must be resolved in favour of the accused. Where two interpretations of the evidence are reasonably possible, one pointing to guilt and the other to innocence, the view favourable to the accused must prevail. In the instant case, the chain of circumstances is neither complete nor conclusive. The overall evidentiary picture leaves significant doubt regarding the accused's presence at the crime scene at the relevant time.

The evidence, being wholly circumstantial, lacking in independent corroboration, and suffering from serious material omissions, fails to meet the standard required to sustain a conviction. The prosecution, having failed to prove the accused's presence at the relevant time and place, cannot rely on Section 106 of the Evidence Act to bridge evidentiary gaps or shift the burden of proof.

#### **Conclusion and Order:**

Upon a thorough and careful reappraisal of the evidence on record, including the oral testimonies of prosecution witnesses, documentary exhibits, medical and post-mortem reports, it is

evident that the prosecution has failed to prove the charge against the condemned prisoner beyond reasonable doubt. All alleged eyewitnesses are close relatives of the deceased, raising a serious possibility of interested testimony. Their statements contain material inconsistencies, both internally and in comparison, with the medical and inquest findings. This Court is, therefore, constrained to hold that the prosecution has not succeeded in establishing the accused's guilt beyond reasonable doubt. Accordingly, the convict-appellant is entitled to the benefit of doubt.

Resultantly:

1. **Death Reference No. 72 of 2018** is hereby **rejected**.
2. **Criminal Appeal No. 6532 of 2018** is **allowed**. The impugned judgment and order of conviction and sentence dated 26.06.2018, passed by the learned Judge of the Nari-O-Shishu Nirjaton Daman Tribunal, Barishal, in Nari-O-Shishu Nirjaton Daman Tribunal Case No. 205 of 2016, is hereby **set aside**. Consequently, the connected **Jail Appeal No. 214 of 2018** is disposed of.
3. The convict-appellant, **Md. Yusuf Sikdar**, is hereby **acquitted** of the charges under Section 11(Ka) of the Nari-O-Shishu Nirjaton Daman Ain, 2000. He shall be **released forthwith**, unless required to be detained in connection with any other case or proceeding.

Let a copy of this judgment and order be transmitted to the Tribunal concerned and the Jail authorities **forthwith** for urgent compliance. Send down the lower court records accordingly.

**(Justice Md. Toufiq Inam)**

**Mohammad Ullah, J:**

I agree.

**(Justice Mohammad Ullah)**

Syed B.O.  
Ashraf/A.B.O.