

Present:
Mr. Justice K.M. Kamrul Kader
And
Mr. Justice Md. Jabid Hossain

Death Reference No. 75 of 2018.

The State ... Appellant

-Versus-

Md. Sohel Biswash

....Condemned-Prisoner

With

Criminal Appeal No.8266 of 2018

Md. Abul Hossain

..... Informant-appellant

-Versus-

The State & othersRespondents

With

Criminal Appeal No.7561 of 2018

With

Jail Appeal No. 212 of 2018

Md. Sohel Biswash

.....Convict- Appellant

-Versus-

The State Respondent

With

Criminal Appeal No.7065 of 2018

Md. Abdus Samad

.....Convict-Appellant

-Versus-

The State Respondent

Mr. Prokash Ranjan Biswas, D.A.G with
Mst. Tahera Khatun, and
Mr. Omar Faruk, A.A.Gs

....For the State.

Mr. Md. Munsurul Hoque Chowdhury,
Senior Advocate with
Mr. Zahirul Haque and

Mr. Mohammad Shafiqul Islam Ripon,
Advocates

....For the Condemned-Prisoner
(In Criminal Appeal No. 7561 of 2018 with
In Jail Appeal No. 212 of 2018)

Mr. Rafiqul Islam (Hiru), Advocate

....For the Informant-appellant
Mr. Md. Sawroar Hossain, with
Mr. Rowshan Alam Khan, Advocates
....For the acquitted-respondents
(In Criminal Appeal No. 8266 of 2018)

Mr. Rowshan Alam Khan, with

Mr. Md. Minarul Islam, Advocates

....For the convict-appellant
(In Criminal Appeal No. 7065 of 2018)

Heard On: 03.07.2025, 07.08.2025, & 14.08.2025

And

Judgment On : 11.12.2025.

K.M. Kamrul Kader, J:

This reference under section 374 of the Code of Criminal Procedure has been made by the learned Judge (Senior District and Sessions Judge) of the Druto Bichar Tribunal, Rajshahi for confirmation of the sentence of death passed on the condemned-prisoner namely Md. Sohel Biswash in Druto Bichar Tribunal Case No.05 of 2017, arising out of Chatmohor Police Station Case No.23 dated 25.06.2014, corresponding to G.R. No.123 of 2014,

convicting the condemned-prisoner under section 302 of the Penal Code and sentencing him to death with fine of Taka 20,000/- only and further convicting him under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 20,000/- only in default to suffer rigorous imprisonment for 01(one) year more. Against this judgment and order of conviction and sentence dated 28.06.2018, the Convict-Appellant Md. Sohel Biswash filed the Criminal Appeal being No.7561 of 2018 and Jail Appeal being No.212 of 2018 before this court.

The learned Judge of the Druto Bichar Tribunal, Rajshahi by his judgment and order dated 28.06.2018 acquitted the accused-respondents No. (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa passed in Druto Bichar Tribunal Case No.05 of 2017 arising out of Chatmohor Police Station Case No.23 dated 25.06.2014 corresponding to G.R. No.123 of 2014 under sections 7/8/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 along with sections

302/201/34 of the Penal Code. Against the judgment and order of acquittal of 3 (three) co-accused dated 28.06.2018, the Informant Md. Abul Hossain as Appellant filed a Criminal Appeal being No.8266 of 2018 before this court.

Co-accused Md. Abdus Samad against whom the learned Judge of the Druto Bichar Tribunal, Rajshahi convicting him under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 20,000/- only in default to suffer rigorous imprisonment for 01(one) year more. Against the judgment and order of conviction and sentence dated 28.06.2018, the Convict Md. Abdus Samad as Appellant filed a Criminal Appeal being No.7065 of 2018 before this court.

The Death Reference and these Appeals were heard together and are being disposed of by this single judgment.

The prosecution case, in shorts, are that one Md. Abul Hossain as Informant lodged the First

Information Report (FIR) to the Officer-in-Charge of the Chatmohor Police Station on 25.06.2014 alleging *interalia* that accused persons along with 5/6 unknown accused have threatened the Informant on several occasions, through various ways due to previous enmity relating to land dispute with the accused Nos. 1 and 4. They also threatened to kidnap his son namely Md. Abdullah Al Noor, 4 (four) years old boy, from mobile/cell-phone nos. 01863759734, 01755456569 and 01745680754. He informed the matter to Pabna RAB office. Thereafter on 25.06.2014, in the morning, the informant was at ground floor of their house and his wife Atia Parveen (32) and father-in-law Md. Amir Hossain (60) were working at the north side of the house. At that time, his son namely Md. Abdullah-Al-Noor, was running in and around the courtyard and inside of the house as well as on the north side of the house next to the paved road and at that time, he was eating peanut. Suddenly, at about 11:45 a.m. his son Md. Abdullah- Al-Noor was missing and the Informant, his wife, father-in-law and

other relatives immediately started searching for his son in all possible places and intimated the matter to the local police station. When the police arrived, everyone joined in and trying to find out whereabouts he is and to rescue his son. At one stage, at about 3:45 p.m. the Informant received phone calls from mobile/cell-phone SIM numbers 01766387589 and 01721748364 to his mobile SIM number-01768583848 and demanded ransom amounting to Taka 15,00,000/= only from him and threatened to kill his son, if he failed to pay the same to the Kidnappers. The accused persons in connivance with some unknown accused have kidnapped his son, due to previous enmity in order to gain property and to collect ransom money. As the Informant was busy in searching his son and efforts are ongoing to rescue his son and as such, there was a delay in filing the complaint to the police station and the same was recorded as Chatmohor Police Station Case No.23 dated 25.06.2014, under sections 7, 8 and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

Sub-Inspector S.M. Moynuddin, as investigating officer, investigated the case. During investigation, he visited the place of occurrence, prepared a sketch map with separate index, examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure, thereof seized alamots by preparing seizure list and arrested FIR named accused persons including three accused whose names are come into the investigation and handed over them to the court below. Thereafter, the beheaded dead body of the Informant's son, victim Abdullah- Al-Noor, whose hands were severed from his body was recovered on 27.06.2014 and sent the same to the morgue for autopsy. Afterwards separate head of the said victim was recovered on the next day i.e. 28.06.2014 and sent it to the morgue for autopsy. Next, the police arrested one Soheli Biswas, who is not a F.I.R. named accused, he reside at the ground floor of the house of the Informant as a tenant. He sent accused Soheli Biswas to the Magistrate, 1st class, cognizance court, on 01.07.2014, who recorded

his confessional statement under section 164 of the Code of Criminal Procedure implicating one Abdus Samad as a planner of the said kidnap of the victim. He collected the confessional statement of the condemned-prisoner Soheli Biswas. After conclusion of the investigation, finding *prima facie* case against the 5 (five) accused persons, he submitted the Charge Sheet being No.165 dated 12.09.2014 under sections 7, 8 and 30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 along with sections 302, 201 and 34 of the Penal Code and not sent up in Charge Sheet other 3 (three) accused persons as he did not find any *prima facie* case against them.

Thereafter, the case record was transmitted to the Court of Nari-O-Shishu Nirjatan Daman Tribunal and the learned Judge of the said Tribunal passed an order for further investigation of the case. Accordingly, a supplementary Charge Sheet was submitted on 29.03.2016, by the Investigating Officer under sections 7, 8 and 30 of the Nari-O-Shishu Nirjatan

Daman Ain, 2000 read with sections 302, 201 and 34 of the Penal Code.

Thereafter, the case record was transmitted to the Court of learned Judge of the Druto Bichar Tribunal, Rajshahi for trial, who took cognizance of the offence and the case was registered as Druto Bichar Tribunal Case No.05 of 2017. At the commencement of the trial, the learned Judge (Senior District and Session Judge) of the Druto Bichar Tribunal, Rajshahi framed charge under sections 7, 8 and 30 of the of the Nari-O-Shishu Nirjatan Daman Ain, 2000 read with sections 302, 201 and 34 of the Penal Code against 05(five) accused persons including condemned-prisoner and it was read over to them, to which they pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined as many as 19 (Nineteen) witnesses to prove their case, on the other hand, the defense examined none and after conclusion of taking evidence, the condemned-prisoner Soheli Biswas was examined under Section 342 of the Code of Criminal Procedure, to which he

pleaded not guilty and claimed to be tried and refused to adduce any evidence in his support. But he submitted a written statement. Other co-accused were examined under Section 342 of the Code of Criminal Procedure, to which they pleaded not guilty and claimed to be tried and they refused to adduce any evidence in their support.

The defense case as it appears from the trend of cross-examination is that the accused persons are totally innocent and they have been falsely implicated in this case out of previous enmity and on the basis of mere suspicion. They are neither responsible nor connected with the kidnapping and murder of deceased Abdullah-Al-Noor. The confessional statement made by condemned-prisoner Sohail Biswash was not true or made voluntarily and the same was obtained by torturing him and he made this statement under duress and the condemned-prisoner is neither responsible nor connected with the murder of deceased Abdullah-Al-Noor.

After conclusion of the trial, learned Judge (Senior District and Sessions Judge) of the Druto Bichar Tribunal, Rajshahi convicting the condemned-prisoner Sohel Biswash under section 302 of the Penal Code and sentencing him to death with fine of Taka 20,000/- only and further convicting him under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 20,000/- only in default to suffer rigorous imprisonment for 01(one) year more. The learned Judge also convicting Md. Abdus Samad under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 20,000/- only in default to suffer rigorous imprisonment for 01(one) year more and acquitted the accused (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa from the charge leveled against them.

Mr. Prokash Ranjan Biswas, the learned Deputy Attorney General with Ms. Tahera Khatun, Mr. Md. Siddik Ali and Mr. Omar Faruk, the learned Assistant

Attorney Generals appearing for the State having taken us through the impugned judgment and order, FIR, charge sheet, depositions of the prosecution witnesses and other materials on record made submissions supporting the conviction and sentence of the condemned- prisoners Soheli Biswas and convict Md. Abdus Samad. Learned D.A.G. submits that the prosecution proved its case beyond reasonable doubt. All facts have been proved by cogent, credible and reliable evidence adduced by the prosecution witnesses. There is no contradiction in their testimonies on any material point. He also submits that the allegation against the condemned-prisoner Soheli Biswas made under section 302 of the Penal Code and the allegations made against the condemned-prisoner Soheli Biswas and convict Md. Abdus Samad have been well proved by the prosecution witnesses. He further submits that there are specific allegations against the condemned-prisoner Soheli Biswas and convict Md. Abdus Samad and the learned Judge of the District Court

Tribunal, Rajshahi passed this judgment and order of conviction and sentence after considering the evidence of the prosecution witnesses and confessional statement of the condemned-prisoner made under section 164 of the Code of Criminal Procedure. The condemned-prisoner Sohel Biswash also made a confessional statement, wherein he confessed that he along with Md. Abdus Samad brutally murdered and kidnapped the deceased. He also narrated vivid picture as to how and what manner the alleged occurrence took place, which corroborated with the other independent evidence adduced by the prosecution witnesses. He lastly submits that the confessional statement made by the convict is inculpatory in nature and it was made voluntarily and the learned Chief Judicial Magistrate after complying the provisions of Sections 364 and 164 of the Code of Criminal Procedure recorded the said confessional statement of the condemned-prisoner, there is no illegality and irregularity in the impugned judgment and order of the conviction and sentence, as such, he

prays for upheld the conviction and sentence of the condemned-prisoner Soheli Biswas and convict Md. Abdus Samad and accept the Death Reference and dismissed the Criminal Appeal being Nos.7561 of 2018 and 7065 of 2018 and Jail Appeal being No.212 of 2018.

To substantiate his submission the learned Deputy Attorney General for the State placed reliance on the decisions in the case of *The State vs. Lulu Miah and another reported in B.L.D. Vol. III (1987) AD page 212.*

Mr. Rafiqul Islam (Hiru) learned Advocate appeared on behalf of the Informant-appellant in Criminal Appeal No. 8266 of 2018 submits that the accused respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa were involved with this occurrence and their name also disclosed by the prosecution witnesses in their evidence, the prosecution proved its case beyond reasonable doubt. He also submits that the informant appellant successfully proved his case by adducing

cogent, credible and reliable evidence by producing the necessary papers and documents; these are exhibited before the Tribunal. All facts have been proved by cogent, credible and reliable evidence adduced by the prosecution witnesses. There is no contradiction in their testimonies on any material point but the learned Judge of the Druto Bichar Tribunal, Rajshahi without considering the evidence of prosecution witnesses acquitted the accused respondents from the charge levelled against them by his judgment and order dated 28.06.2018 and as such, the same is liable to be set aside for ends of justice in respect of the accused respondents. He also submits that the police after investigation got huge evidence against the accused respondents but the learned Judge of the Druto Bichar Tribunal without considering the same was pleased to acquit the accused respondents. The learned Judge of the Druto Bichar Tribunal, Rajshahi after considering the evidence of prosecution witnesses convicted and sentenced the accused No. 4 Md. Sohel Biswas to

death and also sentenced the accused No.1 Md. Abdus Samad to imprisonment for life but the accused Respondents who are on same footing acquitted them by his Judgment and order dated 28.06.2018 and the Judgment and order of acquittal contained no legal reason hence, the same is liable to be set aside for ends of justice in respect of the accused respondents. The informant appellant having been succeeded in proving the charge leveled against the accused respondents beyond all reasonable doubt but the learned Judge of the Druto Bichar Tribunal most illegally and erroneously acquitted the accused respondents, which is not a proper judgment of acquittal in the eye of law and the informant appellant has seriously been prejudiced by the judgment and order of acquittal dated 28.06.2018, in respect of the accused respondents and as such, he prays for setting aside the judgment and order of acquittal dated 28.06.2018, for the ends of justice.

Mr. Md. Munsurul Hoque Chowdhury, learned Senior Counsel with Mr. Zahirul Haque and Mr.

Mohammad Shafiqul Islam Ripon appeared on behalf of the condemned-prisoner Sohel Biswash and submits that the impugned judgment and order of conviction and sentence as passed by the learned Judge of the Druto Bichar Tribunal, Rajshahi is erroneous in law as well as on facts. He also submits that condemned-prisoner Sohel Biswash is innocent and the prosecution failed to prove the case beyond reasonable doubt, as such, other co-accused namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa were acquitted by the trial court below. He then submits that the learned Judge of the Trial Court failed to appreciate the evidence and materials on record in their true perspective and came to an erroneous finding in convicting and sentencing the appellant. He further submits that the learned Judge of the trial Court has failed to appreciate that there is no eye witness of the alleged occurrence. He argued that the informant was examined as P.W.1 and in his testimony, he categorically testified that a beheaded dead body was found at about 3 (three) K.M

away from his house and he claimed to have identified the dead body and stating that “আমার ছেলের মাজায় একটি কালো রং সুতার সঙ্গে স্টীলের একটি তাবিজ ঝুলানো এবং হলুদ রং হাফ প্যান্ট তাতে কাটুনের ছবি ছিল” and further stating “আমার বাড়ী পশ্চিম দিকে অনুমান ২৫০ গজ দূরে কালভার্টের উত্তর পার্শ্বে পলিথিনের মধ্যে আমার ছেলের মস্তক পাই” but without identifying that the recovered head as his son’s head and as such, learned Judge of the trial court committed a serious error of fact and law in accepting the evidence of P.W.-1 as to the identification of the dead body of his son. He also submits that the alleged occurrence took place on 25.06.2014 and the beheaded dead body of the victim was recovered on 27.06.2014 which was found decomposed and identification was absolutely doubtful but the trial court shifted the onus upon the defense to disprove the same taking denial from the prosecution witness. He also submits that trial court has failed to take judicial notice that alleged head recovered on 28.06.2014 was neither identifiable nor was identified by the father to be the head of his son. Learned Judge of the trial court committed error of

law that the accused did not challenge the identity of the dead body, the prosecution will get benefit of the same, as it is settled principle of law that in a criminal case, the prosecution alone has to prove the case beyond any reasonable doubt and no onus lies upon the defense. Learned Senior Counsel also submits that all private prosecution witnesses are near relatives and they did not corroborate with each other on material points, there are contradiction and discrepancy among the depositions of the witnesses. The prosecution side seriously failed to produce any neutral and independent witnesses in support of their case. The prosecution failed to prove their case by adducing any independent, disinterested witnesses from neighbouring area and as such, convicting the condemned prisoner relying on depositions of these witnesses is unsafe and liable to be set aside. He again submits that the learned Judge of the trial court has failed to appreciate that the appellant was arrested on 25.06.2014 and he was taken on remand and after remand confession was recorded on

01.07.2014, which was neither voluntary nor true. Except that so-called confessional statement, wherein he did not admit about his participation in the killing of the victim and there is no other evidence against the appellant to prove his participation in the killing of the victim. He again submits that the story of money as disclosed in the confession for giving the motive has not at all been proved by the prosecution and the names of accused as disclosed in the confession was not made accused in this case. The so-called confession as extracted from the condemned-prisoner Soheli Biswas was obtained under duress and coercion. Subsequently, the same was retracted by the appellant Soheli Biswas, which cannot be the sole basis of conviction without any independent corroborative evidence. The learned Judge of the trial court has failed to appreciate that the confession of the appellant is absolutely an exculpatory one, except that of act of screening evidence. He next submits that the confessional statement of the condemned-prisoner Soheli Biswas was not made voluntarily and it was

not true, it was obtained by torturing the condemned-prisoner and he made this statement under duress and the learned Magistrate also failed to comply with the provisions of Sections 364 and 164 of the Code of Criminal Procedure, while he recorded the confessional statement of the condemned-prisoner Soheli Biswas. He again argued that the learned Judge of the trial court has failed to take judicial notice that according to F.I.R. the informant received two mobile calls demanding ransom and though the mobile numbers were given, but no investigation was undertaken to ascertain about the mobile call and the caller. The learned Judge of the trial court has failed to appreciate that the investigation agency investigated the case in a very perfunctory manner. He then submits that learned Judge of the trial court committed an error of law in convicting the appellant both under sections 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and also under Section 302 of the Penal Code, when the two offences are distinct and under two different laws and

when there is no evidence kidnapping against the appellant before the alleged murder. He further submits that there is no eye witness of the alleged incident and there is no circumstantial evidence to prove the prosecution case beyond reasonable doubt and as such, it is case of no evidence. However, the prosecution witnesses did not see the alleged incident. As such, the condemned-prisoner should be acquitted from the charge level against him. He prays for rejecting the Death Reference and allowing both the Appeal.

Learned Senior Advocate for the condemned-prisoner lastly submits that the conviction and sentence passed by court below is severe, unsafe and harsh especially in not considering the age of the condemned-prisoners. Further condemned-prisoner Soheli Biswas has been suffering in jail custody and the condemned cell for a long period of time, if Your Lordships are pleased to uphold the conviction and sentence, in consideration of the above facts, then his

sentence may be commuted to imprisonment for life instead of death.

To substantiate his submission the learned Advocate for the appellant Sohel Biswash placed reliance on the decisions in the cases of *The State vs. Babul Miah* reported in 63, DLR (AD) (2011) Page 10, *Md. Humayun Kabir vs. The State* reported in 74, DLR (AD) (2022) Page 91, *The State vs. Nuru Miah* reported in 05, ALR (AD) (2015) Page 97, *Mizazul Islam vs. The State* reported in 41, DLR (AD) (1989) Page 157 and *Shahin vs. The State* reported in 31, BLT (AD) (2023) Page 405.

Mr. Rowshan Alam Khan, with Mr. Md. Minarul Islam, learned Advocates appeared on behalf of the convict-appellant Md. Abdus Samad in Criminal Appeal No. 7065 of 2018, after taking us through the entire evidence on record and submits at the very outset that this is a case of no evidence; the convict-appellant is innocent and he has been falsely implicated in the case at the instance of a vested quarter. He also submits that the learned Judge of the

Druto Bichar Tribunal, Rajshahi failed to appreciate the evidence on record and came to a wrong finding and erroneous decision, thereby convicted and sentenced the appellant, which is not sustainable in law. He further submits that all of the prosecution witnesses are near relations and interested witnesses and they made contradictory statement relating to the time, place and manner of the occurrence and they failed to corroborate each other on material points but the learned Sessions Judge, relying upon unreliable and interested witnesses convicted the appellant. He next submits that immediately after lodging the F.I.R. the beheaded dead body of the victim was recovered on 27.06.2014, afterwards separate head of the victim was recovered on the next day i.e. 28.06.2014. During investigation, police arrested one Sohel Biswash on 27.06.2014, who was not F.I.R. named accused, but a tenant of the Informant Abul Hussain, who reside at the ground floor of the house of the informant. Local Police forwarded him to the Court on 28.06.2014 along with prayed for 7(seven) days remand of the

accused persons including the appellant Abdus Samad, Kabir Hossen and Zakirul Islam and after hearing the parties, learned Magistrate was pleased to allow two days remand of all accused persons namely Soheli Biswash, Abdus Samad, Kabir Hussain and Zakirul Islam. At that time, accused Md. Soheli Biswash made a confessional statement under Section 164 of the Code of Criminal Procedure on 01.07.2014 implicating accused Abdus Samad as one of the planner or conspirator for kidnapping the victim and the confession of the appellant is absolutely an exculpatory one, which cannot be used against other co-accused. The confessional statement of Soheli Biswash was not made voluntarily and it was not true, it was obtained by torturing the condemned-prisoner and the learned Magistrate also failed to comply with the provisions of Sections 364 and 164 of the Code of Criminal Procedure, while he recorded the confessional statement of the condemned-prisoner Soheli Biswash. The F.I.R. named accused persons were suspected by the informant and no credible

witness found against them and the suspicion was shifted on 01.07.2014, when the confessional statement of Sohel Biswas was recorded. Confessional statement and chain of the circumstantial evidence, examination of the witnesses and other materials produced by the prosecution completely failed to prove the involvement of appellant Abdus Samad with the alleged occurrence. The accused-appellant is no way involved with this offence, nor is there any reason for such involvement and as such, the convict-appellant is entitled to be acquitted. Learned advocate also submits that there is no ingredient of offence as contemplated under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 but the trial Court with erroneous view and wrong findings convicted and sentenced the appellant. He next submits that in passing the impugned judgment and order the learned Judge of the Tribunal seriously failed to consider that the prosecution totally failed to prove their case by adducing reliable oral and documentary evidence. He next submits that the learned Judge of the Tribunal

did not believe the prosecution case and as such, he acquitted other accused persons namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa however, he convicted and sentenced the appellant on the basis of mere suspicion. Thus, the conviction and sentence passed by the learned Judge of the Druto Bichar Tribunal, Rajshahi is unsafe and liable to be set aside and he prays for allowing the appeal.

To substantiate his submission the learned Advocate for the appellant placed reliance on the decisions in the cases of *Md. Emran Ali and others Vs. The State* 5 BLD (HCD) 95, *Amir Hossain Hawlader Vs. The State* 4 BLD (AD) 193 and *The State Vs. Shafique* 43 DLR 203 (AD).

Mr. Md. Sawroar Hossain with Mr. Rowshan Alam Khan, learned Advocates appeared on behalf of the acquitted-respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa in Criminal Appeal No. 8266 of 2018, after taking us through the entire evidence on record and submits at the very outset that, this is a case of no evidence;

the acquitted-respondents are innocent and they have been falsely implicated in the case at the instance of a vested quarter. He then submits that the learned Judge of the Trial Court, after considering and appreciating the evidence and materials on record in its true perspective acquitted respondents from the charge levelled against them. He further submits that all of the prosecution witnesses are near relations and interested witnesses and they made contradictory statement relating to the time, place and manner of the occurrence and they failed to corroborate each other on material points. Accused Md. Sohel Biswash made a confessional statement under Section 164 of the Code of Criminal Procedure on 01.07.2014, he did not implicate the acquitted respondents with the alleged incident of kidnapping and murder of the victim. The acquitted-respondents were F.I.R. named accused persons and they were suspected by the informant and no credible witness found against them and the suspicion was shifted on 01.07.2014 when the confessional statement of Sohel Biswas was

recorded. Confessional statement and chain of the circumstantial evidence, examination of the witnesses and other materials produced by the prosecution completely failed to prove the involvement of the acquitted respondents with the alleged occurrence. The respondents are no way involved with this offence, nor there do any reason for such involvement. He lastly submits that there is no eye witness, the prosecution witnesses did not see the alleged incident and there is no circumstantial evidence to prove the prosecution case beyond reasonable doubt, it is case of no evidence and as such, the learned Judge of the Tribunal after considering the evidence on record acquitted respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa from the charge levelled against them. There is no illegality and irregularity in the impugned judgment and order of acquittal of the respondents and as such, he prays for rejecting the Appeal.

To substantiate his submission the learned Advocate for the appellant placed reliance on the

decisions in the cases of *The State vs. Monu Miah and others reported in 54 DLR (AD) 2002 page-60* and *The State vs. Jahangir Hussain Boga and Ors. reported in 13, ALR 2018 (part-2) page-01*.

Before entering into the merit of the Death Reference and these Appeals and to ascertain the correctness or otherwise of the finding of the learned Judge of the Tribunal, we are to discuss and assess the evidence of the prosecution witnesses. Let us now discuss the evidence of the prosecution witnesses one after another.

P.W.1 Md. Abul Hossain is the Informant and father of the deceased Abdullah-Al-Noor, aged about 4 years. This witness in his testimony testifies that on 25 June 2014, Wednesday, at about 11:45 a.m., he was at his shop namely Abul Traders. At that time, his wife Atiara Parveen and father-in-law Md. Amir Hossain were making a trellis for pumpkin plant on the south side of their house. This witness deposed that his son the victim came to his shop at about 11:30 a.m. and he bought him some peanuts. He took

the peanuts and went toward his mother and at about 11:45 a.m. his wife came to his shop and asked him whereabouts the victim Noor was? This witness told her that Noor had gone to her. In reply, she said that the victim Noor had left her and he was not with her. Thereafter, they started searching for the child Noor. This witness also deposed that his house is a two-storied building. The accused Soheli Biswas lived as a tenant on the ground floor and on the northern side of the ground floor; there was his rod and cement shop. While searching, he knocked on the door of Soheli Biswas's residence and asked him, whether he had seen Noor. Soheli replied that Noor had come to his house and had asked for a banana, since he had no banana in his house and as such, he could not give him and then the victim Noor left. Shortly afterward, Soheli locked his house and joined us in searching for Noor. As they could not find out whereabouts his son, he informed the matter to the Chatmohar Police Station. This witness also deposed that on 25 June 2014, at about 3:45 p.m. he received a phone call on

his mobile phone from cell phone number 01716387589, an unknown caller told him that his son Al Noor was with them and they demanded an amount of Taka 15,00,000 (fifteen lakh taka) as ransom otherwise, they would kill him. Thereafter, about 10–15 minutes later, another call came from mobile number 01721748364 to his mobile number 0168583848 and an unknown caller demanded an amount of Taka 15,00,000 (fifteen lakh taka) only and threatened to kill his son if the money was not paid quickly. He immediately offered to pay an amount of Taka 50,000, but they refused and told him that they would accept nothing less than amounting to Taka 15,00,000 (fifteen lakh taka). This witness immediately informed the police about these calls. As his son was still missing, at about 9:15 p.m. on that night, he lodged the First Information Report (FIR) to the Chatmohar Police Station and he suspected that accused persons namely Md. Abdus Samad, Kabir Hossain, Alep Ali Molla, Most. Ayesha Bewa and Jakirul Islam committed the offence as he had land

dispute with Abdus Samad and Ayesha Bewa. He deposed that on 27 June 2014, at about 4:30 p.m., the police informed him over phone that a body had been discovered in accumulated rainwater inside two polythene bags on the southern side of the playground of the Bhadra Government Primary School. The said school is situated at approximately 2 (two) kilometers west of his house. He immediately went there and saw the body of a child lying in the southern part of the school field. The body's head had been severed and missing, the hands had been cut off from the body, the thighs had been cut off, and the abdomen had been slashed open. Around the waist there was a steel amulet tied with a black thread, and the body was wearing a yellow half-pant with a cartoon image on it. From the amulet and the half-pant, he identified the body as that of his son, Abdullah-Al-Noor. The police prepared an inquest report at the scene; he and other persons present there signed it. The police then took away the dead body. Thereafter, on 28 June 2014, the police returned his son's dead body and he buried the

headless body at Baluchar Graveyard. While he was returning from the burial, he found he son's severed head wrapped in polythene on the northern side of a culvert situated at approximately 250 yards west of his house. He immediately informed the police and they recovered the head of the victim and prepared another inquest report. He further deposed that the local police searched his house as well as the residence of Sohel Biswas. This witness in his testimony testifies that during the search of the attached bathroom connected to Sohel's bedroom, the police recovered and seized several pieces of white polythene which contained foul-smell, an 8-inch long sharp knife and a yellow color school bag with a broken zipper was found in a wet condition. The police prepared a seizure list for those items. Later, on 28 June 2014, at about 5:00–6:00 p.m., the police returned the head of the victim and he buried it in the proper place in his son's grave. He next deposed that the head was recognizable and identifiable as his son's head. He then deposed that after the police

came to his house on 25 June 2014, at that time, accused Aziza Akhtar Rupa told his wife that “Why did you inform the police? If you had not informed the police, the child could have been recovered alive.” This witness suspected that Rupa was connected with the kidnapping of his child; otherwise, she would not have made such a statement. He identified the accused persons namely Sohel Biswas, Rupa, Abdus Samad, Kabir Hossain, and Ayesha Bewa on the dock. He identified the Ejaher which marked as Exhibit No.1 and his signature on it marked as Exhibit No.1/1. He identified the Inquest Report of the dead body which marked as Exhibit No.2 and his signature on it marked as Exhibit No.2/1. This witness submitted 4 (four) photographs of his son Al Noor, both alive and after death, these are marked as Material Exhibit No.I.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness admitted that his father, Md. Khabir Uddin got married three times and from his first wife, he had two sons namely Md. Abul Hossain,

this witness and Jafar and two daughters namely Kamela and Jamela, who were twins. Kamela's husband is accused Abdus Samad. Accused Kabir is Kamela's son. Ayesha Bewa is his father's third wife. During cross-examination this witness admitted that the accused persons did not file any case against him. Witness Amir Hossain is his father-in-law; Witness Amir Hossain Minu is his uncle-in-law. Witness Monirul Islam is his brother-in-law (ভায়রা ভাই). Witness Imran is also his brother-in-law (শ্যালক), Witness Rafiqul Islam is a neighbour. His father-in-law has one brother and three sisters. He could not recall the names of all his mother-in-laws and extended relatives. He could not recall whether witness Rafique was one of the grand sons of his mother-in-law. Witness Sanaullah is his maternal brother. He could not recall whether witness Lutfor was the brother of his mother-in-law or not. He deposed that the house of accused Abdus Samad is situated at approximately 500–600 yards eastern side of his house. At the time of the incident, accused Ayesha Bewa was staying at

Abdus Samad's house, although she normally lived in Aringail Village, which is about 4–5 kilometers away from his house. His shop is situated at about 20 yards away from the main gate of his house, beside the road. The body of the victim was recovered about 2 kilometers west of his house. He received information from the police at about 4:30 p.m. and immediately left for the said location. He reached there through a van at about 4:45 p.m. He could not recall the name of the van driver. He could not recall who typed the FIR on a computer. During cross-examination this witness admitted that he did not mention in the FIR what clothes his son was wearing and the color/print of those clothes, or he wore an amulet around his waist and these clothes of the same color and design and similar amulets are also available in the market. He denied the suggestion that the recovered head had no skin on it and the head was so decomposed it was impossible to identify. He admitted that the photographs he submitted to the Court, 3 (three) of these photographs were taken by the police. He denied

the suggestion that he fabricated these photographs for the purpose of this case. It is not true that the body he buried could not be identified. He denied the suggestion that he deposed falsely in this case.

During cross-examination on behalf of the accused Soheli Biswas, this witness admitted that he lived in Greece for a long time. He deposed that accused Abdus Samad went to Iran on his own initiative from Bangladesh. This witness only helped him so far related to his journey from Iran to Greece and he stayed in Greece for about 7–8 years. He could not recall the name of Abdus Samad's younger brother. He heard that he died. He denied the suggestion that he took large sums of money from many people and sent them to Greece. He denied the suggestion that Abdus Samad's younger brother died after he went to Greece and failing to obtain any employment. He denied the suggestion that many people became his enemies because he took money from them on the promise of sending them abroad and he failed to do so. During cross-examination he

admitted that accused Soheli Biswas used to operate a travel-related business. He had been living as a tenant in his house since June 2013. He admitted that the rented portion contained three rooms, accused Soheli rented two rooms and a dining space and the southern room was rented by an NGO. He could not recall how many people from that NGO stayed there. He admitted that at about 11:45 a.m., accused Soheli joined us in searching for Noor. He could not recall how long Soheli remained with him and accused Soheli was not with him, at the time of the ransom calls came to his phone. He denied the suggestion that he was present at that time with him. He admitted that the polythene bags may produced foul smell if fish or other perishable items are kept in them for several days. He denied the suggestion that the police failed to recover any foul-smelling polythene, a sharp knife, and a school bag from Soheli's residence. He deposed that at that time, he was present with the police. The police searched the rented house including two bathrooms on the northern side of the rented

premises. He denied the suggestion that the police falsely claimed to have identified two bathrooms in the rented house. This witness admitted that accused Soheli was not a FIR named accused and he knew some of the NGO workers namely Bayan, Rahim and there are other two or three workers. He denied the suggestion that accused Soheli had no involvement in the kidnapping of his son. He deposed that the primary school where Soheli's wife worked is situated about 400–500 yards from his house. This witness admitted that the collapsible gate on the ground floor remained open during the day and it was locked only at night. This witness also admitted that the dead body of the victim was found inside the two white polythene bags in a water-logged area at the southern side of the playground of Bhadra Government Primary School and about one and half feet of water had accumulated in the lower part of the field. He deposed that the dead body was wearing a yellow half-pant with a cartoon image on it. He denied the suggestion that accused Soheli was not involved in the kidnapping

and murder of his son and he has been falsely implicated in this case due to enmity. He denied the suggestion that accused Sohail was innocent and respectable young man.

During cross-examination on behalf of the accused Aziza Akhtar Rupa, this witness admitted that on 25 June 2014, at about 12:30–1:00 p.m., he saw Rupa after she had returned from school. This witness admitted that Accused Rupa was not a FIR named accused. This witness admitted that he did not mention in the FIR that during the search of Sohail's residence, Rupa, Sohail's mother and Advocate Aziz were present there and on 25 June 2014, accused Rupa told his wife that "Why did you inform the police? Had you not informed the police, the child could have been recovered alive?" This witness admitted that he heard that at the time of the murder of his son, accused Rupa was at school and she went to school at her usual time on the day of the occurrence although, she returned before school hours ended. He denied the suggestion that accused

Rupa has been implicated in this case merely because of her husband Soheli was involved in the incident. He denied the suggestion that he deposed falsely in this case.

P.W.2, Most. Atiara Parveen is the Mother of the deceased, Abdullah-Al-Noor and wife of the Informant Md. Abul Hossain. This witness in her testimony testifies that on 25 June 2014 her son Noor was with her. At about 11:45 a.m. this witness and her father were erecting a trellis for pumpkin plant on the southern side of their house. Her husband was at his rod-and-cement shop beside the road at the northern side of the house. Noor was moving back and forth between her and his father. His father bought him peanuts and he was eating them. After some time, she noticed that Noor was no longer beside her and then she went to her husband and asked whereabouts Noor was? Her husband replied that Noor had gone to her. As she told him that Noor had not come to her, at that time, they started searching for him. Later, neighbors, relatives, and other local

people also joined the search. This witness deposed that she knocked the door of the rented unit occupied by the tenant Soheli Biswas, located at the northern side of the ground floor of house and accused Soheli told her that Noor had not come to his residence, without opening the door of his home. She also deposed that later on, she again knocked the door on Soheli's home, at that time, accused Soheli opened the door and as she asked whether Noor was there, then he said that Noor had come and asked for a banana, but as there was no banana in the house, he could not give him and then victim Noor left. Soheli then came out, locked his door and joined in for searching the victim Noor. This witness also deposed that her husband informed the matter to the Chatmohar Police Station over telephone. The police immediately arrived in a vehicle and began searching for the child Noor. This witness deposed that Soheli's wife, accused Aziza Akhtar Rupa used to work as a teacher of the Government Primary School. At about 12:00 noon, she returned from school and came to their house. At

that time, Rupa asked her, whether the police had been informed. In reply she said that the local police station had already been notified. At that time, Rupa told her that: "Why did you inform the police? If you had not informed the police, the child could have been recovered alive. Now they will not return the child alive." Rupa repeated these words several times. She also deposed that unknown person on several occasion called her husband's mobile phone from mobile numbers 01716387589 and 01721748364 and they demanded an amount of Taka 15,00,000 as ransom and if the ransom was not paid, the child would be killed. She also deposed that on 27 June 2014, at about 4:30 p.m., the police called her husband on his mobile phone and informed him that their child had been found. Her husband immediately went to the Bhadra Government Primary School, which situated at about 2 kilometers west of their house, wherein a headless body wrapped in two polythene bags accumulated with rainwater was recovered at the southern side of the playground of

said school, the two hands had been severed from the body, the legs had been cut below the thighs, the abdomen had been cut open, and the legs had been found folded and her husband identified the body of the their son as he saw a steel amulet tied with a black thread around his son's waist and a yellow half-pant with a cartoon image on it, which his son was wearing while he was missing. Thereafter, the police took away the body. She deposed that on the evening of 27 June 2014, at about 6:00 p.m., the police arrested Soheli Biswas in front of their shop. This witness deposed that on 28 June 2014, at about 5:25 p.m. while returning home after burial of their son, people noticed foul smell near a culvert, which situated at about 250 yards away from their house and found her son's head wrapped in white polythene bag. Her husband saw the head and informed the police. The police immediately arrived there and took possession of the head. The police then came to the residence of their tenant Soheli Biswas and conducted a search. At that time, Rupa, Soheli's

mother, and Advocate Aziz of Pabna were present there. At that time, the police recovered several pieces of polythene, which contained foul-smell, a sharp knife approximately 8 inches long including the handle and a wet yellow school bag with damaged zippers from the attached bathroom of Sohel's bedroom. The police seized those items. The police arrested Aziza Akhtar Rupa, locked the rented house and took the key into police custody. Accused Ayesha Bewa is her stepmother-in-law. She used to live in her house. She was responsible for looking after their lands and properties and she also kept the money that was sent from abroad. When they returned to Bangladesh and her husband asked accused Ayesha Bewa to hand over the money and property, but she refused to do so which led to disputes. The accused Samad Biswash returned to Bangladesh from Greece after about 7-8 months and accused Samad took Ayesha Bewa away from her house and Ayesha Bewa while leaving threatened her that she will see how she will continue to live with her husband and children.

She suspected that Ayesha Bewa, Samad Biswash, Kabir Biswash, Soheli Biswash, and Aziza Akhtar Rupa conspired together to kidnap her son, they demanded ransom, and then killed him. She identified the accused persons namely Samad Biswash, Kabir Biswash, Soheli Biswash, Ayesha Bewa, and Aziza Akhtar Rupa on the dock.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness admitted that she last saw her son Noor at about 11:35 a.m. to 11:45 a.m. on 25.06.2014, thereafter she went to her husband and asked about him and after searching for approximately 15–20 minutes, they called the local police, within 10 minutes after the call, the police had arrived. She deposed that she along with her neighbors and relatives searched the rooftop and in and around of their two-story house, except Soheli's home, nearby ponds and surrounding areas. This witness admitted that the police recorded her statement. She deposed that Ayesha Bewa used to live

in their house and she was entrusted to look after their land and money sent from abroad and as her husband demanded to return the money and properties then the disputes arose. She denied the suggestion that she did not tell these matters to the police. She denied the suggestion that she did not tell the police that Samad returned from Greece after 7–8 months and took Ayesha Bewa away from her house and Ayesha Bewa threatened that she would see how this witness could live with her husband and children and all the accused conspired together and kidnapped her son. She denied the suggestion that she did not tell the police that her son wore a steel amulet around her waist and yellow shorts printed with cartoon character. She denied the suggestion that she filed the case on false allegation against Abdus Samad and Ayesha Bewa because Samad supported Ayesha Bewa and she was allegedly deprived of her share in the properties. She denied the suggestion that she deposed falsely in this case.

During cross-examination on behalf of the accused Aziza Akhtar Rupa, this witness admitted that at the time of the incident, she had one 9 (nine) years old daughter and one son, the victim Noor. Her daughter's name is Sadikun Nahar Noori. She was a fourth-grade student. The accused Rupa was a teacher of the school where Noori studied. Sometimes Noori went to school with accused Rupa. On the day of the incident, Noori went to school at about 10:00 a.m. She returned home with her friends at about 11:55 a.m. Rupa returned home at about 12:00 noon. She spoke with accused Rupa about five minutes after she returned from school. Accused Rupa lived in her rented house until she was arrested by the police. This witness studied up to the tenth grade. She admitted that the investigating officer recorded her statement at about 7:00 p.m. on 25.06.2014 at her house, but she does not know what exactly he wrote. She did not suspect Rupa as an accused. She denied the suggestion that she did not tell the police that Sohel's wife asked her whether she had informed the police.

In reply she told her that she had reported the matter to the police station. At that point, Aziza Akhtar Rupa allegedly said, “Oh no, why did you inform the police? If you had not informed them, the child could have been found alive. Now they will not return him alive.” She admitted that Aziza Akhtar Rupa regularly attended school and she used to go to Shalikha Government Primary School at about 9:00 to 9:30 a.m. and the school is about 400–500 yards away from her house. She denied the suggestion that on 18.10.2017, she implicated Aziza Akhtar Rupa. She denied the suggestion that Rupa was not involved in the kidnapping or murder of her son Noor. She denied the suggestion that she deposed falsely in this case.

During cross-examination on behalf of the accused Sohail Biswas, this witness deposed that her husband’s rod-and-cement shop is situated on the northern side of their house, beside the paved road. There are 5–6 other shops to the north and south of it and their shop is on the southern side of the road. Her father does not live in her house. He came to her

house, the day before the incident. This witness deposed that the distance between her husband's shop and the pumpkin trellis is about 100 yards and she began constructing the trellis at about 11:15 a.m. Her husband opened the shop at about 7:00 a.m. and at about 11:15 a.m., her son left the house with her, at that time, he was eating peanuts and running around. Her son was able to remove the shells himself and was doing so while eating them. The peanuts had been purchased by her husband about 10–15 minutes before her son disappeared. She lastly saw her son when he left her side. Her son used to come to his father's shop every day. She admitted that they had other tenants, before Soheli became their tenant. Soheli had a son namely Rafsan, who was about 5–6 years old. Rafsan sometimes went to school with his mother. She does not know whether he had been formally admitted to school or attended regularly. She denied the suggestion that she did not tell the police that when she first knocked on Soheli's door, she was alone. As she knocked the door on second time, her

father, husband, and some neighbors were with her, at that time, the police did not arrive yet and about 7–8 minutes passed between the first and second knock. The first time, Soheli did not open the door but said from inside that Noor had not come there. The second time, he opened the door and said that Noor had come and asked for a banana, but since there were none, he could not give him any banana and then Noor left the place. Soheli then locked his room and joined us in searching for Noor. This witness admitted that she did not see her son's severed head. She heard that it was not decomposed completely. She denied the suggestion that the recovered head could not be identified as it was so decomposed. The place where her son's head was found was about 2 kilometers away from where the body was recovered. She denied the suggestion that the recovered body and head were unidentifiable. She deposed that the police arrested accused Soheli first and then they searched his residence. His bedroom had an attached bathroom on the northern side and she was not present during the

search. She denied the suggestion that the police falsely claimed to have recovered polythene bags which contained foul-smell, a knife and a school bag from Soheli's bathroom. She heard that after Soheli's arrest, he became ill due to physical torture and he was taken to a hospital for treatment, but that was not true. She denied the suggestion that the police arrested Soheli under the influence of his enemies. She denied the suggestion that she never knocked on Soheli's door first alone and later with her father and husband, or that Soheli never said Noor had come asking for a banana but left because there were none. She denied the suggestion that her husband used to send people abroad and he misappropriated money from many people under that pretext, thereby creating enemies. She denied the suggestion that the alleged incident never occurred on the alleged date, time, and place. She denied the suggestion that she deposed falsely in this case.

P.W.3 Md. Monirul Islam is the brother-in-law of the Informant Abul Hossain, in his testimony

testifies that on 25.06.2014, at about 12:00 p.m., his brother-in-law informed him that Abdullah-Al-Noor was missing and at about 12:30 p.m., he came to his brother-in-law's house. They kept looking for Noor but they could not find him. He deposed that at 3:45 p.m. a phone call came from an unknown number to Abul Hossain and on that phone call, an amount of Taka 15,00,000/- was demanded as ransom, otherwise, Al Noor would be killed and at that time, he was with Abul Hossain. He deposed that on 27.06.14, at about 4.30 p.m., the police called Abul Hossain over phone and informed him that Al-Noor's body was found near the Bhadra Government Primary School grounds. They together went to the southern side of the said Primary School playground from where the headless body was recovered in polythene packets, both hands and legs were cut off, the stomach was cut. He deposed that the body was wearing yellow half pant with cartoon image on it and a black thread and a steel amulet. This witness deposed that Abul Hossain saw all this and identified the body as Al-Noor's body.

The body was examined by the police and prepared the inquest report sent it for post-mortem examination. The body was buried after the post-mortem examination. After the burial, on their way back home, they found severed head wrapped in polythene on the northern side of a culvert situated at approximately 250 yards west of the informant house. They immediately informed the police and they recovered the head of the victim and prepared another inquest report. The police also seized the polythene on 28.06.14 and prepared a seizure list. He identified the seizure list, which marked as Exhibit No.3 and his signature on it marked as Exhibit 3/1.

Accused persons declined to cross-examination him.

P.W.4 Sukumar Gomez deposed that deposed that on 27.06.14 at about 3.30 to 4.00 p.m. he came to know that a headless body wrapped with polythene was found in approximately 1 (one) feet deep water on the southern side of the Bhadra Primary School field and both the hands, stomach and thighs of both legs

of the body were cut off. He went there and saw the body was wearing yellow shorts with cartoon image on it and a steel amulet with black thread. The child's father identified the body. The Police prepared the Inquest report of the body. He identified the Inquest Report, which marked as Exhibit No.2 and his signature on it marked as Exhibit 2/2. Later, he heard from the Informant that Soheli, Rupa, Samad, Kabir were involved with this incident.

During cross-examination on behalf of the accused Aziza Akhtar Rupa, this witness denied the suggestion that he did not hear anything from the Informant.

During cross-examination on behalf of the accused Soheli Biswas, this witness denied the suggestion that the Informant did not tell him Soheli was involved in this murder.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness deposed that the police recorded his statement on the day, the body was recovered. He

denied the suggestion that the Informant did not tell him Samad, Kabir, Sohail, Rupa were involved in this incident of murder. He denied the suggestion that he deposed falsely in this case.

P.W.5 Md. Rezaul Karim alias Babu deposed that on 27 June 2014, he saw people running toward the playground of Bhadra Primary School. After some time, he went there and saw a headless dead body lying on the southern side of the field in several polythene bags. The police opened the polythene bags and saw the body had no head; both the hands had also been severed and were lying separately. Thereafter, Noor's father arrived and he identified the body as his son, Al-Noor by looking at the half-pants worn on the body and an amulet tied around the waist with a black thread. The police seized some white polythene bags which contained foul-smell and the amulet. He identified the seizure list dated 27 June 2014, which marked as Exhibit No.4 and his signature on it marked as Exhibit 4/1. The police prepared the Inquest Report of the headless dead

body in his presence. He identified the Inquest Report, which marked as Exhibit No.2 and his signature on it marked as Exhibit 2/3. He deposed that as he asked the Informant who could have committed such an act? In reply, he was crying and said that “My own relatives have done this.” He deposed that the Informant mentioned the names of Samad, Soheli, and Kabir. He could not recall whether he mentioned any other name. He identified the seized white polythene bag, which marked as Material Exhibit No.II.

Accused Aziza Akhtar Rupa declined to cross-examination him.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness deposed that the place where the body was found is less than half kilometer away from his house. He denied the suggestion that his house is 3 (three) kilometers away from that place. He denied the suggestion that the Informant did not mention the names of accused Samad, Soheli, and Kabir. He denied the suggestion that he deposed falsely in this case.

During cross-examination on behalf of the accused Soheli Biswas, this witness deposed that the accused Soheli is his distant relative but he could not recall the name of Soheli's village. He denied the suggestion that he deposed falsely in this case.

P.W.6 Md. Jahangir Alam in his testimony testifies that on 27.06.2014, at about 4.30 p.m., he was at his shop situated at Chatmohar Bypass Intersection. At that time, he heard from the passers-by that a child's body was lying on the ground of Bhadra Primary School. He went there and saw a headless body is lying in an open area on the southern side of the field; both the hands had also been severed and were lying separately. He heard that the dead body was in polythene bags. The child's stomach was cut and both legs were cut off and folded near the waist, the dead body was wearing a yellow short pant and a steel amulet with a black thread around his waist. The police prepared the inquest report of the body and took his signature on it. The police seized some white polythene and a steel amulet

and prepared the seizure list. He identified his signature in the seizure list which marked as Exhibit No. 4/2. He heard, Noor's father telling everyone that his tenants Sohail and Rupa, and other accused namely Samad, Kabir, Ayesha were involved with this incident of murder.

During cross-examination by the accused Aziza Akhtar Rupa this witness deposed that the police recorded his statement on 25.08.14. He denied the suggestion that Noor's father did not tell, his tenants' namely Sohail and Rupa, and other accused namely Samad, Kabir and Ayesha were involved with this incident of murder.

All the accused persons adopted the cross-examination.

P.W.7 Md. Amir Hossain Minu in his testimony testifies that on 25.06.2014, at around 12:00 o'clock (noon) his niece's husband namely Abul Hossain informed him that Noor was missing. He went to the house of Abul Hossain and at 3:45 p.m., an unknown number called on Abul's phone and told him that they

had kidnapped Noor and demanded an amount of Taka 15,00,000/- as ransom otherwise, they will kill Noor. He also heard the conversation on loudspeaker. The Informant Abul suspected that his stepmother Ayesha, Samad and Kabir are the ones who took away his child. This witness further deposed that on 27.06.14, at about 4.30 p.m. Abul Hossain informed him that a dead body of child was found at the southern side of the ground of Bhadra Primary School, he went there and saw the headless dead body of the child lying there, his both hands, stomach and both legs were cut off and folded. The dead body was wearing yellow shorts with cartoon image on it and a steel amulet around his waist. The police took the child's body and sent the same to the hospital morgue. This witness also deposed that on 28.06.14, at about 3.30 p.m., the body was taken to the Baluchar Cemetery for burial. After the burial, on their way back home, Noor's severed head was found inside a polythene bag at the northern side of a culvert, which situated at approximately 250 yards

west of the Abul's house and the head was taken out from the polythene. There was hair on the head. The mouth was open, there were teeth. Noor was identified by looking at the face. This witness realized that Sohail, Rupa, Samad, Kabir, Ayesha had kidnapped this child in collusion with each other. They killed the child as they failed to receive the ransom amounting to Taka 15,00,000/-. He further deposed that the police prepared the Inquest Report of the recovered head in his presence. He identified the Inquest Report, which marked as Exhibit No.5 and his signature on it marked as Exhibit 5/1. The police also seized the polythene bag and prepared the seizure list. He identified his signature in the seizure list, which marked as Exhibit No.3/2. He next deposed that the police searched the rented house of accused Sohail. At that time, he was there and saw that the police seized a wet school bag lying in a corner of the house which contains foul smell, several polythene bags were also found next to it and a sharp knife was also recovered beside the bag. He then deposed that Abul told him,

accused Sohel, Rupa, Ayesha and Samad were the persons who had kidnapped and killed his son.

During cross-examination on behalf of accused Sohel, this witness admitted that his house is situated 5 K.M. away from the Informant's house. He used to work at Agro Equipment Ltd. His office was situated in Rajshahi. He used to do his office work (marketing) from his home and once a month, he went to Rajshahi. He saw Noor's body on the school ground. The head was found 10 yards away from the paved road. He admitted that in the seizure list dated 28.06.14, there was no mention of Noor's severed head was wrapped in that polythene. He denied the suggestion that he was not present when the police searched the house of Sohel and no school bag, knife or polythene were recovered and seized in his presence. He denied the suggestion that he did not mention any name of the accused persons to the police. He denied the suggestion that he deposed falsely in this case.

P.W.8 Md. Lutfar Sarkar deposed that on 27.06.14 at about 4.30-5.00 p.m. in the afternoon, he heard that the headless body of missing child namely Abdullah Noor was found near the Bhadra School ground and on the following day, i.e. 28.06.14, he went to Chatmohar Bus Stand and on his way back from the bus stand, he saw a crowd gathered on the western side of Haran Intersection, on quarry, he came to know that the head of the missing boy was found, he saw the head inside a polythene bag and various parts of the deceased's face were decomposed. He also deposed that the police prepared the Inquest Report of the severed head in his presence. He identified the Inquest Report, which marked as Exhibit No.5 and his signature on it marked as Exhibit 5/2. He heard from Abul Hossain that his infant son had been killed by his tenant Soheli and his wife Rupa. Later, Abul Hossain again informed him that Samad, Kabir and his stepmother Ayesha had committed the murder. He did not know the accused persons.

During cross-examination by the accused Aziza Akhtar Rupa this witness deposed that he signed the Inquest Report and the police recorded his statement on 28.06.14 not on 08.07.14. He admitted that he did not disclose the names of the accused persons to the Investigating Officer.

During cross-examination by the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness deposed that he knew Abul Hossain for the last 3½ years. He denied the suggestion that he heard from a passer-by that the child was missing. He also denied the suggestion that he deposed falsely in this case as the Informant is his relative.

During cross-examination by the accused Soheli, this witness admitted that he did not tell the police that he heard from Abul Hossain, his tenant Soheli and his wife had killed Noor.

P.W.9 Md. Amir Hossain is the father-in-law of the Informant Abul Hossain. This witness in his deposition deposed that on 25.06.2014 at 11.45 a.m., he was at the house of his daughter Atiara Parveen. At

that time, he and his daughter Atiara were erecting a trellis for pumpkin plant at backyard of his son-in-law's house. At that time, his grandson Abdullah-Al-Noor was playing in front of the house and he was eating nuts. Suddenly, at 11.45 am, Noor went missing and they searched to find out whereabouts he was but could not find him. Thereafter, he knocked on the door of accused Soheli Biswas's home, as he opened the door; this witness asked him whether he had seen Noor? In reply, Soheli said that he did not see him. They have been searching for him at different places time and again and also went to Soheli's house again. At that time, Soheli said Noor did come to his house and asked for bananas, but he could not give it to him, then Noor left. Thereafter, his son-in-law informed the matter to the local police and they came to the place of occurrence within few minutes, but they could not find out whereabouts Noor was. This witness also deposed that on 25.06.14, at 3.45 p.m. unknown person called on his son-in-law's mobile phone and demanded an amount of Taka 15,00,000/=

as ransom and if the ransom was not paid, the child would be killed. His son-in-law requested them not to kill him and he was willing to pay amounting to Taka 5,00,000 only. He also deposed that on 27 June 2014, the police informed his son-in-law over telephone that a headless child body, both the hands were severed from the body, both the legs were cut off on the thighs, the abdomen was cut open was found at the southern side of the Bhadra Government Primary School's playground. This witness and his son-in-law immediately went there and saw the body. The police arrested the accused Sohel in front of his son-in-law's shop. He deposed that on 28.06.14, the headless body was buried in the Baluchar graveyard, while he was returning from the burial, after smelling a very foul smell at about 10 yard away from the side of the road; he went down and saw the head was wrapped in white polythene like a ball. He himself took out the head from inside of the polythene and found that it was decomposed in various places of the head and face. He saw all teeth of his upper gum and 2 on his lower

gum. Then he informed the police and they came there and took the head into their custody. He further deposed that the local police searched the house of Soheli Biswas in his presence and at that time; the police recovered and seized an 8-inch long sharp knife, a wet school bag with broken zipper and several pieces of polythene from the attached bathroom, which contained very strong foul-smell. He deposed that accused Soheli, his wife Rupa, Samad, Kabir and Ayesha in connivance with each other kidnapped and killed the victim Abdullah Al-Nur. He identified the accused Soheli, Kabir, Samad, Ayesha and Rupa on the dock.

During cross-examination on behalf of the accused Soheli Biswas, this witness admitted that Abul Hossain's house is situated 6 miles away from his village home. They started erecting the trellis for pumpkin plant at 9:00 a.m. The shop of his son-in-law was open from 8:00 a.m. He deposed that Noor started playing from 8:00 a.m. and he was with them at 11:15 am and then he went to his father. He also

deposed that the police arrived there at about 12:00 a.m. at noon, before the police arrived; they knocked on the door of Soheli's house twice. He could not recall when the first or second time he knock on the Soheli's door; but the time between the two knocks would not have been 1(one) hour. He denied the suggestion that Soheli's bedroom did not have an attached bathroom. He denied the suggestion that the bag, polythene and knife were not recovered from the attached bathroom. He denied the suggestion that he did not tell the police that he knocked on the door of Soheli's house or Soheli informed him that Noor was not at his house or when he went to Soheli's house second time, Soheli said that Noor had come to his house but he left because he could not give him bananas.

During cross-examination on behalf of the accused Rupa, this witness admitted that this witness, Abul Hossain and his daughter Atiya have decided to file the case together and who would have been made accused. This witness also admitted that on the date of incident, accused Rupa went to school

in the morning. His grandson Noor did not go to school. He met Rupa after she was returning from school at about 12:00 a.m. on that day. He admitted that Aziza Akhter Rupa was not F.I.R. named accused. He denied the suggestion that Rupa was made accused on the basis of false allegation as the police seized goods from her rented house.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness admitted that on 25.06.14, at around 12:00 noon, the police came to his son-in-law's house. He could not recall the name of the police officer. He denied the suggestion that he deposed falsely in this case against Samad, Kabir, and Ayesha as per instruction of his son-in-law

P.W.10 Md. Imran Hossain deposed that the victim, Abdullah Al Noor is his nephew. The incident took place on 25.06.2014 and on that morning, at about 11.50 a.m. his sister informed him over telephone that Noor was missing and after hearing the news, he went to his sister's house. At around

3.45 p.m, an unknown person called his brother-in-law Md. Abul Hossain's phone and demanding an amount of Taka 15,00,000/- as ransom and if he do not pay, they would kill Noor. Later, the number was found switched off. He deposed that on 27.06.14, at around 4.30 p.m. Noor's headless body with both the hands severed and his stomach cut off was found on the playground of Bhadra Government Primary School. Noor's body was identified by seeing that he was wearing yellow shorts with cartoon image on it and a black thread tied around his waist with an amulet. The police took the body for autopsy. He went to his sister's house. On that evening, at around 6.00-6.30 p.m. the police arrested Soheli Biswas inside his brother-in-law's shop. He also deposed that on the next day, i.e. on 28.06.14, while he was returning home, after the burial of the victim at the Baluchar graveyard, Noor's head was found wrapped in polythene at about 10/15 yards away at the north side of the culvert, which situated at about 250 yards away from his sister's house. Thereafter, the police

were informed and they recovered the severed head. He also deposed that the police searched the Soheli Biswas's house, at that time, the accused Aziza Akhtar Rupa, Soheli Biswas's mother and Advocate Abdul Aziz of Pabna were present there. During the search, the police recovered and seized a knife with handle estimated 8 inches long, a smelly old school bag; some smelly white polythene bags from the attached bathroom of Soheli's house. The police prepared the seizure list. He identified the seizure list, which marked as Exhibit No.6 and his signature on it marked as Exhibit 6/1. He identified the knife, the used school bag and some white polythene bags; these are marked as Material Exhibits-III, IV and V series.

During cross-examination by the accused Abdus Samad, Kabir Hossain and Ayesha Bewa, this witness admitted that on 25.06.14, at about 1.30 p.m. he reached his sister's house. They searched for Noor in the vicinity of the house including the pond, in and around the house. He deposed that the investigating officer recorded his statement within 1 or 2 days after

recovery of the victim Noor's body. He told the police that he heard from his sister that Noor was missing and at 3.45 p.m., an unknown person from an unknown phone called his brother-in-law and he tried to contact with that number. He denied the suggestion that he did not tell the Investigating Officer that Noor was wearing yellow shorts with cartoon image on it or Noor's severed head was found next to the culvert or during the search of the house of Soheli and the accused Aziza Akhtar Rupa, Soheli Biswas's mother and Advocate Abdul Aziz of Pabna were present there. He also denied the suggestion that he did not tell the Investigating Officer that the knife, school bag and polythene bags were recovered from the attached bathroom of Soheli's bedroom. He denied the suggestion that he deposed falsely in this case as per instruction of his brother-in-law.

During cross-examination on behalf of the accused Rupa, this witness admitted that he knows Aziza Akhter Rupa is a teacher. He did not see Rupa when he first went to his sister's house. He admitted

that there was no blood on the knife, school bag or in the polythene bags. He also denied the suggestion that he did not see the recovery of the knife, school bag and polythene bags from the bathroom. He denied the suggestion that he deposed falsely in this case as tutored by his sister.

P.W.11 Md. Sonaullah in his deposition deposed that the Informant Abul Hossain told him that someone called him 2/3 days before the incident i.e. 25.06.2014 and demanded ransom and if he failed to give the money, they would kill his son. He deposed that on 25.06.14, he came to know that Abul Hossain's son was missing and on 27.06.14, at about 04:35 p.m., he heard that a headless body was found at the ground of Bhadra Primary School and he went there. The Informant identified the body as his son Noor. The police examined the body and sent it for autopsy. He also deposed that on 28.06.14, at about 05:00 p.m. while he was returning from the burial of the victim, after having unpleasant foul smell coming from the northern side of the culvert, they searched

the area and upon searching Noor's head was found wrapped in a polythene bag. Thereafter, the police were informed and they recovered the head and prepared the Inquest Report. He identified his signature in the Inquest Report, which marked as Exhibit No.5/3. He also deposed that the police searched the Sohel Biswash's house, during the search, the police recovered and seized a knife with handle estimated 8 inches long, a smelly old school bag; some smelly white polythene bags from the attached bathroom of Sohel's house. The police prepared the seizure list. He identified his signature in the seizure list, which marked as Exhibit 6/2.

During cross-examination on behalf of the accused Sohel, this witness admitted that his house is situated at about 2 to 2 ½ K.M. away from the place of occurrence. He denied the suggestion that the police did not recover and seize a knife, a school bag and smelly polythene from Sohel Biswash's room in his presence. He admitted that Abul Hossain is my uncle's brother. He denied the suggestion that no

search was conducted at Sohel Biswash's house on 28.06.14. He denied the suggestion that he deposed falsely in this case.

P.W.12 Dr. Md. Rezaul Karim in his testimony testified that he held autopsy on the body of the deceased Abdullah Al Noor aged about 4 years, brought and identified by Chatmohar Police Station Constable No.1014, Md. Humayun Kabir. The dead body was found in 3 (three) parts:

Body is putrefacted three pieces

(1) Trunk with lower extremity without head.

(11) Right upper extremity.

(III) Left upper extremity. All parts belong to same body extremity fit properly with Trunk and skin color similar.

The Medical Board found the following external injuries:-

(1) Multiple incised wound on neck separating head from the Trunk.

(II) Multiple incised wound separating right upper extremity from the trunk at its Junction with extremity.

(3) Multiple incised wound separating left upper extremity from the trunk at its Junction with extremity.

(4) Incised wound, size whole breadth of abdomen 4.1" x3" on mid abdomen.

(5) Incised wound, size 4"x1" x 2 ½" anterior aspects of left thigh near its Junction with the trunk.

(6) Incised wound 4"x1"x2" anterior aspect of right thigh near its junction with the trunk.

On discussion –all internal organs were found putrefacted other finding found on dissection has been mentioned above, whether the above mentioned wounds were anti-mortem or post mortem could not be determined because of advanced putrefaction

The Board opined that cause of death could not be determined because of advanced putrefaction.

He identified the post mortem report, which marked as Exhibit No.7 and his signature on it marked as Exhibit No. 7/1. He deposed that this autopsy was conducted through the Board and Dr. Shipan Kumar Das signed this report in his presence. He identified the signature of Dr. Shipan Kumar Das, which marked as Exhibit No. 7/2.

During cross-examination on behalf of the accused Soheli, this witness admitted that there would be a different situation, between the dismemberment of the body with a weapon after death by suffocation and dismemberment with a weapon while the person is alive. He admitted that sharp weapons could be various types. However, he did not mention what type of weapon was used in this incident. He also admitted that he could not give any specific opinion about the cause of death.

P.W.13 Abu Saleh Md. Salah Uddin Khan, Additional Chief Judicial Magistrate, Pabna who recorded the confessional statement of the accused Md. Soheli Biswas on 01.07.2014. This witness

deposed that after observing all statutory formalities he recorded the statement of the accused Md. Soheli Biswas, which marked as Exhibit No.8 and his 06 (six) signatures on it marked as Exhibit No. 8/1 series. He deposed that accused Md. Soheli Biswas put 12 (twelve) signatures in the statement in his presence. He identified the signature of accused Md. Soheli Biswas, which marked as Exhibit No. 8/Ka series. He also deposed that after recording the statement of accused, he certified that accused Md. Soheli Biswas voluntarily made the true statement.

During cross-examination on behalf of the accused Soheli, this witness admitted that the accused was arrested on 27.06.14 at 19.00 hours but he did not record any explanation as to where the accused was kept for the last four days before the accused was presented to him. He admitted that he did not ask any questions as to how long the accused was kept in police custody and he did not ask any questions as to why the accused is pleading guilty. He also deposed that he recorded the statement in his private room. He

denied the suggestion that the police have tortured the accused, during the period of police custody. He further denied the suggestion that the statement was not made voluntarily and true.

During cross-examination on behalf of the accused Aziza Akhtar Rupa, this witness admitted that the accused stated in his statement, his wife was at school at the time and when she was informed about Noor's disappearance, she returned home with her son from school a short while later.

P.W.14 Dr. Md. Kamal Osman in his testimony testified that on 29/6/2014 at 2.00 p.m. he held autopsy on the head of the deceased Abdullah Al Noor aged about 4 years, brought and identified by Chatmohar Police Station Constable No. 865 Md. Ainul Haque. On physical examination on the Head of the dead body, it was found that the head was completely putrefied skull, bone and teeth. Putrefied skull only skull bones and teeth are present. The skulls are separated from mandible. He opined that the cause of death could not be determined due to

advance putrefaction. He identified the post mortem report, which marked as Exhibit No.9 and his signature on it marked as Exhibit No.9/1.

During cross-examination on behalf of the accused Soheli, this witness admitted that the skull bones and teeth were present in the head and the flash of the eyes; nose and skin of the face were putrefied. He admitted that the face could not be identified due to advance putrefaction.

P.W.15 Md. Saidul Islam deposed that on 27/6/2014, at 5:00 p.m., he saw human organs wrapped in two polythene bags on the south side of the Bhadra Government Primary School grounds. He informed the matter to Mathurapur U. P. Chairman, Sardar Azizul Haque and the local police over telephone. The police opened the polythene bags and in one polythene bag, there were two hands and from neck to stomach of a human body and other polythene bag contained the body part from waist to feet of a human body but the body had no head and the body was wearing half pant with cartoon image on

it and a steel amulet tied with a black thread was found around his waist. The police seized several foul-smelling white polythene bags and the amulet with the black thread in his presence. He identified his signature in the seizure list which marked as Exhibit No. 4/3. The police prepared the Inquest Report of the headless dead body in his presence. He identified his signature in the Inquest Report which marked as Exhibit No. 2/4.

Accused Aziza Akhtar Rupa declined to cross-examine him.

During cross-examination by the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness admitted that at that time, he was in Bhadra village and at about 04:00 p.m. on getting information from Choukider Khaleque, he along with 10/15 persons went to the School ground and saw human organs wrapped in two polythene bags at the outside of the School ground. He informed the local Chairman and the Police. He also denied that suggestion that he did

not inform the police. His house is situated about $\frac{1}{2}$ K.M. away from the school ground.

During cross-examination on behalf of the accused Soheli, this witness admitted that Chota Shalikha village is situated $2\frac{1}{2}$ K.M. away from Bhadra. He deposed that the color of the blood-stained shorts may be green. He denied the suggestion that the police did not seize the steel-colored amulet tied with black thread in his presence.

P.W.16 Md. Akhtar Hossain deposed that on 27.06.2014, at about 5:00 PM, the police recovered the headless body, legs and hands of a young boy from the southern side of the ground of Bhadra Primary School and prepared the Inquest Report of the headless dead body in his presence. He identified his signature in the Inquest Report, which marked as Exhibit No. 2/5.

During cross-examination on behalf of the accused Soheli, this witness deposed that there were two polythene bags containing the body parts and these were lying on the southern side of the field. He

doesn't know who saw these bags first and 400/500 peoples (men, women and police) were present there.

Accused Aziza Akhtar Rupa, Abdus Samad, Kabir Hossain and Ayesha Bewa declined to cross-examine him.

P.W.17 Qurban Ali deposed that on 27.06.14, he transported the headless body wrapped in polythene bag to the Pabna Sadar Hospital morgue. On that date, the police seized the yellow shorts with cartoon image on it, which worn by the dead body and prepared the seizure list. He identified the seizure list, which marked as Exhibit No.10 and his signature on it marked as Exhibit No. 10/1.

During cross-examination this witness deposed that the body parts were in polythene bag and the pant was not cut.

P.W.18 Inspector S.M. Moinuddin is the Investigating Officer, who deposed that on 25.06.2014, he was attached with the Chatmohar police station as Sub-Inspector and the then Officer-in-Charge filed the Chatmohar police station case No.

23 on 25.06.14. He was appointed as Investigating Officer of the case. He also deposed that during the investigation, he visited the place of occurrence, prepared the sketch map with an index, the sketch map marked as Exhibit No. - 11 and his signatures on it marked as Exhibit No. 11/1 and the Index marked as Exhibit No. 12 and his signatures on it marked as Exhibit No.12/1. He recorded the statement of the witnesses under Section 161 of the Code of Criminal Procedure. He seized alamots and arrested the F.I.R. named accused persons. He deposed that on 27.06.14, he recovered the headless body of the victim, Abdullah-Al-Noor with both hands were separated from the body and prepared the Inquest report and he then sent the body to the morgue for autopsy. He identified his signature in the Inquest Report, which marked as Exhibit No. 2/6. He also deposed that on 28.06.14, he recovered the severed head of Abdullah-Al-Noor and prepared the Inquest Report. He identified his signature in the Inquest Report, which marked as Exhibit No. 5/4. He sent

the accused Md. Sohel Biswash to the learned Magistrate, who recorded his confessional statement under section 164 of the Code of Criminal Procedure. This witness deposed that he collected and reviewed the call list of all the mobile numbers that threatened the Informant. He verified the names, addresses and PC & PR of the accused persons. He collected 2 (two) post mortem reports from the concerned hospitals. He deposed that on 27.06.14 at 18.30 hours, he seized some white polythene bags which contained very foul smell, a steel colored amulet tied with a black thread. He identified his signature in the seizure list, which marked as Exhibit No. 4/4. He also deposed that on 27.06.14 at 20.20 hours, he seized the yellow shorts with cartoon image on it, which contained very unpleasant smell. He identified his signature in the seizure list, which marked as Exhibit No.10/2. This witness deposed that on 28.06.14 at 18.05 hours, he seized some white polythene bags which contained unpleasant/foul smell. He identified his signature in the seizure list, which marked as Exhibit No. 3/3. He

also deposed that on 28.06.14 at 18.25 hours, he seized a sharp knife, approximately eight inches long including the handle, a yellow color old used school bag with broken zipper and a few cut and torn white polythene bags, these were contained very unpleasant/foul smell. He identified his signature in the seizure list, which marked as Exhibit No. 6/3. He identified the signatures of the then Officer-in-Charge of Chatmohar Police Station on the FIR form because he worked at the same place with him; these are marked as Exhibit Nos. 1/2, 1/Ka, 1Ka/1 and 1/Ka/2. After conclusion of the investigation, finding *prima facie* case against the accused persons namely Md. Abdus Samad, Md. Kabir, Most. Ayesha Bewa, Md. Sohel Biswash and Aziza Akhtar Rupa, he submitted the Charge Sheet being No. 165 dated 12.09.2014 under Sections 7, 8 and 30 of the Prevention of Violence against Women and Children Act, 2000 and Sections 302, 201 and 34 of the Penal Code and gave final report against other accused persons namely Alep Ali, Yasin and Zakirul as he did

not find any *prima facie* case against them. He identified the accused persons namely Md. Abdus Samad, Md. Kabir, Most. Ayesha Bewa, Md. Sohel Biswash and Aziza Akhtar Rupa on the dock.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha Bewa, this witness deposed that the occurrence took place on 25.06.14 at 11.45 a.m. and the F.I.R. was lodged on the same date at 21.15 hours. The place of occurrence is situated at 3 K.M. away from the police station. He deposed that there are 3 (three) mobile SIM numbers in the ejahar and these are (1st number) 01863759734, (2nd number) 01755456569 and (3rd number) 01745680754. He deposed that during investigation, the ownership of these 3 (three) SIMs could not be identified by the company. He then deposed that on 26/6/14, at 9.30 a.m. he wrote to the company seeking information about the five numbers including the aforesaid three cell phone numbers and he received a reply from the company, wherefrom it transpires that these registration forms were blank,

incomplete and also contained wrong address. This witness admitted that he found one correct SIM number being 01721748364, wherefrom the ransom was demanded and he arrested one Yasin Ali the owner of the SIM but he neither send him up in the charge sheet nor make him a witness in this case. He admitted that he personally did not go to the company to investigate the ownership of these SIMs. He admitted that he did not send the *alamots* (material exhibits) which contained bad smell for chemical examination. He also admitted that he did not send the dead body (without a head) for DNA testing to identify the same because the father of the deceased child identified the body. He admitted that a G.D. Entry was made relating to this incident at Chatmohar Police Station but he did not summon that G.D. Entry.

During cross-examination this witness admitted that witness Atiyara Parveen did not tell him that Ayesha Bewa used to live in their house, she used to look after the land and money sent from abroad, or

when they came back from abroad and wanted the land and money back, there was a dispute raised over it, or the accused Samad returned from abroad after 7/8 months and he took Ayesha Bewa away with him and while Ayesha was leaving she threatened her that she would see how she lived with her husband and children or the accused persons had conspired to kidnap her child, or her son the victim was wearing yellow shorts, which contained cartoon picture on it and a steel-colored amulet. He admitted that the witness Sukuma Gomez did not tell him that he heard from the Informant that Samad, Kabir, Soheli and Rupa were involved or witness Rezaul Karim alias Babu did not tell him that on 27.06.14 the Informant told him, the accused Samad, Soheli and Kabir were involved or witness Jahangir Alam did not tell him that after the burial, the Informant told the people present there, the accused Soheli, Samad and Rupa were involved in this incident of murder or witness Amir Hossain Minu did not tell him that a school bag, a sharp knife and polythene bags were recovered

inside the Soheli's house or witness Lutfar Sarkar did not tell him that the Informant disclosed the names of the accused persons or he went to the Chatmohar Police Station Bus Stand on 28.06.14 and on his way back from there he saw the severed head of the dead child at Haran Intersection. Witness Imran Hossain did not tell him that he heard from his sister that Noor was missing or his brother-in-law get a call from an unknown number and he tried to contact with that number or Noor had a amulet around his waist and wearing pant with cartoon pictures on it or Aziza Akhter Rupa, Soheli's mother and Advocate Abdul Aziz of Pabna were present at Soheli's home or a knife, a school bag or foul-smelling polythene were found in the bathroom of Soheli's house. He denied the suggestion that his investigation was perfunctory and filed the charge sheet as per instruction of the Informant without conducting a proper investigation. He admitted that the PC and PR of these accused were nil.

During cross-examination on behalf of the accused Soheli Biswas, this witness admitted that Soheli Biswas is not a F.I.R. named accused or he is not suspected as an accused. He admitted that the Informant does not mention in the ejahar that his house is a two-storied building and accused Soheli Biswas lived on the ground floor and he has a Rod Cement shop on the north side of the ground floor or during the search, he knocked on the door of Soheli's house or when Soheli opened the door, he asked him if he had seen Noor and Soheli said that Noor went to his house and asked for bananas but Soheli could not give it to him as there were no bananas, then Noor left. He admitted that he did not mention in the draft map or index that Soheli Biswas lives in the ground floor of the building from where Noor was abducted and he did not mark the location of any latrine in the draft map. He admitted that he did not investigate the G.D. Entry, which lodged before this case but one S.I. investigated it. He admitted that the amulet and pant with cartoon image on it are found in different places

and he did not conduct any Test Identification (TID) Parade through the learned Magistrate for the pant and amulet. He admitted that he did not conduct any chemical test to determine, whether the foul odor in the seized polythene were from human body. He also admitted that he arrested Soheli on 27.06.14 at 19.15 hours beside of the Informant's house. He admitted that he did not mention in the seizure list that a knife, a school bag and foul odor polythene were recovered from the latrine. He deposed that he collected the call list of the SIM numbers mentioned in the ejahar but these SIMs could not be identified as the user names were illegible. He did not send up accused Yasin and F.I.R. named accused namely Haji Alef Ali Molla and Zakirul in the charge sheet. He sends Soheli to the court on 28.06.14 and applied for his remand on that date and 03 (three) days remand was granted on 30.06.14. He took him into his custody on 30.06.14 and on 01.07.14, he confessed to the crime and in his confessional statement; he mentioned the name of one Liton as his accomplice. He admitted that he did not

assign any reason as to why Liton was not sent up in the charge sheet. He denied the suggestion that Soheli was physically tortured and he was admitted to the Prison Hospital due to his injury and he made a confessional statement due to fear of torture. He denied the suggestion that Soheli made confessional statement, according to what Police taught him. He denied the suggestion that he correctly verified the ownership of the phone numbers of Alep Ali, Yasin and Zakirul but they were not sent up in the charge sheet in exchange of bribe money and instead of Alep Ali, Yasin and Zakirul, he sent up in the charge sheet Soheli on false allegation. He denied the suggestion that he deposed falsely in this case. He denied the suggestion that the accused Soheli and Aziza Akhter were not involved in the incident of murder of the victim Noor.

P.W.19 Sub-Inspector Asif Mohammad Siddiqui Islam is the Investigating Officer, who deposed that as per the order of the learned Judge, he was appointed as the Investigating Officer to

investigate the case and after conclusion of Investigation; he filed the supplementary charge sheet in this case. He deposed that he had conducted an extensive investigation with regard to the accused Liton. But he failed to find any information, evidence or proof relating to the existence of accused Liton. The accused Soheli mentioned the imaginary and fictional character of one Liton mentioned in his confessional statement before the court to save himself. He created this imaginary character and no evidence was found relating to the existence of accused Liton and as such, he requested to discharge him from the instant case. He deposed that he also found the investigation conducted by the previous I.O. was correct, as such, he submitted the supplementary charge sheet being No. 59 dated 29.03.16 under Sections 7, 8 and 30 of the Prevention of Violence against Women and Children Act read with Sections 302, 201 and 34 of the Penal Code.

During cross-examination on behalf of the accused Abdus Samad, Kabir Hossain, and Ayesha

Bewa, this witness admitted that he did not investigate with regard to the ownership of the mobile phones/ SIM cards mentioned in the Ejahar, which demanded ransom. He denied the suggestion that his investigation was perfunctory and he deposed falsely in this case.

During cross-examination on behalf of the accused Aziza Akhtar Rupa, this witness admitted that during the investigation, he find that accused Aziza Akhtar Rupa was not involved in this incident, but he include her name in the charge sheet as the previous Investigating Officer had included her as accused in the charge sheet.

During cross-examination on behalf of the accused Soheli, this witness admitted that Soheli Biswas is not a F.I.R named accused and he was not mentioned as a suspect. He deposed that he received an order to investigate about Liton. He admitted that during the investigation, he did not record any statement of the witness. He admitted that he mentioned in the charge sheet relating to the

statement given by Soheli Biswas about accused Liton was not true. He denied the suggestion that Soheli was physically tortured to make confessional statement. He denied the suggestion that he deposed falsely in this case.

These are the depositions of the prosecution witnesses.

We have gone through the First Information Report, Inquest Report, Charge Sheet, deposition of the Witnesses, Confessional Statement of the convict Soheli Biswas, impugned Judgment and Order and other materials on record. We have given our anxious consideration to the submissions as advanced by the learned Advocates for both the sides. We find that the condemner Soheli Biswas and appellant Abdus Samad were convicted and sentenced on the basis of the evidence adduced by the Prosecution witnesses as well as the Confessional Statement of the convict Soheli Biswas and circumstantial evidence. In the instant case, there was no ocular evidence witnessing the commission of offence committed by convict-

appellants at the house of the Informant. Prosecution relied upon circumstantial evidence to proof of its case. Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false, tutored and biased witnesses but it is very much difficult to procure circumstantial evidence. In the instant case, we find that all the private prosecution witnesses are near relatives of the Informant and they did not see the incident took place in the home of the victim Abdullah-Al-Noor. Prosecution witnesses corroborated with each other relating to the evidence that the missing of the victim, demanding of ransom, recovery of the alamots, body and head of the victim and the Confessional Statement of the convict Sohel Biswash.

Learned Advocates appearing for the condemned prisoner and the convict-appellant Md. Abdus Samad argued that all the prosecution witnesses are near relatives of the informant and the victim, which cast

serious doubt as to the truthfulness of the prosecution case. The prosecution witnesses have failed to identify the recovered head and body as the body of the victim Abdullah Al Noor, also failed to prove the motive as well as failed to prove the confessional statement of the condemned-prisoner Soheli Biswas was made voluntarily and true, rather it was obtained by torturing the condemned-prisoner. There was illegality in the initiation of the instant case and the defense case is more probable than the prosecution case; they failed to prove their case beyond reasonable doubt by adducing reliable oral and documentary evidence as such, the conviction and sentence passed by trial Court is illegal.

First question raised by the learned Advocate for the Appellants that whether or not all the prosecution witnesses are near relatives of the Informant or victim and judgment and order of conviction and sentence passed by the trial Court against this appellant on the basis of the evidence of interested, inter-related and partisan witnesses is sustainable in law. The evidence

of interested, inter-related and partisan witnesses must be closely scrutinized before it is accepted. We find support of this contention in the case of *Nawabul Alam and ors. Vs. The State*, 15 BLD (AD) 61 wherein it is held:

“The principle that is to be followed is that the evidence of persons falling in the category of interested, interrelated and partisan witnesses, must be closely and critically scrutinized. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses for that will result in a failure of justice, but their evidence is liable to be scrutinized with more care and caution than is necessary in the case of disinterested and unrelated witnesses. An interested witness is one who has a motive for falsely implication an accused person and that is the reason why his evidence is initially suspect. His evidence has to cross the hurdle of critical appreciation. As his evidence cannot be thrown out mechanically because of his interestedness, so his evidence cannot be accepted mechanically without a critical

examination. As Hamoodur Rahman, J. (as his Lordship then was) observed in the case of Ali Ahmed vs. State (14 DLR (SC) 81):

“Prudence, of Course, requires that the evidence of an interested witness should be scrutinized with care and conviction should not be based upon such evidence alone unless the Court can place implicit reliance thereon” (Para -10).

.....The rule that, the evidence of interested witnesses requires corroboration is not an inflexible one it is a rule of caution rather than an ordinary rule of appreciation of evidence. The Supreme Court of Pakistan spelt out the rule in the case of Nazir Vs. The State, 14 DLR (SC) 159, as follows:

“.....we had no intention of laying down an inflexible rule that the statement of an interested witness (by which expression is meant a witness who has a motive for falsely implicating an accused person) can never be accepted without corroboration. There may be an interested witness whom the Court regards as incapable of falsely, implicating an innocent person. But he will be an

exceptional witness and, so far as an ordinary interested witness is concerned, it cannot be said that it is safe to rely upon his testimony in respect of every person against whom he deposes. In order, therefore, to be satisfied that no innocent persons are being implicated along with the guilty the Court will in the case of an ordinary interested witness look for some circumstances that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. That is what is meant by saying that the statement of an interested witness ordinarily needs corroboration.

.....The High court Division was obviously in the wrong in holding that no corroboration was necessary in this case. It failed to scrutinize the evidence of interested eye- witnesses and totally ignored the fact that the evidence of P.Ws. 3-5 having so many infirmities is by itself insufficient and unsafe to sustain any conviction on a capital charge and requires corroboration by either circumstantial or ocular corroborative evidence.”

In the instant case, we find that prosecution witnesses are material witnesses. Admittedly, P.W. 1 is the Informant and father of the victim, P.W. 2 is the mother of the victim and P.W.3 Md. Monirul Islam is the brother-in-law (ভায়রা ভাই) of the Informant, P.W.7 Md. Amir Hossain Minu is the uncle-in-law of the Informant, P.W.9 Md. Amir Hossain is the father-in-law of the Informant and P.W.10 Md. Imran Hossain is the brother-in-law (শাশুর) of the Informant, they are closely related to each other, though they are close relatives of the victim, but they cannot be considered as interested witness. There is no reason that the testimony of P.W. Nos. 1, 2, 3,7,9 and 10 can be discarded or liable to be flung to the wind simply because they happened to be close relative of the victim. They are most natural, probable and competent witnesses in the present case. We find support of this contention in the case of *State vs. Moslem reported in 55 DLR (2003) 116* wherein this Division held that:

“A close relative who is a material witness cannot be regarded as an interested witness. The terms ‘interestedness’ postulates that the witness must have some direct interest in having the accused somehow or the other connected for some animus or some other reasons. ‘Interestedness’ has been defined by Supreme Court of Pakistan in the case of Nazir and others vs. State, PLD 1962 (SC)269 in the following words. “Interested witness is one who has a motive for falsely implicating an accused person.”

There is no law that the statement of a particular witness is liable be flung to the wind simply because he happens to be a close relative of the victim. However, the court while putting reliance on the statement of a close relation and so-called interested witness would be on its tiptoe and guard and would scrutinize the statement more carefully. Evidence of close relative has only to be scrutinized with greater care in order to find out whether the same suffer from internal marks of falsehood due to interestedness.”

Second question raised by learned Senior Counsel Mr. Chowdhury whether or not the prosecution failed to identify the recovered head and body of the unknown deceased as the body of the victim Abdullah Al Noor. Learned Counsel argued that the alleged occurrence took place on 25.06.2014 and the beheaded dead body of the victim was recovered on 27.06.2014 and the alleged head was recovered on 28.06.2014 and these were found decomposed and identification was absolutely doubtful but the trial court shifted the onus upon the defense to disprove though beheaded dead body and head of the victim were neither identifiable nor was identified by the father to be the head and body of his son, the victim Abdullah Al Noor.

In the instant case, we find that P.W.1 Md. Abul Hossain deposed that saw the body of a child lying in the southern part of the school field. The body's head had been severed and missing, the hands had been cut off from the body, the thighs had been cut, and the abdomen had been slashed open and around the

waist there was a steel amulet tied with a black thread, and the body was wearing a yellow half-pant with a cartoon image on it and he identified the body as that of his son, Abdullah Al Noor from the amulet and the half-pant. Other prosecution witnesses also corroborated that P.W.1 Md. Abul Hossain identified the dead body of his son, Abdullah Al Noor. We have perused the confessional statement of the condemned-prisoner made under section 164 of the Code of Criminal Procedure wherein he categorically stated that:-

“-----পরে আমি অনুমান ৬:১৫ টার দিকে তালা খুলে বাসার ভেতরে যাই।
লিটন নূরকে নিয়ে বাথরুমের ভেতরে ছিটকারী দিয়ে ছিল। আমি দরজায় নক
করে বলি আমি সোহেল। তখন লিটন দরজা খুললে আমি ভয়ানক দৃশ্যটা দেখি।
আমি লিটনকে বলি আপনি মানুষ না জানোয়ার। নূরের মাথা, হাত বিচ্ছিন্ন ছিল।
ভুড়িও কাটা ছিল। তখন সে আমাকে ছুরি ধরে বলে দরজা খুলে দে। নাইলে
তোকে, তোর স্ত্রী ও সম্প্রদানকে মেরে ফেলব।

The aforesaid confessional statement of the condemned-prisoner made under section 164 of the Code of Criminal Procedure corroborated with evidence of other prosecution witnesses especially

P.W.1 Md. Abul Hossain, P.W.3 Md. Monirul Islam, P.W.4 Sukumar Gomez, P.W.5 Md. Rezaul Karim, P.W.6 Md. Jahangir Alam and P.W.15 Md. Saidul Islam. They together went to the southern side of the said Primary School playground wherein they saw human organs wrapped in two polythene bags on the south side of the Bhadra Government Primary School ground. In one polythene bag, there were two hands and from neck to stomach of a human body and other polythene bag contained from waist to foot of a human body but the body had no head and the body was wearing half pant with cartoon image on it and a steel amulet with a black thread around his waist. Their statements also corroborated with the medical evidence of P.W.12 Dr. Md. Rezaul Karim and P.W.14 Dr. Md. Kamal Osman.

Thus, we are of the view that the P.W.1 Md. Abul Hossain successfully proved and identified the recovered head and body of the victim as the body and head of his son, the victim Abdullah Al Noor as the body was wearing half pant with cartoon image on it

and a steel amulet with a black thread around his waist.

Third question raised by the learned Senior Counsel Mr. Chowdhury that the learned Judge of the trial court committed an error of law in convicting the appellant both under sections 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and also under Section 302 of the Penal Code, when the two offences are distinct and under two different laws.

In the instant case, we find that the learned Judge of the trial court having perused the record rightly found that an offence under section 302 of the Penal Code and offence under section 7 of the Nari-O-Shishu Nirjatan Ain are connected in such a manner that both the offence have arisen out of the self-same occurrence and in the interest of justice as per provision of section 27(3) of the Nari-O-Shishu Daman Ain, both the offence should be tried together by the Tribunal in accordance with the provision of aforesaid law. We do not find any illegality in trying both the offence before the Druto Bichar Tribunal.

Fourth question raised by the learned Senior Counsel Mr. Chowdhury that the confessional statement of condemned-prisoner Sohel Biswash is absolutely an exculpatory one, except that of act of screening evidence and the confessional statement not made voluntarily and it was not true, rather it was obtained by torturing the condemned-prisoner and he made this statement under duress and the learned Magistrate also failed to comply with the provisions of Sections 364 and 164 of the Code of Criminal Procedure, while he recorded the confessional statement of the condemned-prisoner Sohel Biswash.

On the contrary, the learned Deputy Attorney General argued that the confessional statement made by the convict was inculpatory in nature and it was made voluntarily and the learned Additional Chief Judicial Magistrate after complying the provisions of Sections 364 and 164 of the Code of Criminal Procedure recorded the said confessional statement of the condemned-prisoner, there was no evidence, it

was obtained by torturing the condemned-prisoner and he made this statement under duress.

Now let us consider whether the confessional statement of the condemned-prisoner is true and voluntary.

We have perused the confessional statement of the condemned-prisoner wherefrom it transpires that he implicated himself with regard to the allowing and accommodating one co-accused namely Liton, (not sent up in the charge sheet) in kidnapping and murdering the victim in his home and he hide the head and body of the victim but exculpated himself so far as the commission of the murder. However, the condemned-prisoner Md. Sohel Biswas in his application for retraction of confessional statement and the written statement submitted during examination under Section 342 of the Code of Criminal Procedure, he sought to exculpate himself both from the offence of allowing and accommodating one Liton in kidnapping and murdering the victim in his home as well as for the offence of concealing or

hiding of the head and body of the victim rather it was obtained by torturing the condemned-prisoner and he made this statement under duress.

Let us now consider the confessional statement of the condemned-prisoner made under section 164 of the Code of Criminal Procedure, wherein he categorically stated that:-

“----- আমি ২৪.০৬.২০১৪ ইং তারিখে সন্ধ্যার সময় ছামাদ ভাইকে বলি আপনি লোকটাকে আগামীকাল সকাল ১০:৩০ টার দিকে আমার কাছে পাঠাইবেন। কথামত ২৫.০৬.২০১৪ ইং তারিখে লোকটা সকাল ১০:৪৫ টার দিকে আমার ভাড়া বাসায় আসে। তার বয়স অনুমান ২৮/২৯ বছর হবে। সে আমাকে বলে সে ছামাদ ভাইয়ের লোক। আমি জিজ্ঞাসা করলে তার নাম লিটন বলে। তাকে আমার রুমে ঢুকাই। আমার স্ত্রী তখন স্কুলে ছিল। আবুল হোসেন দোতলায় থাকে। আমি নীচ তলায় থাকি। লিটনকে ঘরে রেখে আমি ছাদে যাই। আমার গা হাত পা কাপ ছিল। কিছুক্ষণ পর ছাদ থেকে রুমে ঢুকার জন্য নীচে আসি। দরজায় নক করতে থাকি। দরজা খুললে দেখি লিটন নূর কে মুখ চেপে ধরে আছে। তখন আমি লিটনকে বলি নূরের যেন কোন ক্ষতি না হয়। আমি ঘরের দরজা বাহির থেকে তালা দেই। ভেতরে নূর ও লিটন থাকে। লিটনের এটিচুড আমার ভাল লাগছিল না। এর মধ্যে নূরের মা ওপর থেকে কয়েকবার এসেছিল নূরের খোঁজে। আমি তাকে বলি নূর এইদিকে আসে নাই। আমি নিজেকে স্বাভাবিক রাখার চেষ্টা করছিলাম। অপর দিকে নূরকে খুঁজতে থাকি। খুজতে খুজতে আমি একটা ভ্যানে করে নতুন বাজারে সামাদ ভাইয়ের কাছে যাচ্ছিলাম। তখন অনুমান বেলা ১১:৩০ টা হবে। পথে মধ্যে গুনি

পুলিশ ছামাদ ভাইকে ধরে নিয়ে গেছে। তখন আমার আরও ভয় লেগে গেল। আমি মাইক নিয়ে আসি। মিডিয়াকে জানাই। নূরের খোজার বিষয়ে নিজে তৎপর হই। আমার স্ত্রীকে ফোনে নূরের নিখোঁজ হওয়ার বিষয়টি জানাই। আমি আবুল ভাইকে নিয়ে বাইরে ছিলাম। আমার স্ত্রী ছেলেকে নিয়ে স্কুল থেকে বাড়িতে আসে। কিছুক্ষণ পর সে দোতলায় যায়। আমি তখন ভিতরে যাই। লিটন নূরকে নিয়ে ভেতরে একটা ঘরের মধ্যে ছিল। ডাইনিং সহ ০৩ রুমের বাসা আমার। যে রুমটায় লিটন নূরকে নিয়ে ছিল সেখানে সাধারণত আমরা কেউ যাইনা। আমি বাইরে চলে আসি। বিকাল ৪:০০ টার দিকে আমি বাসায় যেয়ে বাথরুমের ছিটকারী খুলতে দেখি লিটন নূরকে নিয়ে বসে আছে। নূর মারা গেছে। আমি তাকে জিজ্ঞাসা করি আপনি এটা কি করলেন। তখন লিটন বলে আমি এতক্ষণ বসে আছি। নূর কান্নাকাটি করছিল। আমি কতক্ষণ তার মুখ চেপে ধরে রাখব। মুখ চেপে ধরে রাখতে সে মারা গেছে দম বন্ধ হয়ে। তাকে বলি আপনি নূরকে নিয়ে যান। লিটন আমার সাথে তর্কাতর্কি করে। আমি লিটনকে সন্ধ্যা ৬:০০ টার মধ্যে নূরের ব্যবস্থা করার কথা বলে বাসায় তালা দিয়ে বের হয়ে আসি। আমার স্ত্রী ওপরে ছিল। স্ত্রী ওপর থেকে আসছে কিনা ফলো করছিলাম। পরে আমি অনুমান ৬:১৫ টার দিকে তালা খুলে বাসার ভেতরে যাই। লিটন নূরকে নিয়ে বাথরুমের ভেতরে ছিটকারী দিয়ে ছিল। আমি দরজায় নক করে বলি আমি সোহেল। তখন লিটন দরজা খুললে আমি ভয়ানক দৃশ্যটা দেখি। আমি লিটনকে বলি আপনি মানুষ না জানোয়ার। নূরের মাথা, হাত বিচ্ছিন্ন ছিল। ভুড়িও কাটা ছিল। তখন সে আমাকে ছুরি ধরে বলে দরজা খুলে দে। নাইলে তোকে, তোর স্ত্রী ও সম্প্রদায়কে মেরে ফেলব। তোর পেটে ছুরি মারব। তার হাতের ছুরিটা সে আমার রান্না ঘর থেকে নিয়ে এসেছিল। ঐ ছুরি দিয়ে আম কাটতাম। চপিং বোর্ডে সবজি কাটতাম। সে মেইন দরজার ছিটকানি নিজে খুলে। হাতের ছুরিটা সে দরজার পাশের স্টিলের বাক্সের উপর রাখে।

দরজা খুলে লিটন স্বাভাবিকভাবে চলে যায়। আমি তার লাশটা বাথরুমের এক কোণায় রেখে দেই। রাত্রে আমরা ঐ রুমে ঘুমাই নাই। সকালে ঘুম থেকে উঠলে রুমে গন্ধ বের হয়। স্ত্রী জিজ্ঞাসা করলে বলি সম্ভবত পিয়াজের গন্ধ। আমার আধা মনের মত পিয়াজ কেনা ছিল। সকালে স্ত্রী বাবুকে নিয়ে স্কুলে গেলে আমি বাজারে আসি। বড় পলি ব্যাগ কিনি। বাড়িতে এসে নূরকে পলিব্যাগের মধ্যে ভরি। কাধে বুলানো একটা ব্যাগ ছিল আমার। ঐ ব্যাগের মধ্যে নূরকে রাখি। বাথরুম পরিষ্কার করি। ব্যাগটা ওয়ারড্রপের মধ্যে রাখি। বাসায় স্পেস করি। রাত্রি অনুমান ৮:০০ টার সময় আমি বাজারে যাই। জিরো পয়েন্টে এসে মনিরকে বলি তার মটর সাইকেলটা একটু দিতে। মনিরের বাড়ি দোলন এ। সে আমার পরিচিত। আমাকে বড় ভাই বলে। মনিরের মটর সাইকেল নিয়ে বাসায় এসে স্ত্রীকে বলি তুমি ওপরের ভাবীর সাথে কথা বল। স্ত্রী ওপরে গেলে ব্যাগ ভর্তি নূরের লাশটা নিয়ে মটর সাইকেলে করে ভাদরা সরকারী স্কুল মাঠের পাশে ঝোপে নিয়ে গিয়ে পলিথিন সহ লাশটা ফেলে দিই। তারপর মটর সাইকেলে করে ব্যাগ সহ বাসায় আসি। মটর সাইকেল মনিরকে দিয়ে ভ্যানে করে বাসায় আসি।”

The trial court also found convict-appellant Md. Soheli Biswas voluntarily made the true statement and the confessional statement is inculpatory in nature. We have also perused the confessional statement wherefrom it transpires that the condemned-prisoner narrated vivid picture as to how and what manner the alleged occurrence took place,

which corroborated with the other independent evidence adduced by the prosecution witnesses.

Now, the question is whether a confession, partly exculpatory and partly inculpatory, is at all a confession. Notwithstanding the general principle that a confession should be accepted or rejected as a whole, but in certain facts and circumstances, the inculpatory part may be accepted if the exculpatory part is found to be false or basically improbable regard being had to reason and human conduct. We find support of this contention in the case of *The State -Vs-Lalu Miah and another. Reported in 7 BLD (Ad) 1987 page-212.* P.W.18 Sub-Inspector, S.M. Moinuddin deposed that the accused Sohail in his confessional statement; he mentioned the name of one Liton as his accomplice, but he did not assign any reason as to why Liton was not sent up in the charge sheet. P.W.19 Sub-Inspector Asif Mohammad Siddiqui Islam is the 2nd Investigating Officer. He deposed that he conducted extensive investigation with regard to accused Liton. But he failed to find any information or

proof about the existence of Liton. The accused Soheli mentioned an imaginary and fictional character of Liton in his confessional statement before the court only to save him. He created this imaginary character and there is no evidence was found about Liton or his existence and as such, he requested to discharge him. Thus, we are of the view that the exculpatory part of the confession is found to be false one.

Now the question is whether or not the prosecution could prove that the condemner Soheli Biswas in furtherance of his intention kidnapped the victim Abdullah Al Noor and caused his death and /or for demand of ransom. We find that the condemner Soheli Biswas was convicted and sentenced on the basis of the evidence adduced by the Prosecution witnesses as well as the Confessional Statement of the convict Soheli Biswas and circumstantial evidence. There is no ocular evidence. None of the prosecution witnesses saw the kidnapping and death of the deceased. The trial Court convicted the condemner Soheli Biswas mainly on the basis of his confessional

statement and the testimony of prosecution witnesses and circumstantial evidence. In the instant case, we have categorically considered the depositions of all the prosecution witnesses and other relevant documents on record and we find that there is no direct evidence against the condemner in kidnapping and causing murder of the deceased. The prosecution sought to prove the charge on certain circumstantial facts that on 25.06.2014 at 11.45 a.m. the victim was missing from his house. P.W.2, Most. Atiara Parveen deposed that she knocked on the door of the accused Soheli Biswas and he told her that Noor had not come to his residence, without opening the door of his home. Later on, she again knocked the door on Soheli's home, at that time, accused Soheli opened the door and as she asked whether Noor was there, then he said that Noor had come and asked for a banana, but as there was no banana in the house, he could not give him and then victim Noor left. P.W.9 Md. Amir Hossain deposed that during search he knocked on the door of Soheli Biswas's home and he opened the door and

asked him whether he had seen Noor? In reply Soheli said that he had not seen him. He again went to Soheli's house, at that time, Soheli said Noor came to his house and asked for bananas, but he could not give it to him, then Noor left. Thereafter, on the same day, at 3.45 p.m. unknown person called the victim's father P.W.1 Md. Abul Hossain on his mobile phone demanded an amount of Taka 15,00,000 as ransom and if the ransom was not paid, the child would be killed. Later, on 27 June 2014, the police informed the P.W.1 Md. Abul Hossain over telephone that a headless child body, both hands were severed from the body, the legs had been cut off below the thighs, the abdomen had been cut open was found at the southern side of the playground of Bhadra Government Primary School and he rushed to the playground and identified the body of the victim. Thereafter, on 28.06.14, at about 05:00 p.m. while they were returning from the burial of the victim, having noticed unpleasant foul smell coming from the north side of the culvert and on search Noor's head

was found wrapped in polythene bag. P.W.18 Sub-Inspector, SM Moinuddin deposed that he seized the yellow shorts with cartoon image on it, which contained very foul smell and on 28.06.14 at 18.05 hours, he seized some white polythene bags which contained very foul smell. He also deposed that on 28.06.14, the police arrested the accused Soheli and searched his house and he seized a sharp knife, approximately eight inches long including the handle, a wet yellow colour old used school bag with a broken zipper and a few cut and torn white polythene bags, these *alamots* are contained very foul-smell, recovered from the attached bathroom of the condemner Soheli Biswas's bedroom. P.W.13 Abu Saleh Md. Salah Uddin Khan, Additional Chief Judicial Magistrate, Pabna who recorded the confessional statement of the accused Md. Soheli Biswas on 01.07.2014 after observing all statutory formalities. He narrated vivid picture as to how and what manner the alleged occurrence took place, which corroborated with the other independent evidence adduced by the

prosecution witnesses including the medical evidence, the post mortem report. P.W.12 Dr. Md. Rezaul Karim, who held autopsy on the body of the deceased Abdullah Al Noor aged about 4 years. The dead body was found in 3 (three) parts: He found the body is putrefacted in three pieces:-

(1) Trunk with lower extremity without head.

(11) Right upper extremity.

(III) Left upper extremity. All parts belong to same body extremity fit properly with Trunk and skin color similar.

The Medical Board found the following external injuries:-

(1) Multiple incised wound on neck separating head from the Trunk.

(II) Multiple incised wound separating right upper extremity from the trunk at its Junction with extremity.

(3) Multiple incised wound separating left upper extremity from the trunk at its Junction with extremity.

(4) Incised wound, size whole breadth of abdomen 4.1" x3" on mid abdomen.

(5) Incised wound, size 4"x1" x 2 ½" anterior aspects of left thigh near its Junction with the trunk.

(6) Incised wound 4"x1"x2" anterior aspect of right thigh near its junction with the trunk.

He opined that cause of death could not be determined because of advanced putrefaction.

P.W.14 Dr. Md. Kamal Osman, who held autopsy on the head of the deceased Abdullah Al Noor aged about 4 years. He found that the head was completely putrefied skull, bone and teeth. Putrefied skull only skull bones and teeth are present. The skulls are separated from mandible. He opined that cause of death could not be determined due to advance putrefaction.

We find that the condemner Soheli Biswas was convicted and sentenced on the basis of the evidence adduced by the P.W.1 Md. Abul Hossain P.W.2, Most. Atiara Parveen P.W.3 Md. Monirul Islam P.W.4

Sukumar Gomez P.W.5 Md. Rezaul Karim P.W.6 Md. Jahangir Alam P.W.7 Md. Amir Hossain Minu P.W.8 Md. Lutfar Sarkar P.W.9 Md. Amir Hossain P.W.10 Md. Imran Hossain P.W.11 Md. Sonauallah P.W.12 Dr. Md. Rezaul Karim P.W.13 Abu Saleh Md. Salah Uddin Khan, P.W.14 Dr. Md. Kamal Osman P.W.15 Md. Saidul Islam P.W.16 Md. Akhtar Hossain P.W.17 Qurban Ali P.W.18 Inspector, SM Moinuddin P.W.19 Sub-Inspector Asif Mohammad Siddiqui Islam as well as the Confessional Statement of the convict Sohel Biswas and circumstantial evidence. We also find that the confessional statement made by the condemner Sohel Biswash also corroborated with the inquest report and two aforesaid post mortem report and the testimony of Prosecution Witnesses as well as circumstantial evidence.

As there is no break in the chain of causation and chain or circumstances connecting the condemner Sohel Biswash with the kidnapping and killing of the victim Abdullah-Al-Noor and as circumstantial evidence is more cogent than the

evidence of eye witness and after perusing the materials on record, we are of the view that the prosecution has able to connect the condemner Soheli Biswas with the kidnapping and killing of the victim Abdullah-Al-Noor, which attract the provision of the Section 302 of the Penal Code and section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

However, this is a Death Reference sent by the trial court for confirmation of Death sentence. We have perused all relevant documents of this case including inquest report, charge sheet, seizure list, deposition of the witnesses as well as the confessional statement of the convict Soheli Biswas and the judgment and order of conviction and sentence in question. We do not find irregularity or any illegality with regard to the conviction of the condemner Soheli Biswas under Section 302 of the Penal Code and section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and as such, we are inclined to uphold the conviction of Soheli Biswas passed by the trial court below.

According to the provision of Section 302 of the Penal Code, discretion has been conferred upon the Court to award two types of sentences. Death or imprisonment for life, the discretion is to be exercised in accordance with the fundamental principle of criminal justice. With regards to the sentence passed against the condemned-prisoner Soheli Biswas, the learned Advocate appearing on his behalf has prayed for commutation of his sentence on the ground of long delay in disposal of the Death Reference and other attending circumstances. Let us now consider as to whether there are extenuating circumstances for commutation of the sentence of death of the condemned-prisoner, we find that the condemned-prisoner is aged about 38 years, when he was examined under section 342 of the Code of Criminal Procedure. The record indicates that he is not a habitual offender and he cannot be at all characterized to be a menace to the society. It also appears to us that condemned-prisoner has been languishing in jail since 27.06.2014 and he has been

detained in condemned cell since 28.06.2018, i.e. from the date of pronouncement of the judgment and order of conviction and sentence. He is suffering in jail custody for more than 11 years, out of which he spent about seven years in the condemned Cell. Taking an account of the aggravating and mitigating circumstances, we are of the considered view that the ends of justice will be met if the death sentence is altered to one of imprisonment for life. The convict-appellant Soheli Biswas thus, stands sentenced to imprisonment for life.

Now the question is whether or not the prosecution could prove that the convicted appellant Md. Abdus Samad acted in furtherance of his intention to kidnap the victim Abdullah-Al-Noor.

Learned Advocate Mr. Khan argued that the F.I.R. named accused persons including the convict appellant Md. Abdus Samad was suspected by the Informant but no credible evidence or witness was found against him and this suspicion was shifted on 01.07.2014 when the confessional statement of Soheli

Biswash was recorded. Accused Md. Sohel Biswash made a confessional statement under Section 164 of the Code of Criminal Procedure on 01.07.2014, implicating Abdus Samad as one of the planner or conspirator for kidnapping of the victim. However, the confession of the appellant is absolutely an exculpatory one, which cannot be used against other co-accused. Further, there is no ingredient of offence as contemplated under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 but the trial Court with erroneous view and wrong findings convicted and sentenced the convict- appellant Md. Abdus Samad.

In the instant case, we find that the learned Judge of the Druto Bichar Tribunal, Rajshahi convicted the appellant Md. Abdus Samad under Section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. The appellant was convicted on charge of kidnapping. According to the Section 2(b) the term 'kidnapped' (অপহরণ) is defined, which reads as follows:

2(b) "অপহরন" অর্থ বলপ্রয়োগ বা প্রলুদ্ধ করিয়া বা ফুসলাইয়া বা ভুল বুঝাইয়া বা ভীতি প্রদর্শন করিয়া কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা;

The provision of section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000, provides punishment for 'kidnapping' or (অপহরন) which reads as follows:

Section 7: নারী ও শিশু অপহরণের শাস্তি যদি কোন ব্যক্তি ধারা ৫-এ উল্লেখিত কোন অপরাধ সংঘটনের উদ্দেশ্যে ব্যতীত অন্য কোন উদ্দেশ্যে কোন নারী বা শিশুকে অপহরণ করেন, তাহা হইলে উক্ত ব্যক্তি যাবজ্জীবন কারাদণ্ডে বা অনূন চৌদ্দ বৎসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন।

Let us now consider whether or not the prosecution has been able to prove the allegation of kidnapping against the appellant Md. Abdus Samad.

In the instant case, we have categorically considered the depositions of all the prosecution witnesses and other relevant documents on record and we find that there is no direct evidence against the appellant Md. Abdus Samad in kidnapping the victim Abdullah-Al-Noor. There is no ocular evidence. None of the prosecution witnesses saw the incident of

kidnapping the deceased. The trial Court convicted the appellant Md. Abdus Samad mainly on the basis of confessional statement of the condemner Sohel Biswash and the testimony of Prosecution Witnesses. The Informant Md. Abul Hossain lodged the First Information Report (FIR) to the Officer-in-Charge of the Chatmohor Police Station on 25.06.2014 alleging *interalia* that accused persons including this appellant along with 5/6 unknown accused have threatened the Informant on several occasions, through various ways due to previous enmity relating to land dispute with the accused Nos. 1 and 4. They also threatened to kidnap his son namely Md. Abdullah-Al-Noor, a 4 (four) years old boy, from the mobile/cell-phone nos. 01863759734, 01755456569 and 01745680754. He informed the matter to Pabna RAB office. However, he did not mention whether it was written or verbal and it is also not clear whether the RAB conducted any investigation with this regard. P.W.18 Sub-Inspector, S.M. Moinuddin deposed that he collected the call list of the 3 (three) SIM numbers mentioned in the ejahar

but these SIMs could not be identified as the user names were illegible. P.W. No. 1 Md. Abul Hossain is the Informant and father of the victim deposed that he lodged the First Information Report (FIR) to the Chatmohar Police Station and he suspected that the accused persons namely Md. Abdus Samad, Kabir Hossain, Alep Ali Molla, Most. Ayesha Bewa and Jakirul Islam had committed the offence, due to land dispute with accused Abdus Samad and Ayesha Bewa. The Informant entangled the appellant Md. Abdus Samad in this case on the basis of mere suspicion. P.W.2, Most. Atiara Parveen, the Mother of the Deceased, Abdullah-Al-Noor and wife of the Informant Md. Abul Hossain suspected that the accused persons namely Ayesha Bewa, Samad Biswas, Kabir Biswas, Soheli Biswas, and Aziza Akhtar Rupa conspired to kidnap her son, they demanded ransom, and then killed him. P.W.9 Md. Amir Hossain deposed that the accused person namely Soheli, his wife Rupa, Samad, Kabir and Ayesha in connivance with each other were kidnapped and killed the victim

Abdullah-Al-Noor. P.W.4 Sukumar Gomez deposed that he heard from the Informant that Soheli, Rupa, Samad, Kabir were involved with this incident. P.W. 5 Md. Rezaul Karim deposed that as he asked the Informant, who could have committed such an act. In reply, he was crying and said that "My own relatives have done this." The Informant mentioned the names Samad, Soheli, and Kabir. He could not recall whether he mentioned any other name. P.W.6 Md. Jahangir Alam deposed that he heard Noor's father telling everyone that his tenants Sohail and Rupa, Samad, Kabir, Ayesha are involved with this incident of murder. P.W.7 Md. Amir Hossain Minu deposed that as he asked Abul what the reason was for kidnapping his child. In reply, Abul said that his stepmother Ayesha, Samad and Kabir had been provoking him in various ways for taking their family land. Abul suspected that they are the ones who took away his child. P.W.8 Md. Lutfar Sarkar deposed that he heard from Abul Hossain, his infant son was killed by his tenant Soheli and his wife Rupa. Later, Abul Hossain

again told him that Samad, Kabir and his stepmother Ayesha had committed the murder. The evidence of the Prosecution Witness Nos. 4, 5, 6, 7 and 8 are hearsay evidence, though the oral evidence must, in all cases whatever, be direct, according to the provision of Section 60 of the Evidence Act, 1872. The Informant Md. Abul Hossain has implicated the appellant Md. Abdus Samad in the case on the basis of mere suspicion out of previous enmity, due to land dispute. It is the settled principle of criminal law that suspicion, however strong it might be, cannot be a basis for conviction. We find support of this contention in the case of *Abu Taher Chowdhury and others Vs. The State*, 11 BLD (AD) 2, 202). Further, none of the prosecution witnesses deposed that appellant Md. Abdus Samad was involved in any way with the incident of kidnapping and murder of the victim, which attract the provision of section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

However, the accused Md. Sohel Biswash made a confessional statement under Section 164 of the Code

of Criminal Procedure on 01.07.2014 wherein he implicated the accused Abdus Samad as one of the planner or conspirator for kidnapping the victim. Let us now consider the confessional statement of the condemned-prisoner made under section 164 of the Code of Criminal Procedure, wherein he categorically stated that:-

"-----অনুমান মাস দেড়েক আগে আমি শালিখা স্কুলের পাশে নতুন বাজারের দিকে যাচ্ছিলাম। সকাল অনুমান ১০.৩০ টার দিকে বাজার সময়ে। তখন সামাদ ভাইয়ের সাথে দেখা হয়। ছামাদ ভাই আবুল হোসেনের ভগ্নিপতি। আমাকে জিজ্ঞাসা করে আবুল হোসেন সম্পর্কে। আমি তার সম্পর্কে ভালই বলি। তিনি আমাকে বলে আমার সঙ্গে তার কথা আছে। এর ৪/৫ দিন পরে বাজারে ছামাদ ভাইয়ের সাথে আবার দেখা হয়। সে আমাকে ১টা গলির মধ্যে নিয়ে যায়।----"

".....তার বেশ কিছুদিন তার সাথে যোগাযোগ হয়নি আমার। এরপর একদিন আমি শালিখা বাজারে রফিকের দোকানে বসেছিলাম। মুদিখানার দোকান। সন্ধ্যার পর। ছামাদ ভাই আমাকে ডেকে শালিখা স্কুলের মাঠে নিয়ে যায়।...."

"-----পরের দিন সন্ধ্যার সময় আমি ছামাদ ভাইয়ের বাসার সামনে গিয়ে দাড়াই। সে বের হয়ে আসলে আমি তাকে আমি রাজি মর্মে বলি। আমার স্ত্রীর স্কুলের পেছনে ছামাদ ভাইয়ের বাসা। সে ভেতর থেকে একটা কোরআন শরীফ নিয়ে আসে। সে আমাকে তাতে হাত দেওয়াইয়ে কাউকে না বলার কথা বলে।"

ছামাদ ভাই বলে আবুল হোসেন এর কাছ থেকে টাকা নিয়ে তার টাকা দিয়েই
মামলা চালাবে।-----"

"-----কথামত ২৫/৬/১৪ ইং তারিখে লোকটা সকাল ১০.৪৫ টার দিকে আমার
ভাড়া বাসায় আসে। তার বয়স অনুমান ২৮/২৯ বছর হবে। সে আমাকে বলে সে
ছামাদ ভাইয়ের লোক। আমি জিজ্ঞাসা করলে তার নাম লিটন বলে। তাকে আমার
রুমে ঢুকাই।-----"

On the contrary, the written statement submitted by the accused Sohel Biswash during examination under Section 342 of the Code of Criminal Procedure, 1898, wherein he categorically stated that:-

"----- আমি আমার স্ত্রী ও সন্তানসহ অত্র মামলার অভিযোগকারী। বাদী আবুল
হোসেনের বাড়ীর নিচ তলার ৩টি রুমের মধ্যে ২টি রুম ভাড়া লইয়া স্ত্রীসহ
বসবাস করিতাম অপর রুমে এনজিও ভাড়া নেয় এবং কয়েকটি ছেলে থাকত।
আমরা কমন ভাড়াটিয়া হিসেবে একই সঙ্গে অবস্থান করিতাম। আমি ট্রাভেল
ব্যবসার খাতিরে প্রত্যেক বাড়ীর বাহিরে থাকি। কাজেই আমার বাড়ীর মালিকের
আত্মীয় স্বজন সম্পর্কে আমার কোনো ধারণা নাই এবং পরিচয় ছিল না এবং
থাকিবার কোন কারন নাই।-----"

There are two different statements made by the same person i.e. accused Sohel Biswash which contradict with each other relating to the alleged

meeting or having a conversation with Abdus Samad appears to be untrue because he did not know any relatives of Abul Hossain (the Informant).

Now the question is as to whether Rafique was present at the grocery shop or whether any other persons were present at that time, if so, whether they witnessed accused Soheli Biswas and accused Abdus Samad were together. But the prosecution failed to produce Rafique or any other witness to establish that he had seen Abdus Samad and Soheli were talking to each other.

The accused Soheli in his confessional statement mentioned the name of one Liton as his accomplice. P.W.19 Sub-Inspector Asif Mohammad Siddiqui Islam is the 2nd Investigating Officer deposed that "আলোচ্য মামলার পূর্ববর্তী তদন্তকারী কর্মকর্তা অত্র মামলার ঘটনার সহিত প্রত্যক্ষভাবে জড়িত আসামী মোঃ সোহেল বিশ্বাসকে গ্রেফতার পূর্বক তাহার দোষ স্বীকারোক্তি মূলক জবানবন্দী ফৌঃ কাঃ বিঃ আইনের ১৬৪ ধারা মোতাবেক লিপিবন্ধের ব্যবস্থা বিজ্ঞ আদালতের মাধ্যমে করেন। উক্ত আসামী অত্র মামলার ঘটনার সহিত জড়িত মর্মে দোষ স্বীকার করলেও নিজেকে অত্র মামলার দায় হইতে বাচার জন্য লিটন নামে একটি কাল্পনিক চরিত্র সৃষ্টি করিয়া মামলার দায়ভার উক্ত চরিত্রের উপর অর্পণ করে। কিন্তু, উক্ত নামের কোন ব্যক্তির

সন্ধান বা কোন প্রকার তথ্য পূর্ববর্তী তদন্তকারী কর্মকর্তা সংগ্রহ করিতে পারেন নাই।
মামলাটির সার্বিক তদন্তকালে জানা যায়, অত্র মামলার মূল আসামী মোঃ সোহেল বিশ্বাস
নিজেকে অত্র মামলার হত্যার দায় হইতে বাঁচার জন্য নিজেই লিটন নামের একটি কাল্পনিক
চরিত্র তৈরী করিয়া বিজ্ঞ আদালতে দোষ স্বীকারোক্তিমূলক জবানবন্দী প্রদান করেন।"

The Investigating Officer conducted extensive investigation with regard to the accused Liton. But he failed to find any information or proof about the existence of Liton. The accused Sohel mentioned an imaginary and fictional character of Liton in his confessional statement before the court only to save himself. If the Investigating Officer failed to produce any evidence about Liton or his existence then the allegation against accused Abdus Samad does not have any legs to stand. There is no credible evidence on record to establish that the appellant Abdus Samad had any common intention or participation in the commission of the alleged offence of kidnapping or murder in the instant case, nor is there any evidence to show his direct involvement, instigation, or active role in this incident of kidnapping or murder. It is settled principle of law that in a criminal case, the

prosecution alone has to prove the case beyond any reasonable doubt and no onus lies upon the defense. The prosecution witnesses did not see the alleged incident and there is no circumstantial evidence to prove the prosecution's case beyond reasonable doubt, it is case of no evidence, so far it's relate to the accused Samad. Confessional statement and chain of the circumstantial evidence, evidence of the prosecution witnesses and other materials produced by the prosecution completely failed to prove the involvement of the appellant Abdus Samad with the alleged occurrence. There is no evidence or any ingredient of the offence against the appellant Abdus Samad as contemplated under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000. Therefore, we are of the view that the learned Judge of the Trial Court failed to appreciate the evidence and materials on record in its true perspective and came to an erroneous finding in convicting and sentencing the appellant Abdus Samad. Thus, we are of the view that the prosecution has not been able to connect the

appellant in commission of the offence punishable under the said Act. Accordingly, we find merit in this appeal.

Let us now consider whether or not the prosecution has been able to prove the allegation of kidnapping and /or murder against the accused respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa that they were involved with this incident of kidnapping and murder.

Mr. Rafiqul Islam learned Advocate argued that the accused respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa were involved with this occurrence. The informant-appellant having been succeeded in proving the charge leveled against them beyond all reasonable doubt but the learned Judge of the Druto Bichar Tribunal most illegally and erroneously acquitted the accused respondents, which is not a proper judgment in the eye of law.

On the contrary, learned Advocate Mr. Hossain argued that this is a case of no evidence; the acquitted-respondents are innocent and they have been falsely implicated in the case at the instance of a vested quarter. The learned Judge of the Trial Court after considering and appreciating the evidence and materials on record in its true perspective acquitted respondents from the charge level against them.

In the Instant case, we find that the Informant-appellant preferred this Criminal Appeal challenging the order of acquittal of the accused respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa. The acquitted-respondents were F.I.R. named accused persons and they were suspected by the informant and no credible witness found against them. Accused Md. Sohel Biswash in his confessional statement did not implicate the acquitted respondents with the alleged incident of kidnapping and murder of the victim.

In the instant case, we find that the prosecution witnesses Nos. 1 and 2 have implicated the accused

respondents in the case on the basis of mere suspicion arising out of previous enmity due to land dispute. The prosecution witnesses did not see the alleged incident and there is no circumstantial evidence to prove the prosecution case all beyond reasonable doubt. There is no credible evidence on record to establish that the accused respondents have had any common intention or participation in commissioning the alleged offence of kidnapping or murder in the instant case, nor is there any evidence to show their direct involvement, instigation, or active role in this incident of kidnapping or murder. This is a case of no evidence, so far its relate to these respondents. The acquitted-respondents are innocent and they have been falsely implicated in the case at the instance of a vested quarter. There is no eye witness, the prosecution witnesses did not see the alleged incident and there is no circumstantial evidence to prove the prosecution case all beyond reasonable doubt, it is case of no evidence and as such, the learned Judge of the Tribunal after

considering and appreciating the evidence and materials on record in its true perspective acquitted respondents namely (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa from the charge leveled against them. There is no illegality and irregularity in the impugned judgment and order of acquittal of the respondents passed the learned Judge of the trial Court below. In the light of above findings and observation stated above, we do not find merit in this appeal.

Accordingly, the Death Reference No. 75 of 2018 is rejected and both the Criminal Appeal No.7561 of 2018 and Jail Appeal No.212 of 2018 are hereby dismissed. The condemned- prisoner Md. Sohel Biswash is convicted under Section 302 of the Penal Code and commuted his death penalty to life imprisonment with fine of Taka 10,000/- instead of Taka 20,000/- only and also convicting him under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 10,000/- instead of Taka

20,000/- only in default to suffer rigorous imprisonment for 06 (six) months more instead of 01 (one) year and both the sentence will run concurrently. The Convict-Appellant Md. Sohel Biswash is entitled to get the benefit as provided under Sub-Section (1) of Section 35A of the Code of Criminal Procedure.

The Criminal Appeal No.7065 of 2018 is hereby allowed and impugned judgment and order of conviction and sentence dated 28.06.2018 passed by the learned Judge of the Druto Bichar Tribunal, Rajshahi in Druto Bichar Tribunal Case No.05 of 2017 arising out of Chatmohor Police Station Case No.23 dated 25.06.2014 corresponding to G.R. No.123 of 2014 convicting the Convict-Appellant Md. Abdus Samad under section 7 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 and sentencing him rigorous imprisonment for life with fine of Taka 20,000/- only, in default to suffer rigorous imprisonment for 01(one) year more is hereby set aside. The appellant is

acquitted from the charge leveled against him and he may be released from his bail bond.

The Criminal Appeal No.8266 of 2018 is hereby dismissed and the impugned judgment and order of acquittal dated 28.06.2018, so far it relates to the accused-respondent Nos. (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa passed in Druto Bichar Tribunal Case No.05 of 2017 passed by the learned Judge of the Druto Bichar Tribunal, Rajshahi in Druto Bichar Tribunal Case No.05 of 2017 is hereby affirmed. The accused-respondent Nos. (1) Kabir Hossain, (2) Mossammat Aysha Bewa and (3) Aziza Akhtar Rupa may be released from their respective bail bond, if any.

Send down the Lower Court records along with a copy of this judgment and order to the Court concerned at once, for information and necessary action.

Md. Jabid Hossain, J:

I agree.