

Present:

Mr. Justice Muhammad Mahbub Ul Islam
And
Ms. Justice Mubina Asaf

Death Reference No.87 of 2018

The State ... Petitioner.
-Vs. -
Md. Hanif Shikder
... Condemned-prisoner.

With
Criminal Appeal No.7984 of 2018
With
Jail Appeal No.388 of 2018

Md. Hanif Shikder
... Condemned-Appellant
-Vs.-
The State ... Respondent.

Mr. Mohammad Mujibur Rahman, D.A.G. with
Mr. Mohammad Ayub Ali Ashrafi, AAG, with
Mr. Nooray Alam Shiddique, AAG, with
Mr. Asaduzzaman Khan, AAG, with
Mr. Md. Mijanur rahman, AAG, and
Mrs. Fatema Noor Nazmoon, AAG
... For the State.

Mr. Abdul Quddus Tarafder, Advocate
... For the appellant.

Heard on: 20.05.2025, 21.05.2025,
02.7.2025, 03.07.2025, 08.07.2025,
09.7.2025, 10.7.2025 & 27.07.2025.
Judgment on the 30th July, 2025.

Mubina Asaf, J:

The Death Reference under Section 374 of the Code of Criminal Procedure, 1898 has been sent to this Court by the learned Additional

Sessions Judge, Court No.1, Bagerhat for confirmation of the death sentence of the condemned-prisoner Md. Hanif Shikder by the impugned judgment and order of conviction and sentence dated 25.07.2018 passed in Session Case No.285 of 2014 arising out of Kachua Police Station Case No.7 dated 20.04.2014 corresponding to G.R. No.46 of 2014 convicting the appellant under Section 302 of the Penal Code sentencing him to death and to pay a fine of Tk.10,000/- (ten thousand) and also convicting the appellant under Section 201 of the Penal Code and sentencing him to suffer rigorous imprisonment for 3 (three) years and also to pay a fine of Tk.5,000/- (five thousand). Against the said judgment and order of conviction and sentence, the condemned-prisoner has filed Jail Appeal No.388 of 2018 followed by a regular appeal, being Criminal Appeal No.7984 of 2018.

Since the Death Reference and the connected appeals originated from the same judgment and order of conviction and sentence, they have been heard together and are being disposed of by this judgment.

The case of the prosecution, in short, is that on 20.04.2014 one Parul Begum (mother of deceased) as informant lodged an F.I.R. with the Kachua Police Station alleging, inter alia, that 10 years ago her elder daughter deceased Bithi Akter married the condemned-appellant Md. Hanif Shikder according to Islami Shariya and two children were born out of their

wedlock. On 17.03.2014 at 05.15 a.m. the husband of her daughter (condemned-appellant) informed her by mobile phone that Bithi Akter (her daughter) had died and her dead body was found in the pond. Thereafter, the informant went to the house of her daughter and she found the dead body of her daughter in the varandah of the house and she came to know from Md. Hanif Shikder that on 16.03.2014 at about 11.30 p.m he, his wife Bithi, their child and the informant's younger daughter Sathi (P.W.10) slept at the house. On the following night at about 04.30 hours i.e. on 17.03.2014, hearing the crying of his child Hanif got up from the bed and did not find Bithi. At one stage of searching he saw a sandal of Bithi in the pond and then Hanif with the help of local people after searching recovered the dead body of Bithi from the pond and they put the dead body in the varandah of the house of Hanif. Then the informant's son Ripon Hossain informed the matter by writing to the Kachua Police Station and then the police sent the dead body of Bithi to the Bagerhat Sadar Hospital for post mortem. Thereafter on 17.04.2014 the informant came to know from post mortem report of Bithi that her daughter was killed by suffocation and the informant suspected the accuseds (1) Eklas Sheikh, (2) Soleman Sheikh, (3) Yasin Sheikh because of a long time pending quarrel between the informant's husband and the said accused persons and hence the instant case was lodged.

Thereafter, Mr. Shafiqul Islam, Sub-Inspector of Kachua Police Station was entrusted to investigate the case. During investigation, the Investigating Officer visited the place of occurrence, prepared the sketch map with index, also prepared the inquest report and sent the dead body to the hospital for post mortem, examined the witnesses under Section 161 of the Code of Criminal Procedure, arrested the accused Md. Hanif Shikder and produced him before the learned Magistrate who recorded the confessional statement of the accused under Section 164 of the Code of Criminal Procedure. Thereafter, the investigating officer S. I. Shafiqul Islam was transferred to another place and S. I. Mostafizur Rahman was entrusted as subsequent Investigating Officer.

After completion of investigation, the Investigating Officer found a *prima facie* case against the condemned-prisoner Md. Hanif Shikder and submitted charge sheet under Sections 302/201 of the Penal Code against him.

On 16.06.2014 the condemned-prisoner Md. Hanif Shikder filed a retraction application against his confessional statement made under Section 164 of the Code of Criminal Procedure dated 27.04.2014 stating that the same was recorded against his will as the police brutally tortured him.

Eventually, the case record was transferred to the learned Sessions Judge, Bagerhat who framed charge against the condemned-prisoner under Sections 302/201 of the Penal Code and the same was read over

and explained to him to which he pleaded not guilty and claimed to be tried as per law. Thereafter, the case record was transferred to the learned Additional Sessions Judge, Court No.1, Bagerhat for trial.

During trial, the prosecution examined as many as 14 (fourteen) witnesses to prove their case while the defence examined none.

On closure, the evidence of condemned-prisoner Md. Hanif Sheikder was examined under Section 342 of the Code of Criminal Procedure, 1898, at that time he reiterated the plea of innocence and declined to adduce any evidence on his behalf.

On consideration of evidence and other materials on record the learned Additional Sessions Judge, Court No.1 Bagerhat passed the judgment and order of conviction and sentence as aforesaid and has sent the reference to this Court for confirmation.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence the appeals were preferred by the condemned-prisoner.

The only point for determination in the appeals and the Death Reference is whether the impugned judgment and order of conviction and sentence dated 20.04.2014 is sustainable in law or not.

Mr. Mohammad Mujibur Rahman, the learned Deputy Attorney General appearing on behalf of the State in support of the Death Reference at the outset, placed the F.I.R., charge sheet, inquest report, post mortem report, deposition of the prosecution witnesses, the impugned judgment and order of conviction and sentence and other connected materials available on record and submits that the prosecution case arises out of the murder of Bithi Akter who was killed by her husband Md. Hanif Shikder the condemned-prisoner on 17.03.2014. He also submits that the condemned-prisoner committed a heinous offence by killing his wife in a pre-planned manner which was proved by the confessional statement under Section 164 of the Code of Criminal Procedure made by the condemned-prisoner Md. Hanif Shikder. He finally submits that the learned Additional Sessions Judge, Court No.1, Bagerhat, has rightly found the accused guilty and sentenced him by the impugned judgment and order of conviction and sentence. The judgment and order of conviction is well founded both in law and in facts and therefore, does not warrant any interference by this Court. The learned Deputy Attorney General referred the decisions reported in 8 BLC (AD) 172, 67 DLR (AD) 55, 39 DLR (AD) 194 and 5 BLC (HC) 230.

On the other hand, Mr. Abdul Quddus Tarafder, the learned Counsel appearing on behalf of the condemned-prisoner refuting the

arguments of the learned Deputy Attorney General sought to persuade the court that the impugned judgment and order of conviction and sentence is not sustainable in the eye of law. He submits that the prosecution has miserably failed to bring home the charge brought against the condemned-prisoner. He further submits that the defence case as it transpires while the accused was examined under Section 342 of the Code is that confession was extracted and if the confession is taken as made voluntarily it does not disclose that the accused murdered the victim in a preplanned way. It was a heat of the moment decision during quarrel between them. And after the victim died the accused got scared and threw the dead body in the pond. Therefore, the sentence of death may be commuted to life.

He referred 62 DLR (AD) 406

Wife killing case-*The deceased was the wife of the accused who met with death in the bedroom of the accused, while she was living with the accused. The presence of the accused in the house at the material time is not disputed rather is supported and proved by evidence on record and the death of the deceased was within the special knowledge of the accused.*

As to sentence the High Court Division held as under: “*The accused is not a hardened criminal. The death of the deceased was caused by him in sequel of bitter matrimonial relationship. He caused the haematoma with any hard substance on the occipital region on the head of the*

deceased which resulted her instantaneous death. The accused has three minor children and an invalid first wife. In view of these facts and circumstances, we are of the view that justice will be met if the sentence of death awarded to the accused is commuted to imprisonment for life."

He also referred to 5 BLC HC 230 where the sentence of death was commuted to that of life imprisonment.

"Ends of justice will be met if the sentence of death be altered to one of imprisonment for life. The sentence of death imposed upon the accused Abul Kalam, son of Amanullah, is altered to that of imprisonment for life. He be transferred immediately from the condemned cell to general cell. Send down Lower Court records at once."

We have considered the submissions of the learned Advocate for the appellant and the learned Deputy Attorney General and gone through the evidence and other materials on record.

Let us discuss the evidence of the prosecution witnesses to assess how far the prosecution has been able to substantiate the charge leveled against the condemned-prisoner.

Out of 14 prosecution witnesses P.W.1 is the informant and the mother of the deceased. In her testimony she stated that her daughter was married to the condemned-prisoner for 12 years. They had two sons. One was 3 years old and the other 9 months old at the time of the incident. The

condemned-prisoner used to beat his wife and many times shalish had to be called. Her deceased daughter had asked her to take her away to their house as her husband had beaten her the day before the incident. She had told her daughter that she will come in the morning. At the time of fajr she received a call from the condemned-prisoner that he cannot find her daughter (his wife). P.W.1 immediately went to his (condemned-prisoner) house and saw the dead body of her daughter being taken out of the pond. Thereafter, her son informed the police. The police prepared the inquest report and thereafter she was buried at her father's house. P.W.1 mentioned categorically that her daughter was suffocated to death by her husband the condemned-prisoner and later he threw the dead body in the pond. They filed the F.I.R. and put her signature in the F.I.R.

In her cross-examination she further said that she filed the case after one and a half months. Her daughter used to be beaten by her husband (condemned-prisoner) and the day before she died she had told her mother about being tortured by her husband. She also reiterated that her husband suffocated her to death and then threw her dead body in the pond which the condemned-prisoner has confessed in his confessional statement made under Section 164 of the Code of Criminal Procedure.

Dr. Sheikh Md. Mosharaf Hossain as P.W.2 in his testimony deposed that, "our opinion, about the cause of death was due to asphyxia as result of suffocation which was ante-mortem and homicidal in nature."

P.W.3 Sardar Shahnewaz was a U.P. member testified that, he saw the victim's slipper/sandal floating in the pond. Local people recovered the dead body from the pond. Later, police took the dead body.

P.W.4 Nusrat Jahan the learned Magistrate in her testimony stated that the condemned-prisoner wanted to record his confessional statement under Section 164 of the Code of Criminal Procedure hence following all the procedures the confessional statement was recorded as exhibits-3, 3/1 series.

P.W.5 Md. Ashraf Ali Shikder the father of the condemned-prisoner was declared hostile.

P.W.6 Sardar Rejaul Hossain, who was the neighbour deposed that he saw the dead body of the victim in the varandah and the police had recovered a pair of sandals. He is a seizure list witness.

P.W.7 Most. Nasima Begum, mother of the condemned-prisoner and mother-in-law of the deceased deposed that her son lived next door to them. Her son told her that he is not finding his wife. They all looked for her. She saw her sandal while doing wudu in the pond. The dead body was found in the pond. She is a seizure list witness. In reply to cross-examination she said that the deceased was unwell and their marital relationship was good.

P.W.8 Nasima testified that she saw the dead body floating in the pond. Also that a pair of sandals were recovered. She was a seizure list witness.

P.W.9 Sonia Akhter Nupur deposed as neighbour. She mentioned that she saw the deceased's dead body in the varandah. Police seized a pillow. She is a seizure list witness.

P.W.10 Shathi Akhter, the sister of the deceased testified that the relationship between her brother-in-law and sister was not good as they would fight most of the time. On 13.03.2014 at around 10.00 p.m. the condemned-prisoner her brother-in-law came home and thereafter they all went off to sleep. Her sister, brother-in-law and their 6 months old son slept in the varandah. Around 4 a.m. on 17.03.2014 her nephew started to cry. She called her sister but there was no reply from her. She asked her brother-in-law and he replied that her sister has gone to the pond. After half an hour on asking her brother-in-law again about the where about of her sister he told her that her sister is bathing in the pond. Later on he came back from the pond and said she was not there. At that point the little nephew started crying and she started calling the parents of her brother-in-law who lived next door. They came and started looking for her sister. She at one point started walking towards the house of the mother-in-law of her deceased sister with the little nephew. She saw her sister's sandal floating

in the pond and started screaming. Local people came there. The condemned-prisoner and his brother recovered the dead body from the pond. She had fainted at that point. After she gained consciousness she saw her sister's dead body in their varandah. Her mother was informed by the brother-in-law. Her brother informed the police and the police arrested the condemned-prisoner. The body was taken for post mortem investigation.

She further testified that her brother-in-law the day before the incident while having lunch had told her that your sister is not going to live long. On asking why he said that doctor Taposh from the signboard told him.

In reply to cross-examination she reiterated that the relationship between her sister and brother-in-law was not good. They used to quarrel/fight in front of her and 15/20 days before this incident they had fought again. Everyone knew about their quarrels. She informed her parents as well. When her brother-in-law made the confession she was there. She denied the suggestions that she was in love with her brother-in-law or that she wanted to marry him or that after her brother-in-laws rejection she had a role in killing her sister.

P.W.11 S.I. Mustafizur Rahman the Investigating Officer of the case stated that the first investigating officer S.I. Shofiqul Islam was transferred

so he took over the investigation and the case docket. He recorded the statements of the witness under Section 161 of the Code of Criminal Procedure. He reviewed the post mortem report. Having found *prima-facie* case, against the condemned-prisoner, submitted charge sheet No.28/16 dated 09.05.2016 under Sections 302/201 of the Penal Code.

In reply to cross-examination he said that he visited the place of occurrence and has noted it in the C.D. He did not prepare the sketch map afresh as previous sketch map had similarity with the place of occurrence. He recorded 161 statements of 5 witnesses. The seizure list was prepared by the 1st I.O. He visited the place of occurrence about 5 times. He denied that he is not aware of the incident. He also denied that he has not recorded the statements without going to the place of occurrence.

P.W.12 S.I. Md. Shafiqul Islam testified that on 20.04.2014 while he was on duty in Kachua Thana he took charge of investigation of this case. He prepared the map, index and seized/confiscated the exhibits, recorded the statements of the plaintiff and witnesses under Section 161. Arrested the accused and sent the accused to the Court for recording his confessional statement under Section 164 of the Code of Criminal Procedure. He prepared the inquest report. He sent the dead body to the hospital for post mortem report. After the post mortem report was available it was ascertained that the victim was suffocated to death. Later on being

transferred he handed over the case docket to the officer in charge. The map and the table of contents were marked as Exhibits 6/1.

In reply to cross-examination he denied that in order to get the confessional statement being influenced by the other side he beat up or scared them of cross fire. He had seized the sandal of the deceased victim. He himself seized it from the pond. Her sister Shathi Akter (P.W.10) identified it. He denied the suggestion that he did not prepare the seizure list. He also denied the suggestion that the seizure list was prepared to harass the condemned-prisoner. He also denied the suggestion that he did not prepare the sketch map, table of contents and seizure list sitting at the Police Station. He also denied that he has not implicated the condemned-prisoner in a false case.

Upon recall he said that he seized 1 pillow, 1 pair of sandal and cloths which victim was wearing. He seized the pillow on 26.04.2014 after confession of the condemned-prisoner. He identified the pillow which the deceased was suffocated with. The pillow was on the bed in the varandah. He arrested the condemned-prisoner on 26.04.2014 at 12 p.m.

P.W.13 Mollah Shahidul Islam witness of the inquest report. On 17.03.2014 at the residence of the deceased's husband he saw the deceased's dead body. The dead body was examined in the presence of constable Shafiqul Islam and Khaleda. The deceased was wearing a green

saree. The dead body was covered with a purple blanket. He was present when he prepared the inquest report. His signature was taken as Exhibit 8/1.

These were all the evidences of the prosecution witnesses.

So, it appears that the prosecution has examined in all 14 witnesses of whom except the official 2 witnesses i.e. P.Ws.11 & 12 and P.W.2. Doctor Sheikh Md. Mosharraf Hossain, rest are all the witnesses of the facts.

It appears from the above evidence of the prosecution witnesses that there is no ocular evidence with regard to the killing of the victim. P.Ws.1, 5, 7 & 10 are all family members of the deceased. It is quite natural that they were supposed to reach the place of occurrence on hearing the news of the death of the victim in a wife killing case.

It is to be noted here that the alleged occurrence took place in the house of the husband. The character at which all the fingers are pointing is the husband of the deceased. The gruesome and cruel occurrence of killing had occurred in the very house of the husband. The occurrence took place in dead of the night. There is no eye witness.

It is found evident that the deceased along with her husband and son slept together in the varandah of their house. P.W.10 the sister of the

deceased mentioned in her statement that she slept in the room and they slept in the varandah.

Thereafter, in the late hours of night the condemned-prisoner suffocated his wife with a pillow till she died. He then got scared and threw her dead body in the pond.

In this case, there is no eyewitness of the occurrence but it is a well settled principle of law by the judgments in numerous cases of our Apex Court that in a wife killing case when the husband and wife were sleeping in the same room, the husband has to explain as to how his wife died. Moreover, the condemned-prisoner made a confessional statement under Section 164 of the Code of Criminal procedure which is inculpatory in nature. The confessional statement is reproduced below-

“গত মাসের ১৬ তারিখ আমি রাত ৮.৩০ টার দিকে বাসায় ফিরে আসি। আমার স্ত্রী, শ্যালিকা ও আমার দুই ছেলে খাওয়া দাওয়া করি, আমার মোবাইলে ছবি তুলি। আমারস্ত্রী বলে তার □□□□□ লেগেছে। সে আবার ভাত খায়। তারপরে বলে আমি বাইরে যাব। বাইরে থেকে এসে বারান্দায় খাটের উপর বসি, আমার স্ত্রী বিথী ও আমি একসাথে শুয়ে থাকি। হাতের পাশে বালিশ ছিল বালিশটি ঠেলা দিয়েছি। তারপর আমি তার বুকের উপর শুয়ে থাকি। ১-২ মিনিট পরে বিথী হঠাতে করে মোর দেয়। আমি তাড়াতাড়ি উঠে পরি। উঠে জিজ্ঞাসা করি ব্যাথা পাচ্ছিস না কি। সে ব্যাথা বলে নাই। মাথায় তেল পানি দিয়েছি। বুকে তেল দিয়ে টেনে দিয়েছি। হাত ধরে দেখি রং চলছে না। অনেক সময় বসে থাকি। কি করব বুঝতে পারি না। কাউকে (হেঁড়া) নাই। আমি স্ত্রী বিথী মারা গেছে মনে

করে ভয়ে পুরুরে ফেলে আসি । বাড়ির লোকজনকে এ বিষয়ে কিছু বলি নাই ।”

It is again well settled by our Apex Court in numerous cases that, a confession, if it is found to be true and made voluntarily can be the sole basis of conviction of its maker. In this case we have to ascertain whether the confession made by the condemned-prisoner is true and made voluntarily. We find that the police arrested the condemned-prisoner at around 12.15 p.m. on 26.04.2014 and was taken to the Police Station at 3.30 p.m. on 26.04.2014. They produced him before the Magistrate on 27.04.2014 at 12 p.m. within 24 hours.

We find that the columns of the printed form were filled up according to law. The condemned-prisoner was asked every question of column Nos.6 and 7 and answers written thereto. In the bottom of the confession the learned Magistrate ascertained the truth and voluntariness of it by his own writing- “অভিযুক্তের শরীরে কোন জখম প্রতীয়মান হয়নি । আসামী হানিফ শিকদার স্বেচ্ছায় সাবলীলভাবে কথা বলেছে ।”

Hence, we find the confession made by the condemned-prisoner to be true and voluntary.

The narration of the confession and the circumstances described therein do not speak that the condemned-prisoner has made the

confession cunningly, or he introduced a strong self-defence to save himself.

On conclusion of recording evidence of the prosecution witnesses the learned Judge examined the accused under Section 342 of the Code, while he reiterated his innocence and stated that the police tortured him and extracted the confessional statement.

The prosecution produced 14 (fourteen) witnesses for examination; of them P.W.1 is the mother of the deceased who filed the F.I.R.; P.W.5 is the father of the accused who was declared hostile; P.W.2 was the doctor who performed the post mortem and gave their report; P.Ws.11 and 12 were designated Sub-Inspectors of this case; P.W.4 was the Magistrate who recorded the accused's confessional statement under Section 164 of the Code of Criminal Procedure.

From the deposition of P.W.10 sister of the deceased who slept in the next room of the condemned-prisoner and deceased at the night of occurrence shows that the relationship between the deceased and her husband (condemned-prisoner) was mostly of quarrel and fights. The condemned-prisoner had also shared with P.W.10 that his wife (deceased) will not live long. This creates the doubt in the mind that he was planning to kill his wife. It was hence a pre-planned murder. The condemned prisoner and his wife (deceased) slept together at night in their house. This is also

proved by the statement of P.W.10 who was sleeping in the room next to the varandah in the same house. Hence, the condemned-prisoner in a pre-planned manner murdered his wife brutally while she was under his custody. He suffocated his wife with a pillow till her dead thereafter threw her dead body in the pond.

Admittedly, there is no ocular witness to the occurrence but the dead body of the victim was found in the pond of the house of the condemned-prisoner. Before, the dead body was thrown into the pond, the deceased victim was suffocated to death by a pillow. This has been clearly opined in the post mortem report. The cause of death as testified by P.W.2 clearly shows that the death was due to asphyxia as a result of suffocation which was ante-mortem and homicidal in nature. The above fact has been corroborated by the confession of the condemned-prisoner.

The decision reported in 8 BLC (AD) 172, states that, "*Since death to the wife was caused while she was residing in the house of her husband, the condemned-prisoner is competent to say how death occurred to his wife and that the explanation which he offered having been found untrue, the conviction and sentence that was passed by the learned Sessions Judge has rightly been affirmed by the High Court Division.*"

The decision reported in 67 DLR (AD) 55, states that, "*It is by now a well established principle that under Section 106 of the Evidence Act when*

any fact is especially within the knowledge of any person the burden of proving that fact is upon him. This principle has been applied in many cases where the wife has been found killed in the house of the husband where they resided together. In such circumstance the husband will have to prove by positive evidence that he was absent from the house when his wife was killed or explain by evidence how she came to meet her death."

The decision reported in 39 DLR (AD) 194, states, "Prerequisites of a judicial confession- *The required formalities have duly been observed. The Magistrate deposed that by questioning the prisoner and giving him caution and reasonable time for reflection he was satisfied that the prisoner made the statement voluntarily. This statement is in full agreement with the oral statement of Nausher given before P.W. Toyeb Ali and others, as stated above. Confession when proved against confessing accused can be taken into consideration against co-accused in same offence."*

The decision reported in 5 BLC (HC) 230, states, "*The murder of the wife of the accused having taken place in the house of the accused who was living with his wife in the same house and he having an obligation to her death made a plea of snake biting but the same has been found to be a travesty of truth in view of the evidence of witnesses including PW 2, the explanation given by the accused being found to be false and in the*

absence of any other satisfactory explanation from the defence the accused is responsible for the death of his wife and the facts and circumstances revealed through the evidence of witnesses are incompatible of explanation upon any other reasonable hypothesis than that of guilt of the accused".

All the above decisions are applicable to this case.

On appraisal of the evidences, we find that the couple had two sons. At the time they were 3 years and 9 months respectively. Like in any marriage they used to have quarrels and fights and shalish was also called many times. P.W.1 the mother of the deceased victim has stated this fact in her statement.

The condemned-prisoner has been in the condemned cell for over 7 years following his conviction for the murder of his wife from 25.07.2018.

We are of the view that, as the condemned-prisoner has spent 4 years in Jail from 26.04.2014 and 7 years in condemned cell from 25.07.2018 till date under severe psychological and physical duress. Prolonged detention under the shadow of death has itself been considered by the Courts as a mitigating factor in various cases.

Furthermore, the prisoner is the father of two sons. The oldest son was 3 years at the time of the incident and now will be more than 14 years

old. The youngest son was 9 months and now will be about 11 years old. With their mother deceased and their father facing execution, the children are left orphaned in practical terms. The welfare of these minors, especially the opportunity to maintain a minimal parental connection, should weigh in favour of commuting the death sentence.

Considering these factors - of prolonged period in condemned cell and the two minor children facilitated us to consider the death penalty to be commuted to life sentence. To consider the lesser punishment from death sentence to life imprisonment mitigating evidence on circumstances must be stronger than that of aggravating evidence produced by the prosecution. In this case we find the following circumstances outweigh the aggravating circumstances:

(1) Condemned-prisoner never obtained bail after his arrest dated 26.04.2014. He was in normal jail custody till pronouncement of the judgment dated 25.07.2018 (4 years).

(2) He is in condemned cell till date (7 years) after the delivery of the judgment dated 25.07.2018 suffering emotional trauma, mental anguish and sorrows of human condition.

Misfortunes of life's design has put the two children in this agony of life without the love, affection and guidance of parents. This irrevocable

loss of their mother and the impending loss of their father would render the minor children effectively orphaned by a single event.

The Court is persuaded that the interest of the children, though not overriding, must form part of the holistic consideration in determining the justness of capital punishment. The anguish of the young children already scarred by the brutality of their mother's death must not be multiplied by another irreversible act. The possibility of a reformed relationship, even from behind the prison walls, cannot be wholly discounted in the context of a child's evolving identity and emotional needs.

The Court cannot remain indifferent to the enduring plight of the two minor children, now bereft of their mother who fell victim to the tragic act of their father. The cruelty of the loss is compounded by the looming possibility of loosing their father to the gallows of a sentence which, though legal, risks further orphaning two innocent lives.

While the gravity of the offence cannot be diminished, the welfare of the children already marred by trauma deserves meaningful consideration. The long term psychological, emotional and social consequences of a life without either parents must weigh into the judicial conscience.

Justice must punish, but it must also heal where it can. In commuting the death sentence to imprisonment for life, this Court seeks

not to erase the crime, but to preserve a thread of connection between a father and his sons however fragile, however distant. That possibility, slim as it may be, may hold redemptive value in the lives of the children.

Therefore, we do find extraneous grounds to commute the sentence but we do not find any reason to interfere with the conviction recorded against him under Sections 302 and 201 of the Penal Code.

In the above facts and circumstances of the case, we are of the view that ends of justice will be met if the condemned-prisoner is sentenced to one of imprisonment for life instead of awarding him sentence to death with the fine of Tk. 10,000/- and also under Section 201 of the Penal Code sentencing him to rigorous imprisonment for 3 years and also pay fine of Tk. 5,000/-.

In the result, the Death Reference No.87 of 2018 is hereby, rejected with the said modification and the connected Criminal Appeal No.7984 of 2018 arising out of Jail Appeal No.388 of 2018 is dismissed with modification.

Accordingly, the condemned-prisoner is sentenced to imprisonment for life with a fine of Tk.10,000/- instead of sentence of death with the fine of Tk.10,000/- and the order of conviction under Section 201 of the Penal

Code and sentencing him to suffer rigorous imprisonment for 3 (three) years and also to pay a fine of Tk.5,000/- is hereby affirmed. He be shifted from the condemned cell to normal cell meant for similar convicts, at once.

Let a copy of this judgment and order along with lower Court records be transmitted to the Additional Sessions Judge, Court No.1, Bagerhat, expeditiously for necessary measures.

Muhammad Mahbub UI Islam, J.

I agree.