

Present:

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

Death Reference No.88 of 2018

The State ... Petitioner.
-Vs. -
Abdul Aziz ... Condemned-prisoner.

With
Criminal Appeal No.7931 of 2018
With
Jail Appeal No.225 of 2018

Abdul Aziz ... 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. Md. Abdul Haque, Advocate
... For the appellant.

Heard on: 21.05.2025, 09.07.2025,
16.07.2025, 24.07.2025, 30.07.2025
and 06.08.2025.
Judgment on the 22nd October, 2025.

Mubina Asaf, J:

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

Sessions Judge, Netrokona for confirmation of the death sentence passed against condemned-prisoner Abdul Aziz by the judgment and order of conviction and sentence dated 26.07.2018 in Session Case No.195 of 2014 arising out of Netrokona Police Station Case No.17 dated 12.08.2011 corresponding to G.R. No.239(2)2011 convicting the appellant under Section 302 of the Penal Code and sentencing him to death and to pay a fine of Tk.20,000/- (twenty thousand).

Against the said judgment and order of conviction and sentence, the condemned-prisoner has filed Jail Appeal No.225 of 2018 followed by a regular appeal, being Criminal Appeal No.7931 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 informant Moti Miah (son of deceased) lodged the FIR with Netrokona Police Station alleging, inter alia, that on 12.08.2011 at 5.30 p.m. deceased Mohammad Ali while sitting in the tea stall of Abdul Khaleque and talking to Abdus Salam (P.W.3), Abdul Quddus, Liton (P.W.8) and others, at that time the accuseds Abdul Gani and Abdur Razzak also came and sat there. Few moments later, condemned prisoner Abdul Aziz came to the place of occurrence by a bicycle and dealt dao blows twice on the right side of the

neck of the deceased Mohammad Ali (his father) with an intention to kill him. When the witnesses tried to obstruct the accuseds, they fled away from the place of occurrence. On hearing the hue and cry, the informant and others reached the place of occurrence and saw the deceased's body with dao blows on his neck. They were trying to take the victim to the hospital, the victim died at the place of occurrence. The informant heard everything relating to the incident from the eyewitnesses and thereafter, lodged the FIR.

Mr. Dhanaraj Das, Sub-Inspector of CID, Netrokona was entrusted to investigate the case. During investigation, he 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 and examined the witnesses under Section 161 of the Code of Criminal Procedure. After completion of investigation, the Investigating Officer found a *prima facie* case against the condemned-prisoner and others and submitted charge sheet under Sections 302/34 of the Penal Code against them.

Eventually, the case record was transferred to the learned Sessions Judge, Netrokona who framed charge against the condemned-prisoner and others under Sections 302/34 of the Penal Code and the same was read over and explained to them to which they pleaded not guilty and claimed to be tried as per law.

During trial, the prosecution examined as many as 10 (ten) witnesses to prove their case while the defence examined none.

The condemned-prisoner and others were examined under Section 342 of the Code of Criminal Procedure, 1898, at that time they reiterated the plea of innocence and declined to adduce any evidence on their behalf.

On consideration of evidence and other materials on record the learned Sessions Judge, Netrokona passed the judgment and order of conviction and sentence dated 26.07.2018 convicting the condemned-prisoner under Section 302 of the Penal Code and sentenced him to death and to pay a fine of Tk.20,000/- and acquitted the other two accuseds.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the appeal was preferred by the condemned-prisoner.

The only point for determination in the appeal and the Death Reference is whether the impugned judgment and order of conviction and sentence dated 26.07.2018 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, depositions of the prosecution witnesses, the impugned judgment and order of conviction and sentence and other connected materials available on record and submits that the condemned-prisoner Abdul Aziz in cool head and in a pre-planned manner killed the deceased Mohammad Ali in broad day light which was supported by the prosecution witnesses particularly the eyewitnesses namely P.Ws.2, 3, 8, 9 & 10. The learned Deputy Attorney General also submits that the prosecution has been able to prove the charge against the condemned-prisoner beyond any shadow of doubt. Therefore, there is no reason to interfere with the impugned judgment and order of conviction and sentence by this Court. He referred the decisions reported in 5 BLC (AD) 12 where the Apex Court held that High Court Division rightly upheld the conviction and sentence of the accused petitioner and 11 BLC (AD) 182 where it was held by our Appellate Division that there is no bar to produce any witness by the prosecution at the time of trial even if their names do not find place in the charge-sheet.

On the other hand, Mr. Md. Abdul Haque, 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 also submits that though the prosecution claimed that the occurrence took place in front of Abdul Khaleque's tea stall and as such he was the most vital witness of this case but he was not examined. He further submits that it was not mentioned specifically in the FIR who dealt the dao blows on the neck of the deceased. Therefore, the prosecution has failed to prove the case beyond all reasonable doubts. The learned Advocate for the appellant referred the decisions reported in 16 BLT (HCD) 69, 46 DLR 423, 1 ALR (AD) 222 and 1987 BLD (AD) 1.

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.

P.W.1 Moti Miah is the informant of the case as well as the son of deceased Mohammad Ali. He deposed that the occurrence took place on 12.08.2011 at about 5.30 p. m. in front of Abdul Khaleque's tea stall. At that time he was at the market and his nephew Liton (P.W.8) informed

him that the condemned-prisoner Abdul Aziz killed Mohammad Ali (the deceased). He saw the dead body of the deceased at his house. He also deposed that on asking Abdul Khaleque informed him that his father (the deceased) was sitting on a bench in infront of his (Abdul Khaleque's) shop. At that time the condemned-prisoner passing the shop of Abdul Khaleque went to the west side from the east by a bicycle and keeping the bicycle there came to his father (deceased) and dealt dao blows twice on the right side of his neck without saying anything. Abdul Khaleque brought his father to his house. He further deposed that Liton (P.W.8) informed him that, at the time of occurrence Liton was next to the deceased. Abdul Salam (P.W.3) informed him that after praying, he and the deceased sat in front of Abdul Khaleque's shop at that time one person dealt dao blows on right side of the neck of the deceased. This witness also deposed that due to land dispute the condemned-prisoner Abdul Aziz killed his father. Abdul Aziz is his cousin brother who claimed that he is entitled to get land from the deceased but the deceased denied the same. He identified the FIR marked as Exhibit-1 and his signature marked as Exhibit-1/1. He also identified the inquest report marked as Exhibit-2 and his signature thereon marked as Exhibit-2/1. He further identified the accuseds on the dock.

In cross-examination, P.W.1 stated that being informed everything from the witnesses, he lodged the FIR. He denied the suggestion that he

did not write in the FIR that his father was assaulted or Abdul Aziz killed his father by dao blows which was not mentioned in the FIR or has he exaggerated before the Court. He also stated that his father has been married three times and all three of his mothers had children and there was no disagreement amongst them. He also denied the suggestion that nobody informed him and condemned-prisoner Abdul Aziz did not give dao blows on his father or Abdul Aziz did not give dao blows to his father in front of Abdul Khaleque's shop or the occurrence took place at their own house at the instigation of A. Salam or he filed a false case to defeat the accused due to land dispute.

P.W.2 Abul Kalam is the cousin of the informant. He deposed that at the time of occurrence on hearing hue and cry he reached the place of occurrence and saw the condemned-prisoner Abdul Aziz fleeing away with a dao towards the west. Abdul Aziz dealt dao blows on the right side of the neck of the deceased. He tied up the injured portion of the deceased with a 'gamchha' and brought him at home. He also deposed that Liton (P.W.8) informed him that accused Abdul Aziz dealt dao blows to the deceased.

In cross-examination, P.W.2 stated that 3/4 days after the occurrence he gave statement to the daroga. He denied the suggestion that he did not state to the daroga that he did not see the dao or Liton

(P.W.8) narrated the occurrence to him. He also stated that then and there he reached the place of occurrence. He found Liton on the spot. He also denied the suggestion that he did not find Liton or he (Liton) did not state anything to him or he deposed false statements at the instigation of the informant.

P.W.3 Md. A. Salam is an eyewitness who at the time of occurrence was sitting with the deceased in the tea stall. He deposed that accused Abdul Aziz came from the west side and dealt dao blows on the deceased Mohammad Ali who died there.

In cross-examination, he stated that he knew nothing about the family litigation of the deceased. He denied the suggestion that he went to the deceased's house to solve their family litigation. He also stated that at the time of murder he saw the man and he came to know his name from the people. He denied the suggestion that nobody mentioned him about the name of accused Abdul Aziz or he has deposed falsely.

P.W.4 Habib is the step brother of the informant and the son of the deceased. He deposed that on hearing hue and cry he went to the tea stall of Abdul Khaleque and saw his father with a wound on his neck. On asking Kalam (P.W.2) informed him that accused Aziz dealt dao blows to his father. Daroga prepared the seizure list and inquest report in his presence.

In cross-examination, he stated that he went to the place of occurrence and saw Kalam holding the dead body. He denied the suggestion that he did not state to daroga that accused Aziz dealt dao blows to the deceased or he has deposed falsely at the instigation of the informant.

P.W.5 Md. Ali Usman is the neighbour of the informant. He deposed that on hearing hue and cry he went to the place of occurrence and on asking he came to know from the shopkeeper Abdul Khaleque that accused Aziz dealt dao blows to Mohammad Ali. Thereafter, they brought Mohammad Ali to his house, who died at the place of occurrence.

In cross-examination, he denied the suggestion that he did not state to the daroga or he has deposed as per tutorial of the informant.

P.W.6 Dr. Nilotpol Talukder is RMO of Netrokona Adhunik Sadar Hospital. He deposed that as per identification of constable Bimal Khasnobis he carried out the post mortem examination on the dead body of the deceased Mohammad Ali and found the following injuries:

“(1) One chop wound on right side of the neck 06”X $2\frac{1}{2}$ ”X02’ with cut of partial thickness of cervical vertebral column and bisection of the muscles and great vessels of neck on right side.

(2) One incised wound 03”X $\frac{1}{2}$ ” X skin deep on lower part of right lateral aspect of neck.”

In the post mortem-report he opined that:

“Cause of death of the deceased is haemorrhage and shock due to above mentioned injuries which were antemortem and homicidal in nature.”

He also deposed that the post mortem was held by a board and thereafter he prepared the report and put his signature. He identified the postmortem report marked as Exhibit-4 and his signature thereon marked as Exhibit-4/1.

In cross-examination, he stated that he did not mention the age of injury. He denied the suggestion that above injury was not available in the dead body or he did not hold the post mortem properly.

P.W.7 Dhanaraj Das was Sub-inspection of CID, Netrokona. He was entrusted to further investigate the case as the informant filed a naraji petition against the charge sheet submitted by the earlier investigating officer. During investigation, he visited the place of occurrence and found the sketch map with index prepared by the earlier Investigating Officer was correct. He recorded the statement of the witnesses. In course of investigation, he came to know that at the time of occurrence at about 5.35 p.m. when deceased Mohammad Ali was having tea in front of a tea stall, the accused came there by a motorcycle and sat there on a bench. He also deposed that he came to know that

condemned-prisoner Abdul Aziz crossed the said place by a bicycle and keeping the same in front of Jahid Miah's house came to the place of occurrence and dealt dao blows one after another and a dao blow also landed on a bamboo where the deceased was sitting. The condemned-prisoner Abdul Aziz fled away from the place of occurrence before the nearby people could understand anything and at that time accused Rashid was standing with a dao on the bank of the pond. He also deposed that due to land dispute accused Abdul Aziz and others killed deceased Mohammad Ali in a pre-planned way.

In cross-examination, he denied the suggestion that the witnesses did not state about the pre-plan. There are 4 (four) accused-persons in the FIR. Abdur Rashid and Abdur Razzak were not sent up in the 1st charge sheet. He submitted final report against Abdur Razzak. He stated that there is one injury mentioned in the FIR as well as inquest report. He also denied the suggestion that the accuseds were not involved with the occurrence or the witnesses were not stated in respect of pre-plan or involvement of the accuseds with the occurrence or he submitted charge sheet without investigating the case properly.

P.W.8 Md. Liton Mia is the eye witness of the occurrence and neighbour of the parties. He deposed that on 12.08.2011 at about 5.00/5.30 p.m. when he was sitting in front of Abdul Khaleque's shop, at

that time Razzak and Gani came with a motorcycle and sat next to him. Deceased Mohammad Ali was sitting on his west side. The condemned-prisoner Aziz dealt dao blows on the right side of Mohammad Ali's neck. He informed the informant over mobile phone that the condemned-prisoner Aziz killed deceased Mohammad Ali and asked him to come quickly.

In cross-examination, he denied the suggestion that no occurrence took place or he was not there or he has deposed as tutored by the informant.

P.W.9 Shahid Miah alias Sahid is the son of the deceased and eye witness of the occurrence. He deposed that on 12.08.2011 at about 5.00/5.30 p.m. his father was sitting in front of Abdul Khaleque's shop and 10 yards east from that place he was discussing about cultivation with Rohis. Abdul Gani and Abdur Razzak came with motorcycle and were discussing with his father. Few moments after the condemned-prisoner Abdul Aziz came there with a motorcycle and started chopping his father with a dao. His father died on the place of occurrence. Police prepared the inquest report. Condemned-prisoner is a rowdy person.

In cross-examination, he stated that he saw the incident. He stated the same to the daroga that night. He denied the suggestion that

he did not state the same to daroga. He also stated that the condemned-prisoner is his cousin and there was no dispute about the land with them and there was no dispute between their brothers as well. Witness Salam came to their house to visit. He denied the suggestion that he (Salam) came to their house to resolve the dispute or the occurrence took place in their homestead or did not take place at the shop or at the instigation of Salam they arranged the event and 3 brothers of Aziz were falsely implicated or he deposed falsely.

P.W.10 Rohis is another son of the deceased and eyewitness of the occurrence. He deposed that on 12.08.2011 after Asar prayer his father was talking with Abdur Razzak, Gani, Liton and others in front of Abdul Khaleque's tea stall. Abdul Quddus and Abdus Salam were also sitting there. They were discussing about cultivation 10 yards far. Meanwhile, Abdur Razzak and Gani started discussion with his father (deceased). Condemned-prisoner Abdul Aziz came there with a bicycle and started chopping his father by a dao. His father died on the spot.

In cross-examination, this witness stated that he saw the occurrence. They chased the condemned-prisoner Aziz but Abdur Razzeck on resisting them told that he (Aziz) may also kill them (witnesses) for which they did not go ahead. Witness Abdus Salam came to their house to visit who did know Abdul Aziz. He denied the suggestion

that the occurrence took place at their homestead or due to land dispute they killed their father and falsely implicated the accuseds. He further stated that his father (deceased) married the mother of the condemned-prisoner Aziz. Aziz is his cousin as well as step brother. He denied the suggestion that he has stated falsely.

These were all the evidences of the prosecution witnesses.

It appears that the prosecution has examined in all 10 witnesses out of which P.Ws.6 and 7 were official witnesses and P.Ws.2, 3, 8, 9 & 10 were eye witnesses of the occurrence.

It further appears from the above evidences of the prosecution witnesses that P.W.1 is the informant of the case though was not an eye witness of the occurrence but hearing about the incident from the eye witnesses, lodged the FIR. P.W.2 in his deposition deposed that - “আমি চিৎকার শুনে ঘটনাস্থলে গিয়ে দেখি আঃ আজিজ দা নিয়ে পশ্চিম দিকে দৌড়ে চলে যাচ্ছে”.

P.W.3 being an eye witness deposed that - “পশ্চিম দিক থেকে একটি লোক দা নিয়ে এসে মোঃ আলীকে কোপ দেয়। সে সেখানেই মারা যায়। লোকটির নাম আঃ আজিজ বলে শুনেছি”.

In cross-examination he stated that - “আমি মার্ডারের সময়ই লোকটিকে দেখেছি। তার নাম লোকজনের কাছে শুনেছি।” P.W.8 is another eye witness of the occurrence deposed that - “মৃতক মোহাম্মদ আলীও আমার পশ্চিম পাশে বসা ছিল। আসামী আজিজ দা দিয়ে মোহাম্মদ আলীর ঘাড়ের ডান পাশে কোপ

দেয়। আমি মৃতকের ছেলে বাদী মতিকে ফোন করে বলি তাড়াতাড়ি এসো তোমার বাবাকে মেরে ফেলেছে। মোহাম্মদ আলী সাথে সাথেই মারা গেছে।". P.W.9 deposed that - "১২-০৮-১১ তারিখ বিকাল অনুমান ০৫.০০/০৫.৩০মিঃ এর সময় আমার বাবা খালেকের দোকানের সামনে বসা ছিল। এর ১০ গজ পূর্বেই আমি আমার ভাই রহিষ্ট ট্রাকটারে হাল চাষ নিয়ে আলোচনা করছিলাম। আঃ গণি এবং আঃ রাজ্জাক একটি মোটর সাইকেলে এসে আমার বাবার সাথে আলাপ করছিল। কিছুক্ষণ পরেই আজিজ একটি মোটর সাইকেলে এসে আমার বাবাকে দা দিয়ে কোপাতে থাকে। আমার বাবা ঘটনাস্থলেই মারা গেছে।". In cross-examination, he stated that - "আমি ঘটনা পাশে থেকেই দেখেছি।". P.W.10 deposed that - "আমরা ১০/১২ গজ দূরেই ট্রাকটারের হালচাষ বিষয়ে কথা বলছিলাম। এর মধ্যে আঃ রাজ্জাক এবং গণি এসে আমার বাবার সাথে আলাপ করতে থাকে। আঃ আজিজ একটি সাইকেল নিয়ে এসে একটি দা দিয়ে আমার বাবাকে কোপাতে থাকে। আমার বাবা সেখানেই মারা যায়।". In cross-examination, he stated that - "আমি কাছে থেকেই ঘটনা দেখেছি।".

All these eye witnesses were present at the time of occurrence and they have mentioned in their statements that they saw the condemned prisoner kill the deceased by giving dao blows on his neck in broad daylight. Therefore, the contention of the learned Counsel of the appellant that it is not mentioned specifically in the FIR who gave dao blow does not stand as there were as many as 4 (four) eye witnesses who saw that the condemned-prisoner Abdul Aziz gave the dao blows.

It is to be noted here that all the eye witnesses have stated the same facts that the condemned prisoner Abdul Aziz appeared riding a bicycle/motorcycle and he brought a dao with him and dealt two dao blows on his father including one on the right side of his neck.

In the inquest report police found one injury but the doctor found two injuries while performing post mortem examination over the dead body. P.W.6 Dr. Neelotpaul Talukder found one chop wound on the right side of the neck of the deceased measuring 06"x $\frac{1}{2}$ "x02" with cut of partial thickness of the cervical vertebral column and bisection of the muscle and great vessels of neck on right side and another incised wound measuring 3"x $\frac{1}{2}$ "x skin deep on lower part of right lateral aspect of neck. In his opinion the cause of death of the deceased is haemorrhage and shock due to above mentioned injuries which were ante-mortem and homicidal in nature. P.W.6 also found two injuries while performing post-mortem examination. It further appears that the injury mentioned in the inquest report is supportive to injury No.-1 mentioned in post-mortem report and that is the major and fatal injury. The other one is nearing the 1st one. The daroga might have found the 2nd injury insignificant or he failed to separate the 2nd injury. So, this inconsistency between the inquest report and the post-mortem report appears to be technical and a negligible one and unable to cast any shadow of doubt on the fact that the deceased died of the chopping injuries inflicted on him.

The learned Counsel of the condemned prisoner placed reliance upon 16 BLT (HCD) 69, 46 DLR (HCD) 423 and 1 ALR (AD) 222. We are of the view that all the material witnesses were examined by the prosecution out of them P.Ws.3, 8, 9 and 10 were eye witnesses. The ratios laid down in the cited decisions cannot be applied to the facts of the present case. We found relevance with this case the decisions referred by the learned Deputy Attorney General in 5 BLC (AD) 12 & 11 BLC (AD) 182.

We would now like to discuss some guiding principles as referred in the case of Bachan Singh-Vs.-State of Punjab reported in AIR 1980 (SC) 898 and reaffirmed in the case of Machhi Singh-Vs.-Sate of Punjab reported in AIR 1983 (SC) 957 that death penalty is awarded only in the “rarest of rare” cases where:

- The crime is of extreme brutality;
- The manner of commission shocks the collective conscience;
- The alternative sentence of life imprisonment is unquestionably foreclosed as the crime is of such magnitude that it shocks the collective conscience of society.

In the light of this case -

(a) Nature of the crime -

- Premeditated and in broad daylight: The condemned prisoner killed his stepfather over a land dispute, in a preplanned manner.
- Brutality: A dao blow of 6 inches deep, severing vital neck veins, causing instantaneous death.
- In front of witnesses: The incident took place in broad daylight in a tea stall shows fearlessness, brazenness and intent to terrorise.

(b) Relationship of the victim and accused -

- Murder of a close relative who had taken a parental role aggravates the moral depravity of the act.

(c) Threat to societal order -

- The act was committed openly in a public place, in full view of the witnesses creating insecurity and fear in the community.

In our view, such violence if not dealt with sternly, undermines the rule of law and public order.

Weighting Aggravating-Vs.-mitigating circumstances –

Aggravating factors such as –

- Premeditation - Brutal and deliberate killing with a deadly weapon.
- Extreme brutality - Deep fatal wound aimed at neck.
- Public setting – Committed in daylight in front of witnesses.

- Social impact – Victim was a father figure and guardian.
- Greed driven motive – Property acquisition through violent means.
- Balancing Test: Referring the case of Bachan Singh (AIR 1980 SC 898), only when mitigating factors clearly outweigh aggravating ones should death be commuted. Here, aggravating circumstances overwhelmingly dominate.
- Public confidence in justice – The murder occurred in broad daylight, in front of witnesses. The present case has deeply shaken the local community creating fear of lawlessness and witness intimidation. The justice system, as guardian of public order must respond in a manner that both deters potential offenders and reassures the law abiding citizenry.

The defence has placed no substantial mitigating factors that outweighs these aggravating circumstances.

The Court is mindful that the ultimate penalty must be reserved for exceptional cases. Here, the manner of killing, the relationship of the parties, the motive and the fearless public execution of the act render the offence so grave that any punishment less than death would be grossly inadequate, failing to meet the ends of justice on the expectations of society's collective conscience.

Hence, as discussed above, we have carefully considered the aggravating and mitigating circumstances of the case and we do not find any cogent ground to interfere with the sentence awarded to condemned-prisoner Abdul Aziz. In our view, death penalty will be the only appropriate punishment for the accused which will equally commensurate with the magnitude of the crime committed by him.

In the result, the Death Reference is accepted and the Criminal Appeal No.7931 of 2018 and Jail Appeal No.225 of 2018 are dismissed.

The impugned judgment and order of conviction and sentence is maintained.

The sentence of death awarded to condemned-prisoner Abdul Aziz is hereby confirmed while upholding the acquittal of the other two accuseds.

Send down the L.C. Records along with a copy of the judgment to the court concerned forthwith.

Muhammad Mahbub Ul Islam, J.

I agree.