

Present:

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

Death Reference No.90 of 2018

The State ... Petitioner.
-Vs. -
Md. Bachchu Hawlader
... Condemned-prisoner

With
Criminal Appeal No.12866 of 2023
(Arising out of Jail Appeal No.263 of 2023)

Md. Bachchu Hawlader
... Condemned-prisoner
-Vs.-
The State ... Respondent.

Ms. Salma Sultana, D. A. G. with
Mr. Md. Kaium, A. A. G. ... For the State.

Mr. S. M. Shahjahan, Senior Advocate with
Mr. ABM Hamidul Mishbah, Advocate
... For the appellant.

Heard on:29.10.2025

Judgment on the 12th November, 2025.

Mubina Asaf, J:

The Death Reference under Section 374 of the Code of Criminal Procedure, 1898 (shortly, the Code) has been submitted to this Court by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal, Shariatpur for confirmation of the death sentence passed against the condemned-prisoner Md. Bacchu Hawleder by the judgment and order of conviction

and sentence dated 01.08.2018 in Nari-O-Shishu Nirjatan Daman Tribunal Case No.537 of 2003 arising out of Gosairhat Police Station Case No.6 dated 20.08.2003 corresponding to G.R. No.780 of 2003 convicting the condemned-prisoner under Section 11 (Ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) and sentencing him to death and to pay a fine of Tk.50,000/- (Fifty Thousand Only).

Against the said judgment and order of conviction and sentence, the condemned-prisoner has filed Jail Appeal No.263 of 2023 which was subsequently converted to Criminal Appeal No.12866 of 2023.

Since the Death Reference and the connected appeal 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 prosecution case, in brief, is that the incident took place at around 4:00 a.m. on 19.08.2003 at the house of the accused, located in Char Jalalpur Moti Gainer Kandi village under Gosairhat Police Station. The informant's daughter Jahanara Begum (30), the victim was married to the accused Md. Bacchu Hawleder, son of Makbul Hawleder, and they had been living a peaceful conjugal life. However, after about one year of marriage, the accused Bacchu Hawleder and his mother Joyon Bibi, demanded dowry from the informant (father of the deceased). In response, the informant gave them a piece of land measuring 5 gonda for

constructing a house, along with a tin-shed house, Tk. 2,500 in cash, and a vehicle. On 20.08.2003, at around 5:00–6:00 a.m., Md. Manik Hawleder (younger brother of the condemned-prisoner) and Md. Sujon (7) (son of the condemned-prisoner), went to the informant's house and informed him that Jahanara Begum was ill. The informant then asked his grandson Md. Sujon about the victim's condition and Sujon stated that his father, Md. Bacchu Hawleder and his grandmother Joyon Bibi had killed his mother. The informant went to the place of occurrence and found his daughter dead. Her body was lying on a *hugla* (a kind of mat made of aquatic grass). The informant came to know from local residents that on 18.08.2003, at around 4:00 p.m., the accused Bacchu Hawleder had created pressure to the victim to bring one cow, Tk. 2,000 in cash, a wristwatch and a ring as dowry from her father (the informant). When she refused, the accused became angry and went fishing in the river. Upon returning home around 9:00 p.m., he began arguing and quarreling with the victim. At one stage, the accused Bacchu Hawleder kicked the victim in the abdomen, causing her serious injuries. She began screaming and neighbors arrived at the scene. Thereafter, the accused took her to a village doctor, Dr. Basir, on 19.08.2003. Subsequently, the victim died on 20.08.2003 at around 4:00 a.m. Later, the informant lodged a First Information Report (FIR), which was registered as Gosairhat Police

Station Case No.6 dated 20.08.2003 under Sections 11(Ka)/30 of the *Nari O Shishu Nirjatan Daman Ain, 2000* (as amended in 2003). Hence, 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 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 submitted charge sheet under Section 11(Ka) of the *Nari O Shishu Nirjatan Daman Ain, 2000* (as amended in 2003).

The learned Judge of Tribunal framed charge against the absconding accused under Section 11(Ka) of the *Nari O Shishu Nirjatan Daman Ain, 2000* (as amended in 2003) and started trial in absentia.

During trial, the prosecution examined 7 (seven) witnesses to prove the case and the accused was not examined under Section 342 of the Code as he was absconding.

On consideration of evidence and other materials on record the learned Judge of the Nari-O-Shishu Nirjatan Daman Tribunal, Shariatpur passed the judgment and order of conviction and sentence dated 01.08.2018 convicting the absconding accused under Section 11(Ka) of

the *Nari O Shishu Nirjatan Daman Ain, 2000* (as amended in 2003) as we have already stated above.

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

Mr. S. M. Shahjahan, the learned Senior Counsel appearing on behalf of the accused-appellant, submits that the accused-appellant was not properly defended, as both the State Defence Lawyers were absent and the prosecution witnesses were not cross-examined in a case involving capital punishment. He further submits that the Tribunal failed to follow the procedures laid down in Sections 87 and 88 of the Code. He finally contends that the proceedings before the Tribunal was not in accordance with law, hence, the accused was seriously prejudiced. The trial, therefore in a nullity. Consequently, the impugned judgment and order of conviction and sentence is liable to be set aside and the accused is entitled to be acquitted.

Ms. Salma Sultana, the learned Deputy Attorney General appearing on behalf of the State finds it difficult to rebut the above submissions advanced by the learned Counsel for the appellant. She, however, candidly submits that in view of the peculiar facts and circumstances of the case necessary orders may be passed in accordance with law.

Heard the learned Counsel for the appellant and the learned Deputy Attorney General for the State, pursued the impugned judgment and order of conviction and sentence including other connected materials available in the paper book, order sheets and also considered the facts and circumstances of the case explicitly.

It appears from the record that the occurrence took place on 19.08.2003. Subsequently, the police submitted the charge sheet on 01.09.2003 under Section 11(Ka) of the *Nari-O-Shishu Nirjatan Daman Ain, 2003* (as amended in 2003) against the accused-appellant alone. Thereafter, on 15.08.2004, the Tribunal issued an order for publication in newspapers, directing the accused to appear within 7 (seven) days. In compliance, notices were published in two daily newspapers. Subsequently, on 26.01.2005, the Tribunal passed an order to proceed with the trial in absentia under Section 21(1) of the said Act. On 03.05.2005, the charge was framed under Section 11(Ka) of the Act against the absconding accused.

However, prior to the publication of the accused's name in the newspapers, no steps were taken under Sections 87 and 88 of the Code. Despite this, the Tribunal proceeded to initiate the trial in absentia. It is a settled principle that all necessary legal procedures must be exhausted to compel the accused to appear before the court. In particular, the

procedures prescribed under Sections 87 and 88 of the Code must be strictly followed prior to initiating a trial in absentia, especially where the offence carries a sentence of capital punishment. Non-compliance with these mandatory provisions renders the trial *coram non judice* - conducted without proper jurisdiction and thus a nullity, as held in the decision reported in 42 DLR (HCD) 15.

It also appears that after framing the charge, when the trial commenced, the Tribunal, by order dated 21.05.2005, appointed Mr. Md. Shah Alam, the learned Advocate, as the State Defence Lawyer. However, such an appointment was required to be made prior to the framing of charge. Even so, the said State Defence Lawyer never appeared before the Tribunal to defend the absconding accused, as required under Chapter XII of the Legal Remembrance Manual (LR Manual), which provides that in cases involving capital punishment, the accused must be defended by a lawyer appointed by the State. Subsequently, Mr. Shah Alam was replaced, and Mr. Jahangir Alam, the learned Advocate, was appointed as the State Defence Lawyer. To our utter dismay, he also did not appear before the Tribunal. We find that neither the accused was represented properly nor the witnesses were cross-examined in this case.

Under the law, an accused is guaranteed the right to be defended by an advocate, as mandated in Section 340 of the Code. Sub-section (1) of Section 340 of the Code is relevant for the purpose of the instant case and reads as follows:

"340(1). Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code in any such Court, may of right be defended by a pleader."

In the light of the above provision of Section 340 of the Code, provisions have been made in Chapter XII of the Legal Remembrancer's Manual, 1960 to provide defence to an undefended accused charged with the offence punishable with death.

The provisions of paragraphs 1, 4 & 6 of the said Chapter XII of Legal Remembrancer's Manual, 1960 relating to undefended accused may be set-forth as follows:

1. Pauper accused punishable with capital sentence to be given legal assistance. Every person charged with committing an offence punishable with death shall have legal assistance at his trial and the Court should provide advocate or pleader for the defence unless they certify that the accused can afford to do so.
4. No discretion of the Court allowed. It is no longer left to the discretion of the courts to decide whether the nature of the case makes legal assistance essential. The sole criterion is whether the

accused has sufficient means or nor, and the courts are bound to satisfy themselves on this point.

6. Engagement of pleaders to be made in time. In all cases, the advocate or pleader should be appointed in time to be able to study the case, and the person selected should be of sufficient standing and ability to render substantial assistance. He should be given a brief similar to that prepared for Public Prosecutor and it would be convenient if the two briefs were prepared together. He should be supplied free of cost with copies of all papers of which an accused person is ordinarily allowed copies.

From the aforesaid provisions of law, it is evident that an Advocate to defend an undefended accused charged with a capital offence should be appointed well before the commencement of the trial, so as to enable him to study the case properly. The Advocate should be of sufficient standing and capable of rendering effective assistance. Moreover, he should be provided with the same papers as those supplied to the Public Prosecutor and be furnished, free of cost, with copies of all documents that an accused person is ordinarily entitled to receive.

It is pertinent to mention that, in the present case, the accused was charged with a capital offence, and a State Defence Lawyer was appointed by the Court to defend him. However, the said State Defence Lawyer neither appeared before the Tribunal nor cross-examined any witness. This aspect of the case lends support to the submission of the

learned Advocate appearing for the convict that the State Defence Lawyer failed to do justice to the case by not cross-examining the prosecution witnesses. From the record, it is evident that there were serious deficiencies in conducting the case and in properly representing the accused. Two Advocates were successively appointed to defend the accused unfortunately, neither of them made any effective attempts to do so.

The circumstances of the case, as discussed above, make it evident that the Court below was not only oblivious to the provisions of Section 340 of the Tribunal, which confer upon an accused the right to be defended by an advocate with adequate opportunity to prepare the case for defence, but also to the provisions of the *Legal Remembrancer's Manual, 1960*, applicable to an accused charged with an offence punishable by death.

Moreover, it is evident that the accused—appellant was not examined under Section 342 of the Code due to his abscondence. Since the condemned prisoner was tried in absentia and was never examined under Section 342 of the Code, the trial cannot be said to have been conducted in accordance with law. The accused was thereby denied an effective opportunity to defend himself, which offends the fundamental principles of natural justice and the right to a fair trial guaranteed by law.

In view of the foregoing, while we refrain from expressing any opinion on the merits of the case we would like to send back the case on remand to the Tribunal for a fresh trial in accordance with law.

In the result, the Death Reference is rejected and the connected Criminal Appeal is disposed of.

The impugned judgment and order of conviction and sentence dated 01.08.2018 passed by the learned Judge of Nari-O-Shishu Nirjatan Daman Tribunal, Shariatpur in Nari-O-Shishu Nirjatan Daman Tribunal Case No.537 of 2003 arising out of Gosairhat Police Station Case No.6 dated 20.08.2003 corresponding to G.R. No.780 of 2003 is hereby set aside.

The case is sent back on remand to the Tribunal concern for re-trial.

The following directions are being given to the concerned Tribunal :-

1. The Tribunal shall appoint a State Defence Lawyer, if the accused does not appoint any Advocate to defend himself;
2. The Tribunal shall ensure that the accused is given full opportunity of being heard being represented by a State Defence Lawyer or by his own appointed lawyer ;

3. All witnesses, including those previously examined, shall be available for cross-examination by the State Defence Lawyer or his own appointed lawyer and the Tribunal shall ensure that the accused's right to a fair and effective defence is fully protected ;
4. The Tribunal shall record all proceedings meticulously, ensuring compliance with the principles of natural justice, ensuring the right to a fair trial guaranteed by law ;
5. The Jail Authorities are hereby directed to shift the condemned prisoner from condemn cell to normal cell as per Jail Code ; and
6. The Tribunal shall dispose of the case as expeditiously as possible, preferably within 3 (three) months from the date of receipt of this order.

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

Muhammad Mahbub UI Islam, J.

I agree.