

Bench:

Mr. Justice Bhishmadev Chakrabortty
and
Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 67 of 2019

The State petitioner
-Versus-

Liton Mondal (absconding)
.... condemned-convict

Mr. Syed Ejaz Kabir, Deputy Attorney
General with Ms. Mahbuba Tasnim Akhi,
Mr. Ashraful Alam, Ms. Rohani Siddiqua
and Mr. Al Amir Siddique, Assistant
Attorney Generals for the state

Ms. Bulbul Rabeya Banu, Advocate
.... appointed as a State Defence Lawyer
for the condemned-convict

Judgment on 15.07.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nar-o-Shishu Nirjatan Daman
Tribunal, Pirojpur (the Tribunal) on trial in Nari-o-Shishu
Nirjatan Daman Case 172 of 2009 found the condemned-
convict Liton Mondal (absconding) guilty of offence under
section 7 of Nar-o-Shishu Nirjatan Daman Ain, 2000 (the Ain,
2000) read with sections 302 and 201 of the Penal Code and
sentenced him under section 302 of the Penal Code to death
and made this reference to this Division for its acceptance but

did not pass sentence under section 7 of the Ain, 2000 separately. By the same judgment other three co-accused were acquitted of the charges brought against them.

PW1 informant Subash Deury alias Subash Chandra Deury lodged a first information report (FIR) with Nesarabad police station at about 16.20 hours on 24.05.2009 alleging, *inter alia*, that his daughter Jharna Rani Deury was a student of Intermediate in Shah Mahmudia College, Ramchandrapur, Jhalakathi. Accused Liton Mondal used to disturb her on the way to school and college. They told it to Liton's guardians to resist/prohibit him from doing such act but it was fruitless. Finding no other way he (PW1) left his house with his daughter and started living in a rented house at Banaripara. Subsequently, due to financial crisis they again returned to Atghor and started living there. On Jharna's way to college the wayward/spoilt accused Liton proposed to marry her but the informant's family refused the proposal. Consequently, accused Liton and his men threatened to abduct Jharna. They told the above fact to the local member Babul Mandal (PW8) but the parents of accused Liton without taking any step to resist the accused, made a proposal of marriage. His

(informant) family again refused the proposal. The accused recently opened a shop at Kuriana bazar of downloading songs and traditional medicine. His (informant) daughter Jharna after completing examination in the subject of english in the HSC examination on 04.05.2009 went to the house of his elder daughter Jhumu Rani situated at Andharmanik within the district of Bagerhat. His daughter reached the house of his elder daughter and told it to him over a phone call. The victim daughter therefrom on 14.05.2009 started towards his (PW1) house but she did not arrive at. They tried to make contact with his daughter through mobile phone call but failed. They became afraid and puzzled and tried to find out the daughter. Sumon Deury over a mobile phone call on 17.05.2009 told him that on his way to Swarupkathi government college hostel on 14.05.2009, he found accused Liton and 4-5 others with victim Jharna boarded in a trawler which sailed towards the north. He (PW1) found a news published in 'Ajker Barta' on 17.05.2009 that a dead body of an unknown lady was recovered at Banaripara. He went to Nesarabad police station and therefrom to Banaripara police station and looking the wearing apparel and a photo of the unknown lady kept with

the police station identified those as of his daughter. He was then confirmed that accused Liton and his accomplices in a preplanned way abducted Jharna from 'Kourikhara Kheya Ghat' on her way back home. They kept her in confinement, raped her and after killing threw the body into the river. Police of Banaripara police station recovered disfigured unknown dead body from river and sent it to the morgue of hospital for holding autopsy. On holding autopsy the Authority buried the dead body in the graveyard of Barishal. After recovery of the dead body accused Liton decamped keeping his shop closed. Due to his such act the informant was confirmed that the accused and his men abducted his daughter from 'Kourikhara Kheya Ghat' on her way back home from elder sister's house. He then kept her in confinement, committed rape upon her, killed her and threw the dead body into the river. He prayed for disinterring the dead body from graveyard for identification. On the aforesaid allegation Nesarabad Police Station Case No. 21 dated 24.05.2009 was registered against the condemned-convict and 4-5 unknown accused under sections 7, 9(2) and 30 of the Ain, 2000.

However, because of the lodgment of this FIR, Md. Nurul Islam, a Sub-Inspector (SI) of police submitted final report in the UD case upon which the inquest of the unknown dead body was held and some *alamots* were seized. Md. Shahjahan Ali Khan, Officer-in-Charge (OC) of Nesarabad police station investigated the case and submitted a charge sheet against accused Liton Mondal and 4-5 unknown accused on 02.09.2009 under the sections 7, 9(2) and 30 of the Ain, 2000. On a *naraji* filed by the informant, PW6 Md. Akramul Hossain, a senior ASP, Sadar Circle, Pirojpur did further investigation of the case and submitted a supplementary charge sheet on 01.05.2011 against 5 accused including Liton Mondal under section 7 of the Ain, 2000 read with sections 302 and 201 of the Penal Code.

Record of the case was then transmitted to the Tribunal for holding trial. Learned Judge of the Tribunal took cognizance of offence on 04.05.2011 against all the accused under section 7 of the Ain, 2000 read with sections 302 and 201 of the Penal Code. Eventually, the Tribunal framed charge against the accused persons on 27.03.2013 under sections 7, 9(2) and 30 of the Ain, 2000. The charge so framed was read

over to the accused then present in the dock. After examination of 06 (six) witnesses the learned Judge of the Tribunal reframed the charge on 09.08.2018 against the accused persons present in the dock under section 7 of the Ain, 2000 read with sections 302 and 201 of the Penal Code, to which they pleaded not guilty and claimed to be tried. The charge could not be read over to accused Liton Mondal owing to his absconsion.

In the trial, the prosecution examined 12 (twelve) witnesses out of 21 (twenty one) cited in the charge sheet. The witnesses were cross-examined by the learned Advocate for co-accused and the State Defence Lawyer appointed for absconding accused Liton. The defence case as it transpires from the cross-examination is of simple innocence. However, on trial the Tribunal found accused Liton Mondal guilty of offences under section 7 of the Ain, 2000 read with sections 302 and 201 of the Penal Code. But the learned Judge convicted him under section 302 of the Penal Code sentencing him thereunder to death and no separate sentence was passed under section 7 of the Ain because of the fact that he has

already been sentenced under section 302 of the other enactment.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General takes us through the evidence and other materials on record and submits that victim Jharna Rani was lastly found with condemned-convict Liton Mondal at 'Kourikhara Kheya Ghat' in a trawler at about 1:00 pm on 14.05.2009. The condemned-convict abducted the victim therefrom and afterwards she was found missing. Subsequently police of Banaripara police station recovered an unknown dead body of a women from river. PW1, informant read the said news in a local news paper. He went there and looking the wearing apparel of her daughter kept in the police station was confirmed that the unknown dead body was of his missing daughter. Since victim Jharna was lastly seen with the condemned-convict wherefrom she did not return and thereafter her body was recovered from river and PW1 identified the wearing apparel of the dead body as of his daughter, therefore, none but convict Liton abducted her and killed her after committing rape. It was accused Liton's duty to explain the whereabouts of the victim because she was lastly seen with him and she did not return safely

form his custody, which he did not but remained absconding. Mr. Kabir further submits that PW5 Sumon Deury in his evidence corroborated the facts of finding victim Jharna at 'Kourikhara Kheya Ghat' lastly on 14.05.2009 with convict Liton. The aforesaid fact unerringly proves that none but the condemned-convict is the killer of Jharna. Convict Liton remained absconding although procedure of law under section 21(1) of the Ain, 2000 was duly complied with by publishing the news in daily newspaper. If the procedure as required by the law for appearance of an absconding accused is complied with and he does not appear to face trial, he is to be treated as fugitive from justice and will not get any clemency for any Court of law. The Tribunal on correct appreciation of evidence found the condemned-convict guilty of offence and sentenced him to death. The reference, therefore, would be accepted.

Ms. Bulbul Rabeya Banu, learned Advocate appointed as a State Defence Lawyer for the condemned-convict submits that to convict an accused section 7 of the Ain, 2000 read with 302 of the Penal Code, the prosecution has to prove that the victim was abducted and thereafter he was killed by the accused. In this case, the prosecution failed to prove that the

victim was at all abducted. The facts as stated in the FIR do not come within the meaning of abduction as defined in the Ain, 2000. Moreover, the prosecution failed to prove that police recovered the dead body of Jharna. The unknown dead body which was recovered by police of Banaripara police station was not identified by the informant party. After getting information PW1 although went to the police station but in the meantime the dead body was buried. The body was not exhumed to ascertain its identity. Evidence of PW5 that he found Jharna 'Kourikhara Kheya Ghat' has been disclosed to PW1 after 3 (three) days of her missing. Moreover, his evidence to that effect was not corroborated by any other witness. Since the prosecution failed to prove the charge against the condemned-convict by reliable evidence, the judgment and order of conviction and sentence cannot be sustained in law. The reference, therefore, would be rejected and the condemned-convict would be acquitted of the charges levelled against him.

To address the submissions of the parties and dispose of the reference, let us have a bird's eye view on the prosecution witnesses.

PW1 Subash Deury alias Subash Chandra Deury, father of Jharna stated that the occurrence took place on 14.05.2009. His daughter Jharna went to visit the house of his elder daughter at Kanchua, Bagerhat ten days before the occurrence. After spending the days therein she started towards his (PW1) house on 14.05.2009. His elder daughter told it to him through a call over telephone. Victim came to 'Sriramkathi Kheya Ghat' from Andharmanik by a rickshaw van and thereafter reached Indrerhat by a trawler. After reaching Indrerhat the victim was found missing. He came to learn on reading a newspaper namely 'Ajker Barta' that an unknown dead body of a lady was found floating in Sandhya river. He then went to Banaripara police station. The OC of the police station told him that the dead body was decomposed and they sent it to the Medical College Hospital morgue for holding autopsy. But the OC showed him the wearing apparel of the victim and a photograph of the dead body. On looking those he was confirmed that the deceased was his daughter. Before the occurrence the wayward/spoilt accused Liton disturbed her daughter on her way to school and college. He also proposed to marry her but they refused the proposal. In consequence of

it, accused Liton and his accomplices abducted his daughter and after committing rape killed her. Witness Sumon saw accused Liton taking away his daughter by a trawler. He told the said fact to him on 17.05.2009. He lodged the FIR exhibit-1 and identified his signature therein. He identified the wearing apparel of the victim material exhibit-I series. In cross-examination by accused Bipul, Ranjit and Ratan he stated that he lodged the FIR against accused Liton who abducted her daughter and killed her after committing rape. Accused Bipul, Ranjit and Ratan were not involved with the offence. In cross-examination by the State Defence Lawyer he stated that his daughter did not go to her brother-in-law's house on 14.05.2009. He denied the defence suggestion that accused Liton did not abduct her daughter from Indrerhat or that he did not kill her.

PW2 Puspo Rani Majumder alias Puspo Rani, wife of PW1 and mother of victim Jharna, stated that the victim went to the house of her elder daughter situated at Kanchua, Bagerhat on 04.05.2009. After ten days she started towards her house on 14.05.2009 via Shriramkathi Kheya Ghat to Indrerhat and Kourikhara Kheya Ghat. Accused Liton

abducted the victim by a trawler from Kourikhara Kheya Ghat and killed her after committing rape. Witness Sumon saw the incident of abduction who told it to her on 17.05.2009. They searched for the victim but could not find her out. They came to learn though a news published in the daily newspaper that an unknown dead body of a girl was found in the river near Banaripara. Her husband, PW1 went to Banaripara police station and came to learn that the dead body was sent to morgue for holding autopsy. Her husband identified the dead body in the morgue. Accused Liton committed the offence on refusal of his proposal to marry her daughter. In cross-examination by the condemned-convict he denied that accused Liton did not abduct her daughter on 14.05.2009 or he did not commit rape upon her and killed her.

PW3 Tusahr Deury alias Tushar, son of PW1 stated in the similar line of PWs1 and 2 as to the visit of victim to her elder sister's house at Kanchua, Bagerhat on 04.05.2009 and starting therefrom towards their house on 14.05.2009. He further stated that accused Liton from Kourikhara Kheya Ghat abducted his sister by a trawler and killed her after committing rape. Witness Sumon saw the occurrence of abduction. They

came to learn through a newspaper that a dead body of an unknown lady was recovered from river at Banaripara. His father went to Banaripara police station and came to learn that the body was sent to the morgue for holding autopsy. His father went to the morgue and identified the dead body. Accused Liton made a proposal to marry his sister and on its refusal he abducted her and killed her after committing rape. In cross-examination by the defence he denied the suggestion that accused Liton did not abduct his sister from the place of occurrence or that accused Liton did not kill her sister.

PW4 Sumoti Deury, a neighbour of the informant stated that she heard that Jharna went to visit her elder sister's house situated at Bagerhat. Accused Liton had a relation with Jharna. He wanted to marry Jharna but her parents disagreed and consequently Liton became angry. She heard that accused Liton committed rape upon the Jharna and killed her. In cross-examination by the defence she denied of deposing falsely or that accused Liton was innocent.

PW5 Sumon Deury, a neighbour of the informant (PW1) stated that he was his uncle and they resided in the same house. The occurrence took place at about 12:30 pm on

14.05.2009. At that time he was a student. He came to Swarupkathi Kheya Ghat and found accused Liton and Jharna going towards Banaripara by another trawler. In cross-examination by accused Bipul, Ranjit and Ratan he stated that they are the uncles of victim Jharna. He did not find the aforesaid three accused in the trawler. The State Defence Lawyer adopted the cross-examination of other three co-accused.

PW6 Md. Akramul Hossain, the Investigating Officer (IO) stated that after being entrusted investigation he visited the place of occurrence, examined the rough sketch map and index prepared by previous IO and found those correct. He proved the sketch map and index exhibits-2 and 2/1. He examined the witnesses whose statement were recorded under section 161 of the Code by previous IO and finally finding allegation against the accused persons *prima facie* to be true submitted a charge sheet on 11.05.2011 under section 7 of the Ain, 2000 read with sections 302 and 201 Penal Code. In cross-examination by the State Defence Lawyer he denied the suggestion that he did not visit the place of occurrence or examined the witnesses under section 161 of the Code. He

further denied of submitting the charge sheet against the accused without any material evidence against him.

PW7 Faruk, a man from the locality stated that he knew nothing about the occurrence. He defence declined to cross-examine him.

PW8 Babul Mondal, a member of local union parishad stated that he knew the girl whose dead body was found in the river. He could not say how the victim met death. In his presence police on 20.08.2009 seized an engine boat from the *ghat* in front of accused Liton's house through seizure exhibit-3. The defence declined to cross-examine him.

PW10 Sabuj Mridha, a witness to the seizure stated that about ten years ago he went to Banaripara police station and police took his signature on a paper. He proved the inquest report exhibit-4 and identified his signature therein. In cross-examination by the State Defence Lawyer he stated that he could not remember whether there was any writing on the paper in which he put his signature.

PW11 Siddiqur Rahman, a village police stated that about ten years ago he went to Banaripara police station and

found the dead body of a women. Police seized wearing apparel of the dead body and took his signature. He proved the seizure exhibit-5. The defence declined to cross-examine him.

PW12 Md. Rasel Sardar, a witness to the inquest stated that about ten years ago police recovered a dead body from river, held inquest of it, prepared a report and took his signature therein. He proved the report exhibit-4. The defence declined to cross-examined him.

These are all evidence of prosecution witnesses.

We have considered the submissions of the learned Deputy Attorney General and Ms. Banu, learned Advocate appointed as a State Defence Lawyer for the condemned-convict, gone through the evidence and other materials on record.

It transpires that to bring home the charge against the condemned-convict under section 7 of the Ain read with sections 302 and 34 of the Penal Code, the prosecution in all examined 12 (twelve) witnesses; of them PW1 is the informant and father of missing Jharna Rani, PW2 is her mother, PW3 is her brother, PW4 is her cousin and PW5 is a

distant relative and neighbour of the informant. PW6 is the Investigating Officer (IO) and PWs 10 and 12 are men from Banaripara and witnesses to the inquest exhibit-4. PWs 8 and 11 are the witness to the seizure of a boat exhibit-3 and wearing apparel of the unknown body of the lady exhibit-5 respectively.

The prosecution case is that the victim was found missing from 14.05.2009 on her way back home from her elder sister's house situated at Bagerhat. It is stated in the FIR that the informant came to learn that police of Banaripara police station recovered dead body of an unknown lady from river. On receipt of the news he went to Banaripara police station and OC of the police station showed him the *shalwar* and *kamij* alleged to have been worn by the unknown lady and a photograph of the dead body. He then identified those as of his daughter and was confirmed that his daughter was killed. In the FIR he stated that the police of Banaripara police station sent dead body of the unknown lady to medical college morgue for holding autopsy. After holding autopsy the dead body was buried in the graveyard as an unknown because nobody claimed and identified it (this line of FIR was not

typed in the paper books). In the FIR he prayed for disinterring the dead body from graveyard to ascertain its identity. But on perusal of the record of the case, we do not find that the body was exhumed from graveyard for its identification. Although PWs 2 and 3 stated in evidence that PW1 identified the dead body in the morgue but such evidence is embellishment because the informant PW1 in the FIR and in his evidence did not claim so.

We find that sole identification by PW1, the informant and father of Jharna only looking the wearing apparel seized by Banaripara police station as *alamots* of an unknown dead body is not sufficient to hold that it was Jharna's dead body. It would be unsafe to rely looking solely on the *shalwar* and *kamij* of the dead body that it was Jharna, because recently in some cases it has been found that after identification of the dead body and its burial by the guardians and relatives, the alive victim came back. We do not find any photograph in the record to see the condition of the dead body but police told that it was decomposed and disfigured. The photograph was not also produced in the Court while PW1 and other witnesses were examined. Only the *alamots* of *shalwar* and *kamij*

alleged to have been worn by Jharna were produced as materials exhibits. The other witnesses except PW1 also did not identify those in evidence as of Jharna's wearing apparel. So to hold that Jharna was killed only relaying on *alamots* materials exhibit-I series appears would be unsafe.

For the sake of argument, even it is admitted that the dead body of Jharna was recovered by police in that case the prosecution has to prove that the condemned-convict abducted her and thereafter he was found missing. In that case the conviction may be sustained in the absence of identification of dead body. In the FIR PW1 stated that PW5 told him, “..... হোষ্টেলে যাবার পথে স্বরূপকাঠী কৌরিখাড়া খেয়ার ট্রলারে বসে দুপুর ১:০০ ঘটিকার সময় লিটন ও ৪/৫ জন দলীয় লোকসহ মেয়ে বার্না রানীকে উঠতে দেখে এবং ট্রলারটি উত্তরদিকে”, while in evidence PWs1 and 5 stated to see only Jharna and Liton boarded in a trawler. Here on appraisal of evidence of PWs1 and 5, we cannot hold that the victim was abducted by the condemned-convict on 14.05.2009 from ‘Kourikhara Kheya Ghat’. The manner PW5 who alleged to have seen Jharna on 14.05.2009 with convict Liton is that, “তখন আরেকটি ট্রলারে আমি আসামী লিটন ও বার্নাকে (ভিকটিম) উত্তরদিকে বরিশালের বানরীপাড়া থানার দিকে যেতে দেখি”। The mode of leaving

Jharna and the convict by a trawler do not come within the meaning of abduction defined in section 2(Kha) of the Ain, 2000. Because no force or misleading or inducement is found in the evidence that Liton applied on Jharna. Moreover, PW4 Sumoti Deury, a neighbour of the informant stated in evidence, “আসামী লিটনের সাথে ঝার্নার সম্পর্ক ছিলো তা আমি জানতাম। লিটন মৃত ঝার্নাকে বিয়ে করতে চাইলে, ঝার্নার বাবা মা রাজি হয়নি।” The aforesaid evidence of PW4, if considered with the evidence of other witnesses together, it is found that the prosecution failed to prove that the Jharna was unwilling in the alleged marriage proposed by the condemned-convict or she had bitter relation with Liton or she went (if) with him unwillingly, keeping in the mind that she was matured enough. We do not find that in the evidence that in any point of time condemned-convict had any altercation or disagreement with Jharna. Therefore, we find no reason or motive of the condemned-convict to abduct Jharna and killing her after committing rape. The prosecution also failed to prove that Jharna was lastly seen with the condemned-convict, because it was alleged to have been seen only by PW5 on 14.05.2009 disclosed to PW1 on 17.05.2009 which was not corroborated by any other witnesses. To

convict an accused on the principle of last seen theory, the prosecution has to prove the chain of events complete and unbroken which is totally absent in this case.

Finally, the prosecution failed to prove by evidence that Jharna, daughter of the informant was abducted by condemned-prisoner Liton and she was killed by strangulation as opined by the doctor, in the autopsy report mark (1), on an unknown dead body. The lady, whose dead body was recovered by Banaripara police, was killed by strangulation undoubtedly, but it has not been proved that it was Jharna or condemned-prison Liton abducted and killed her. In the aforesaid premises, we find that the prosecution failed to bring home the charge against the condemned-convict in both the counts i.e., abduction under section 7 of the Ain, 2000 and murder under section 302 of the Penal Code. The Tribunal failed to appraise the evidence and other materials on record and passed the judgment convicting accused Liton Mondal under both the enactments sentencing him under section 302 of the Penal Code to death which is required to be interfered with by us. It may be noted here that absconsion by itself is

not the proof of guilt in the absence of any legal evidence against the condemned-convict.

Accordingly, the reference is rejected. The judgment and order of conviction and sentence passed by the Tribunal is hereby set aside. The condemned-convict is acquitted of the charges leveled against him. The warrant of arrest, if any shall be recalled.

Communicate this judgment and order and send down the records of the Tribunal.

K.M. Rasheduzzaman Raja, J.

I agree

Rajib