

Present:

Mr. Justice Afzal Hossain Ahmed

And

Mr. Justice Md. Emdadul Haque Azad

DEATH REFERENCE NO. 20 of 2008.

State

-Versus-

Nazma Sarker @ Beauty and 3 others

..... Condemned-prisoners.
& another absconding convict Ahidul.

Mr. Muhammad. Jamiruddin Sircar with

Mr. Md. Munsurul Haque Chowdhury,

Mr. Idris Khan.

Mr. Md.Saifuddin Mahmud and

Mr. Md. Zahirul Islam

..... for the condemned-prisoners.

Ms. Nahid Sultana, State Defence Lawyer

.....for the absconding convict-Ahidul.

With

CRIMINAL APPEAL NO. 1247 OF 2008.

Rokeya Begum & another Appellants

Versus

The State Respondent.

Mr. Md. Saifuddin Mahmud for the Appellant.

With

CRIMINAL APPEAL NO. 1284 of 2008.

Nazma Sarker @ Beauty... Appellant

Versus

The StateRespondent.

Mr. Md. Munsurul Haque Chowdhury

..... for the Appellant.

With

CRIMINAL APPEAL NO. 2515 of 2008.

Md. Kamal ... Appellant

Versus

The State ... Respondent

Mr. Muhammad Jamiruddin Sircar with

Mr. Idris Khan,

Mr. Md. Saifuddin Mahmud and

Mr. Md. Jahirul Islam

... for the Appellant

With

JAIL APPEAL NO. 318 of 2008.

Nazma Sarker @ Beauty ... Appellant

Versus

The State Respondent.

Mrs. Khalifa Shamsunnahar, State Defence Lawyer.

... for the Appellant.

With

JAIL APPEAL NO. 319 of 2008.

Rokeya Begum ... Appellant

-Versus-

The State ... Respondent

Mrs. Khalifa Shamsunnahar, State defence lawyer

..... for the Appellant.

With

JAIL APPEAL NO. 320 of 2008.

Shahidul ... Appellant

-Versus-

The State Respondent

Mrs. Hasna Begum.

..... for the Appellant

and

JAIL APPEAL NO. 406 of 2008.

Md. Kamal ... Appellant

Versus

The State Respondent

Mr.Md. Aminur Rashid, State Defence lawyer
... for the appellant- Kamal.

Mr. Md. Salim, Deputy Attorney-General with

Mr.Md. Ensan Uddin Sheikh and

Mr. Md. Nurul Islam Matubbor, Assistant Attorneys General.

....For the Appellant-State.

Heard on the 20th, 21st, 24th to 28th, 31st July, 1st to 3rd August, 2011.

&

Judgment on the 4th and 16th August, 2011.

AFZAL HOSSAIN AHMED ,J:

This Death Reference has been made under Section 374 of the Code of Criminal Procedure by the learned Additional Sessions Judge, 1st Court, Gazipur for confirmation of the sentence of death imposed upon the condemned-prisoners Nazma Sarker @ Beauty, Rokeya Begum, Shahidul Islam, Ahidul Islam (absconding) and Kamal in Sessions Case No. 20 of 2005 arising out of Tongi P. S. Case No. 26(8)03 and G.R. Case No. 246 of 2003. The condemned-prisoners filed Jail Appeals being Nos. 318 of 2008, 319 of 2008, 320 of 2008 and 406 of 2008. Besides, the above named condemned-prisoners have also filed separate Criminal Appeals being Nos. 1247 of 2008, 2515 of 2008 and 1284 of 2008. The Death Reference, Jail Appeals as well as the Criminal Appeals have been heard together and are disposed of by this judgment.

The prosecution case, in short, is as follows:-

One Moulana Mohammad Ali (Md. Ali), Son of Moulana Md. Neyamot Ali Sarker of village- Doboria, P.S. Kaliganj, District- Gazipur lodged an F.I.R. with the Tongi Police Station, District- Gazipur on 25.8.2003 at 13-15 hours alleging that, on the same day in the morning one Habibur Rahman, a neighbour of the deceased Hanif Sarker informed him over telephone that his brother, Hanif Sarker, who was an employee of Bata Shoe Company and residing at Boro Dewra village of Tongi Police Station, was murdered in the last night at his own house. Thereafter, the informant rushed to the house of his brother Hanif Sarker at the place of occurrence and found the dead body of his said brother and also found several injuries on the person of the deceased and when the informant asked about the incident to Nazma Sarker @ Beauty, wife of the deceased Hanif Sarker and Rokeya Begum, maid servant of that house they informed that some unknown persons killed the victim Hanif Sarker. Upon lodging the First Information Report the present Tongi P.S. Case No. 26 dated 25.8.2003 under Section 302/34 of the Penal Code was started.

The Police after investigation submitted charge sheet being No. 107 dated 3.5.2004 under Section 302/34/109 of the Penal Code against the condemned prisoners-appellants and another. Thereafter, the informant filed a Naraji petition before the Magistrate, First Class, Gazipur against the said charge sheet to the effect that one of the accused was not included in the charge sheet when the case was transferred to the D.B. Police for further investigation who after holding further

investigation into the matter submitted charge sheet to the same effect as was done earlier. The case came up for hearing before the learned Sessions Judge, Gazipur where it was registered as Sessions Case No. 20 of 2005 who then sent the case to the learned Additional Sessions Judge, Second Court, Gazipur for trial where charge under Sections 302/34/109 of the Penal Code was framed against the appellants and another and the same was read over and explained to all the condemned prisoners-appellants except the absconding accused Ahidul Islam and Kamal to which they pleaded their innocence and claimed to be tried and because of their absconsion the charge could not be read over and explained to accused Ahidul Islam and Kamal.

The prosecution, with a view to establish the charge examined as many as 10 witnesses and the defence examined none.

Amongst the prosecution witnesses, P.W.1 Moulana Mohammad Ali (Md. Ali) is the informant of the case and elder brother of the deceased Hanif Sarker, P.W.2 Md. Faruque Bhuiyan is a tenant of Hanif Sarker, P.W. 3 Halima Begum is the wife of P.W.2, P.W. 4 Md. Rafiqul Islam is a neighbor of the deceased Hanif Sarker, P.W.5 Md. Khorshed Alam is a Tenant of the deceased, P.W. 6 Sufia Khatun is the wife of P.W. 5, P.W.7 Md. Monir Hossain is a neighbour of the deceased Hanif Sarker, P.W.8 Mahmuda Khatun is a Magistrate, First Class, who recorded the confessional statements of the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum under section 164 of the Code of Criminal Procedure, P.W.9 Dr. Md. Mujibur Rahman held the autopsy on the person of the deceased and P.W.10, A.S.P. Noor Ahmed is the Investigating Officer of the case. Thereafter, the case was transferred to the learned Additional Sessions Judge, First Court, Gazipur for its disposal where after closure of the examination of the prosecution witnesses all the above named condemned prisoners except the absconding accused Kamal and Ahidul Islam were examined under Section 342 of the Code of Criminal Procedure to which they claimed the same plea of innocence. The accused Kamal and Ahidul Islam could not be examined under Section 342 of the Code of Criminal Procedure as they remained on absconsion.

Besides the aforesaid 10 witnesses being examined, the prosecution has also adduced evidence which are marked as exhibits and material exhibits. The State Defence Lawyer was provided for the absconding accused Kamal and Ahidul.

The defence case, as it transpires from the trend of cross-examination of the prosecution witnesses, is that all the accused persons are quite innocent and that the informant has falsely implicated them in this case with intent to grab the property of the deceased Hanif Sarker and that the confessional statements have been obtained from the confessing accused Nazma Sarker @ Beauty and Rokeya Begum by exercising threat and coercion and the same are not true and voluntary.

The learned Additional Sessions Judge, First Court, Gazipur having heard both the parties and considered the materials on record passed the impugned judgment and order of conviction and sentence dated 27.2.2008 convicting all the above named 5 accused persons including the absconding accused Kamal and Ahidul under Sections 302/34/109 of the Penal Code and sentencing them to death by hanging by neck. The instant Death Reference being No. 20 of 2008 arising out of the aforesaid judgment and order of conviction and sentence and, thereafter, being aggrieved by the aforesaid judgment and order of conviction and sentence and convict-appellants except Ahidul have preferred the Jail Appeals and the regular Criminal Appeals as above.

Mr. Md. Selim, the learned Deputy Attorney-General, with Mr. Md. Ensanuddin Sheikh and Mr.Md. Nurul Islam Matubbor, the learned Assistant

Attorneys-General, appearing for the State submits that the condemned prisoner Nazma Sarker @ Beauty wife of the deceased Hanif Sarker had extramarital relations with the condemned prisoner Kamal and she wanted to marry him and with a view to fulfil her desire the condemned prisoner Nazma Sarker @ Beauty herself along with other condemned prisoners Kamal, Shahidul, Ahidul (absconding) and Rokeya wife of the condemned prisoner Shahidul planned to kill Hanif Sarker (deceased) and if the plan to kill Hanif Sarker is implemented she (condemned prisoner Nazma Sarker @ Beauty) would get the properties of her husband Hanif Sarker and also would be able to marry her paramour, the condemned prisoner Kamal. According to their premeditation, on the alleged night of occurrence, all the condemned prisoners along with absconding convict Ahidul brutally committed the murder of the deceased Hanif Sarker in presence of his wife, the condemned prisoner Nazma Sarker @ Beauty. Thereafter, the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum made confessional statements recorded under Section 164 of the Code of Criminal Procedure wherein they confessed that as per plan designed by them all the condemned prisoners brutally murdered Hanif Sarker in presence of the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum. The learned Deputy Attorney-General further submits that both the aforesaid confessional statements made by the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum are consistent with each other wherein they gave a vivid picture as to how the alleged occurrence took place which is also consistent with the Inquest Report, Post Mortem Report and other evidence and materials on record and that the learned Additional Sessions Judge, considering all the aspects of the matter as well as the evidence on record, passed the impugned judgment and order of conviction and sentence and there is no reason to interfere with the same and that in a case of this sort of heinous offence all the condemned prisoners as well as the absconding convict-Ahidul upon his securing arrest should be hanged.

Mr. Md. Jamiruddin Sircar, the learned Advocate, with Mr. Md. Saifuddin Mahmud and Mr. Md. Jahirul Islam, the learned Advocates, appearing for the condemned prisoners Rokeya Begum, Shahidul Islam and Md. Kamal submits that there is no eye witness of the occurrence in this case and that the conviction of the condemned prisoners is solely based on the judicial confessional statements made by condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum which have been extracted by exercising threat and coercion upon them and the same have not been voluntarily made by them and that in the instant case the condemned prisoner Rokeya Begum was produced before the Magistrate for recording her confessional statement from Police custody about after 5 days from her date of arrest. More so, there was no motive of this condemned prisoner for committing the brutal murder of the deceased Hanif Sarker even if the confessional statement of the condemned-prisoner Nazma Sarker @ Beauty is taken to be true and voluntary. Mr. Sircar further submits that the condemned prisoner Rokeya Begum is a poor woman who had been serving in the house of deceased Hanif Sarker as maid servant and she has been made a scapegoat in this case and that in the circumstances her said confessional statement being exculpatory and involuntary in nature, no conviction can be based thereupon and as such the impugned order of conviction and sentence, so far as it relates to the condemned prisoners Rokeya, Shahidul and Kamal, is not sustainable in law. Mr. Sircar, lastly, entreats that the condemned prisoner Rokeya was aged about 18 years at the time of the alleged occurrence and the condemned prisoners Rokeya, Shahidul and Kamal have been in the condemned cell for about 3 years and if the Hon'ble Court is pleased to uphold the impugned judgment and order of conviction, in consideration of the tender age of Rokeya Begum and also of the fact that she had no initial motive to kill the victim as well as of the long detention of Rokeya,

Shahidul and Kamal in the condemned cell their sentence may be commuted to imprisonment for life instead of death.

Mr. Monsurul Haque Chowdhury, the learned Advocate appearing for the condemned prisoner Nazma Sarker @ Beauty submits that there is no eye witness of the alleged occurrence in this case and the condemned prisoner Nazma Sarker @ Beauty is quite innocent and that the informant and others falsely implicated her in this case with intent to grab the properties of her deceased husband and with that end in view the informant and others managed to obtain the confessional statement made by her through Police by exercising threat and coercion upon her and that the condemned prisoner Nazma Sarker @ Beauty had never any love affairs with the condemned prisoner Kamal and she had also no connection with the other convicts and that she also never made any plan to kill her husband with a view to grab her properties and to get the condemned prisoner Kamal married as alleged. Mr. Chowdhury further submits that the conviction of the condemned prisoner-appellant Nazma Sarker @ Beauty is solely based on the judicial confessional statement made by her but that was never true and voluntary. Besides, there is no reliable evidence to show that she was concerned with the murder of the deceased Hanif Sarker and as such the impugned order of conviction and sentence is not sustainable in law. Mr. Chowdhury, lastly, entreats submitting that inspite of the fact the condemned prisoner Nazma Sarker @ Beauty has been in condemned cell for about 3½ years and that in the circumstances if the Hon'ble Court is pleased to uphold the impugned judgment and order of conviction and sentence, in consideration of the above aspects of the matter, her sentence may be commuted to imprisonment for life from death .

Ms. Nahid Sultana, the learned State Defence Lawyer for the absconding convict Ahidul Islam submits that there is no direct evidence against him and that his conviction is solely based on the judicial confessional statements made by Nazma Sarker @ Beauty and Rokeya Begum but without any corroborating evidence those confessional statements can not form the basis of conviction of this co-accused Ahidul and as such the impugned judgment and order of conviction and sentence, so far as it relates to this absconding convict Ahidul, is not sustainable in law. The learned Advocate further submits that inspite of the fact if the Hon'ble Court is pleased to uphold the impugned judgment and order of conviction and sentence, in consideration of the facts and circumstances as above, his sentence may be commuted to imprisonment for life from death.

Ms. Khalifa Shamsun Nahar, the learned Advocate appearing for the condemned prisoner Nazma Sarker @ Beauty in Jail Appeal No. 318 of 2008 and condemned prisoner Rokeya Begum in Jail Appeal No. 319 of 2008 respectively made her submission adopting the submissions of Mr. Md. Jamiruddin Sircar and Mr. Md. Monsurul Haque Chowdhury, the learned Advocates made as above.

The real question that calls for determination is, whether the impugned judgment and order of conviction and sentence is sustainable in law.

Admittedly, the prosecution could not adduce any direct evidence to prove the charge of murder and, therefore, to prove the charge, the prosecution has mainly based on the self inculpatory confessions of the two condemned prisoners namely, Nazma Sarker @ Beauty and Rokeya Begum and the circumstantial evidence and that the learned Additional Sessions Judge convicted the condemned prisoner-appellants and another absconding convict Ahidul under Section 302/34/109 of the Penal Code and sentenced them to death treating the aforesaid confessions as true and voluntary and having based thereupon.

Heard the learned Advocates on both the sides and perused the Death Reference, the impugned judgment and order of conviction and sentence, Memorandum of appeals, Jail Appeals, evidence adduced by the prosecution and the materials of record.

Now let us see how far the prosecution has been able to prove the incident of death of the unfortunate Hanif Sarker and complicity of the condemned prisoners and absconding convict in the commission of the crime.

Before considering the circumstantial evidence and confessions of the aforesaid two condemned prisoners, we like to discuss certain broad evidence as revealed from the evidence of the prosecution witnesses to evaluate the prosecution case.

P.W.1 Moulana Mohammad Ali, is the elder brother of the deceased who has stated that on 25.8.2003 in the morning one Habibur Rahman, a neighbour of his brother Hanif Sarker, informed him that his brother Hanif Sarker has been murdered in his own house whereupon he rushed to the place of occurrence and saw Police and many others at the place of occurrence and also saw the slaughtered dead body of Hanif Sarker on the "Khat". He also saw severe marks of injuries on the belly to the right below with intestine coming out. He also saw marks of cut bleeding injuries to the left of the chest and also saw other cut injuries on the person of the deceased. On query he came to know from Nazma, Rokeya, Khorshed, Tenant Faruque and their wives that Hanif Sarker returned home at about 10-10 ½ in the preceding night and was reading newspaper in his drawing room and at about 11 P.M. two persons came and pushed the calling in bell when Hanif Sarker asked Rokeya to see and then Hanif Sarker asked those persons to come in and Hanif Sarker was then taking with them. Meanwhile, the wife of Hanif Sarker and maid servant Rokeya went to sleep. Nazma and Rokeya told all these facts to him. Nazma also told that at about one hour in the night some one fell her down from the "Khat" when she was roaring and on hearing this Faruque and others, 4 in number, saw the hands and mouth of Nazma fastened which they untied and then saw the blood stained slaughtered dead body of Hanif Sarker with bleeding injuries on the chest, belly and thigh. Having seen this Faruque and Khorshed raised alarm. The clothes of Almirah were found scattered. Having heard of the occurrence as stated by Nazma Sarker and Rokeya, as above, he lodged the F.I.R. which he exhibited as Ext. 1 and his signature thereon as Ext. 1/1. P.W. 1 has corroborated the facts stated in the F.I.R. in toto. Further he has said that he saw 3 knives and taking delivery of the dead body from the morgue on 25.8.2003, he buried the dead body on 26.8.2003. He has further stated that the Officer-in-charge called him to Thana and asked him whether he knew Rokeya whereupon he replied in the affirmative and when Rokeya was brought before him by the Officer-in-Charge Rokeya entreated him to save her and on giving assurance she disclosed and narrated the fact giving the vivid picture of the occurrence and the Officer-in-Charge recorded her statements. During cross-examination this P.W.1 has stated that he did not know Kamal but heard that his deceased brother's wife Nazma Sarker @ Beauty had illicit relation with a number of persons and also heard that Nazma Sarker @ Beauty once fled away with a man and also heard that she used to talk to different male person over telephone and also used to write letters to them. However, this P.W.1 denied the defence suggestion that he had falsely implicated the condemned prisoners and absconding accused in this case with intent to grab the property of the deceased Hanif Sarker and with that end in view obtained the confessional statements of Nazma Sarker @ Beauty and Rokeya by Police exercising threat and coercion on them.

P.W. 2, Md. Faruque Bhuiya is a tenant of the deceased Hanif Sarker residing by the side of the place of occurrence house and P.W.3 Halima Begum is the wife of P.W. 2. Both have stated corroborating each other that in the alleged night of occurrence, at about 1 O'clock, being attracted by the alarm raised by tenant Md. Khorshed Alam, P.W. 5 and his wife Sufia Khatun P.W. 6 got in the house of Hanif Sarker when Rokeya opened the door and then having entered into the bed room what they have seen is quite consistent with that of the fact as narrated by P.W. 1 as above.

P.W.2's wife untied the knots from the hands and legs of Nazma Sarker @ Beauty when Nazma asked him and his wife to see who had killed his mama Hanif Sarker. They saw the dead body of Hanif Sarker in a slaughtered condition with bleeding injuries on the belly and elbow and seeing these he (P.W.2) became indisposed of. Police, on coming to the place of occurrence, prepared the Inquest Report to which he stood as a witness. Both P.W.s 2 and 3 have stated corroborating each other that they have heard afterwards that accused Kamal, Shahidul, Ahidul, Rokeya and Nazma Sarker @ Beauty in furtherance of their common intention of all committed the murder of Hanif Sarker. During cross-examination P.W.2 has stated that he woke up from sleep and when he came to the gate of the house of Hanif Sarker accused Rokeya opened the gate.

P.W.3 Halima Begum has stated that she saw two knives on the bed and another knife in their bath room.

P.W. 4, Md. Rafiqul Islam is the neighbour of the deceased Hanif Sarker. He has stated that at about 1 O-Clock in the night following 24.8.2003 on hearing hue and cry he went to the house of Hanif Sarker along with others and entered into the house of Hanif Sarker and saw Hanif Sarker's dead body lying on the "Khat" and saw knife injuries on the chest, belly and neck of Hanif Sarker. On query Nazma Sarker @ Beauty wife of the deceased Hanif Sarker and maid servant Rokeya told him that at about 12 hours in the night two unknown persons came to the house of Hanif Sarker who after gossiping with Hanif Sarker killed Hanif Sarker after fastening the eyes, hands and legs of Nazma Sarker @ Beauty. This P.W. 4 has further stated that subsequently he came to know from others that Shahidul, Ahidul and Kamal used to come to the house of the deceased and Nazma had illicit relation with accused Kamal and also came to learn that accused Shahidul, Kamal, Ahidul, Nazma Sarker @ Beauty and Rokeya in furtherance of their common intention of all committed the murder of Hanif Sarker. He also came to know that accused Nazma Sarker @ Beauty and Rokeya confessed their guilt before the Police and the Magistrate.

P.W. 5 Md. Khorshed Alam, a tenant of the deceased Hanif Sarker, has stated that at about 1 O-Clock in the night following on 24.8.2003 he woke up from sleep on hearing the sound of roaring and called the neighbouring tenant Faruque (P.W.2). Then they raised alarm from outside the house of Hanif Sarker and after a long lapse of time accused Rokeya opened the door of the house of Hanif Sarker and on getting in the house of Hanif Sarker saw the hands, legs and face of accused Nazma Sarker @ Beauty fastened and they untied her knots when he saw Hanif Sarker lying on the bed in blood stained condition and saw marks of injuries on the neck, chest and belly and also saw 3 blood stained knives by the side. Police came and held inquest in his presence and he put his signature in the Inquest Report as a witness. He exhibited the Inquest Report as Ext. 2 and his signature therein as Ext. 2/1. Police seized one blood stained bed sheet, 3 blood stained knives and some other articles in his presence by preparing a seizure list to which he stood as a witness. He exhibited the seizure list as Ext. 3 and his signature therein as Ext. 3/1. Later on he came to learn

from the newspaper that accused Nazma Sarker @ Beauty had illegal love affairs with Kamal for which she killed Hanif Sarker which accused Nazma Sarker @ Beauty and Rokeya had confessed.

P.W. 6 Sufia Khatun is the wife of P.W. 5. She has stated the same as deposed by P.W. 5 as above. She also saw 3 blood-stained knives thereat. Her evidence is quite consistent with those of the foregoing P.W.s regarding the time, place and manner of occurrence as alleged by the prosecution.

P.W.7 Md. Monir Hossain is a neighbour of the deceased Hanif Sarker. He has stated that in the night following 24.8.2003 Faruque, tenant of Hanif Sarker woke him up and told him that somebody had killed Hanif Sarker whereupon he and his elder brother Anwar accompanied by Faruque came to the house of Hanif Sarker and on getting into the house saw Hanif lying in blood stained condition with severe injuries on the neck and belly when his wife Nazma Sarker @ Beauty laid on the legs of Hanif. Police came and held the inquest of the dead body of the deceased. Subsequently, he came to know that accused Nazma Sarker @ Beauty had love affairs with Kamal and because of that Nazma Sarker @ Beauty and Kamal have murdered Hanif Sarker. Police arrested Nazma Sarker @ Beauty, Kamal and Rokeya when Nazma Sarker @ Beauty and Rokeya confessed their guilt.

P.W.8, Mahmuda Khatun, a Senior Assistant Secretary of the Establishment Ministry while serving as Magistrate, First Class at Gazipur, on 30.8.2003 at 11-30 hours, accused Nazma Sarker @ Beauty of this case was produced before her in her Chamber by the Officer-in-Charge, Tongi Police Station for recording her confession whereupon she allowed 3 hours time to accused Nazma Sarker @ Beauty for reflection and, thereafter, accused Nazma Sarker @ Beauty expressed her desire that she would voluntarily confess her guilt and at that time there was no other person inside her Chamber. Then the Magistrate, P.W. 8 recorded the confessional statement of accused Nazma Sarker @ Beauty under section 164 of the Code of Criminal Procedure wherein accused Nazma Sarker @ Beauty put her signature in presence of P.W.8 admitting the same to have been recorded correctly. P.W.8 has exhibited the confessional statement of accused Nazma Sarker @ Beauty as Ext. 4 and her signature as Ext. 4/1. This P.W. 8 exhibited her own signature put therein as Ext. 4/2.

This P.W.8 has further stated that on 30.8.2003 at 12 hours the Officer-in-Charge of Tongi Police Station produced accused Rokeya Begum of this case before her for recording her confessional statement whereupon she (P.W.8) allowed 3 hours time to accused Rokeya for reflection and, thereafter, she disclosed her intention that she would make her confessional statement voluntarily and at that time there was no other person in her (P.W.8) Chamber and then P.W.8 recorded the confessional statement of accused Rokeya under Section 164 of the Code of Criminal Procedure and accused Rokeya put her signature therein in presence of P.W.8 admitting the same have been recorded correctly.

P.W.8 exhibited the confessional statement of accused Rokeya Begum as Ext. 5, her signature therein as Ext.5/1 and her (P.W.8) signature therein as Ext.5/2. During cross-examination this P.W.8 has stated that she has not recorded as to when accused Nazma Sarker @ Beauty was arrested by Police as there was no column therefor in the prescribed form for recording statement of the accused under Section 164 of the Code of Criminal Procedure. This P.W.8, however, denied the defence suggestion that accused Nazma Sarker @ Beauty was produced before her after inflicting torture on her by Police and that Police compelled her to make the confessional statement as made by her. This P.W.8 also denied the defence suggestion that the confessional statement made by accused Nazma Sarker @ Beauty as recorded by her was not true and voluntary.

During cross-examination for accused Rokeya she has stated that Rokeya stated in her said confessional statement that she was not present at the time of committing the murder of Hanif Sarker and also stated that she was not involved but had connivance in committing the murder. However, she denied the defence suggestion that the confessional statement of accused Rokeya Begum as recorded by her (P.W.8) was not made voluntarily.

P.W.9 Dr. Md. Mujibur Rahman, Medical Officer of Gazipur Sadar Hospital, held Post Mortem Examination on the dead body of Hanif Sarker, aged 45 years, on 25.8.2003 in connection with this case and found the following injuries on the person of the deceased:-

1. One cut throat on the neck of 6" x 3" with cutting under lying all the structure.
2. Penetrating wound on the left side of the lower chest of 3" x 1" x deep up to internal structure.
3. Penetrating wound on the abdomen right side of the umbilicus with exposed out omentum of 2" x $1\frac{1}{2}$ ".
4. One cutting injury on the back of the shoulder joint of 2" x $\frac{3}{4}$ " x 1" with cutting bone.
5. Wound on the right upper arm posterior aspect of $1\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ ".
6. Wound on the left upper scapula region of $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ ". Deep dissection done column wise.

Then upon the consensus of opinion of all the members of the Medical Board this P.W.9 opined as follows:-

“Death was due to Cardio-respiratory Cerebral failure resulting from cut throat injury involving trachea and major vessels which was ante mortem and homicidal in nature”

P.W.9 has exhibited the Post Mortem Report as Ext.6 and his signature therein as Ext.6/1. He has stated that Dr. Md. Solaiman and Dr. Shamsul Alam also put their signatures in the Post Mortem Report and he is conversant with their signatures and identified their signatures therein.

During cross-examination by defence he has stated that the tongue of the deceased Hanif Sarker was found coming out $\frac{1}{2}$ " which can not be found in the position for sustaining severe injuries on the neck. Further he has stated that the throat of the dead body was found cut.

P.W.10, A.S.P., Noor Ahmed, on 25.8.2003, while serving as the Officer-in-Charge of Tongi Police Station started the instant case upon a written ejahar filed by Moulana Mohammad Ali, elder brother of the deceased Hanif Sarker and took up investigation of the case by himself. He filled up the F.I.R. form marked as Ext.7 and also exhibited his signatures therein as Ext.7/1 and 7/2 and in the original F.I.R. as Ext. 7/3.

During investigation he visited the place of occurrence, prepared the Sketch Map with Index which he exhibited as Exts. 8 and 9 respectively and his signatures therein as Exts. 8/1 and 9/1 respectively. He seized some alams by preparing a seizure list. He exhibited the seizure list marked as Ext. 3 and his signature therein as Ext. 3/2. He exhibited the articles seized against serial No.7 of the seizure list produced in Court as material Ext. "Ka" series. He, after holding the inquest on the dead body of Hanif Sarker, sent the dead body for autopsy to the Gazipur Sadar Hospital through Constable No. 756 Faruque. He arrested Nazma Sarker @ Beauty wife of the deceased Hanif Sarker and maid servant Rokeya Begum and on interrogation they confessed to him about their involvement in the commission of the murder of the deceased and then he arrested them and on the next day sent both of them before the Magistrate for recording their judicial confessions. He recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure and obtained the Post Mortem Report of the deceased Hanif Sarker. Then on the basis of the judicial confessional statements of the aforesaid two confessing accused as well as on the circumstantial evidence and incriminating materials on record he submitted Charge Sheet being No. 107 dated 31.5.2004 under Section 302/109/34 of the Penal Code against accused Nazma Sarker @ Beauty, Rokeya Begum, Shahidul Islam, Ahidul Islam and Kamal. During cross-examination by defence this P.W. 10 has stated that on 25.8.2003 in the night he asked Nazma Sarker @ Beauty calling her at the Police Station and afterwards, on query, when it primarily revealed that Nazma Sarker @ Beauty and maid servant Rokeya Begum were involved in the commission of the murder of the deceased he arrested them and on the next day i.e. on 30.8.2003 produced them before the Magistrate for recording their judicial confessional statements where they made such statements. During Cross-examination this P.W.10 has further stated that for interrogation Rokeya was kept in the Police Station for 3/4 days and that she was sent up to the Court on the next day of her arrest. Further he has stated that at the time of occurrence Rokeya was sleeping in another room of the house of the place of occurrence with two sons of the deceased Hanif Sarker. He denied the defence suggestion that the accused persons are not concerned with the alleged murder of the deceased and that he has submitted the charge sheet without holding proper investigation .

In the instant case the alleged murder of Hanif Sarker took place in between 12 P.M. and 1 A.M.in the night following 24.8.2003 and the accused Nazma Sarker @ Beauty and Rokeya Begum on being arrested were produced on 30.8.2003 before the Magistrate (P.W.8, Ms. Mahmuda Khatun) who on the same date, after observing all the formalities of law as provided under section 164 of the Code of Criminal Procedure, recorded their confessional statements.

The confessional statement of accused Nazma Sarker @ Beauty recorded under Section 164 of the Code of Criminal Procedure, marked as Ext. 4, is as follows:-

ৱেMZ Rj vB 2003 গুত্ৰ তেW^ৱevRv^{ti} i AMYx e^{is}tKi KgPZ Kvgvj Gi mvt_ cwiPq nq| Kvgvj Avgvi evmvq GKw^b Avtm, Awg Zvi evmvq `B w^b hvB| cti `Ecvovl hvB Avgiv| Avgvi evmvq KtRi tg^{tq} Zvi mlgx kn^j Ges Kvgvj wgtj w^{xv}s-tbB mlgxtK tkl Kti tdjvi Rb^z Zvntj Kvgvj AvgvtK w^{tq} Ki^{te} Ges mlgxi m^utⁱ gwij K Awg ne| w^{xv}s-Abhvqx 24/08/03 iweevi kn^j tdi^{tb} etj th, GKUv gvj w^{tq} AvR^{tK} i^{vt} K^{vR} tkl n^{te} | i w^l tcstb 11.00 Uvq kn^j, Zvi fvB Awⁿj Avi GKUv t^Qtj w^pbbv Avgvi evmvq Gtm Ovt^e etm^vtK Ges Avgvi mlgxtK Ng^v cvov^tZ etj | i w^l 12.00 Uvq kn^j w^RAmv Kti mlgx Ng^vt^q w^Kbv| Ng^vt^q ej^{tj} kn^j, Awⁿj I H t^Qtj Uv Kvgvtj i t^q gvj w^cj I w^ZbUv t^Qov w^{tq} w^Qv^vq D^tv mlgx t^RtM DV^{tj} Zvi v ewj k Pvcv w^{tq} i B^{tq} t^dtj Awⁿj cv^{ati}, A^tPbv t^Qtj w^L g^L ewj k Pvcv w^{tq} atⁱ, kn^j Q^{yo} w^{tq} Mjv K^vtU Avi Awⁿj t^ctVi `B w^tK `BUv cv^o t^q Q^{yo} w^{tq} Avgvi mlgxtK Awg N^{ti}B^vov^{tb} w^Qv^vg| mlgx a^vw^v-Kivq kn^j vi^{vl} AvnZ nq | gZj w^bo^Z Kti ti^vtKqv^{tK} t^wtK etj tkl | Zvi ci c^w Abhvqx AvgvtK tet^{au}Dcj Kti t^dtj tⁱtL hvq| c^w Abhvqx w^Zb N^uv cti kaⁱ Ki^tZ | cti f^{ro}w^lqv^{iv} Gtm N^ubv t^lL Avgvi kaⁱ t^ctq|

The confessional statement of accused Rokeya Begum recorded under Section 164 of the Code of Criminal Procedure, marked as Ext. 5, is as follows:-

Avghi mlyxi tdlv baji w`tz wltq Kvgvtj i mvt_ cwiPq| Kvgvj teW^oevRvti e`vt¹/₄i bXP Zj vq _vtK| bVRgv mi Kvi weDwUtK dczWwK Zvi evmvq KvR Kwi | mlyxi mvt_ SMov Kti dclai evmvq KvR Ki tZ Avwm| mlyxi gva`tg Kvgvj mvtntei mvt_ dclai m^ouR nq| Kvgvj evmvq Avtm GKw`b| evBti I t`Lv Kti | Awg GKw`b hvB| Kvgvj mvtne dcltK weq Kite etj Avghi mlyxi I iWR Kivq| civgk^oKti Avghi mlyxi Kvgvj mvtne mn tm dclvtK gvi te I Zvi `B tQtj wbtq Kvgvtj i mvt_ _vKte cO`tg KweivR w`tg gvi te etj | dclz`uJ evj v t`q Avghi mlyxi knx`j i KvQt| wKŠ KweivR ctiwb cti knx`j , Zvi fvB Avn`j wczv gZ ewi K tPqvi g`vtbi tQtj Kvgvj mn civgk^oKti dclvtK gvi vi | Awg wbtla Ki wQ gvi tZ| Zvi ci iweevi Zwi L Rvbbv 11.30 wgtD 12.00 Uvq knx`j AvI tj vKRb wbtq Qvt` etmQj | dclv Ngyvtj wfZti Avtm, AvgtK av^ov w`tg Ab` i`tgi wfZi XwKtq t`q knx`j | Awg ftq wfZti wQj vg| gvi vi mgq Awg wQj vg bv| dclz wQj | wKfvte gvi tQ Awgt`wL bvB| gvi vi ci dclz Avghi `i Rvq av^ov w`tg etj tgti tdtj tQ knx`j I wQj | UvKv w`tg GKUv tQtj tK fvov Kti Avtb| ZvtK ev_i`tg I teimtb PvKz aZ t`wL| iweevi mKvtj Kvgvj 1Uv w`j t`q knx`j Gi KvQt w`jUv evmvq knx`j mUvq ti tL hvq | me wKQyKvgvj Kwi tQtQ|

Admittedly, there is no eye witness in this case. The prosecution case rests on the judicial confessions of the two condemned prisoners and some circumstantial evidence including the recovery of 3 blood stained knives with iron “bat” measuring 9½” each in length, one blood stained bed sheet, 2 blood stained pillow covers with two pillows and blood stained red printed shari, a blood stained Orna (Scarf) , a blood stained full pant and a blue colored half handed vest lying beside the dead body of Hanif Sarker. The appellants and another absconding convict Ahidul have been convicted and sentenced solely on the basis of the said judicial confessions aided by circumstantial evidence.

The learned Advocates for the condemned prisoners as well as for the absconding convict have submitted that the prosecution case not only suffers from the absence of any direct evidence but the circumstantial evidence in the case are also quite insufficient so as to bring home the charge to the appellants and the absconding convict.

The learned Advocates for the appellants have also assailed, in reference to the statement of P.W. 10, on the voluntariness of the judicial confessions made by the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum marked as Exts. 4 and 5 respectively submitting that after arrest they had been in prolonged Police custody for 3/4 days and then they were produced before the Magistrate on 30.8.2003 for recording their confessions under Section 164 of the Code of Criminal Procedure. In reply to that submission of the learned Defence Counsels, the learned Deputy Attorney-General submits that P.W.10, in his cross-examination by defence, has stated that Rokeya was kept in Police Station for 3/4 days and in the same breath he has also stated that accused Rokeya was forwarded to the Court on the next day of her arrest and that Nazma Sarker @ Beauty herself stated in her retraction petition dated 11.9.2003 that she was forwarded to the Magistrate for recording her confessional statement after she being arrested after 4 days of the occurrence and that Nazma Sarker @ Beauty in her bail petition dated 19.2.2005 before the Sessions Judge stated that she was arrested on 29.8.2003 and produced before the Magistrate on the next day. As regards accused Rokeya Begum the learned Deputy Attorney-General submits that accused Rokeya Begum in the application for bail dated 13.9.2003 filed by her before the Magistrate herself admitted that she was arrested after 4 days of the alleged occurrence. The learned Deputy Attorney-General further submits that Nazma Sarker @ Beauty and Rokeya, after they being arrested, were produced before the Magistrate on the next day i.e. on 30.8.2003 and, admittedly,

they were produced before the Magistrate on 30.8.2003 on which date they made their confessions before the Magistrate P.W.8.

In spite of the fact the learned Deputy Attorney-General, with a view to clear up the ambiguity of the evidence as deposed by P.W.10 regarding arrest of the confessing accused Nazma Sarker @ Beauty and Rokeya, has submitted that in a case like that of the present circumstances, in appreciation of the evidence and to clear up any doubtful point, the Court can peruse the Police Diary and having looked into the Police Diary it would be clear that, in fact, both the confessing accused Nazma Sarker @ Beauty and Rokeya were arrested by Police at 15.16 hours on 29.8.2003 and on the next day i.e. on 30.8.2003 they were produced before the Magistrate (P.W.8) for recording their confessional statements under sections 164 of the Code of Criminal Procedure. The learned Deputy Attorney-General, in appreciation of his above submission as to the use of Police Diary by the Court, has cited a decision in the case of *The State Vs. Md. Abdur Rashid* reported in 1987 B.L.D. (AD) 73 wherein it has been held as under:-

“The Court may use the Police Diary not as evidence of any date, fact or statement referred to it, but as containing indication of sources and lines of enquiring. In Mannu’s case it was held that the Police diaries may be used not as evidence in a case, but to aid the Court in such inquiry or trial. (R.V. Mannu 1909 All 390 F.B.) This was approved by the Privy Council in A.I.R.1917 P.C. 25. It is intended to be used only for the purpose of assisting the Court in the appreciation of the evidence and to clear up any doubtful point.”

We also find appreciation of the above settled view in the case of *Salauddin Vs. The State* reported in 32 D.L.R. (1980) 227, in a case similar to that of the present case, wherein their Lordships perused the Police Diary from which it appeared that the prisoner of that case was arrested on 18.1.1976 as stated by the Investigating Officer. Viewing it from this context, there is no hesitation in saying that in appreciation of the evidence, with a view to clear up any doubtful point as to the arrest of the confessing appellants Nazma Sarker @ Beauty and Rokeya, we may look into the Police Diary.

We have perused the Police diary from which it would appear that the confessing condemned prisoners Nazma Sarker @ Beauty and Rokeya both were arrested on 29.8.2003 and, admittedly, they were produced before the Magistrate P.W.8 on the next day i.e. on 30.8.2003 on which date they made their confessional statements before the Magistrate P.W.8 who recorded the same under Section 164 of the Code of Criminal Procedure.

Mr. Saifuddin Mahmud, the learned Advocate appearing for the condemned prisoner-appellant Rokeya Begum, in appreciation of his above submission as to the date of arrest of the condemned-prisoner Rokeya has cited a decision in the case of *State Vs. Mofizuddin and others* reported in III A.D.C. (2006) 840 but the facts and circumstances of this case is distinguishable from that of the instant case.

The learned Deputy Attorney-General appearing for the State has pointed out that in the instant case the conviction has not been based on circumstantial evidence alone. These circumstances, though by itself, should not be sufficient to establish the guilt of the condemned prisoners and another absconding convict Ahidul Islam but the said circumstances have rendered material corroboration to the particulars mentioned in the confessional statements of the condemned-prisoners Nazma Sarker @ Beauty and Rokeya Begum. The learned Deputy Attorney General has further submitted that once the confession is found to be true and voluntary it can form the sole basis of the conviction against the maker and, if lends assurance

to other evidence, it can also form the basis of conviction of the co-accused and in the instant case there is nothing to shake the truthfulness and voluntariness of the confessions recorded by the Magistrate (P.W.8) and hence the condemned prisoners and another absconding accused Ahidul have rightly been convicted and sentenced on the basis of such judicial confessions aided by circumstantial and material evidence. The learned Advocates for the condemned prisoners have further contended that the confessions were not voluntary and true as the same were obtained by torture and mal-treatment keeping the prisoners in the custody of Police prior to their production before the Magistrate and afterwards both the confessing condemned prisoners retracted their confessions and, thus, such confession should not have been made the sole basis of conviction of the condemned prisoner-appellants and another absconding convict Ahidul in this case.

Before examining the confessional statements of the two condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum separately to find as to how far they admitted their guilt and how far those are admissible in evidence, we may take up for consideration the inculpatory confessional statements of Nazma Sarker @ Beauty which is the most important feature of the case.

We have already seen that the case before us is one in which guilt or otherwise of the condemned prisoners and another absconding convict rests on the inculpatory confessions of the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum aided by the attending circumstances and material evidence. Confession is manifestly a very important and convincing material for proving that the offence is committed by such persons making confession. According to the Rule of law, conviction can be based solely on the confession of the maker if it is found voluntary and true though the Rule of prudence may require some sort of corroboration with giving facts. It is not necessary that each and every circumstance mentioned in the confession regarding complicity of the accused must independently be corroborated as it is necessary in the case of using the confession of an accused against his co-accused. It is enough if the general trend of confession is substantiated by evidence which would tally with what is contained in the confession. For ascertaining as to whether the confession is voluntary and true or not the Court has to examine the confession itself and also to consider the same in the light of other materials on record and broad probabilities of the case.

The next question arises, whether the confession can be the basis of the conviction against the makers, if found to be retracted. It is well settled that once a confession has been found to be true and voluntary, the conviction of the confessing accused can be based on the said confession, even if it is retracted. In this connection for our guidance we may look to the case of Joygun Bibi Vs. the State reported in 12 D.L.R. (SC), 157 relevant page 159, para 9 wherein it has been held as under:-

“The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made and on the further question whether it is true. The fact that the maker of a confession later does not adhere to it can not by itself have any effect upon the findings reached as to whether the confession was voluntary and if so, whether it was true, for to withdraw from a self acquiring statement in direct phase of the consequences of acquisition, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding those two questions and the answer being in the affirmative in declaring that

the confession by itself was sufficient, taken with other facts and circumstances, to support Abdul Majid's conviction. The retraction of the confession is wholly immaterial, once it is found to be voluntary as well as true"

We will now like to deal with the confession of the condemned prisoner Nazma Sarker @ Beauty first. As we have found earlier, she was arrested on 29.8.2003 and was forwarded before the Magistrate on the next day i.e. on 30.8.2003 for recording her confessional statement and on the same date P.W.8 Mahmuda Khatun, Magistrate, First Class, recorded her confession at her chamber. The said confessional statement of Nazma Sarker @ Beauty was marked as Ext. 4. The paper clearly manifests that the learned Magistrate recorded the statement observing all the legal formalities. The accused did not make any complaint of Police torture and mal-treatment and she was given 3 hours time for reflection. The statement was read over and explained to the accused Nazma Sarker @ Beauty and then she put her signature thereon. Furthermore, the learned Magistrate also put her signature under the certificate that the confession was voluntarily made. In her statement the accused Nazma Sarker @ Beauty has given full narration of the events disclosing that in July 2003 she got acquainted with accused Kamal, an employee of the Agrani Bank at Board Bazar Branch, once he came to her house and she made her return visit to Kamal's house twice and then they went to Dattapara where her maid servant, her maid servant's husband Shahidul and Kamal all conjointly decided to kill her husband (deceased Hanif Sarker) and if that was done she (Nazma Sarker @ Beauty) could marry Kamal and would be the owner of the properties of her husband (deceased Hanif Sarker). According to that decision, on 24.8.2003, Shahidul informed over telephone that everything would be finished by the night of that day. At quarter to 11 in the night on that day Shahidul and his brother Ahidul and an unknown boy came to her house and sat on the roof of the house and they asked her to get her husband to sleep. At 12 P.M. in the night Shahidul asked whether her husband (Hanif Sarker) fell asleep and when she replied in the affirmative Shahidul, Ahidul and that unknown boy armed with a pistol supplied by Kamal and 3 knives got on the bed and when her husband woke up they caught hold of him when Ahidul caught hold of his legs and the unknown boy pushed and pressed the pillow on his mouth and Shahidul cut the throat of her husband (Hanif Sarker), Ahidul also inflicted two knife blows on the belly from two sides and at that time she was standing inside the room. Shahidul and his accomplices having been confirmed of the death of Hanif Sarker called Rokeya and said her that every thing was finished. Thereafter, according to the premeditation, Shahidul and his two other accomplices fastened her legs, hands and mouth and left her on the floor placing her mouth touching the floor and asked her to make sound after 3 hours. Then being attracted by the sound of roaring the tenants came and saw the occurrence. These, in brief, are the contents of the confessional statement of the accused Nazma Sarker @ Beauty. P.W.8 Mahmuda Khatun who recorded the confession of Nazma Sarker @ Beauty, emphatically denied that Police tortured the accused Nazma Sarker @ Beauty and produced the accused before her and that she was compelled to make the statement and that the statement was not voluntary and true. While recording the statement of Nazma Sarker @ Beauty under Section 342 of the Code of Criminal Procedure she also did not make any complaint that she was tortured by police or otherwise and that she was compelled to make such confession out of fear or torture or mal-treatment of the Police. P.W.10 the Investigating Officer also denied the defence suggestion that accused Nazma Sarker @ Beauty was tortured at the Police Station and she was threatened to make the confessional statement. We find no reason to disbelieve the evidence of this P.W. 10 and the learned Magistrate P.W.8 and no material could be elicited by the defence to show that the confession was the result of torture and mal-treatment and hence it was not voluntary and true as well.

Next comes for consideration is the confession of accused Rokeya Begum. This accused was arrested on 29.8.2003 and on the next day i.e., on 30.08.2003 was forwarded to the Magistrate for recording her confessional statement under Section 164 of the Code of Criminal Procedure on which date her statement was recorded by the learned Magistrate P.W.8 which was marked as Ext.5 . The learned Magistrate observed all the legal formalities and then the accused narrated the occurrence implicating herself, accused Nazma Sarker @ Beauty , Shahidul, Ahidul and Kamal. The statement of the accused Rokeya Begum fully corroborated the statement of accused Nazma Sarker @ Beauty on all material particulars regarding the murder of Hanif Sarker in his house at the place of occurrence. The learned Magistrate gave 3 hours time for reflection and the accused did not complain of any Police torture and the learned Magistrate also did not find any mark of injury on her person. The learned Magistrate observed all the formalities as required under section 164 of the Code of Criminal Procedure and the accused Rokeya Begum put her signature in the statement. The accused did not deny the fact of her putting signature therein. While recording the statement of the accused Rokeya Begum under Section 342 of the Code of Criminal Procedure she also did not make any complain that she was tortured by Police or otherwise and that she was compelled to make such confession out of fear or torture or mal-treatment of the Police. P.W.8, Mahmuda Khatun, Magistrate who recorded the statement of accused Rokeya Begum stated that the statement was recorded by her when she was satisfied that it was voluntary and true and the accused did not complain about any Police torture and she also did not find any injury on her person. P.W. 10, the Investigating Officer also denied the defence suggestion that he tortured the accused and threatened her to confess and that the said statement was not recorded as told by her. The learned Magistrate while recording the confessional statement of the two condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum ascertained that the confessions were voluntary and true. There was no complaint before the learned Magistrate and all legal procedures were followed and the learned Magistrate before recording confession gave sufficient caution and also time for reflection. The learned trial Court also ascertained the truth as well as the voluntariness of the confession made by the two condemned prisoners. The learned Magistrate found that the confessing accused Nazma Sarker @ Beauty and Rokeya Begum gave a full and free account of the occurrence in order to satisfy that they were really involved in the commission of the alleged murder. Although the allegation of torture by the Police was raised by those confessing accused by filing separate retraction petitions on 11.9.2003 but there being no material on record to substantiate the same we are unable to place any reliance on the said allegation made in their retraction petitions. Besides, nothing could be elicited from the cross-examination of the witnesses that the aforesaid confession was not voluntary and true and there was nothing to show that the same was obtained by torture or mal-treatment.

It is well settled that once a confession is found to be true and voluntary, the conviction can be based solely on confession, even if it is retracted. In this connection reference may be made to the cases reported in 12 D.L.R.(SC) 156, 16 D.L.R. (SC)598, 19 D.L.R. 819, 31 D.L.R. 316, 32 D.L.R. 227 and the case of Shafali Begum and another Vs. The State reported in 1 B.C.R. (1981) 105 and S.C.R. 1979 (Vol) page 417 and also in 42 D.L.R. , P-187, para 39 wherein it has been consistently held that conviction of the prisoners can be based solely on the confession, even found to have been retracted, if the confession is found to be voluntary and true as well.

It is also well settled that confession of a co-accused can be taken into consideration and on the strength of that confession another co-accused can be

convicted provided the said confession is corroborated by any other evidence either direct or circumstantial (56 D.L.R. , Page 124).

Section 30 of The Evidence Act enjoins that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such persons as well as against the persons who makes such confession.

In the absence of any positive material to the contrary the presumption of correctness of recording the confessional statement upon observing all formalities can very well be inferred and we have reason to believe that P.W. 8 on being satisfied that the accused Nazma Sarker @ Beauty and Rokeya Begum would freely and voluntarily confess their guilt, recorded their confessions and that accused also made no complaint before the Magistrate. We do not find any cogent reason as to why self-implication of the confessing appellants in the commission of the offence can not be taken as true. Retraction of confessions at an earliest opportunity some time lend support to the defence plea that the confession was not voluntary one but for the belated retraction of the confession filed on 11.9.2003 i.e. after 12 days of making the confession in the instant case without any material to support it, no such inference can be drawn. Rather, the consensus of the judicial decisions is that an accused may be convicted even on a retracted confession, if it is inculpatory and found to be voluntary and true .

We are satisfied that all the required legal formalities have been observed in the case by the Magistrate (P.W.8) in recording the confessions. There is nothing to show that the accused persons made the confession out of fear or torture or maltreatment of the Police or that the confession was the result of inducement. We have already noted that the learned Magistrate recorded the confessional statements in respect of both the condemned prisoners after giving sufficient caution to them and gave them reasonable time for reflection of their mind.

The learned Magistrate also was satisfied that the confessions are voluntarily made by the two condemned prisoners. The contents of the confessional statement of both the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum gave a ring of truth when their statements are mingled with other evidence on record and attending circumstances.

The confession of the two condemned prisoners voluntarily made coupled with the circumstantial evidence has furnished the link in the chain of evidence and they are so consistently established that no other inference but the guilt of the confessing appellants can be the only conclusion.

In the instant case both the confessing accused Nazma Sarker @ Beauty and Rokeya Begum in their confessional statements have consistently given a vivid picture of the occurrence that as per premeditation, on the alleged night of occurrence at about 12 P.M. following 24.8.2003, the condemned prisoners Shahidul and Ahidul (absconding) and another unknown boy came to the house of the deceased and sat on the roof of that house and they asked Nazma Sarker @ Beauty to get her husband to sleep and when Hanif Sarker fell asleep Nazma Sarker @ Beauty informed them and accused Shahidul, Ahidul and one unknown boy, being armed with Pistol and 3 knives supplied by accused Kamal, got on the bed of Hanif Sarker and in presence of accused Nazma Sarker @ Beauty the unknown boy pressed pillow on the mouth of deceased Hanif Sarker when Shahidul cut the throat of Hanif Sarker and at that time Ahidul caught hold of the legs of Hanif Sarker and, thereafter, Ahidul inflicted two knife blows from two sides on the belly of the

deceased. At that time accused Nazma Sarker @ Beauty was standing inside room and being confirmed of the death of Hanif Sarker, accused Shahidul while leaving the place of occurrence house, alongwith his two other accomplices, accused Ahidul and another unknown, told Rokeya Begum that everything was finished. It appears that both the confessional statements of accused Nazma Sarker @ Beauty and Rokeya Begum are consistent to each other on material particulars and it is apparent from the statement of Rokeya Begum that the plan for committing the murder of Hanif Sarker was well within her knowledge from its very inception. Rokeya Begum has said in her statement that in the fateful night, as per premeditation, at about 11-30/12-00 hours, accused Shahidul, Ahidul and another unknown person came to the house of the deceased Hanif Sarker and camouflaged on the roof of that house. It is also apparent from the statement that at the time of committing the murder of Hanif Sarker accused Rokeya Begum was in another room with two sons of Hanif Sarker, with a view to guarding so that the Children could not understand anything. Besides, P.Ws. 2, 3, 5, 6 and 7 who are tenants and close neighbours of Hanif Sarker immediately after the occurrence, on hearing the sound of roaring, rushed to the house of the place of occurrence when accused Rokeya Begum opened the door and they saw the slaughtered dead body of the deceased Hanif Sarker and also saw severe bleeding injuries on the chest and belly and also saw three blood-stained knives inside the room. The statement of the above witnesses are consistent to each other as to the circumstances they have seen. As stated by Nazma Sarker @ Beauty in her confessional statement, accused Shahidul, Ahidul and another unknown boy were armed with 3 knives as supplied by accused Kamal and, as we have said earlier, accused Nazma Sarker @ Beauty has also vividly given a full account of the individual overt acts of accused Shahidul, Ahidul and another unknown boy stating that accused Shahidul slaughtered Hanif Sarker and Ahidul inflicted two knife blows on the chest and belly of deceased Hanif Sarker from two sides when the unknown boy pressed the mouth with pillows. The injuries found on the person of the deceased are quite consistent with the Inquest Report and the Post Mortem Report. In the Post Mortem Report it is opined that the death was due to cardio respiratory cerebral failure resulting from cut throat injury involving trachea and major vessels which was ante mortem and homicidal in nature. The confessional statements of accused Nazma Sarker @ Beauty and Rokeya Begum are consistent to each other on material particulars and, more so, those are supported by strong circumstantial evidence that not only the confessing accused Nazma Sarker @ Beauty and Rokeya Begum but also accused Shahidul and Ahidul were involved in the murder of the deceased Hanif Sarker.

The confession of the two condemned prisoners voluntarily made coupled with the circumstantial evidence has furnished the link in the chain of evidence and they are so consistently established that no other inference but the guilt of the appellants Nazma Sarker @ Beauty, Rokeya Begum, Shahidul and Ahidul (absconding convict) can be the only conclusion. The defence theory of innocence of the accused persons so far as it relates to Nazma Sarker @ Beauty, Rokeya Begum, Shahidul and Ahidul (absconding accused) has been ruled out as being improbable and the attending circumstances are highly against them. The mark of injuries on the neck and on the person of the deceased as per overt act as narrated by accused Nazma Sarker @ Beauty in her confessional statement and the recovery of three blood stained knives lying beside the dead body are the corroborative evidence to the confession on material particulars. The confession of the accused-appellants receives ample corroboration from the independent circumstantial evidence on material points. Thus, the inculpatory confessional statement of the condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum corroborated by the attending circumstances and material evidence are sufficient to establish beyond any

reasonable doubt that the appellants Nazma Sarker @ Beauty, Rokeya Begum and Shahidul and another Ahidul (absconding convict) in furtherance of their common intention of all committed the murder of Hanif Sarker. There is also nothing to show as to why would the confessing condemned prisoners falsely assign the part of killing on Shahidul and Ahidul. Investigating Officer P.W. 10 on coming to the place of occurrence found all these 3 blood stained knives lying near the dead body which he seized along with blood stained two pillows and pillow covers, one blood stained bed sheet and other materials by preparing a seizure list which he marked as Ext.3 and these circumstantial evidence are quite consistent with the facts narrated in the inculpatory confessional statements of confessing condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum coupled with the statements of P.Ws. 1-7, 9 and 10.

Circumstantial evidence may be and frequently is more cogent than the evidence of eye witnesses. It is not difficult to produce false evidence of eye witnesses. It is, on the other hand, extremely difficult to produce circumstantial evidence of a convincing character and, therefore, circumstantial evidence, if convincing, is more cogent than the evidence of eye witnesses.

The inculpatory confessional statements of the above two condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum, marked as Exts. 4 and 5 respectively, having been found to be true and voluntary supported by circumstantial evidence and other evidence, as referred to above, and the common intention and participation of the condemned prisoners Nazma Sarker @ Beauty, Rokeya Begum and Shahidul and another Ahidul (absconding convict) in committing the alleged murder of Hanif Sarker as disclosed in the aforesaid confessional statements made by accused Nazma Sarker @ Beauty and Rokeya Begum having been supported and proved by strong circumstantial and other evidence, as above, the said confessional statements, can also safely form the basis of conviction of their co-accused Shahidul and Ahidul (absconding convict) along with its' makers. The evidence, as referred to above, apparently show that the legal responsibility for the death of Hanif Sarker is equally shared by all the appellants Nazma Sarker @ Beauty, Rokeya Begum, Shahidul and Ahidul (absconding convict) all of whom fully contributed to the death of deceased Hanif Sarker.

The name of the condemned prisoner Kamal appears to have been disclosed only in the confessional statements made by condemned prisoners Nazma Sarker @ Beauty and Rokeya Begum which are marked as Exts. 4 and 5 respectively but except mentioning his name in those confessional statements there is nothing to connect him with this murder. The condemned prisoner Nazma Sarker @ Beauty in her confession mentioned the name of one Kamal, an employee of the Agrani Bank, Board Bazar Branch, to be one of her accomplices. But there is nothing to show that the condemned prisoner Kamal is that very employee of the said Agrani Bank. Besides, the condemned prisoner Rokeya in her confessional statement stated that late Berek Chairman's son Kamal engineered the whole plan of murder of the deceased. But from the charge sheet, Jail Appeal and the impugned judgment it is apparent that the condemned prisoner Kamal is the son of one Abed Ali but not of late Berek Chairman. There is also no other reliable evidence to connect this condemned prisoner Kamal with the alleged murder of the deceased Hanif Sarker and, as such, he is entitled to get the benefit of doubt and accordingly, the impugned order of conviction and sentence so far as it relates to him (condemned prisoner Kamal) is set aside.

On careful consideration of the evidence and materials on record we hold that the prosecution has satisfactorily proved by inculpatory confessional statements

and attending circumstances that the condemned prisoners Nazma Sarker @ Beauty, Rokeya Begum, Shahidul and Ahidul (absconding convict) did brutally commit the murder of the deceased Hanif Sarker in furtherance of their common intention of all and they have been rightly found guilty and as such convicted by the learned Additional Sessions Judge under Sections 302/34 of the Penal Code.

As regards the sentence passed against the condemned prisoners Nazma Sarker @ Beauty, Rokeya Begum, Shahidul and Ahidul (absconding convict) the learned Advocates for them prayed for commutation of their sentence on the ground of long delay in disposal of the Death Reference and other attending circumstances and as to condemned prisoner Rokeya Begum also on the ground of her tender age as she was 18 at the time of the alleged occurrence.

In this connection we like to refer a decision in the case of Salauddin Vs. the State reported in 32 D.L.R. (1980) 227 wherein it was held as under :-

“It was never held as a rule of law that mere delay in disposing of a Death Reference Under Section 374 of the Code of Criminal Procedure would by itself be a good ground for commuting the sentence of death “.

In another case reported in A.I.R. 1954 (SC) 278 it was observed that,

“In proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it but that is no rule of law and is a matter primarily for consideration of the Government on a mercy petition submitted by the condemned prisoner. If the Court has to exercise a discretion in such matter, the other facts of such case would have to be taken into consideration. In that particular case the murder was found a cruel and deliberate one and there was no extenuating circumstances whatsoever which would justify the commuting the sentence of death.”

In the instant case the murder of Hanif Sarker was a deliberate, premeditated and cold blooded one and we find no extenuating circumstances whatsoever which would justify the commuting the sentence of death of the condemned prisoners Nazma Sarker @ Beauty, Shahidul and Ahidul (absconding convict).

As regards the condemned prisoner Rokeya Begum it appears from the record that she being a maid-servant working in the house of the deceased Hanif Sarker was, admittedly, aged about 18 years at the time when she made her confessional statement on 30.8.2003 i.e. after 5 days of the alleged occurrence. Mr. Saifuddin Mahmud, the learned Advocate appearing for her citing a decision of this Court in the case of the State Vs. Nurul Islam reported in 31 B.L.D. (HCD) (2011) 285 submits that in this case the sentence of death passed upon the condemned prisoners was commuted to imprisonment for life on consideration of their tender age.

Thus, in view of the above decision of this Court the tender age of the condemned prisoner Rokeya Begum as well as the other attending circumstances may be considered as extenuating circumstances for her and we think that the ends of justice would be sufficiently met if we commute the sentence of death passed upon the condemned prisoner Rokeya Begum to imprisonment for life.

Having considered the facts and circumstances of the case we find no extenuating circumstances in the case for commuting the sentence of death awarded on the appellant- condemned prisoners Nazma Sarker @ Beauty and Shahidul and Ahidul (absconding convict).

Accordingly, we confirm the sentence of death imposed upon the condemned prisoners Nazma Sarker @ Beauty and Shahidul and Ahidul (absconding convict). Section 302 of the Penal Code enjoins for imposing of fine also with the substantive sentence and since the trial Court omitted to impose the fine we impose fine of Tk.10,000/- (ten thousand) each on all the aforesaid condemned prisoners in addition to their death penalty.

The conviction of the condemned- prisoner Rokeya Begum is confirmed but the sentence of death as imposed upon her is commuted to imprisonment for life and in addition she is also to pay a fine of Tk.10,000/-, in default, to suffer rigorous imprisonment for one year more.

Accordingly, for the reasons stated above, we accept partly the Death Reference No. 20 of 2008 in respect of the condemned prisoners Nazma Sarker @ Beauty and Shahidul and Ahidul (absconding convict) and reject the Death Reference in respect of the condemned prisoner Rokeya Begum and Kamal. As such, Jail Appeal No. 318 of 2008 (appellant- Nazma Sarker @ Beauty), Jail Appeal No. 319 of 2008 (appellant- Rokeya Begum) and Jail Appeal No. 320 of 2008 (appellant- Shahidul) and Criminal Appeal No.1247 of 2008 (appellants- Rokeya Begum and another) and Criminal Appeal No. 1284 of 2008 (appellant- Nazma Sarker @ Beauty) are dismissed.

Jail Appeal No. 406 of 2008 and Criminal Appeal No. 2515 of 2008 preferred by condemned prisoner Kamal son of Abed Ali are allowed.

Convict-appellant Rokeya Begum is entitled to get the benefit as provided under sub-section (1) of Section 35 A of the Code of Criminal Procedure.

The condemned-prisoner Md. Kamal son of Abed Ali be set at liberty at once if not wanted in any other connection.

Let the Lower Court Records, along with a copy of this judgment and order, be sent to the concerned Court below for information and necessary action at once.

MD. EMDADUL HAQUE AZAD,;J

I agree.