

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 65 of 2019

The State

...petitioner

-Versus-

Sujan Bepari and another

...condemned-convicts (Absconding)

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Mustafizur Rahman Mukul, Mr. Ashraful Alam, Ms. Rohani Siddiqua, Mr. Al-Amin Siddiqui, Assistant Attorney Generals

...for the State

Mr. Md. Hafizur Rahman Khan, Advocate

...appointed as a State Defence Lawyer

Heard on: 13.07.2026 and 14.07.2026

Judgment on 14.07.2026

K.M. Rasheduzzaman Raja, J:

This reference under section 29 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, hereinafter ‘the Ain, 2000’, has

been sent by the learned Judge, Nari-o-Shishu Nirjatan Daman Tribunal, Shariatpur, hereinafter ‘the Tribunal,’ for confirmation of the death sentence awarded upon condemned convicts Sujan Bepari and Shamim Bepari under section 9(3) of the Ain, 2000 by the judgment and order dated 26.06.2019 passed in Nari-o-Shishu Case No. 137 of 2015 arising out of GR No. 99/2015 corresponding to Jajira P.S. Case No. 21 dated 26.04.2015.

The prosecution case, in short, is that victim Farzana Yesmin went to respond natural call at 11.00 p.m. on 22.04.2015. While returning from toilet accused Sujan Bepari caught hold of victim Farzana Yesmin and pressing her mouth put down her *salower*. Accused Shamim Bepari tied up her mouth with her *urna*. Accused Sujan, Suman and Shamim led the victim to nearby bamboo-clump. Accused Sujan and Shamim committed rape on the victim and disappeared therefrom for a while. The victim got senseless and returned home after gaining her sense but did not raise alarm out of fear and losing of honour and dignity. Accused Suman video-recorded the occurrence of rape in his mobile phone and

threatened the victim to upload the video in internet if she disclosed the occurrence to anybody. However, the victim told P.W. 1 Rahima Begum, her mother, the occurrence. The victim was screaming on pain and she was sent to Dhaka Medical College Hospital on 25.04.2015 where she got admitted in One-Stop Crisis Center (OSCC) wherein she was examined by doctor. Thereafter P.W. 1 Rahima Begum lodged FIR with Jajira Police Station.

Receiving the above FIR police registered Jajira P.S. Case No. 21 dated 26.04.2015. Police investigated the case and submitted charge sheet under section 9(3) of the Ain upon found primary evidence against the accused persons.

Learned Magistrate sent the case record to the Tribunal for holding trial. The Tribunal receiving the case record started Nari-o-Shishu Case No. 137 of 2015 and appointed State Defence Lawyer for the absconding accused. Learned Judge of the Tribunal framed charge against the accused Sujan Bepari and Shamim Bepari under section 9(3) of the Ain. Charge could not be read over to the accused as they were absconding.

The Tribunal examined 10 witnesses as produced by the prosecution. But the accused could not be examined under section 342 of the Code for their absconsion.

The defence case as transpires from the trend of cross-examination of the prosecution witness is that of innocence and the accused have been falsely implicated with the case for existing enmity between the parties.

On perusal of the evidence on record and hearing the learned Advocate of the both sides the learned Judge of the Tribunal awarded death sentenced upon the accused persons under section 9(3) of the Ain by the judgment and order dated 26.06.2019 and referred the case to this Division under section 374 of the Code for confirmation of the sentence.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General, appearing for the State led us to travel the materials on record and submits that the prosecution adduced sufficient evidence to prove the guilt of the condemned convicts. The condemned convicts have committed rape on the victim which was also proved by the video recovered from condemned convict Sujjan Bepari who recorded the occurrence with his Kingstar Mobile

phone which was seized from him by the Investigating Officer (I.O.). The victim has given the description of rape in her statements under section 22 of the Ain which has been corroborated by the circumstantial as well as other evidence. The absconsion of the condemned convicts also indicates their guilty mind. Such being the case, the Judge of the Tribunal has rightly awarded conviction and sentence upon the absconding convicts by the impugned judgment and order and, therefore, the reference should be accepted.

On the other hand, Mr. Md. Hafizur Rahman Khan being appointed as the State Defence Lawyer has opposed the reference submitting that the prosecution could not prove their case beyond all reasonable doubt. The statements of the victim given under section 22 of the Ain and to the examining doctor are contradictory to the contents of FIR and other evidence. The examining Doctor P.W. 9 Monika Khandaker did not find any external sign of injury on the victim even though it has been alleged that the accused persons scratched her with nail and injured her biting her lips. The seized mobile does not recognize

the appearance of the condemned convicts as their pictures were blurred.

Let us examine the some and substances of the evidence of the prosecution and the above submissions of the both sides to determine the propriety of the conviction and sentence awarded upon the condemned convicts by the impugned judgment and order.

P.W. 1 Rahima Begum, mother of the plaintiff, has deposed that the occurrence took place at 11.00 p.m. on 22.04.2015 at the bamboo-clump behind their house. Her daughter Farzana Yesmin went to respond the natural call. The accused Sujan, Suman and Shamim were in ambush near the toilet. As soon as the victim came out of toilet accused Sujan pressed hold of mouth of her daughter and accused Shamim tied-up her mouth with her *urna*. The accused persons took her daughter near the bamboo-clump. Accused Shamim pressed hold her hand on the ground, accused Sujan committed rape on her putting down her *salower*. Thereafter, accused Shamim committed rape on her and subsequently all the accused disappeared. Gaining sense, the victim returned home without

raising any alarm out of fear of lossing dignity and honour. While committing rape accused Suman video-recorded the occurrence and threatened to upload the same in internet. Her daughter told her all the story. They sent the victim to Dhaka Medical College Hospital on 25.04.2015 wherein she got admitted in OSCC and went under medical examination. Thereafter, she has filed FIR against the accused persons.

In cross-examination she has stated that after composition of the FIR she read it. Her daughter got admitted in Dhaka Medical College Hospital on 25.04.2015 wherefrom she returned home after 10/12 days. She was in OSCC for 5 days. She heard the occurrence from her daughter but she did not witness the occurrence herself.

P.W. 2 Sabina Yeasmin, elder sister of the victim, has deposed the same way as her mother P.W. 1 Rahima Begum did. In cross-examination she has stated that the victim is her younger sister. She is a student and used to teach in a Kindergarten. She did not witness the occurrence herself. She has denied that she deposed falsely.

P.W. 3 Farzana Yeasmin, the victim, has deposed that the occurrence took place at 11.00 p.m. on 22.04.2015 in the bamboo-clump behind their house. She was preparing questioniers at night. Her mother was sick. She taught in Kindergarten alongside her study. Just after her exit from toilet at 11.00 p.m. accused Sujan and Shamim clasped her whom she saw turning back. Accused Shamim tied up her mouth with *urna* and both of them dragged her towards the bamboo-clump and taking there they caused her to lie down. Accused Shamim put his hand on her chest and accused Sujan started groping over her lower part of body and put down her *salower*. Accused Shamim tore off her wearing clothes. When she attempted to scream accused Suman put her under fear pointing a knife at her. Accused Suman started video-recording the occurrence with his mobile using the flash light. At first accused Sujan and then accused Shamim committed rape on her. Accused Shamim bite on her lips while accused Sujan was committing rape on her. She got senseless and when she was returning home after gaining of her sense the accused persons threatened her to upload the video in internet if she disclosed the facts to anyone

of his house. Thereafter, she raised alarm drawing the presence of her mother who also started screaming seeing her. Hearing their screaming her aunt Akter Parvin appeared. She took pain killing medicine at night. As her condition was getting deteriorated, she was sent to Dhaka where she got admitted in One Stop Crisis Centre. She received treatment for 5 days at OSCC. Her mother filed FIR to Jajira P.S. The Investigating Officer took her to Magistrate who recorded her statements under section 22 of the Ain. She has marked the statements under section 22 of the Ain and her signature thereon as exhibits.

In cross-examination she has stated that she gave statements at 05.00 p.m. on 04.05.2015. She did not go to police station with her mother. They with the accused persons live in the same village. The faces of the accused persons were not covered. Light was put on inside the house but no light was in the bamboo-clump. None witnessed her being taken by the accused. The accused persons tied-up her mouth before raising alarm. She took first aid on 23.04.2015 and got admitted in hospital on 25.04.2015. Her elder sister P.W. 2 Sabina Yeasmin

and her cousin P.W. 8 Md. Abdus Salam were with her. She has denied that her statements under section 22 of the Ain were false or they have lodged false case against the accused persons following their enmity with the accused persons.

P.W. 4 Mosharof Bepari has deposed that hearing shouting he went to the house of the informant and going there he found the informant and the victim crying. His aunt, the informant, told him that accused Sujan, Shamim and Suman ruined all of her daughter. She told that just after coming out of toilet accused Sujan and Shamim clasped her daughter Farzana and committed rape on her taking to bamboo-clump. Accused Suman Bepari shot video of the occurrence. Next day the victim was taken to Dhaka Medical College Hospital and got admitted there. Thereafter, FIR was lodged. Police arrested accused Suman and Sujan and seized the mobile phone from accused Sujan where a 11 second video of the occurrence was found. Police prepared a seizure list with his signature. He has marked the seizure list along with his signature thereon as exhibits and a 4 GB memory card of Kingstar Mobile set as material Exhibit-I. In cross-examination he has stated that police prepared seizure

list at 6.00 p.m. at the place of occurrence. He did not witness the commission of rape.

P.W. 5 Mokles Bepari has deposed that at 11.00 p.m. on the date of occurrence he went to the house of the informant hearing shouting. The informant told him that accused Sujana and Shamim committed rape on her daughter and they recorded video of the occurrence and threatened to upload the same in internet if the victim discloses the occurrence to anyone. Victim Farzana was taken to hospital and took treatment getting admitted in OSCC. In cross-examination he has stated that he did not witness the occurrence but heard it from the informant. He did not see the video.

P.W. 6 Imran Bepari, son of the informant, has deposed that he was sleeping on 22.04.2015 at night and woke up hearing shouting of his mother and sister. Hearing their shouting his uncle and aunt appeared. His sister told that the accused persons ruined her. The accused persons committed rape on her sister when she went to toilet. Accused Suman shot video of the occurrence. Having local treatment the victim was sent to Dhaka. In cross-examination he has stated that he did not

witness the occurrence but heard from his sister. He has denied that they lodged false FIR against the accused persons for having enmity with them.

P.W. 7 Akteruzzaman Bepari alias Akteruzzaman has deposed that the occurrence took place at 11.00 p.m. on 22.04.2015 in the bamboo-clump behind the house of the informant. Hearing shouting he came out from his house at 11.50 p.m. and came to know from his niece, the victim, and his sister in law, the informant, that while the victim was returning from toilet accused Sujan and Shamim caught hold of her and tying up her mouth by *urna* led her to bamboo-clump. Accused Sujan and Shamim groped over the body of the victim and thereafter committed rape on her. Accused Suman shot video of the occurrence by Mobile. Thereafter, they threatened to upload the video in internet if the occurrence was disclosed to anyone. The victim was sent to Dhaka Medical College Hospital for treatment and his sister in law lodged the FIR. In cross-examination he has stated that he himself did not witness the occurrence but view the video. The accused persons also lived

in the same village but the informant has no enmity with the accused.

P.W. 8 Md. Abdus Salam has deposed that the informant is her aunt. The accused Sujon, Shamim and Suman committed rape on the victim at 11.00 p.m. on the date of occurrence when she was returning from toilet and they videoed the occurrence and, thereafter, threatened to upload the video in internet. The victim was sent to Dhaka where she got admitted in OSCC. In cross-examination he has stated that he did not witness the occurrence but heard it from his aunt and the victim.

P.W. 9 Dr. Monika Khandaker has deposed that while she was discharging her duty on 26.04.2015 she examined victim Farzana and opined that-

The victim named 'Farzana Yesmin' has signs of recent forceful sexual intercourse and her age is about 18-19 years at present.

She issued a medical certificate to that effect. She has marked the medical certificate and her signature thereon as exhibits.

In cross-examination she has stated that she found no physical external sign of violence but found internal sign of violence in the body of the victim. She has denied that she was not posted at Dhaka Medical College Hospital at that time.

P.W. 10 S.I. Md. Borhan Uddin, the Investigating Officer, has deposed that being entrusted with the investigation he visited the place of occurrence, prepared sketch-map with index, arrested the accused persons, recorded statements of the witnesses, seized mobile phone set from accused Sujon, seized 4 GB memory card from the mobile wherein the video of rape was recorded, got the statements of the victim recorded under section 22 of the Ain and thereafter submitted charge sheet against the accused persons upon found primary evidence against them.

In cross-examination he has stated that the occurrence took place at 11.00 p.m. on 22.04.2015 and the victim was examined in hospital on 26.04.2015. He got the statements of victim recorded under section 22 of the Ain on 04.05.2015. He interrogated the accused persons taking them in remand but they gave no confession. He seized the Kingstar Mobile set with

memory card wherein a 11 second video was found which he submitted transferring to Compact Disk (CD). Although the appearance of the accused are not clear in the video but the appearance of the victim is very much clear. He has denied that he submitted a false charge sheet without investigating the case properly.

On perusal of the above evidence of the prosecution, it appears that victim Farzana Yeasmin was raped 11.00 at night on 26.04.2015 in the bamboo-clump behind their house. She was given treatment in One Stop Crisis Centre at Dhaka Medical College Hospital. P.W. 3 Farzana Yeasmin, the victim, has deposed that while she was returning from toilet accused Sujan Bepari and Shamim Bepari clasped her, tied up her mouth, dragged her to their bamboo-clump behind their house and committed rape on her consecutively. The other prosecution witnesses did not witness the occurrence but P.W. 1 Rahima Begum, the informant as well as mother of the victim, has heard the occurrence from the victim firsthand. Hearing the story of committing rape on her daughter she raised alarm drawing the presence of neighbours P.W. 4 Mosharof Bepari, P.W. 5 Mokles

Bepari, P.W. 6 Imran Bepari, P.W. 7 Akteruzzaman Bepari alias Akteruzzaman and P.W. 8 Md. Abdus Salam. All of them heard the story of committing rape on the victim directly from the victim. So, none of them can be called to be hearsay witnesses. The accounts of the occurrence given by those witnesses do not appear to be contradictory.

It appears in the medical certificate, Exhibit-4, that the examining doctor P.W. 9 Dr. Monika Khandaker has found ruptured, recent tear present at 3, 5, 7, 9 O, Clock position; a linear tear present at fourchette but did not find spermatozoa as she mentioned in column No. 16 under heading of Sexual Assault. She opined in Column No. 21 that-

Considering physical examination findings, radiological and microbiological report, I am of the opinion that the victim named 'Farzana Yesmin' has signs of recent forceful sexual intercourse and her age is about 18-19 years (about eighteen to nineteen years) at present.

Although P.W. 9 did not find spermatozoa present but since the victim was examined after 4 days of the occurrence, therefore, it is not supposed that spermatozoa should be present

there after lapse of 4 days from commission of the occurrence. The medical evidence is also found supportive to the oral evidence of the victim and other prosecution witnesses mentioned above.

The accused persons have been absconding since happening of the occurrence. Condemned convict Shamim Bepari has been absconding from the very beginning and he has become fugitive after publication of notice for his appearance in the daily News Papers following the provisions of law. Condemned convict Sujan Bepari has been absconding since after getting released on bail. Although Mr. Khan submits that the absconsion is not always indicative to the guilt of the accused persons but in this case one of the accused is found to be absent since after the occurrence showing no respect to legal process. The other accused Sujan Bepari was apprehended by police just after filing of the case and the mobile phone set with a memory card was seized from his possession wherein the video of committing rape on the victim was found. There is no explanation of their absence in record. The defence case got no land to rest it's leg.

Mr. Khan submits that since the appearance of the accused persons are not visible in the video, therefore, relying only on suspicion they should not be connected with the offence of the instant case. Admittedly, the sad occurrence of rape was committed on the victim almost in the midnight on the date of occurrence. Therefore, it is natural that the appearance of the perpetrators might not be clear as the video lens was focused on the victim by them. Since the mobile set by which the video was shot was recovered from the direct possession of the condemned convict Sujan Bepari as P.W. 4 Mosharof Bepari, who is a witness to the seizure and has marked the seized memory card of the Mobile as Ext., and the video of the rape was found present in the memory card inserted in the mobile, therefore, we find no other person involved with the occurrence excepting the condemned convicts Sujan Bepari and Shamim Bepari.

From the above discussions following facts have come out:

- (a) commission of rape on the victim has been proved by medical examination;

- (b) the Mobile, wherein the video of commission of rape on the victim was found, was recovered from the possession of condemned convict Sujan Bepari;
- (c) no other probability except the participation of the condemned convicts Sujan Beparia and Shamim Bepari in the occurrence of rape is comprehensible;
- (d) all the persons who heard the story of committing rape from the victim herself have reproduced the story before the Court without making any contradiction;
- (e) the accused persons have been absconding since the very beginning of filing of the case.

In view of the above circumstances and evidence on record, we find no other option but to hold that the condemned convicts are liable for committing such a diabolic offence of rape on the victim. So, we find no substance in the submissions of the learned State Defence Lawyer Advocate Mr. Khan that the prosecution could not prove the case beyond reasonable doubt. However, we accept the submission of Mr. Khan regarding the death sentence awarded upon the condemned convicts and hold that the sentence awarded upon the

condemned convicts appears to be disproportionate to the offence they committed. Therefore, we hold that the justice would be best served if the death sentence awarded by the learned Judge of the Tribunal upon the condemned convicts by the impugned judgment and order is commuted to imprisonment for life.

In the result, the death reference is rejected. The death sentence is commuted to sentence of imprisonment for life. The Tribunal is directed to recall the earlier Warrants of Arrest and issue fresh Warrants against the convicts for commuted sentence.

Communicate the judgment and order and transmit the lower Court records.

Bhishmadev Chakraborty, J:

I agree