

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

Present:

Mr. Justice Mohi Uddin Shamim

And

Mrs. Justice Jesmin Ara Begum

Death Reference No.95 of 2018

With

Criminal Appeal No.8455 of 2018

with

Criminal Appeal No.8754 of 2018

and

Jail Appeal No.247 of 2018

The State

... Petitioner

-Versus-

1. Most. Lucky Khatun

... condemned-prisoner

2. Md. Mizanur Rahman alias Polash

... convict-appellant

Mr. Mohammad Mujibur Rahman, D.A.G with

Mr. Md. Mijanur Rahman, A.A.G.,

Mr. Md. Zobaidur Rahman Babu, A.A.G,

Mr. Md. Asaduzzaman Khan, A.A.G and

Mr. Md. Shafi Ul Alam, A.A.G

... for the state

Mr. Khaled Hamid Chowdhury, Advocate with

Mr. Md. Rabiul Ahsan Habib, Advocate and

Mr. Md. Raihan Kawser, Advocate

... For the condemned-prisoner

(in Criminal Appeal No.8455 of 2018)

Mr. Mohammad Abidul Haque, Advocate

... For the convict-appellant

(in Criminal Appeal No.8754 of 2018)

Heard on: 25.01.2026, 28.01.2026 and 29.01.2026
and Judgment on:05.03.2026

Jesmin Ara Begum,J:

This Death Reference being Death Reference No.95 of 2018 under Section 374 of the Code of Criminal Procedure 1898 (hereinafter referred to as the Code) has been made by the learned Additional Sessions Judge, Chapainawabganj vide Memo No.463(Crl) dated 05.08.2018 for confirmation of the death sentence, imposed upon the condemned accused prisoner Most. Lucky Khatun vide his judgment and order of conviction and sentence dated 05.08.2018 passed in Sessions Case No.102 of 2018 corresponding to G.R. No.90 of 2017 arising out of Nawabganj Police Station Case No.28 dated 13.02.2017 under section 302 of the Penal Code. By the same judgment convict-appellant Md. Mizanur Rahman alias Polash was also convicted under section 411 of the Penal Code and sentenced to suffer rigorous imprisonment for 03(three) years and also to pay a fine of Tk.10,000/- in default to suffer simple imprisonment for 06(six) months more. The condemned prisoner Most Lucky Khatun has preferred Criminal Appeal No.8455 of 2018 and Jail Appeal No.247 of 2018 against the order of conviction and sentence of death and the condemned prisoner Md. Mizanur Rahman alias Polash has preferred Criminal Appeal No.8754 of 2018 against his order of conviction and sentence.

The Death Reference, the Criminal Appeals and the Jail Appeal have emerged out of the self-same judgment and order of conviction and sentence and that common question of law and facts involved in those are same and hence, those have been heard together and are being disposed of by this single consolidated judgment.

The prosecution case, in brief, is that on 10.02.2017 one Md. Abdul Malek, father of the deceased victim, as informant lodged an FIR with the Chapainawabganj Sadar Model Police Station, Chapainawabganj against the unknown accused-persons, alleging inter-alia that, on 12.02.2017 at around 07:30 a.m. in the morning, his daughter Mst. Maliha age of 6(Six) years accompanying with her playing mate Mst. Sumaiya age of 07(Seven) years went out from their home to attend their school. After that, at 10:30 a.m. both of them returned back to their home after attending their school, both of them changed their school dress and came out outside of their home and started playing together just in front of their house. At 11:00 a.m. in the morning the informant noticed that his daughter and her friend who had been involved with playing together just in front of his house were not there, they were disappeared; they were missing. Soon after noticing their disappearance, the informant started looking for his daughter and her friend. He thought his daughter might be gone to her friend's house but whilst the informant went there to search his daughter, he neither found his daughter nor her playing mate in her house. He was then shocked and appalled. The informant then started searching frantically, accompanying

with his daughter playing mate's mother and relatives. Meanwhile, after hearing the missing news, a few other people of the locality also joint with them. Then they all started searching but they did not find the duo anywhere. At that time, they had been informed that a few onlookers; especially, named Md. Dulal, as well as other fellow school going students also informed the informant that, while they were passing the alleged missing spot they had noticed both the missing girls were walking along behind Shri Gita Rani and went to her house accompanying with her. It was then informant's strong apprehension that, the suspected accused Gita Rani might allured his daughter and her mate and abducted them and confined them in her house or any other secret place. It is also alleged in the FIR that, previously, the suspected accused Gita Rani was also involved with another kidnapping incident, the informant then believed that no one but Gita Rani was involved with the alleged abduction. The informant along with the local inhabitants went to Gita Rani's house, and while asking her about his missing daughter's information, she was faltering and replied the question very suspiciously and hesitantly and time to time said fabricated different story which created suspicion on her and hence local people confined her along with her father inside her house, so that they could not run away before handing them over to the police. The informant then reached to the local police station and requested the local police to take immediate step to find out the missing girls, at that time, he then also

filed a regular abduction case in this regard implicating Gita Rami and others.

Meanwhile, local peoples started searching intensively entire locality i.e. every house of the area, starting from informant's house; at ongoing process of searching while they went to the house of Lucky Khatun at around 5:00 p.m., she refused to open her door and hence, it made suspicion but local people's strong resistance compelled her to open her house door for searching the missing girls and when informant wanted to search Lucky Khatun's father-in-law Yasin Ali's bed room, but once again she denied to allow him to get in and search then the informant along with Abu Taleb, Sumaiya's aunt and two other local women forcibly entered the bed room and they saw that Yasin Ali's bed sheet was stretched to the floor. Abu Taleb lifted the bed sheet and they saw two plastic sacks under the bed. On asking Lucky Khatun said that there were pumpkins in it. Abu Taleb pulled out a sack and when the lailon's thread was untied Sumaiya's head came out, informant and others were started crying, people gathered and Abu Taleb locked the door of the room because Lucky Khatun was trying to escape. Abu Taleb called the police and police came and opened 2 sacks. Sumaiya's body was found in one sack and Maliha's in the other. There were red marks on the two children's necks, red marks on the chest in several places. There was blood on the sides of both faces. Sumaiya was wearing a white and gray dress, no pant, Maliha was wearing a red, yellow

and white winter sweater and red shorts. Police prepared inquest reports and seized alamots and sent the bodies for post mortem.

The investigating officer P.W.14 SI Md. Khairul Islam, P.W.15 police Inspector Md. Mazharul Islam and P.W.16 police Inspector Chowdhury Jubaer Ahammed investigated the case. During investigation, the investigating officers visited the place of occurrence, prepared a sketch map of the same along with index thereof, prepared inquest report of the dead body of the victims and forwarded the dead body of the victims for post mortem examination, seized alamats and recorded statements of witnesses under section 161 of the Code of Criminal Procedure. During investigation accused Lucky Khatun and accused Md. Mizanur Rahman made confessional statement before the Magistrate under section 164 of the Code of Criminal Procedure. Finding prima facie case, the last investigating officer submitted a charge sheet against accused Most. Lucky Khatun and Mizanur Rahman @ Polash under sections 347/302/379/201/411 of the Penal Code.

The learned trial Court, the Additional Sessions Judge of Chapainawabganj framed charge against the accused Most. Lucky Khatun under sections 347/302/201/379 of the Penal Code and accused Md. Mizanur Rahman @ Polash was charged under sections 379/411 of the Penal Code. The charge so framed were read over to the accused persons to which they pleaded not guilty and prayed to be tried as per law.

To establish the charge leveled against the accused persons the prosecution has examined 17 witnesses, who were cross examined by the defence, but the defence examined none.

After conclusion of prosecution witnesses the two accused were examined under section 342 of the Code of Criminal Procedure, where the accused-persons were again pleaded not guilty and denied to produce any defence witness.

The defence version of the case, as it transpires from the trend of cross-examination of the prosecution witnesses, was that the accused are innocent and have falsely been implicated in the case and the alleged confessional statements of the accused persons are the products of police torture, oppression and maltreatment.

After hearing both the parties and upon perusing the materials on record and having regard to the attending facts and circumstances of the case, the trial Court came to the conclusion that the prosecution brought the charges home against the accused persons and accordingly the trial Court convicted accused Lucky Khatun under section 302 of the Penal Code and sentenced her to death and convicted accused Md. Mizanur Rahman @ Polash under section 411 of the Penal Code and sentenced him to suffer rigorous imprisonment for 03(Three)years and also to pay a fine of Tk.10,000/- (Ten Thousand) in default to suffer simple imprisonment for 06(Six) months more. Lucky Khatun was also convicted by the same judgment under section 211 of the Penal Code and sentenced to suffer

rigorous imprisonment for 07(Seven) years and also to pay a fine of Tk.10,000/-(Ten Thousand) in default, to suffer simple imprisonment for 06(Six)months more. It was directed by the impugned judgment that the imprisonment awarded under section 211 of the Penal Code will run until the Death Reference has been confirmed by this Court and as more than 07(Seven) years have already been passed, the condemned-prisoner Lucky Khatun's sentence under section 211 of the Penal Code is deemed to have been served out.

During hearing of the death reference Mr. Khaled Hamid Chowdhury, the learned Senior Advocate with Mr. Md. Rabiul Ahsan Habib and Mr. Md. Raihan Kawser appeared for the condemned-prisoner Most. Lucky Khatun and Mr. Md. Abidul Haquem, the learned Advocate appeared for convict-accused Md. Mizanur Rahman @ Polash, while Mr. Md. Mujibur Rahman, the learned Deputy Attorney General with Mr. Md. Mizanur Rahman, Mr. Md. Zobaidur Rahman Babu, Mr. Md. Asaduzzaman Khan and Mr. Md. Shafi ul Alam, the learned Assistant Attorney Generals appeared for the State.

The points for consideration in this reference and in these appeals are that whether the judgment and order of conviction and sentence passed by the trial Court can be sustained and whether the condemned-prisoner Most. Lucky Khatun can be convicted and sentenced to death and accused Md. Mizanur Rahman @ Polash can be convicted and sentenced on the

above facts and circumstances of the case. The points are taken up together.

Mr. Md. Mujibur Rahman, the learned Deputy Attorney General took us through the First Information Report, inquest report, post mortem report, seizure list, charge sheet, confessional statements of the accused persons, the evidences of the prosecution witnesses and the impugned judgment and order of conviction and sentence passed by the learned Judge of the Additional Sessions Judge, Chapainawabganj and submitted that condemned-accused Most. Lucky Khatun and accused Md. Mizanur Rahman @ Polash made confessional statements voluntarily and these were recorded following the legal formalities as stipulated in sections 164 and 364 of the Code of Criminal Procedure. He also submitted that the confessional statements are true and voluntary and for this reason these statements can be used to make the two accused persons liable for the offence charged against them. In this respect the learned DAG also mentioned various case laws in support of his submission that conviction can be given on the sole basis of confessional statement if it is found true and voluntary.

The learned Deputy Attorney General further submitted that the prosecution has become successful in proving the case beyond all reasonable shadow of doubt by examining all the relevant and necessary witnesses and by producing necessary documentary evidences that condemned-prisoner Most. Lucky Khatun murdered the two victim girls

and therefore, the learned trial Court below rightly convicted and sentenced to death to the condemned accused Most Lucky Khatun. He also submitted that the prosecution has rightly proved the charge under section 411 of Penal Code against the accused Md. Mizanur Rahman @ Polash and rightly convicted and sentenced him to suffer rigorous imprisonment for 03(Three) years and also to pay a fine of Tk.10,000/-(Ten Thousand) in default to suffer simple imprisonment for 06(Six) months more. He again submitted that the accused Most. Lucky Khatun brutally killed two innocent minor girls and considering these aggravating factors the learned trial Court passed the impugned sentence of death which suffers from no illegality, needs no interference by this Court.

Per Contra, Mr. Khaled Hamid Chowdhury, the learned Senior Advocate appearing for condemned-accused-prisoner Most. Lucky Khatun contended that the prosecution hopelessly failed to prove the charge brought against the convict-accused Lucky Khatun beyond reasonable shadow of doubt. He submitted that there are serious infirmities in the medical evidence and in the investigation of the case. He however submitted that though the doctor, P.W.11 opined that the death of the victim minor girls were due to shock and asphyxia as a result of throttling, but the objective findings of the post mortem report do not inescapably point to the manual throttling as the external marks are small and non-specific abrasions and ecchymosis, compatible with a range of possible causes, including rough handling, pressure applied while concealing or

moving the body. He also submitted that the opinion in the post mortem report is not believable as there is no classic sign of manual strangulation. Fracture of the hyoid bone, injury to the laryngeal cartilages and extensive deep tissue haemorrhage in the neck are absent here and as such the opinion given by the doctor, P.W.11 as to the cause of death is not acceptable.

Mr. Khaled Hamid Chowdhury, the learned Senior Advocate also submitted that the probable cause of death is written in the inquest report is, by throttling or by use of some consciousness destroying substance (শ্বাসরোধ অথবা চেতনা নাশক/ঔষধ প্রয়োগে). The learned Senior Advocate also draw our attention to the fact that in the same room from which the bodies were discovered, the investigating officer seized empty strips and packets of Clonazepam 0.5 mg tablets which is capable of causing sedation but the investigating officer of the case and the doctor P.W.11, who prepared the post mortem report, did not take any step to examine viscera to ascertain whether the victim's blood or stomach contains any sedative agent. In this respect learned Senior Advocate submitted that this is not a minor omission, in a case where the I.O. himself was articulating the possibility of "chetana-nashok" being used, failure to conduct toxicological examination is a central investigative failure, it leaves open the reasonable possibility that the child were drugged and rendered unconscious and that death occurred as a combination of sedation and airway obstruction, perhaps without a clear or fully formed intention to kill. As such, the learned Senior Advocate

claimed that Lucky Khatun did not have any intention to kill the victim girls, thus conviction under section 302 of the Penal Code and sentenced to death thereunder is not tenable in law.

He further submits that the confessional statement of accused Most. Lucky Khatun, recorded under section 164 of the Code of Criminal Procedure does not describe the very mechanism of killing on which the death sentence has been imposed. There is a clear mismatch between the post mortem opinion of death by throttling and the content of section 164 of the code statement which does not mention manual throttling of victim girls or strangulation or administering sleeping tablets or sedatives to the victims. As such, he submits that, the confessional statement of accused Most. Lucky Khatun cannot be used as an important basis for conviction at all.

For considering the merit of this reference and appeal, let us discuss and consider the evidences adduced by the witnesses. P.W.1 Abdul Malek states in his deposition that he is the informant and victim Maliha,(age 6 years) is his daughter. Victim Sumaiya (age 7 years) is Maliha's friend. On 12.02.2017, Maliha and Sumaiya went to school together at 7:30 a.m. They came home after school at 10:30 a.m. They changed their clothes and after 5-10 minutes went to play in the alley in front of the house. He asked his wife at about 11:00 a.m. where is Maliha? He asked her if she is playing outside. He went outside and saw that Maliha was not there. He searched

around and went to Sumaiya's house. Sumaiya's mother said that they were playing together. Sumaiya was not at home. They all searched together.

At one point, Dulal Mia of Jannatpara said that he had seen two children were following Gita Rani. At around 12:50/1:00 p.m. he went to Gita Rani's house, when he asked Gita Rani she said different things.

They became suspicious. He called the police. The police came to Gita's house. They took Gita to the police station. On the morning of 13.02.2017 he filed case against Gita Rani. He searched for his daughter but could not find her. On 14.02.2017 local people decided to search all the houses in the area. Starting from his house they searched 3 houses and then Most. Lucky Khatun's house number 4. Before magrib, at around 5:00 p.m. he went with local people to Most. Lucky Khatun's house. The gate was locked from inside, when they asked to open the door, Most. Lucky Khatun replied that she would not open it. She opened it in the face of public demand, but she prevented them from searching. At one point, they forcibly searched Most. Lucky Khatun's bed room and found nothing and when they wanted to search her father-in-law Yasin Ali's bed room Most. Lucky Khatun stopped them. They forcibly entered into the room. He along with Abu Taleb, Sumaiya's aunt and two other local women entered the room. He saw that Yasin Ali's bed sheet was stretched to the floor. Abu Taleb lifted the sheet. He saw two plastic sacks under the bed. Most. Lucky Khatun said that there were pumpkins in it. Abu Taleb pulled out a sack. When lailon's thread of the sack was untied then Sumaiya's head came out.

They started crying. People gathered. The police were called. The police came and opened 2 sacks. Sumaiya's body was found in one sack and Maliha's in the other. The two sacks were small. The 2 children were squeezed in. There were red marks on the 2 children's necks, red marks on the chest in several places. There were blood on the sides of both faces. Sumaiya was wearing a white and gray dress, no pants. Maliha was wearing a red, yellow and white winter sweater and red shirts. The police prepared inquest report of both the bodies in which he put his signature as witness. Maliha's inquest report Ext.1, his signature Ext.1/1, Sumaiya's inquest report Ext.2 and his signature thereon Ext.2/1 police seized alamats by seizure list where he is a witness. The police took the body for post mortem. He did not file separate case. He identified his ejahar Ext.4 and his signature thereon Ext.4/1. The arrested accused Most. Lucky Khatun is in the dock, later he came to know that Most. Lucky Khatun took the gold ornaments from the children and sold it to accused Md. Mizanur Rahman @ Polash. Maliha had a pair of earrings and Sumaiya had a chain and earrings around her neck. He wants justice for the murder of two innocent children.

In his cross P.W.1 stated that he was at home on the day of the incident. Sumaiya's father was abroad at the time of occurrence. Accused Lucky's house is to the west of his house. Sumaiya's house is next door to the east. Taleb is Sumaiya's cousin. On the first day, they informed the police verbally. Lucky, her daughter and father in law live in her house. Her husband lives abroad. Her mother-in-law lives in another house in next

door. They filed a case on the next day of disappearance. In the same afternoon the police went to the place and questioned the locals. It is not written in the ejahar that there was gold or money with the children. He went to Lucky's house for the first time on 14.02.2017, Abu Taleb also entered into the room. In the room there was a box bed, a TV, a showcase, a brick house, a tin built roof and only one door. They left that room and searched the next room to the north. That was also a tin shed brick house. In that room there was a bed, a rack and a box. He found the dead body of victims in this room. He did not notice whether there were other rooms in that house. He felt various after seeing the dead body. They didn't take out the sack before the police came. The police came and took it out. Police was there for about 2 hours. Police took the accused away. The people kept Lucky in that room until the police arrived. He signed the written paper. He signed it 2 hours after the police came. Lucky's father in law was not at home at that time. He did not go to that house after that day. The police came several times. It's not true, Lucky Khatun didn't say that there was pumpkin in the sack. It is not true that he said what the police tortured him. No one beat Lucky Khatun. It is not true, she was beaten. It is not true that he gave false testimony.

P.W.2 Abu Taleb stated in his examination in chief that on 12.02.2017, while he was on duty at New Market, Sumaiya's grand mother, who is his grand mother too, called him and said that Sumaiya was not available. It was 12:12 p.m. she said to search at the station and bus stand.

He kept searching. He asked Sumaiya's mother to come to the police station. They filed a G.D. They searched the area. They didn't find her for 2/3 days. After 3 days, in the afternoon, they decided to search house by house. After 3 houses, house No.4 was Lucky's house. When he went there after Asr, he saw that the gate was locked from inside. He asked her to open the gate. She said who? He said that the child is lost and they are looking for the child. After asking her 2/3 times, Lucky opened the gate. They 5 persons went in. He, Malek, Fatema Begum (Sumaiya's aunt), Nurjahan (Sumaiya's cousin's aunt) and Shahnaz (Sumaiya's aunt). He did not find anything in Lucky's bed room. Then he went into Lucky's father-in-law's room and saw a bed, a self, Lucky was preventing him from entering the room. He forced himself in. The bedsheet was lying on the floor. He removed the sheet and saw 2 white plastic bags under the bed. He asked what's in it. Lucky said there's pumpkin. He pulled one of the bags, the bag opened and his cousin Sumaiya's head came out. They broke down in tears. He locked the door of the room because Lucky was trying to escape. People came. He called the police, the police came and opened the bags where they found Sumaiya had a gray and white pink dress on her body, while Maliha was wearing a red sweater and shorts. Sumaiya had blood on her cheek, a scar on her neck and another on chest and her legs were bent. Maliha was in the same condition. Her legs and arms were twisted. The police prepared inquest report where he is a witness police found sleeping tablets behind the window of that room and also found

sandals, wet pants with urine and wearing cloths of the children and seized those. He put his signature on the seizure list as witness. The police took the body. Maliha was buried next day and Sumaiya was buried the day after that. Lucky took the gold jewelery belonging to Sumaiya and Maliha and sold its to a goldsmith. Accused Lucky and another person Polash are in dock. He identified the two inquest reports and one seizure list and his signature thereon which were marked as ext.1,1/2,2,2/1,3 and 3/1 respectively.

In his cross P.W.2 stated that the I.O. interrogated him on the day of the occurrence. The G.D. was signed by Sumaiya's mother. That G.D. mentioned only two people. There was a description of clothes and golds. They searched 3 houses before Lucky's house. The first was Sumaiya's house. They also searched the informant's house. Lucky and a woman were in Lucky's house. Lucky's father-in-law and brother-in-law live in that house. The mother-in-law lives in another house. Later the brother-in-law and father-in-law came. He did not go to Lucky's house at first. He went later. The police came 20/25 minutes after the information was given. Police were there until 12:22 a.m. They searched the house and made a list of the seized items, the police found wet pants, dress, sandals, sacks, medicines and clothes. The police wrote and took their signatures. He was not there when the gold was recovered from Polash. Police took away Lucky and his father-in-law and mother-in-law. He denied the suggestion put to him that he put his signature on a white piece of paper or that Lucky

did not prevent them or that Lucky did not say that there were pumpkins or that he deposed falsely. Sumaiya's uncle's name is Liton.

P.W.3 Most. Tajrin Khatun deposed that victim Maliha is her child. The informant is her husband. The victim Sumaiya is her daughter's friend. Both of them were about 6 years old. On 12.02.2017, she went to her school in the morning and returned at 10:30 a.m. They changed their clothes and went out to play. Maliha's father came and looked for Maliha around 11:00 a.m., she told him that she was playing outside. He did not find her in the out side. Then they went to Sumaiya's house, where Sumaiya's mother said that she went to play. They searched the area together. Around 1:00 p.m. a man named Dulal said that he saw the children were going after Geeta. They searched Geeta's house but could not find her. On the 1st day a G.D. was filed for Sumaiya. The next day her husband filed a case, 3 days after the occurrence people of the locality formed a team and started searching. After searching from her house, they went to Lucky's house and found the dead bodies of their 2 children, they found the dead bodies in 2 sacks under the bed. Maliha was buried on the 15th and Sumaiya on the 16th. They want justice.

In cross examination P.W.3 stated that Lucky also has a child at the same age as Maliha. Lucky's child will be a little younger. She heard that police took Lucky along with her child. She did not see the body when recovered. She does not know what happened in the house. It is not true that Lucky is innocent or that Lucky knows nothing.

P.W.4 Umme Kulsum deposed that victim Sumaiya is her daughter. Maliha is Sumaiya's friend. On 12.02.2017 after coming from school they went to play at around 10:30 a.m. Maliha was wearing a pink sweater and pant. She had a gold ring in her ears. Sumaiya was wearing a brown dress, pink pant and brown sandals. Sumaiya had gold ring in her ear and gold chain around her neck. Maliha's mother came to look for her at 11:00 a.m. She told her that they were playing together, then the search began. They could not find them anywhere. She lodged a G.D. at the police station. Everyone kept searching, the police came. After 3 days everyone decided to search house by house, starting from Maliha's house, after Asr, they searched, after 4 houses they went to Lucky's house and found 2 bodies in a sack under the bed of Lucky's house. This witness's husband was abroad, he came on the morning of the 16th and Sumaiya was buried on the 16th. She wants justice for the murder of children. Accused Lucky is present at the dock and Lucky had sold the children's gold to Polash goldsmith.

In her cross P.W.4 stated that her husband was abroad and Lucky's husband was also abroad. Police interrogated her, but she did not remember the date of interrogation. She did not see the recovering of the dead bodies from Lucky's father-in-law's house. It is written in her G.D. that child was lost. She denied the defence case that Lucky is not involved with the occurrence, or that Polash does not know about the incident or that both of the accused are innocent.

P.W.5 Most. Fatema Begum deposed that victim Sumaiya is her sister's daughter. On 12.02.2017 Sumaiya and Maliha went missing. They searched for them but could not find them. They called her on mobile and informed her about the missing, she then went to her sister's house in Bhabanipur. A G.D. was filed at the police station on that day. On the 13th Maliha's father filed a case. Police also searched. On the 14th, it was decided to search house by house. After Asr, she, Shahnaz, Nurjahan, Taleb and Malek formed a team and started searching from Maliha's house and after searching 3 house in a group they went to Lucky's house which is house No.4 in serial. The door of Lucky's house was closed from inside. When she asked for opening the door Lucky did not want to open it. When this witness opened the door Lucky stood in the way, Lucky said that there was nothing in her house. The bed sheet was covered up to the bottom. When Nurjahan and Abu Taleb lifted the sheet, they saw 2 sacks, Lucky said that there were pumpkins in the sacks. Lucky did not want to let them see, saying that it was personal belongings. When Taleb and Nurjahan pulled the sack, its mouth opened and Sumaiya's head came out, Lucky then grabbed their legs. Lucky said that she killed the children for the jewelry and requested them not to inform the police. They were screaming. The police came after receiving the news, Lucky confessed to the police. Sumaiya had blood on her face, there were marks on her neck. It seemed that the body was forced into the sacks, Sumaiya was wearing a brown dress, no pants, Maliha had blood stains on her face, she was wearing a

white, yellow and red sweater and red pants. Maliha had a stain on her neck. The police seized sharee, bed-sheet, dress, Sandals. Police prepared inquest report. Maliha was buried on the 15th and Sumaiya was buried on the 16th. Lucky is on the dock, Lucky admitted that she sold the gold to Polash.

In her cross P.W.5 stated that the place of occurrence was about 2 miles from her house, they did not have leader and they were searching together. They found the dead bodies in Lucky's father-in-laws room. The room was 5/6 feet wide and 10 feet long, she was in the room where the dead bodies were recovered for about half an hour. When Nurjahan and Taleb pulled the sack, Sumaiya's face came out. They did not take the dead body out of the sack. The police came and took the dead body out. Jahanara and Malek took Maliha's sack out. All of them talked to Lucky. She did not go back to that room after half an hour. The Police interrogated her. It is not true that she did not tell the police what she deposed before the Court. It is not true that Lucky did not confess. It is not true that Lucky did not say that there were pumpkins in the sacks. It is not true that Lucky did not sell gold to Polash, Polash's house is in Ghoshpara. There were blood on the left side of Sumaiya's face, there was a black mark on her neck. It is not true that Lucky is not guilty or that she gave false evidence in a false case.

P.W.6 Nurjahan deposed in her chief that Sumaiya was her sister Kulsum's daughter. Sumaiya was 7 years old child. Maliha was next door

tenant's daughter, Maliha was 6 years old child. 2 friends went missing on 12.02.2017 at 10/10:30 a.m. They got news at 11:00 a.m. They started searching. G.D. was lodged around 12:00 p.m. when the children were not found, a case was filed at the police station in the next day. 3 days after missing on the 14th, after Asr prayer, before Magrib, they decided to search house by house. They formed a group of 5 people. They started from Maliha's house. After 3 houses they went to Lucky's house, the 4th house. They knocked on the door. The door was locked from inside. At first Lucky did not want to open the door, she said "it can not be opened now." They told that they were looking for the child. At one point, they forced in their way and Fatema, Taleb and Jharna entered Lucky's room and Malek and she went to Lucky's father-in-law room. Lucky put her both hands on the door and stopped them from entering that room. When they tried to forcefully enter, Lucky grabbed her throat, Taleb rescued her. The bed in that room was covered with a sheet all the way to the floor. As soon as she lifted the sheet she saw 2 white plastic sacks under the bed. Lucky said, there were pumpkins in that. Taleb and she pulled out 2 sacks. As soon as one sack opened, Sumaiya's face came out. Lucky then grabbed her leg and said that she killed the children for the jewelry and requested not to inform the police. The police came after receiving the information. Sumaiya was wrinkled and stuffed in a small bag, there was a mark on Sumaiya's neck. There was a bloodstain on the corner of her lips. There was a mark on her chest. There was a cut on her back. There were black marks on Sumaiya's

legs from being tied with rope. Sumaiya was wearing a brown dress, no pants. Maliha was wearing a red, white, yellow sweater with a hat and red pants. She did not notice Maliha's marks. The Police found an empty strip of sleeping pills behind the window. Police seized 20 items including sandals, clothes, sacks, police prepared inquest report. Lucky is on the dock. Lucky informed that she sold gold to the Polash goldsmith.

In her cross P.W.6 stated that she did not see Lucky before the occurrence. She told the occurrence to the police. Police interrogated her before Isha prayer. There were 2 rooms in that house. When they knocked, Lucky came to the gate. She blocked her by extending her hands saying she would not let them enter into Lucky's father-in-law's room. She did not enter Lucky's room. She was in Lucky's father-in-laws room for 25 minutes. After the police arrived she came out. After they entered some local people entered. Lucky was in that room at that time. They did not take out the whole dead body from the sacks, police came and took it out. Lucky held her mouth and throat while entering the room. It is not true that Lucky did not hold her throat. It is not true that Lucky did not say that she killed for the jewellery. It is not true that Lucky was implicated in the case basing on suspicion.

P.W.7 Liton Ali deposed that Sumaiya was his niece and Maliha was Sumaiya's friend. He got a call on 12.02.2017 at around 11:00 a.m. that Sumaiya and Maliha could not be found. He came home and searched everywhere. Sumaiya's mother filed a G.D. on 13.02.2017 and Maliha's

father filed a case. After Asr, on the 14th it was decided to search every house in the area. 5 people including Malek went to Lucky's house. Two dead bodies were found in Lucky's house at her father-in-law's room. Hearing the screams he ran to there. Maliha and Sumaiya's body were in two sacks. Lucky asked to forgive her and she also told that she killed them for their gold and she sold their gold to Polash. Police took the dead bodies and seized their clothes, pillows, bed-sheets, strip of sleeping pills, sandals total 20 items. He signed the seizure list as an witness and identified the seizure list as Ext.3 and his signature thereon as Ext.3/1. He was also a witness of the inquest reports of the two dead bodies. He also identified the two inquest reports and his signature thereon which were marked as Ext.1, 1/3 and 2,2/3. He also identified the accused Lucky and Polash on the dock.

In the cross he said that Lucky's house was 3 houses to the west of their house. They first looked for relatives' houses. On the 14th, they searched house by house. He along with Nurtaj and Kabir ran to the Lucky's house on hearing the screaming. They went and saw Taleb, Malek, Fatema and Sumaiya's aunt their. Then many people came. He stayed outside the house until the police come. I.O. has interrogated him. He denied the suggestions put to him that he gave false testimony.

P.W.8 Md. Golam Nabi stated in his examination-in-chief that he is Sumaiya's uncle. On 12.02.2017 he received news that Sumaiya and Maliha were not found. He went to their house. He kept looking for the house of

the relatives. On the 13th Maliha's father filed a case. On the 14th they decided to search house by house in groups. 10/15 minutes before Magrib, he heard a scream, the children had been found. He ran to Lucky's house. When he went there, he saw the dead bodies of Maliha and Sumaiya dead in 2 sacks with their heads sticking out. Lucky told that she killed the children for their gold and Lucky was requesting them not to inform the police and to forgive her. The police came and arrested Lucky. Police took the bodies of the two children out of the sack. The police collected various samples and took the signature of the witnesses. Police also made inquest report of the bodies. Post mortem was done. Maliha was buried on the 15th and Sumaiya on the 16th.

In his cross P.W.8 stated that he went there and saw two dead bodies. Malek, Sumaiya's aunt and cousin were there. There were 5 people and slowly more people came. Lucky was there. He was looking from the 1st day. He denied the suggestions that Lucky did not say that she killed the children out of greed for gold or that he gave false testimony as he is relative.

P.W.9 Nurtaj Ali stated that the victims, the informant and accused Lucky are his neighbours. On the 12th he heard that Maliha and Sumaiya were missing since 11:30 a.m. That day, when he went out after Asr prayers, Lucky said that her daughter saw them; Sumaiya and Maliha had passed by this road. Lucky's daughter is little younger to them. Before Magrib on 14th his wife called him and said that dead bodies were found in

the sacks at Lucky's house. He then ran to Lucky's house and found Sumaiya's aunts and cousin there and Lucky was requesting to save her and said that she killed the children for money. 2 heads were sticking out of two sacks. After a while police came and made inquest report and seized 18/19 items. Lucky sold the gold of the children to one goldsmith. He identified the accused Lucky on the dock.

In his cross P.W.9 stated that at the time of occurrence Lucky's husband was in abroad. He denied all the suggestions put to him by the defence.

P.W.10 Md. Ariful Islam @ Arif stated that victims, their family and accused Most. Lucky Khatun was his neighbours. On 12.02.2007 at around 12:30 p.m. he heard miking of missing news of Sumaiya and Maliha. They also kept searching. On 14th at 5:30 p.m. he heard that the bodies of two children were found in Lucky's house. He went there and saw many people and police over there. The dead bodies of two children were stuffed in plastic bags, their faces were sticking out in Lucky's father-in-law's room. Lucky was requesting not to arrest her as she had a daughter. Lucky said in presence of all people that she killed the children for their gold Jewellery.

In cross examination, this P.W.10 stated that he went to the place of occurrence during Magrib prayer. He saw that police were questioning Lucky. He denied that he gave evidence out of emotion.

P.W.11 Dr. Ayesha Julekha deposed that she was working at Sadar Hospital on 15.02.2017. That day, a 3-membered medical board conducted

an autopsy on the bodies of children Sumaiya (7) and Maliha(6). During autopsy she found bruises on the front and sides of Sumaiya's neck. She found a raised scar on her right shoulder. They gave their opinion regarding Sumaiya that "In their opinion, death of the above deceased was due to shock and asphyxia as a result of throttling which was ante mortem and homicidal in nature and there was no sign of sexual violence." She identified the post mortem report of Sumaiya and her signature there on which were marked as Ext.4 and 4/1. She also identified the signature of Dr. Najir Ahmed and Dr. Shofiqul on the post mortem report as she knows their signature as they are her colleagues. Maliha had bruises on the front and sides of her neck. The skin was peeled off on the front and sides of her neck. They gave their opinion for Maliha that the death of the above deceased was due to shock and asphyxia as a result of throttling which was ante mortem and homicidal in nature and there were no signs of sexual violence. P.W.11 also identified the post mortem report of Maliha and her signature and the signature of her colleagues who were with her during autopsy and all of these were marked as Ext.6 series.

P.W.11 stated in her cross that they did the autopsy on Sumaiya's body first on 12 noon and Maliha at 1:00 noon. They first took draft notes and later entered the information in the form. They saw the chalan and inquest report. They wrote what they found, there was absolutely no dispute with the inquest report. Ecchymosis and bruises are found on the neck of Sumaiya. They did not mention the colour of the wound. When

they did the autopsy on the 15th, the body would be about 3 days old. If the death was due to confinement in the box bed, they would not have found the signs of throttling. Death was due to asphyxia. This is throttling. There were marks on the throat due to pressure from the hand. The report does not mention how many fingerprints were left. There was no forensic expert at Sadar Hospital. She denied the suggestion that they submitted a false report because they influenced by emotions as the murders were sensational murders.

P.W.12 Md. Golam Mostofa deposed that he knows the informant and goldsmith Polash, his jewellery shop is on the west side of his house. He heard that two girls were murdered for gold and the golds were sold to Polash. In his cross P.W.12 stated that Polash has been in the gold business for 3 or 4 years.

P.W.13, Constable Md. Abu Bakar deposed that he carried the dead bodies of Maliha and Sumaiya for post mortem through 2 separate chalan form and produced the wearing clothes of the deceased to the investigating officer after the post mortem, who seized them by a seizure list. That same night he went to Smriti jewelers, Polash's shop in Namoshankarbat, Jhapaipara. They recovered 1" long sheet of melted gold and he signed the seizure list.

In his cross P.W.13 stated that he could not tell the holding number of Lucky's house. He reached that house in the evening. The 1st seizure list was written in Lucky's house. He was with S.I. Khairul. Gold was not

recovered from the house but from Polash's shop. He carried the dead body from Lucky's house to the Hospital. Polash himself opened the steel cupboard and took the melted gold out of it. He denied that he did not give the correct deposition.

S.I. Md. Khairul Islam as P.W.14 deposed that on 13.02.2017 he was working at Chapai Sadar police Station. The O.C. appointed him as the I.O. of this case. He visited the place of occurrence and prepared a sketch map, interrogated the witnesses, arrested the suspected accused Geeta Rani and Shambhu and produced them before the Court, tried to rescue the victims. The next day, on 14.02.2017 he received a news at 17:20 hours that the dead body of Maliha and Sumaiya were found in the house of Lucky Khatun. He then went to the spot with the accompanying force at 17:45 hours and found the dead bodies of the victims in 2 plastic sacks. He took them out of the sacks and prepared inquest report in presence of witnesses and found 2" ecchymosis on the neck and 1" round reddish mark on the middle and left side of the chest of Sumaiya. He identified the inquest report and his signature thereon which were marked as ext.1, 1/4, 2 and 2/4. Local people had detained Lucky in that house and Lucky said that she killed Sumaiya and Maliha for their gold jewellery and Lucky also said that she sold the gold and paid off her debt. He took Lucky to his custody and seized alamats by seizure list and took signature of the witnesses on it, he then send the dead bodies through 2 separate chalans to the Hospital for autopsy by Constable Abu Bakkar. He produced Lucky Khatun before the

Court on the next day, where she made a confessional statement under section 164 of the Code of Criminal Procedure. On the basis of the confession of Lucky khatun he arrested the gold purchaser Md. Mizanur Rahman @ Polash and recovered the melted gold from the purchaser and seized it by seizure list. He recorded statements of 7 witnesses under section 161 of the Code of Criminal Procedure. He also collected the copy of the G.D. which was lodged on 12.02.2017 upon the missing of two children. He produced the alamats before Court, which were marked as material exhibits. Following the instruction of the authority he then handed over the charge of investigation to the O.C. Mazharul Islam.

P.W.14 stated in his cross that he was appointed as I.O. on 13.02.2017 at 10:20 a.m. He forwarded Lucky Khatun to the Court on 15.02.2017 at 12.05. A G.D. was filed after missing the children where there were description of the dresses of the children but there was no description of the gold jewellery of the victims. On receiving the information by radio, he directly went to the place of occurrence. He denied suggestions put to him that accused Lucky was threatened with death to compel her to make confessional statement. He also denied that he did everything by sitting at home without doing any investigation. After recovering the bodies he did not find any chance for chemical examination.

Inspector Md. Mazharul Islam as P.W.15 stated that while he was working as O.C. Sadar, on 13.02.2017, when the informant filed the FIR he recorded the case and gave the investigation charge to SI Khairul, who

inspected the place of occurrence and prepared sketch map with index and recorded the statement of witnesses under section 161 of the Code, prepared inquest reports and send the body for post mortem. Accused Lucky Khatun made a confessional statement. Considering the importance of the case, authority transferred the investigating power of the case to him on 16.02.2017. He again revisited the place of occurrence and found it correctly represented in the map and index prepared by 1st I.O. He forwarded the accused Md. Mizanur Rahman @ Polash and yasin to the Court. He interrogated 18 people and recorded their statements and he then handed over the case diary (C.D.) to the authorities on 15.03.2017 due to his transfer.

In his cross P.W.15 stated that, they all went the place of occurrence after the bodies were recovered. They went to the place of occurrence at 17:45 hours on 14.02.2017, and they were there until 10:00/10:30 p.m. They stayed in that area all the night. Lucky Khatun was arrested from the place of occurrence. Her father-in-law was there. Lucky and her father-in-law lived in that house. Their relatives received the house, but do not remember their name. They arrested Mizanur @ Polash and forwarded to the Court. He did not get the swab and blood samples chemically tested. He did not record the statements of doctors under section 161 of the Code. He denied the suggestion that he created all the papers without holding any investigation.

P.W.16 police Inspector Chowdhury Zubaer Ahmed deposed that as the 2nd I.O. had been transferred, he visited the place of occurrence upon being assigned as 3rd I.O. He found the index and map prepared by the previous I.O. as correct. He interrogated the witnesses and found their statements correct. He also interrogated 4 witnesses and recorded their statements. He did not find any new evidence. He received the post mortem report and perused it. After the investigation basing on the evidences, he submitted charge sheet being No.252, dated 30.04.2017 against accused Lucky Khatun and Mizanur Rahman Polash at sadar police station.

In the cross, P.W.16 stated that he did not know which of the two victims died first. There was no description of injury in the inquest of Sumaiya. There was description of injuries in the Sumaiya's post mortem report. He presented what he found in the investigation. Lucky said in her confession that she kept the children in the box bed and found them dead in the morning. The doctor's report said that they were strangled to death. The investigating officer found that they were strangled to death. He did not find anything about the death with anesthetic. He did not do any chemical tests on the swab or blood. Lucky went to sell gold to Polash. It is not true that Polash did not know that it was stolen goods. He denied that he submitted a false charge sheet.

P.W.17 Jewel Adhikary stated that while he was working as a Senior Judicial Magistrate at the CJM Court, Chapainawabganj on 15.02.2017 on

the presentation of SI Khairul Islam he recorded the confessional statement of accused Lucky Khatun under section 164 of the Code of Criminal Procedure as per the prescribed rules. The accused has given her statement voluntarily and without any coercion. He identified the confessional statement and his signature thereon, which were marked as Ext.17 series. Later on 16.02.2017 as per the presentation of SI Khairul Islam he duly recorded the confessional statement of accused Mizanur Rahman @ Polash under section 164 of the Code of Criminal Procedure. He read out the written statement to him and took his signature.

In his cross P.W.17 stated that it is not true that the CD of the case and the 'statement' under section 161 were submitted along with the application under section 164 of the Code. It is not true that there is no date under the signature in column 5 of the form, but the date has been mentioned in other designated places. He asked the question, "I am a Magistrate, not a police officer" but it is not written. The confession will be used against him as evidence is not mentioned. Lucky Khatun did not say about any injury on interrogation. The accused voluntarily and truthfully confessed her guilt.

In his cross on behalf of accused Mizan P.W.17 denied all the suggestions put to him that SI Khairul did not present the accused or that there is no certificate to the effect that the statement of the accused is true or that he recorded the statement as per the I.O.'s statement.

These are all oral and documentary evidences adduced by the prosecution to bring home the charge leveled against the accused persons. Out of the 17 witnesses P.W.1 is the informant and father of one of the children victim Maliha, P.W.3 is child victim Maliha's mother, P.W.4 is mother of another child victim Sumaiya, P.W.2 is victim Sumaiya's cousin and P.W.5 and 6 are victim Sumaiya's aunt, P.W.7 and 8 are victim Sumaiya's uncle, P.W.9 and 10 are neighbours, P.W.11 is the doctor performing autopsy of the dead bodies, P.W.12 is the neighbor of the accused goldsmith, P.W.13 is the police constable by whom dead bodies were sent from the place of occurrence to the Hospital for autopsy, while P.W.14,15 and 16 are investigating officers and P.W.17 is the Magistrate, who recorded the confessional statements of both accused under section 164 of the Code of Criminal Procedure.

Now let us turn to the evidences which are available on record to ascertain the guilt of the convict-accused. At this juncture, it is pertinent to embark upon the discussion in respect of condemned accused prisoner Lucky Khatun.

P.W.1, the informant stated in his deposition that he is the informant and victim Maliha,(age 6 years) is his daughter. Victim Sumaiya (age 7 years) is Maliha's friend. On 12.02.2017, Maliha and Sumaiya went to school together at 7:30 a.m. They came home after school at 10:30 a.m. They changed their clothes and after 5-10 minutes went to play in the alley in front of the house. He asked his wife at about 11:00 a.m. where is

Maliha? He went out side and saw that Maliha was not there. He searched around and went to Sumaiyas house. Sumaiya's mother said that they were playing together. Sumaiya was not at home. They all searched together.

At one point Dulal Mia of Jannatpara said that he had seen two children were following Gita Rani. At around 12:50/1:00 p.m. he went to Gita Rani's house and on asking she said different things.

They became suspicious. He called the police. The police came to Gita's house. They took Gita to the police station. On the morning of 13.02.2017 he filed case against Gita Rani. He searched for his daughter but could not find her. On 14.02.2017 local people decided to search all the houses in the area. Starting from his house they searched 3 houses and then Most. Lucky Khatun's house was house number 4. Before magrib, at around 5:00 p.m. he went with local people to Most. Lucky Khatun's house. The gate was locked from inside, when he asked to open the gate, Most. Lucky Khatun replied that she would not open it. She opened it in the face of public demand, but she prevented them from searching. At one point, they forcibly searched Most. Lucky Khatun's bed room and found nothing, when they wanted to search her father-in-law Yasin Ali's bed room, Most. Lucky Khatun stopped them. They forcibly entered. He along with Abu Taleb, Sumaiya's aunt and two other local women entered the room. They saw that Yasin Ali's bed sheet was stretched to the floor. Abu Taleb lifted the sheet. They saw two plastic sacks under the bed. Most. Lucky Khatun said that there were pumpkins in it. Abu Taleb pulled out a

sack. When nailon's thread of a sack was untied Sumaiya's head came out. They started crying. People gathered. The police were called. The police came and opened 2 sacks. Sumaiya's dead body was found in one sack and Maliha's in the other. The two sacks were small. The 2 children were squeezed in. There were red marks on the 2 children's necks, red marks on the chest in several places. There were blood on the sides of both faces. Sumaiya was wearing a white and gray dress, no pants. Maliha was wearing a red, yellow and white winter sweater and red sharts. The police prepared inquest report of both the dead bodies in which he put his signature as witness. Maliha's inquest report Ext.1, his signature Ext.1/1, Sumaiya's inquest report Ext.2 and his signature thereon Ext.2/1. The police seized the alamats and prepared a sizure list where he was a witness. The police took the dead bodies for post mortem. He did not file separate case. He identified his ejahar Ext.4 and his signature thereon Ext.4/1. The arrested accused Most. Lucky Khatun was in the dock, later he came to know that Most. Lucky Khatun took the gold ornaments from the children and sold it to accused Md. Mizanur Rahman @ Polash. Maliha had a pair of earrings and Sumaiya had earrings and a chain around her neck. He wants justice for the murder of two innocent children.

In his cross P.W.1 stated that he was at home on the day of the incident. Sumaiya's father was abroad at the time of occurrence. Lucky's house is to the west of his house. Sumaiya's house is next door to the east. Taleb is Sumaiya's cousin. On the first day, they informed the police

verbally. Lucky, her daughter and father-in-law of Lucky live in Lucky's house. Her husband lives abroad. Her mother-in-law lives in another house next door. They filed a case the day after the disappearance. That same afternoon the Inspector went, he questioned the locals. It is not written in the ejahar that there was gold or money with the children. He went to Lucky's house for the first time on 14.02.2017, Abu Taleb also entered. First he entered Lucky Khatun's room. In that room there was a box bed, a TV, a showcase, a brick house, a tin roof, only one door. They left this room and searched the next room to the north. That was also a brick house, a tin roof. In that room there was a bed, a rack, a box. They found the dead bodies in this room. He did not notice if there were other rooms in that house. He felt different after seeing the body. They did not take out the sack before the police came. The police came and took it out. Police was there for about 2 hours. Police took the accused away. The people confined Lucky in that room until the police came. He signed the written paper. He signed it 2 hours after the police came. Lucky's father in law was not at home at that time. He did not go to that house after that day. The police came several times. It's not true, Lucky Khatun did not say that there were pumpkins in the sacks. It is not true that he said what the police tutored him. No one beat Lucky Khatun. It is not true, she was beaten. It is not true that he gave false testimony.

P.W.2 Abu Taleb, the cousin of deceased Sumaiya, P.W.5 Fatema and P.W.6 Nurjahan the aunts of Sumaiya corroborated P.W.1 and stated

that 2 friends Sumaiya and Maliha went missing on 12.02.2017 at 10/10:30 a.m. They got news at 11:00 a.m. They started searching. G.D. was lodged around 12:00 p.m. when the children were not found, a case was filed at the police station in the next day. 3 days after the missing on the 14th, after Asr prayer, before Magrib, they decided to search house by house. They formed a group of 5 people. They started from Maliha's house. After 3 houses they went to Lucky's house, the 4th house. They knocked on the door. The door was locked from the inside. At first Lucky did not want to open the door, she said "it can not be opened now." They told that they were looking for the child. At one point, they forced in their way and Fatema, Taleb and Jharna entered Lucky's room and Malek and P.W.6 went to Lucky's father-in-law's room. Lucky put her both hands on the door and stopped them from entering into that room. When they tried to forcefully enter, Lucky grabbed P.W.6 Nurjahan's throat, Taleb rescued her. The bed in that room was covered with a bed sheet all the way to the floor. As soon as they lifted the sheet they saw 2 white plastic sacks under the bed. Lucky said, "there are pumpkin in that." Taleb and Nurjahan pulled out 2 sacks. As soon as one sack opened, Sumaiya's face came out. Lucky then grabbed Nurjahan's leg and said that she killed the children for the jewelry and requested not to inform the police. The police came after receiving the information. Sumaiya was wrinkled and stuffed in a small bag, there was a mark on Sumaiya's neck. There was a bloodstain on the corner of her lips. There was a mark on her chest. There was a cut on her back. There were black marks on

Sumaiya's legs from being tied with rope. Sumaiya was wearing a brown dress, no pants. Maliha was wearing a red, white, yellow sweater with a hat and red pants. Police found an empty strip of sleeping pills behind the window. Police seized 20 items including sandals, clothes, sacks, police prepared inquest report. All the witnesses identified Lucky on the dock. Lucky informed the witnesses that she sold gold jewellery of the kids to the Polash goldsmith.

Victim Maliha's mother P.W.3 and Sumaiya's mother as P.W.4 also corroborated P.W.1 in their deposition. The uncles of victim Sumaiya as P.W.7 and 8 also corroborated the positive ascertainment of P.W.1.

P.W.9 and 10 are important neutral witnesses, as both of them are neighbours of informant and accused Lucky Khatun. Among them P.W.9 Nurtaz Ali deposed that the victims, the informant and accused Lucky are his neighbours. On the 12th he heard that Maliha and Sumaiya were missing since 11:30 a.m. That day, when he went out after Asr prayers, Lucky said, my daughter saw them; Sumaiya and Maliha had passed by this road. Lucky's daughter was little younger to them. Before Magrib on 14th his wife called him and said that bodies were found in the sacks at Lucky's house. He then ran to Lucky's house and found Sumaiya's aunts and cousins and uncle there and Lucky was requesting to save her and said that she killed the children for money. 2 heads were sticking out of two sacks. After a while police came and made inquest report and seized 18/19 items. Lucky

sold the gold of the children to one goldsmith. He identified the accused Lucky on the dock.

In his cross P.W.9 stated that at the time of occurrence Lucky's husband was in abroad. He denied all the suggestions put to him by the defence.

P.W.10 Md.Ariful Islam Arif also stated in his examination in chief that victims and their family and accused Lucky Khatun were his neighbours. On 12.02.2007 at around 12:30 p.m. he heard miking of missing news of Sumaiya and Maliha. They also kept searching. On 14th at 5:30 p.m. he heard that the bodies of two children were found in Lucky's house. He went and saw many people and police there. The bodies of two children were stuffed in plastic bags, their faces were sticking out in Lucky's father-in-law's room. Lucky was requesting not to arrest her as she had a daughter and Lucky said in presence of all people that she killed the children for their gold Jewellery.

In the cross examination this P.W.10 stated that he went to the place of occurrence during the Magrib prayer. He saw that police were questioning Lucky. He denied that he gave evidence out of emotion.

All of the above mentioned P.Ws. had been cross-examined by the defence elaborately, but nothing could be elicited to shake their credibility in any manner whatsoever.

It transpires from the above credible evidences, firstly that, on 12.02.2017 two kids Maliha (6) and Sumaiya (7) who were close neighbours

and friends, came home after their school at 10:30 a.m. and then they after changing their dress within 5-10 minutes went to play in the alley in front of their house and thereafter they were not found any where.

Secondly, the local people and police were searching the kids everywhere but the kids were not found.

Thirdly, on 14.02.2017 the local people and relatives of the missing kids decided to search house by house and they formed a group of 5 persons to search and started searching house by house.

Fourthly, after searching 3 houses when they tried to search Lucky Khatun's house as house No.4, Lucky Khatun prevented them from entering her house and then the team forcibly entered Lucky's house.

Fifthly, on searching Lucky Khatun's house the dead bodies of the two missing kids were recovered from Lucky's house. The dead bodies were found in two sacks under the bed of Lucky's father-in-law.

Sixthly, Lucky's father-in-law was not present in the room at that time and Lucky Khatun admitted her guilt to the present relatives and witnesses by grabbing their legs and requested them not to inform the matter to the police.

Seventhly, police came on receiving the information and took the bodies out from the sacks and prepared inquest report and send the dead bodies for autopsy and apprehended Lucky Khatun.

So the dead bodies of two kids who were missing from 12.02.2017 were recovered from their neighbor Lucky Khatun's house on 14.02.2017

and Lucky Khatun resisted the searching team firstly from entering her house and secondly from entering her father-in-law's bedroom from where the dead bodies were found. The conduct of Lucky Khatun as to resisting the searching team transpires that she had the full knowledge about the dead bodies. Importantly that, it is proved by corroborative testimonies of P.Ws. that Lucky Khatun admitted in presence of witnesses, who were in the searching team, that she killed the kids for their jewellery.

The 1st I.O. of the case P.W.14 stated in his deposition that he produced accused Lucky Khatun before the Court on the next day of her arrest, where she voluntarily confessed. P.W.13 is the Judicial Magistrate who recorded the confessional statement of accused Lucky Khatun under section 164 of the Code of Criminal Procedure. The contents of the confessional statement made by the accused Lucky Khatun run as follows:-

“আমি মোসা: লাকী খাতুন। আমার স্বামী মো: ইব্রাহীম আলী দুবাইতে থাকে। আমার বাড়ীর ০৪টি বাড়ী পর মালিহা ও সুমাইয়া নামে দুটি মেয়ে বয়স যথাক্রমে ০৬ ও ০৭ বছর হবে। তারা প্রায়ই আমার বাড়ীতে আমার মেয়ে ইলমার (বয়স ০৪ বছর) সাথে খেলতে আসত। মালিহা ও সুমাইয়া ১২.০২.২০১৭ তারিখ রোজ রবিবার সকাল ১০:৩০ ঘটিকার সময় আমার বাড়ীতে আসে আমার মেয়ে ইলমার সাথে খেলার জন্য। আমি তখন আমার মেয়ে ইলমাকে আমাদের পাশের বাড়ী আমার শ্বশুরের কাছে পাঠিয়ে দেই। আমি মালিহা ও সুমাইয়াকে আমার মেয়ের খেলনা দিয়ে খেলার জন্য আমার ঘরে ডাকি এবং তারা খেলনা দিয়ে খেলতে থাকে। কিছুক্ষণ খেলার পর বলে ইলমা নেই আমরা বাড়ী যাব। আমি তাদেরকে বলি তাদের বাড়ী যেতে হবে না। তোরা এখানে থাকবি। আমি ঘরের দরজা লাগিয়ে দেই। ওরা বাড়ী যেতে চাইলে তাদেরকে ধমক দেই এবং তারা চুপ হয়ে যায়। আমি বাইরে থেকে দরজা লাগিয়ে দেই এবং ঘরের কাজকর্ম করি। তখন আমার শ্বশুর ঘরে ছিলনা।

পরে আমার মেয়ে ইলমাকে বাড়ীতে এনে গোসল করিয়ে আবার শ্বাশুড়ীর কাছে পাঠিয়ে দেই। এই ফাকে সুমাইয়া ও মালিহার কাছে যাই। আমি ঘরে ঢুকতেই সুমাইয়া বলছে আপা আমাদেরকে বাড়ীতে রেখে আসেন। আমাদেরকে কেন আটকায়ে রেখেছেন। আমি তখন বলি আমার টাকার দরকার তোদের সোনার চেন ও কানের বালি দিতে হবে। সুমাইয়া বলে এগুলো নিতে হবে না। আমার বাড়ীতে মাটির ব্যাংকে টাকা আছে। আমি ঐ টাকা আপনাকে দিব। আমি বলি ঐ টাকায় আমার হবে না। এরপর সুমাইয়া আমাকে তার গলার চেন খুলে দেয় ও কানের বালা খুলে নিতে বলে। আমি কানের বালি খুলে নেই। সুমাইয়ার দেখা দেখি মালিহা ও কানের বালি খুলে নিতে বলে। আমি তার কানের বালি খুলে নেই। তারপর আমি তাদেরকে ঘরে আটকে রাখি। আমার শ্বশুর মোঃ ইয়াসীন আলী দুপুরে নামাজ পড়ে দাওয়াত খেতে গিয়েছিল। আমি সোনার গহনা নিয়ে ঐ দিন বিকাল ৪:০০ ঘটিকার সময় মিরের খেলেন ও সূতি জুয়েলার্স এর মালিক পলাস এর কাছে যাই এবং গহনা বিক্রীর কথা বলি। সে একুশ হাজার টাকা দাম দিতে চায়। কিন্তু টাকা না থাকায় ঐদিন সে আমার বাড়ী থেকে একটু দূরে খাদিম দালালের বাড়ীর সামনে বিকাল/সন্ধ্যা ৬:৩০ ঘটিকার সময় এসে টাকা দেয়। ঐ টাকা থেকে আমার কাছ থেকে সুদ পেত সুফিয়া/সফিয়া এবং তাকে দুই হাজার টাকা দেই। আমার মায়ের কাছে লোনের কিস্তি বাবদ দশ হাজার টাকা পাঠাই। রহিম দোকানদারকে সুদ বাবদ দুই হাজার টাকা দিয়েছিলাম। বাচ্চারা বাড়ী যাইতে চাইলে তাদেরকে বার বার ধমক দেই এবং তারা ভয়ে আর বাড়ী যেতে চায়না। ঐ দিন রাতে বাচ্চাদুটিকে আমার পাশে নিয়ে ঘুমাই। আমি তার পরের দিন আমার বাচ্চাকে স্কুলে রেখে এসে মালিহা ও সুমাইয়াকে সকালের খাবার খাওয়াই এবং তাদেরকে বন্দী করে রেখে দেই এবং দুপুরের খাবার খাওয়াই। রাতে বাচ্চা দুটিকে আবার খাওয়াই। আমি সন্ধ্যা ৭:১৫ ঘটিকার সময় মালিহা ও সুমাইয়াকে বস্ত্র খাটের বস্ত্রে অর্থাৎ খাটের চালার নিচে রেখে দেই এবং চালা বা বিট দিয়ে ঢেকে দেই। রাত ৯:৩০ ঘটিকার সময়। বাচ্চা দুটিকে সেখানে উঠিয়ে প্রস্রাব করিয়ে আবার সেখানে রেখে দেই। সকাল ৮:৩০ ঘটিকার সময় খাটের বস্ত্রের মধ্য দিয়ে বাচ্চা দুটিকে উঠাই এবং দেখি তারা মৃত। আমি বাচ্চা দুটিকে বস্ত্রের (খুতেতে) মধ্যে ভরে আমার শ্বশুরের

খাটের নিচে রাখি রোজ মঙ্গলবার। সুমাইয়া ও মালিহার ফুফু, খালারা মঙ্গলবার সন্ধ্যা ৬:৩০ ঘটিকার সময় আমার বাড়ী তল্লাসী করে এবং খাটের নিচে বস্তা খুলে বাচ্চা দুটিকে দেখে। এরপর তারা পুলিশ এনে আমাকে গ্রেফতার করে আনে।”

It is evident from her confessional statement that Most. Lucky Khatun confined the kids into her bed room and then she sold the gold jewellery of the kids to goldsmith accused Polash and then she hide the dead bodies of the kids under the bed of her father-in-law by putting the bodies into two different sacks. Though the 164 statement of accused Lucky Khatun does not disclose the manner of Killing but we find from the testimonies of P.Ws., who were present on the spot at the time of recovering the dead bodies, that there were marks on the necks of the bodies and the doctor Ayesha Julekha who conducted autopsy stated in her deposition as P.W.11 that during autopsy she found bruises on the front and sides of Sumaiya's neck and they opined as to the cause of death of victim Sumaiya that the death of Sumaiya was due to shock and asphyxia as a result of throttling which was ante mortem and homicidal in nature and there was no sign of sexual violence. The doctor as P.W.11 then identified the autopsy report of Sumaiya and her signature thereon.

Similarly, P.W.11 deposed that victim Maliha had bruises on the front and sides of her neck, the skin was peeled off on the front and sides of her neck and as to the cause of death of Maliha doctors gave their opinion that the death of Maliha was due to shock and asphyxia as a result of throttling which was ante mortem and homicidal in nature. P.W.11

stated in her corss that “১৫তারিখ যখন ময়না তদন্ত করি তখন লাশ প্রায় ৩ দিনের হবে। বক্স খাটে শ্বাসরুদ্ধ হলে গলা টিপে মারার সাইন পেতাম না। অড়সবঁভত এর কারনে মৃত্যু। গলা টিপে হত্যা এটা। হাতের চাপের কারনে গলায় দাগ হয়েছে।”

The inquest report of deceased Maliha ext.2 contains that “গলায় আঙ্গুলের লালচে অনুমান ২’’x ২’’ চাপ দাগ পরিলক্ষিত হয়। বুকের মাঝখানে ও বামসাইডে ১’’x ১’’ গোল লালচে দাগ। ইহা ছাড়া শরীরের অন্য কোনও স্থানে জখম পরিলক্ষিত হইল না।”

During post mortem doctors found following injuries on Sumaiya’s body:- (1) A diffuse Ecchymosis on front and both sides of neck and an abrasion just like the size of a pea on front of neck

(2) An abrasion $1'' \times \frac{1}{2}''$ on the right shoulder.

On dissection of the above injuries subcutaneous tissues were found to be congested.

And doctors found the following injuries on deceased Maliha’s body:- A diffuse Ecchymosis with multiple abrasions on front and both sides of neck.

On dissection subcutaneous tissues were found to be congested.

So it is evident from the autopsy reports exts.4 and 6, inquest report exts.1 and 2 and from the testimony of P.W.11 and also from the testimonies of P.Ws. who were present during recovery of dead bodies that there were marks on the neck of the dead bodies and while holding autopsy the doctors have clearly found that when they did the autopsy on 15th, the dead bodies would be about 3 days old and the death were due to throttling

as there were clear signs of throttling on the dead bodies. So it is proved that the kids were murdered by throttling and they were not died because of their confinement into the box of bed as is narrated in the 164 statement of accused Lucky Khatun, because Dr. witness P.W.11 made it clear in her cross that if the death was for suffocation due to confinement in the box of bed then the doctors would not have found signs of throttling in the dead bodies.

1st I.O. as P.W.14 deposed that according to the information of the accused Lucky Khatun, he arrested the gold buyer Md. Mizanur Rahman @ Polash from his house. The gold buyer said that Lucky had sold 4 earrings and 1 chain to him on the afternoon of the 12th and he melted the gold and kept it in his shop Smriti Jewelers, then P.W.14 took him to his shop from where accused Mizanur Rahman @ Polash took out a piece of gold that he melted from the cupboard. The gold was 1'' long 12 annas in weight and estimated value of Tk.30,000/-. This accused Mizanur Rahman @ Polash also made out a confessional statement under section 164 of the Code of Criminal Procedure by admitting only the facts that he has purchased 4 earrings and 1 chain from accused Lucky Khatun on 12th. On careful scrutiny of the confessional statement of accused Lucky Khatun and the testimony of P.W.17 the Judicial Magistrate who recorded the statement it appears that the statement was recorded after fulfilling all the legal requirements as stipulated in sections 164 and 364 of the Code of Criminal Procedure.

It appears from the confessional statement of accused Lucky Khatun that the recording Magistrate has made an endorsement in the confessional statement to the effect that he has made the accused aware of the fact that she is not bound to confess and if she confesses, that can be used against her as evidence. Thereafter, when the accused agreed to confess voluntarily, he recorded her confession. It was recorded within the range of his hearing and he believed that the confession contains the total and true statement of the accused. The confession so recorded was read over to the accused; and admitting the same to be correct, she has signed on it. The Magistrate noted what he told to the accused at the time of recording the confession and wrote and signed a memorandum on the statement being satisfied that it was made voluntarily and contained a true account of the statement. So the voluntary character of the confession made by accused Lucky Khatun has been proved.

Though the confessional statement of Lucky Khatun does not contain the manner of killing but it has already been proved in this case by sufficient evidences that the 2 victim minor girls were murdered by throttling. As the cause of death of the 2 victim have sufficiently been proved; there is no need to chemically examine the viscera of the deceased only because empty strips of sleeping pills was recovered from the place of occurrence. It has been held in the case of The State Vs. Altazur Rahman, reported in BCR 1982(AD) 264 that, "Absence of chemical examination of the contained in the bottle produced before the Thana and viscera of the

deceased did not in any way render the trial defective. In the face of sufficient evidence to land support to the prosecution case chemical examination was not at all necessary.”

On the basis of the findings and discussions made herein about the evidences and materials on record, we are unable to accept the submissions made by learned Senior Advocate appearing for condemned prisoner Lucky Khatun.

From the foregoing discussions we can come to the conclusion that the prosecution has become successful in proving the charge against the condemned prisoner Lucky Khatun beyond all reasonable shadow of doubt.

Mr. Khaled Hamid Chowdhury, the learned Senior Advocate appearing for the condemned-prisoner Lucky Khatun lastly drew our attention to some factors to treat them as mitigating factors in favour of Lucky Khatun.

According to him the extreme poverty and social vulnerability of the accused leads her to commit the offence, moreover the condemned prisoner is a woman and mother of young girl and a first offender are strong mitigating factors in awarding sentence. The learned Senior Advocate further submitted that the condemned-prisoner Lucky Khatun had been languishing in the condemned cell since 05.08.2018 and considering all of the above mentioned factors as mitigating factors and the length of confinement in the condemned cell the sentence of death may be reduced.

In this regard it is pertinent to mention the observation of their Lordships of the Supreme Court of India made in the case of Arvind Singh Vs. the State of Maharashtra, AIR 2020 SC2 541, para 98 that:-

- “(i) The extreme penalty of death need not be inflicted except in gravest case of extreme culpability.
- (ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the crime.
- (iii) Life imprisonment is the Rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime and provided, and only the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
- (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weight and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised”.

It is important to note here that our Apex Court in the case of Gias and others Vs. the State, reported in 75 DLR(AD)195 quoted the above observation and held in para 70 that:- “we fully agree with the above observations except the observations that, “Life imprisonment is the Rule and death sentence is an exception”. Because in our jurisdiction our Apex Court in many cases has decided in a reverse way.”

However, from the materials on record, it appears that condemned-prisoner Most. Lucky Khatun is a poor, minimally educated village woman. The motive as is proved by the prosecution case is relates to money and debt, not to any sadistic pleasure. She is a first time offender and there is no evidence of prior criminal antecedents, violence or deviant behavior. The trial Court imposed the death sentence in 2018, and it is now 2026, approximately eight years she is suffering from the pangs of death under the sentence of death.

In view of the decisions cited above as well as the circumstances of this case and the discussion made above we are of the view that justice would be sufficiently met if the sentence of death of condemned prisoner Lucky Khatun be commuted to one of imprisonment for life.

Now as regards accused Md. Mizanur Rahman @ Polash lets scan the evidences adduced by the prosecution. 1st I.O. P.W.14 stated that he arrested accused Md. Mizanur Rahman @ Polash on getting information from accused Lucky Khatun that Most. Lucky Khatun sold the jewellery of the victim's to Polash. Accused Md. Mizanur Rahman @ Polash was

convicted under section 411 of the Penal Code and sentenced to suffer rigorous imprisonment for 03(three) years and also to pay a fine of Tk.10,000/-; in default to suffer simple imprisonment for 06(six) months more.

According to section 411 of the Penal Code anyone who receives or retains property, knowing or having reason to believe it as stolen, faces up to 3 years of imprisonment or with fine or with both. To substantiate a charge brought under section 411 of Penal Code the prosecution must prove that the accused knew or had reason to believe that the property was stolen. In the instant case not a single witness was examined to prove that the accused Polash had the knowledge that the jewellery which he purchased from Lucky Khatun were stolen jewellery. Most. Lucky Khatun did not say in her 164 statement that she disclosed the occurrence to the accused Mizanur Rahman @ Polash or the accused Polash himself though made a confessional statement by admitting the fact that he purchased the jewellery from Most. Lucky Khatun on 12th but he also did not admit that he knew that the Jewellery were stolen property. So the very ingredient of section 411 of Penal Code has not been proved in this case. Therefore, the conviction and sentence imposed upon accsued Md. Mizanur Rahman @ Polash by the impugned judgment is found to have been done not in accordance with law.

Resultantly, the Death Reference is rejected with modification of sentence; consequently the Criminal Appeal No.8455 of 2018 and Jail

Appeal No.247 of 2018 are dismissed with modification of sentence, the sentence of death of condemned-prisoner-appellant Most. Lucky Khatun is commuted to imprisonment for life and she is ordered to pay a fine of Tk.20,000/-(Twenty Thousand); in default to suffer rigorous imprisonment for 03(three) months more. She will get the benefit of section 35A of the Code of Criminal Procedure in calculation of her sentence and other remissions as admissible under the Jail Code.

The concerned Jail authority is directed to move the accused Most Lucky Khatun to the regular jail from the condemned cell forthwith.

The Criminal Appeal No.8754 of 2018 preferred by the convict-appellant Md. Mizanur Rahman @ Polash is allowed and he is acquitted from the charge leveled against him and his conviction and sentence is set-aside. As the accused-appellant Md. Mizanur Rahman @ Polash is on bail now, his sureties are hereby released from their respective bail bond.

Send down the lower Court's record (LCR) along with a copy of this judgment and order to the concerned Court below at once.

Mohi Uddin Shamim,J:

I agree.