

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

And

Mr Justice S M Saiful Islam

Death Reference No 106 of 2018

The State

-Versus-

Md. Shafiqul Islam @ Shafique

With

Criminal Appeal No 11294 of 2018 with

Jail Appeal No 320 of 2018

Md. Shafiqul Islam @ Shafique

-Versus-

The State

Mr Md. Shamsul Hoque, Advocate

..... For the appellant

Mr Md Emran Khan (Rony), DAG with

Mr Muhammad Safwan,

Mr Zillur Rahman,

Mr Khalilur Rahman,

Mr Amran Hossain, AAGs

----- for the state

**Heard on 09.12.2025, 14.12.2025,
15.12.2025
and Judgment on 28.01.2026**

Md Atoar Rahman, J:

This death reference, being Death Reference No 106 of
2018, has been made by the learned Additional Sessions

Judge, First Court, Cumilla, under section 374 of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the Code”), for confirmation of the death sentence awarded to the condemned prisoner Shafiqul Islam @ Shafiqu by judgment and order dated 27.08.2018 in Sessions Case No. 1259 of 2009, arising out of Debidwar Police Station Case No. 03 dated 26.10.2009, corresponding to GR Case No. 152 of 2009.

By the aforesaid judgment and order, the learned Additional Sessions Judge convicted the condemned prisoner under sections 302 and 379 of the Penal Code and sentenced him to death and fined taka 10,000.00 under section 302. However under section 379 no sentence was imposed.

Against the aforesaid judgment and order of convictions and sentence condemned-prisoner preferred the Criminal Appeal No. 11294 of 2018 and the Jail Appeal No. 320 of 2018.

The death reference and the appeals have been heard together and are being disposed of by this common judgment.

The prosecution case in short is that the informant’s son Nasrul Hasan Swapon (deceased of the case) was running

a shop on the embankment of Maddapara. He (the informant) occasionally sat at that shop. On 05.10.2009 at about 4:00 pm he left the shop while Swapon was in there. At about 9:30 pm he (the informant) to attend a natural call went out of his house. Having heard moaning he searched with torchlight and found that his son Swapon was seriously wound caused by throat cutting injury who was moaning lying on the paddy field. Upon hearing his screaming local people rushed there and took the victim to the Sheba Clinic, Cumilla where doctors declared him dead.

Thereafter the informant Abdul Jalil Sarker on 06.10.2009 lodged the first information report (FIR) with the Debidwar Police Station against unknown persons under section 302/34 of the Penal Code. In the FIR he suspected that villagers Jasim, Azad Bhuiyan, Abul Kalam, Shahid Miah, Jahangir Bhuiyan and Titu Bhuiyan and some other persons might have killed his son. On the basis of such FIR Debidwar Police Station Case No. 03 dated 06.10.2009, under section 302/34 of the Penal Code against unknown persons was started.

Sub-Inspector Shah Kamal Akand was appointed as the investigating officer who, upon completion the investigation finding a *prima facie* case against the condemned prisoner on 08.11.2009 submitted police report recommending his trial under sections 302/379/411 of the Penal Code.

The condemned prisoner was ultimately placed on trial before the learned Additional Sessions Judge, First Court, Comilla. On 22.06.2010, after hearing both the parties, charges were framed against him under sections 302/379/411 of the Penal Code, which were read over and explained to him, to which he pleaded not guilty and demanded trial.

In order to bring home the charges the prosecution examined twenty-one witnesses out of thirty-one cited in the police report, who were cross-examined. But the defence did not adduce any evidence.

Upon closure of the prosecution evidence the condemned prisoner was examined under section 342 of the Code, wherein he again pleaded his innocence and declined to produce any defence evidence.

The defence case, as evident from the cross-examination of prosecution witnesses, was that the condemned prisoner was innocent and falsely implicated in a fabricated case. It was further asserted that the condemned prisoner neither confessed to the police nor to the local witnesses. His confessional statement to the judicial magistrate was neither true nor voluntary, as the same was procured by physical torture and intimidation and the investigating officer had submitted a concocted report without conducting a proper investigation.

Upon careful consideration of the evidence on record and the surrounding circumstances, the learned trial Judge held that the prosecution had successfully established the charges under sections 302 and 379 of the Penal Code beyond reasonable doubt against the condemned prisoner. Consequently, he convicted and sentenced as stated earlier by the impugned judgment and order.

Being aggrieved by and dissatisfied with the said judgment and order the condemned prisoner preferred the instant appeals, while the learned trial Judge made a statutory

reference to this Division for confirmation of the death sentence.

The only point for determination in the death reference and the connected appeals is, whether the impugned judgment and order are sustainable in law.

Mr Md. Emran Khan, learned Deputy Attorney General, assisted by Mr. Muhammad Safwan, Mr Zillur Rahman, Mr Khalilur Rahman and Mr Amran Hossain, learned Assistant Attorneys General, appearing for the State–petitioner–opposite party, opposed the appeals and supported both the reference and the reasoning of the learned trial Judge. He took us through the impugned judgment, the FIR, seizure lists, inquest report, autopsy report, police report, oral evidence, other relevant materials on record and particularly the confessional statement of the condemned prisoner.

He has then submitted that on a proper appreciation of the prosecution evidence together with inculpatory confessional statement, recorded under section 164 of the Code by a competent Judicial Magistrate, and corroborating circumstantial evidence including extra-judicial confession,

specially made to his sibling PW 10 Abdul Kader the trial court rightly found him guilty under sections 302 and 379 of the Penal Code and correctly imposed sentence.

The learned Deputy Attorney General has further argued that the prosecution proved, beyond reasonable doubt, an unbroken chain of circumstances from inception to culmination of the occurrence; that condemned prisoner's confession is voluntary and true; and that there is no exculpatory material enabling him to escape liability for offences of murder and theft. He has also contended that the condemned prisoner's conviction could validly rest on his confessional statement alone, it having been found true and voluntary, relying on the cases of *Zakir Hossain and another vs. the State*, 55 DLR 137; *Shamim Beg @ Md. Shamim Beg vs. the State*, 27 BLD (AD) 74; *Hazrat Ali & Abdur Rahman vs. the State*, 42 DLR 177; *The State and another vs. Abdul Kader @ Mobile Kader and others*, 67 DLR (AD) 6; and *Hasmat Ali vs. the State*, 53 DLR 169.

He has accordingly prayed for acceptance of the reference and dismissal of the appeals.

On the other hand, Mr. Md. Shamsul Haque, learned Advocate has appeared on behalf of the condemned prisoner, at the outset has contended that the learned trial Judge erred in law in convicting the condemned prisoner under sections 302 and 379 of the Penal Code without properly weighing and sifting the evidence, thereby occasioning a failure of justice. He has argued that the purported confessional statement is inadmissible as it was procured by physical torture, inducement and threat, rendering it neither true nor voluntary; hence the conviction based thereon is unsustainable.

In a last-ditch effort, Mr. Haque has submitted that even if the conviction under section 302 is maintained, the sentence of death, imposed upon the condemned prisoner, is unduly severe. Considering his clean antecedents, youthfulness, and prolonged incarceration, sixteen years, including seven years in the condemned cell, his sentence should be commuted to imprisonment for life and the reference rejected. In support of his contentions he has cited to the cases of *Nalu vs. the State*, 17 BLC (AD) 204 and *Bangladesh Legal Aid and Services Trust (BLAST) and another Vs Government of Bangladesh*, 68 DLR (AD) 1.

We have heard the submissions of the learned Deputy Attorney General and the counter-submissions of the learned Advocate for the condemned prisoner. To reach a correct decision, we must examine and scrutinize the relevant evidence and surrounding circumstances, juxtaposing the prosecution and defence versions of the case.

We have already noted that, at trial, the prosecution examined twenty-one (21) witnesses out of 31 cited in the police report. It is noted that since before commencement of trial the informant had died, his another son Nazmul Hasan Darpon (PW 4) deposed on his behalf having permission of the court. He supported the prosecution case and proved the FIR (Ext 2) and his father's signature thereto (Ext. 1/1).

PW 1, Md Jahirul Islam, PW 2 Humayun Kabir, PW 3 Shahadat Hossain, PW 5 Md Fazlur Rahman, PW 6 Mominur Rahman Bulbul, PW 8 Md Abul Quashem, PW 9 Abul Hashem, PW 11 Md Jahangir Alam, PW 12 Md Ali Azam, PW 13 Md Shah Alam, PW 14 Md Mofijul Islam and PW 15 Md Abdus Salam are the relatives, neighbours and villagers. They testified that immediately after the occurrence having heard screaming rushed to the place of occurrence and found

the deceased in severely throat cut injured condition and he was taken to the hospital by them and doctors declared him dead.

In addition of that, PW 1, PW 2, PW 3 and PW 6 stated that at the time of holding inquest of the dead body they were present and proved the inquest report (Ext 1) prepared by the investigating officer PW 20 Shah Kamal, Sub-inspector of police. PW 6 further stated that the condemned prisoner after arrest confessed to him and local people that not getting money from the deceased he had killed him. PW 5, PW 11, PW 12 and PW 7 Md Mostafizur Rahman testified that on 06.10.2009 the investigating office in their presence recovered a turned on torch light, used by the deceased, from eastern side of Laksmipur Central Mosque and a black coloured bag, used by the deceased, from the nearby paddy field of the place of occurrence, preparing seizure lists and they proved the same (Ext 3 and Ext 4). PW 7 also identified the torch light (Mat Ext I) and the bag including some articles (Mat Ext II).

PW 19 Md Mostofa stated that on 14.10.2009 in his presence police recovered a Nokia mobile phone set from the custody of Sufiya Khatun, wife of Abul Hossain preparing

seizure list. He proved the seizure list (Ext 9) and the mobile set (Mat Ext IX).

PW 21 Mohammad Ali stated that in his presence police recovered a mobile set from his cousin's possession preparing a seizure list (Ext 9).

PW 10, sibling of the condemned prisoner, Abdul Kader is the star witness of this case. He testified that on 05.10.2019 at about 8:00 pm having had dinner he went to bed and slept; the condemned prisoner and he used to sleep in the same room; the condemned prisoner entered into the room and he (PW 10) found him trembling, body was wet, shirt was stained with blood. He asked him what had happened. Then the condemned prisoner holding his feet told him that he had killed the victim. Having heard about the incident he became unconscious. He also stated that out of fear he went hidden in Chattogram. Subsequently police arrested him and produced before the Magistrate to whom he gave statement explaining the whole story.

PW 16, Dr. Abdul Hay, testified that on 06.10.2009 while he was an Assistant Professor at the Forensic

Department, Cumilla Medical College, performed the autopsy on the dead body of Nasrul Hasan Swapon and found the following injuries:

“One heavy sharp cutting injury present on the neck starting from left entero lateral aspect, the whole right side and ending on the left postero lateral aspect. All soft tissue structures of the neck (trachea vessels muscles and nerves cut). Fracture 5th cervical and 6th cervical vertebrae. Only a tag of skin and soft tissue bridges the neck with the body on the left lateral side. One Sharp cutting injury present on the back on the left palm 4”x4”x3”triangular shaped.

He finally opined that the death was due to shock and haemorrhage as a result of cut throat injury which was ante mortem and homicidal in nature. He also proved the autopsy report (Ext 5).

PW 17 and PW 18 is the same person, Md Jahir Uddin, the then Judicial Magistrate, Cumilla. As PW 17 he testified that on 15.10.2009 the investigating officer produced the condemned prisoner before him for recording confessional

statement. He voluntarily made confessional statement before him and he recorded the same following the provisions of law. He proved the confessional statement (Ext 6). As PW 18 he testified that on 14.10.2009 he recorded the statements of witnesses Abdul Kader and Humayun Kabir and he proved the statements (Exts 7 and 8 respectively).

PW 20, Sub-Inspector Md Shah Kamal Akond, the investigating officer of the case testified that on 06.10.2009 he after holding inquest of the dead body of the deceased Shwpon prepared an inquest report. He proved the inquest report (Ext 1). He further stated that after lodgment of the FIR he was assigned for investigation into the case and he revisited the place of occurrence, prepared a sketch map with index, examined witnesses and recorded their statements under section 161 of the Code. He further stated that he seized a torch light and a bag including some articles used by the deceased preparing seizure lists. He seized deceased's mobile set and on the basis of the same interrogated brothers of the condemned prisoner namely Md Humayun Kabir and Abdul Kader who disclosed that the condemned prisoner killed the deceased. Thereafter he produced them before the Magistrate

who recorded their statements under section 164 of the Code. On the basis of such information he arrested the condemned prisoner who was willing to make confessional statement before the Magistrate and accordingly he was produced before the Magistrate who recorded his confessional statement under section 164 of the Code. After conclusion of the investigation finding a *prima facie* case, he submitted the police report against the condemned prisoner recommending trial under section 302/379/411 of the Penal Code. He also exhibited the sketch map (Ext 11) and his signature (Ext 11/1), the index (Ext 12) and his signature (Ext. 12/1), four seizure lists (Exts 3,4,9 and 10) and his signatures (Ext. 3/4, 4/4, 9/2 10/2). He also exhibited the torch light (Mat Ext I) and other articles (Mat Exts II to VIII) and the mobile set (Mat. Ext. IX).

In cross-examination, PW 20 admitted that no *alamots* was recovered from the condemned prisoner's possession. He denied the suggestions that there was an animosity between the condemned prisoner and his brothers; the confessional statement was product of physical torture and intimidation and the condemned prisoner was innocent and he has falsely been

implicated with the occurrence and without proper investigation a concocted police report has been submitted.

These are all the items of evidence adduced by the prosecution to substantiate its case.

Considering the autopsy report (Ext 5), inquest report (Ext 1) and evidence of the concerned doctor who held Autopsy of the deceased and facts and circumstances of the case, we are of the opinion that the deceased Shwpon was murdered which falls within the purview of section 300 of the Penal Code.

This is a case of an unseen murder. The condemned prisoner has been convicted and sentenced primarily on the basis of his confessional statement recorded under section 164 of the Code, extra judicial confession, recovery of *alamots* and the connecting facts and circumstances.

The condemned prisoner's confessional statement (Ext. 6) was recorded by PW 17, Md. Zahir Uddin, then Senior Judicial Magistrate, Cumilla, who proved it. On careful scrutiny of Ext. 6, it is found that all columns have been properly filled in the Judicial Magistrate's handwriting. Ext. 6

further shows that on 15.10.2009, when the condemned prisoner was produced for recording his confession, no marks of hurt or injury were found on his person. The Judicial Magistrate carefully explained to him each matter in column 5 and granted him three hours for reflection. Thereafter, following the provisions of sections 164 and 364 of the Code, he recorded his statement in the prescribed columns, took his signatures, and signed it himself. He also made a memorandum in the appropriate column stating his satisfaction regarding voluntariness. It is also found that the condemned prisoner was not detained in police custody violating the provisions of section 61 of the Code. Thus, it is evident that the confession was not made under threat, coercion, inducement or torture. In this confessional statement he stated:

“গত রমযানের ঈদের পরের দিন স্বপন ভূইয়ার কাছে ৫০০০/- টাকা ধার চাই। আমাকে জনাব আলীর ছেলে তৈয়ব আলী সহ স্বপন ভূইয়া ঠেক দেয়ার কথা ছিল। আমি বলি ঠেক দেয়ার দরকার নাই। আমি টাকা ধার চাই। তিনি আমাকে বলে কিছু দিন পর দেখা করার জন্য। ৫ তাং এই মাসের ঘটনা হয়। আমি কুমিল্লাতে রিক্সা চালাই। রোযার ২/৩ দিন যাওয়ার পর আমার নিকট থেকে ঠেক দিয়া টাকা নিয়া যায়। আমি রিক্সা চালায় রাতে বাড়ির যাওয়ার পথে ৩ দিন আমার থেকে টাকা ঠেক দিয়া

নিয়া যায়। পরে নিজের রক্ষার জন্য ২০ টাকা দিয়া ছোট ১টা ছুরি কিনি। আমি এটা গাড়ির গদির ভিতর রাখি। রাতে যাওয়ার সময় প্রয়োজন হলে ব্যবহার করব। এই মাসের ভিতরে রাস্তা দিয়া যাচ্ছিলাম লক্ষ্মীপুর যাব বলে। জলিল সরকারের বাড়ির নিকট দিয়া যাই। একটু উত্তর পশ্চিম পাশে যাওয়ার পরে প্রাইমারী স্কুল আছে। ঐখানে আমার সাথে স্বপন ভূইয়ার দেখা হয়। আমি তাকে সালাম দেই। ভালমন্দ জিজ্ঞাসা করি। টাকা ধারের কথা জিজ্ঞাসা করি। সে আমাকে বলে আমাকে টাকা দিবে না কারণ আমি নাকি নেশা করি। পানি খায়। আমি তাকে বলি আপনি আমার চাচাত ভাই। টাকাটা দেন আমি ব্যবসা করব। আমি নেশা করব না। ৪/৫ মাস পর টাকা দিয়া দেব। সে আমাকে গালাগালি করে। বলে আমি তাকে ঠেগ দিতাম চাইনি। সে আমার বাপের নিকট বিচার দিবে। আমি এমনিতে একটু দুষ্টামি করি। বাবা আমাকে পছন্দ করে না। সে বিচার দিলে বাবা বাড়ি থেকে বের করে দিবে। বিচারের কথা বলায় আমার সহ্য হয়নি। মাথা চক্কর দেয়। আমার সাথে থাকা ছুরি যা রিক্সার গদিতে ছিল তখন তার মুখে হাত রেখে ছুরি দিয়া গলায় টান দেই। জবাই করে ফেলি। তখন আমার হৃশ ছিল না। স্বপন ভূইয়া আমার থেকে ছুরি নিয়া ধান ক্ষেতে পরে যায়। তার হাতে ঔষধের ব্যাগ ছিল। ১টি চার্জ লাইট ছিল। জলিল সরকারের বাড়ির কে যেন দেখি লাইট নিয়া বের হয়েছে। আমার নজর পড়লে আমি উঠে ব্যাগটা হাতে নিয়া লাইট সহ স্কুলের মাঠে নিয়া ধান ক্ষেতের আইল দিয়া বাড়ির উদ্দেশ্যে দৌড় মারি। কিছুটা যাওয়ার পর লাইট জলে উঠে। বন্ধ না করতে পারায় তা ইডা দিয়া ধান ক্ষেতে ফেলে দেই। আর একটু পরে দৌড়ের মধ্যে ব্যাগে হাত দিয়া দেখি ২টা মোবাইল। ১টি ৩৩১০ ১টি ১১০০ মডেলের সেট গুলো হাতে নিয়া ব্যাগটা ইডা দিয়া ধান ক্ষেতে ফেলে দেই। বাড়ির পাশাপাশি যাইতেই মোবাইল ২টি অফ করে দেই। বাড়ির দক্ষিণ সাইডে ক্ষেত আছে। ১ বিঘত পানি আছে। ক্ষেতের ভেতর দিয়া দৌড়ে বাড়িতে আসি। বাড়ির সবাই চোর চোর বলে

চিল্লাচ্ছে। আমার মেঝো ভাই ঘরে ছিল। আমার আব্বা আগেই ঘর থেকে বের হয়ে যায়। আঃ কাদের আমার ভাই ১ দরজা দিয়া ঘরে থেকে বের হলে আমি অন্য দরজা দিয়া ঢুকি। আমার ভাইয়ের চোখে পড়ে যাই আমি। তখন আমার ভাই ঘরে ঢুকে। রুমে আসিয়া দেখে আমার লুঙ্গি ভিজা। আমি কাপতে ছিলাম। আমার জামায় রওঁ ছিল। ভাইয়া জিজ্ঞাসা করলে তার পা ধরে সব বলে দেই।”

In the above confessional statement, the condemned prisoner explained the circumstances why and how he killed the unfortunate deceased. Considering the confession, PW 17's evidence, and the surrounding facts and circumstances, we are clearly of the view that the learned trial Judge rightly found the condemned prisoner's confession to be true and voluntary.

It is well-established principles of law that a conviction can rest solely on a confession if it is found to be true and voluntary against its maker. Moreso, we have seen that the evidence of the PW 10 Abdul Maleque, sibling of the condemned prisoner, has proven that immediately after the occurrence while the condemned prisoner reached home he (PW 10) found him trembling, body was wet and wearing shirt was stained with blood. He (PW 10) asked him what had happened. Then the condemned prisoner holding his feet told

that he had killed the victim. He was cross examined, but nothing is revealed to disbelieve his evidence. It is pertinent to mention here that this witness (PW 10) was produced to the Judicial Magistrate (PW 18) who recorded his statement (Ext 7) under section 164 of the Code which has been reflected in the testimony of PWs 10 and 18. The statement before the Judicial Magistrate (Ext 7) and deposition given in the trial court are identical. This extra judicial confession is clearly corroborative to the above confessional statement of the condemned prisoner made before the Judicial Magistrate.

Apart from these, it has already been found that recovery of torch light (Mat Ext I), bag (Mat Ext II), and other things (Mat Exts III to VIII) from the paddy field of nearby the place of occurrence by the seizure lists (Exts 3 and 4) also directly corroborated the above stated confessional statement.

In view of the above discussions and considering all the facts and circumstances, we hold that the learned trial Judge committed no error in convicting the condemned prisoner under sections 302 and 379 of the Penal Code.

As to the capital sentence imposed upon the condemned prisoner, we have considered the case of *Nalu vs. the State*, 17 BLC (AD) (2012) 204 and *Bangladesh Legal Aid and Services Trust (BLAST) and another Vs Government of Bangladesh*, 68 DLR (AD) 1, cited by learned Counsel for the condemned prisoner. The later judgment was passed following the previous one in which, their lordships commuted the death sentence to life imprisonment upon considering four mitigating circumstances are quoted below:

“(a) The condemned prisoner has no significant history of prior criminal activity.

(b) Youth of the condemned prisoner at the time of commission of the offence.

(c) Record reveals that the condemned prisoner would not be likely to commit acts of violence if released.

(d) Confinement of the condemned prisoner in the condemned cell from 9-6-2005 till date, i.e., for more than seven years, during which period the sword of death has been hanging over his head.”

In the present case, it appears that the condemned prisoner was a youth of 22 years at the time of the occurrence. He has no prior criminal record, and his custody exceeds sixteen years, since 14.10.2009, including confinement in the condemned cell since 27.08.2018. All the mitigating factors are present in the present case. Moreover, in the confessional statement the learned Judicial Magistrate noted that the confession was made by the condemned prisoner out of repentance. His repentance also should therefore be taken into account. Besides, in our view, this case does not fall within the “*rarest of rare*” category that mandates capital punishment. Following the principles settled by the apex court, and considering his repentance, we are inclined to commute the death sentence to imprisonment for life.

In the result, the death reference is rejected.

The Criminal Appeal No. 11294 of 2018 filed by condemned prisoner is dismissed with modification. The Jail Appeal No. 320 of 2018 is accordingly disposed of.

The death sentence under section 302 of the Penal Code is commuted to imprisonment for life. The appellant shall get

benefit of section 35A of the Code in respect of calculation of the sentence. The Jail Superintendent, Cumilla, is directed to shift him from the condemned cell immediately.

Let the lower court record, along with a copy of this judgment, be sent to the Court of the Additional Sessions Judge, 1st Court, Cumilla, and another copy be sent to the Jail Superintendent, Cumilla, forthwith for information and necessary actions.

S M Saiful Islam, J

I agree.