

District: Brahmanbaria.

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

**Present:
Mr. Justice Md. Zakir Hossain
And
Mr. Justice Md. Toufiq Inam**

Death Reference No. 127 of 2018.

The State.

-Versus-

Md. Abdul Motin,

----- Condemned-Prisoner.

Mr. Mohammed Abdul Baset, DAG with
Ms. Anjuman Ara Begum, A.A.G,
Ms. Selina Parvin (Setu), A.A.G.
Mr. Md. Syedur Rahman Mainul, A.A.G.
Mr. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.
Ms. Rohani Siddiqua, A.A.G.

----- For the State.

Mr. S. M. Quamrul Hasan, Advocate with
Ms. Rabeya Khanom, Advocate

----- For the Condemned-Prisoner.

With

Criminal Appeal No. 2184 of 2019.

(Arising out of Jail Appeal No. 330 of 2018.)

Md. Abdul Motin,

----- Condemned-Prisoner-Appellant.

-Versus-

The State.

----- Respondent.

Mr. S. M. Quamrul Hasan, Advocate with
Ms. Rabeya Khanom, Advocate

---- For the Condemned-Prisoner-Appellant.

Mr. Mohammed Abdul Baset, DAG with
 Ms. Anjuman Ara Begum, A.A.G,
 Ms. Selina Parvin (Setu), A.A.G.
 Mr. Md. Syedur Rahman Mainul, A.A.G.
 Mr. Md. Mizanur Rahman, A.A.G. and
 Mr. Md. Shaikhul Islam, A.A.G.
 Ms. Rohani Siddiqua, A.A.G.

----- For the Respondent.

With

Criminal Appeal No. 13461 of 2018.

Most. Sahana Khatun,

----- Informant-Appellant.

-Versus-

1. The State.
2. Humayun Mia,

----- Respondents.

No one appears.

-----For the Informant-Appellant.

Mr. S. M. Quamrul Hasan, Advocate with
 Ms. Rabeya Khanom, Advocate

---- For the Respondent No.2.

Heard On: 28.01.2026 and 03.02.2026.

And

Judgment Delivered On: 08.02.2026.

Md. Toufiq Inam, J:

This Death Reference has been made under section 374 of the Code of Criminal Procedure, 1898 (“the CrPC”), for confirmation of the sentence of death awarded to the condemned prisoner, Md. Abdul Motin, by the learned Sessions Judge, Brahmanbaria, in Sessions Case No. 94 of 2016. The reference has been heard analogously with Criminal Appeal No. 2184 of 2019, arising out of Jail Appeal

No. 330 of 2018, preferred by the condemned prisoner himself, and Criminal Appeal No. 13461 of 2018, filed by the informant challenging the acquittal of accused Humayun Mia. Since all these matters arise out of the same judgment, they were heard together and are being disposed of by this single judgment.

The prosecution case, in brief, is that the victim, Zainal Abedin, husband of the informant, had been serving as a night watchman at Bhatpara, Rajghar, Amtali Bazar for about twelve years. Accused Humayun Mia was also employed as a night watchman at the same market. A few days prior to the occurrence, a dispute allegedly arose between the victim and accused Humayun Mia, although the victim continued to discharge his duties regularly. Thereafter, accused Humayun Mia, in collusion with other unidentified persons, allegedly held a secret meeting and decided to murder the victim. On the night of the occurrence, while Zainal Abedin was performing his night duty at Amtali Bazar, accused Humayun Mia, along with unidentified accused persons, allegedly surrounded him and attacked him with deadly weapons such as ram dao, kirich, and a Chinese axe, inflicting multiple severe and grievous injuries on vital parts of the body, particularly the head, resulting in the instantaneous death of Zainal Abedin at the place of occurrence.

Upon receiving information over mobile phone from local persons, the informant rushed to the place of occurrence and found her husband lying dead with multiple injuries. In the above circumstances, she lodged a written First Information Report on 17.07.2014 at Brahmanbaria Sadar Model Police Station, accusing Humayun Mia along with 8/9 unidentified persons. On the basis of the FIR, Brahmanbaria Sadar Model Police Station Case No. 75 dated 17.07.2014 was registered, and investigation was entrusted to SI Shafiqul Alam.

During investigation, the Investigating Officer visited the place of occurrence, prepared a sketch map and index, seized incriminating articles, recorded statements of witnesses under section 161 of the CrPC, arrested non-FIR-named accused Md. Abdul Motin, and arranged for recording of his confessional statement under section 164 of the CrPC. Upon completion of investigation, the allegation of murder against Md. Abdul Motin was found prima facie true, and a charge-sheet under section 302 of the Penal Code was submitted against him on 05.12.2014. As regards FIR-named accused Humayun Mia, the Investigating Officer found no prima facie material against him and prayed for his discharge.

Subsequently, the informant filed a naraji petition, whereupon the learned Chief Judicial Magistrate, by order dated 18.05.2015, allowed the petition and took cognizance against accused Humayun Mia under sections 302/34 of the Penal Code.

Upon commitment, charges under sections 302/34 of the Penal Code were framed on 02.03.2016 against accused Md. Abdul Motin and Humayun Mia. Md. Abdul Motin pleaded not guilty and claimed to be tried. As accused Humayun Mia was absconding at the relevant time, the charge could not be read over to him. After conclusion of the prosecution evidence, the accused were examined under section 342 of the CrPC, whereupon they pleaded innocence and declined to adduce any defence evidence.

The defence case of accused Md. Abdul Motin is that he is innocent, was not named in the FIR, and had no involvement in the murder. He alleges that while in police remand he was subjected to physical torture and was forcibly compelled to make a confessional statement, which, according to him, was neither voluntary nor true. The defence case of accused Humayun Mia is that he is wholly innocent and has been falsely implicated. Although he was named in the FIR on suspicion, the Investigating Officer, upon

investigation, found no evidence of his involvement and prayed for his discharge. It is contended that cognizance was taken against him solely on the basis of a naraji petition, without any substantive evidence connecting him to the offence. Upon conclusion of the trial, the learned Sessions Judge convicted and sentenced the condemned prisoner Md. Abdul Motin to death, while acquitting accused Humayun Mia.

Mr. Mohammed Abul Baset, learned Deputy Attorney General, appearing for the State, supports the Death Reference. He submits that the prosecution has proved the charge against the condemned prisoner beyond reasonable doubt through clear, consistent, and cogent evidence. It is contended that the homicidal nature of death is conclusively established by the inquest report and the post-mortem report, which disclose multiple sharp-cut injuries on vital parts of the head. He further submits that the conviction of Md. Abdul Motin is firmly founded on his judicial confession recorded under section 164 of the CrPC, which was made voluntarily and in strict compliance with law. The Magistrate (PW-8) who recorded the confession has been examined and has categorically stated that all statutory safeguards were duly observed. The confession is fully corroborated by independent medical evidence regarding the

nature, number, and location of injuries. It is further argued that the motive disclosed in the confession, namely, that the deceased, being a night watchman, obstructed theft at the market, lends further assurance to its truthfulness. The defence plea of coercion is described as an afterthought unsupported by any credible evidence. Regarding sentence, learned counsel submits that the brutal killing of an unarmed night watchman while on duty justifies the sentence of death. Accordingly, it is prayed that the Death Reference be answered in the affirmative.

Mr. S. M. Quamrul Hasan, learned Advocate, appearing with Ms. Rabeya Khanom, learned Advocate, for the condemned prisoner, submits that the prosecution has failed to prove its case beyond reasonable doubt. It is argued that the accused was not named in the FIR and was subsequently implicated during investigation without any direct evidence. The confessional statement is vehemently challenged on the ground that it was extracted through torture while the accused was in police remand. It is further contended that there is no eyewitness to the occurrence and that mere medical evidence, without trustworthy ocular or circumstantial evidence, is insufficient to sustain a conviction for murder. In the alternative, it is submitted that even if the conviction is upheld, the sentence of

death is wholly disproportionate, as the accused is a first-time offender and the offence was not premeditated. It is finally contended that even if the prosecution case is accepted at its highest, the facts and circumstances do not warrant the extreme penalty of death, and the sentence, if any, should be commuted to imprisonment for life.

None appears for the informant in Criminal Appeal No. 13461 of 2018, which challenges the acquittal of accused Humayun Mia. Nevertheless, the grounds taken in the appeal are that the trial court erred in acquitting Humayun Mia despite the fact that he was named in the FIR, allegedly had prior enmity with the deceased, and absconded after the occurrence, which, according to the appellant, constitutes an incriminating circumstance. It is further contended that the learned Magistrate rightly took cognizance against him upon the naraji petition and that the trial court failed to appreciate the cumulative effect of the circumstantial evidence on record. On these premises, it is prayed that the order of acquittal be set aside.

Mr. S. M. Quamrul Hasan, learned counsel, appearing with Ms. Rabeya Khanom, learned Advocate, for accused Humayun Mia

(Respondent No.2), submits that there is absolutely no legal evidence against his client. The FIR is admittedly based on hearsay. No prosecution witness has seen Humayun Mia at the place of occurrence, no weapon was recovered from him, and no forensic or circumstantial evidence links him to the crime. The alleged prior dispute is vague and unsubstantiated. He further submits that the confessional statement of co-accused Abdul Motin does not implicate Humayun Mia, and it is a settled principle of law that a confession, even if true and voluntary, is substantive evidence only against its maker. The Investigating Officer found no prima facie case against Humayun Mia, and abscondence, even if assumed, cannot be treated as proof of guilt. It is therefore prayed that the acquittal be affirmed.

We have meticulously re-appraised the entire evidence on record, which is our bounden duty in a death reference, and have examined with anxious scrutiny the confessional statement of the convicted accused recorded under section 164 of the CrPC. At the outset, it is beyond dispute that the death of Zainal Abedin was homicidal. The inquest report and the post-mortem report conclusively establish that the deceased sustained multiple sharp-cut injuries on vital parts of the head, resulting in hemorrhage and shock. The medical officer

(PW-10) unequivocally opined that the injuries were ante-mortem and sufficient in the ordinary course of nature to cause death.

To substantiate the charge, the prosecution examined ten witnesses (PW-1 to PW-10), whose evidence may broadly be classified into four categories: (i) informant and hearsay witnesses, (ii) seizure and inquest witnesses, (iii) medical evidence, and (iv) investigating officers and the confessional statement.

PW-1, the wife of the deceased and the maker of the FIR, was not an eyewitness to the occurrence. Her evidence establishes the identity of the deceased, his employment as a night watchman at Amtali Bazar, and the prompt lodging of the FIR upon receiving information over mobile phone. Her testimony regarding the manner of assault is admittedly hearsay. Nevertheless, her evidence is relevant to explain the genesis of the case, the naming of accused Humayun Mia in the FIR, and the immediate conduct of the informant after the incident. PW-2, PW-3, PW-4, and PW-5 did not witness the assault but deposed that they saw the dead body lying at the place of occurrence with multiple bleeding injuries. Their evidence corroborates the place of occurrence, the timing of the incident, and the fact that the death was unnatural and homicidal.

PW-6 and PW-7 are witnesses to the inquest report. They proved the inquest conducted over the dead body, which corroborates the nature and multiplicity of injuries and rules out any suggestion of natural or accidental death. PW-7 also supported the seizure of incriminating articles from the place of occurrence, thereby lending assurance to the procedural regularity of the investigation.

PW-10, the medical officer, conducted the post-mortem examination and found multiple incised and lacerated injuries on the head, ear, cheek, and frontal and occipital regions. He opined that death was caused by hemorrhage and shock resulting from ante-mortem injuries inflicted by a sharp cutting weapon. His testimony conclusively establishes the homicidal nature of death and fully corroborates the manner of assault described in the confessional statement.

PW-8 is the learned Magistrate who recorded the confessional statement of accused Md. Abdul Motin under section 164 of the CrPC. He testified that he observed all statutory safeguards, allowed sufficient time for reflection, warned the accused that he was not bound to confess, and recorded the statement only after

being satisfied that it was voluntary. His evidence remains unshaken in cross-examination.

PW-9 deposed regarding the various stages of investigation, including registration of the case, preparation of the sketch map and index, recording of witness statements, arrest of accused Abdul Motin, and submission of the charge-sheet. He also stated that during investigation no incriminating material was found against accused Humayun Mia, leading to a prayer for his discharge.

The prosecution relies heavily on the confessional statement of accused Md. Abdul Motin recorded under section 164 of the CrPC, which has been duly proved. This Confession runs as under:

“আমার অনেক টাকা ঋণ হয়ে যাওয়ায় মানুষ আমাকে এই ঋণের টাকার জন্য যা ইচ্ছা তাই বলে। আমি ৭/৮ দিন ধরে আমতলী বাজারে থাকি। এই ঋণের টাকা পরিশোধ করার জন্য আমি বাজারে স্বর্ণের দোকানে চুরি করার ইচ্ছা করি। কিন্তু এই পাহারাদার জয়নালের জন্য আমি চুরি করতে পারছিলাম না। দোকানের শাটার টান দিলেই পাহারাদার দেখে টর্চ দিয়ে দেখে। এই ক্ষোভে আমি বুধবার রাত্র ১.৩০-২.০০ টায় পাহারাদার জয়নালকে তাশকাল দিয়ে তার মাথায় ৩/৪টা কুপ দিই। আমি অন্য কোন কারণে পাহাদারকে খুন করিনাই, শুধু ঋণের টাকা পরিশোধ করার জন্য চুরি করতে না পারায় পাহারাদারের উপর ক্ষেপে গিয়ে খুন করেছি।”

In his confession, the accused admitted that on the night of occurrence he alone assaulted the victim with a sharp cutting weapon, striking him on the head three to four times, resulting in his death. Notably, he did not implicate any other person, including accused Humayun Mia. The confession contains a clear, consistent, and graphic description of the assault, the weapon used, and the part of the body targeted.

The defence contention that the confession was extracted through torture remains a bare allegation unsupported by any contemporaneous complaint, medical evidence, or suggestion to the Magistrate. The learned Magistrate has categorically testified to the voluntariness of the confession, and the defence chose not to challenge him effectively on this point. In the absence of any material to the contrary, we find no reason to doubt the voluntariness or truthfulness of the confession.

It is well settled that a voluntary and truthful judicial confession, if corroborated by surrounding circumstances, can form the sole basis of conviction of its maker. In the present case, the confession receives strong corroboration from independent medical evidence, the inquest report, and the surrounding circumstances. The nature,

number, and location of injuries fully accord with the manner of assault described in the confession. The motive disclosed therein appears natural and plausible. The prosecution has thus successfully established a clear nexus between the confession and the objective medical evidence, bringing the act squarely within section 302 of the Penal Code.

As regards accused Humayun Mia, the evidence on record falls short of establishing his involvement beyond reasonable doubt. Mere naming in the FIR, alleged prior enmity, or abscondence cannot substitute legal proof. The confessional statement of Abdul Motin does not implicate him, and the prosecution has failed to establish common intention under section 34 of the Penal Code. Suspicion, however strong, cannot take the place of proof.

For a conviction under section 302 of the Penal Code, the prosecution must prove beyond reasonable doubt both the homicidal death of the deceased and the active participation of the accused. A voluntary and truthful judicial confession, if corroborated by independent evidence such as medical reports, inquest reports, and circumstantial circumstances, can form the sole basis for conviction of its maker. Mere naming of an accused in the

FIR, absence of direct eyewitnesses, or suspicion arising from prior enmity cannot sustain criminal liability. Cognizance taken on a naraji petition or other procedural steps cannot substitute substantive proof. In the present case, the confession of Md. Abdul Motin, fully corroborated by independent medical and inquest evidence, establishes his sole culpability, whereas the prosecution has failed to establish the involvement of Humayun Mia beyond reasonable doubt.

In determining the appropriate sentence, this Court has considered the entire evidentiary landscape, including the manner in which the prosecution case unfolded, as well as the aggravating and mitigating circumstances surrounding the offence and the offender. Although section 302 of the Penal Code prescribes two alternative punishments- death or imprisonment for life- neither is designated by law as the rule or the exception. The choice of sentence must therefore be guided by a careful and judicious assessment of the proved circumstances. Where the accused acted alone, has no prior criminal record, and there is no material suggesting a continuing threat to society, the aggravating factors are outweighed by the mitigating factors, including the mental agony and suffering inherent in death row confinement. In such circumstances, this

Court considers it just to commute the sentence of death to imprisonment for life, which itself constitutes a grave and substantial punishment.

In the result—

- A) The Death Reference is rejected. The conviction of Md. Abdul Motin under section 302 of the Penal Code is maintained; however, the sentence of death is commuted to imprisonment for life. Criminal Appeal No. 2184 of 2019 is disposed of accordingly.
- B) The condemned prisoner shall be transferred from the condemned cell to the general prison forthwith and shall be entitled to the benefit of section 35A of the CrPC and such remissions as may be admissible under law.
- C) Criminal Appeal No. 13461 of 2018 is dismissed, and the acquittal of accused Humayun Mia stands affirmed.

The Office is directed to transmit the lower court records forthwith and to communicate this judgment to the trial court and the concerned authorities for immediate compliance.

(Justice Md. Toufiq Inam)

Md. Zakir Hossain, J:
I agree.

(Justice Md. Zakir Hossain)

Ashraf/ABO.