

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.100 of 2019

The State

.....petitioner

-Versus-

Momin Gazi (absconding)

.....condemned-convict

Mr. Syed Ejaz Kabir, Deputy Attorney General
with Ms. Mahbuba Taslim Akhi, Mr. Ashraful
Alam and Mr. Al-Amir Siddiqui, Assistant
Attorney Generals

..... for the State
(In the reference)

Mr. Md. Hafizur Rahman Khan, Advocate

.....appointed as a State Defence Lawyer
(for condemned-convict)

Judgment on 15.09.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman
Tribunal 1, Jashore (the Tribunal) has made this reference to
this Division for confirmation of the sentence of death
awarded upon the condemned-convict Momin Gazi
(absconding) under section 11(Ka) of the Nari-o-Shishu
Nirjatan Daman Ain, 2000 (the Ain, 2000) in Nari-o-Shishu
Case 129 of 2007.

The prosecution case, in brief, is that PW1 Takbar Ali alias Md. Takbar brother of deceased Manwara (the victim) lodged a first information report (FIR) at about 22:30 hours on 14.05.2006 with Keshabpur police station alleging, *inter alias*, that 8(eight) years ago his victim sister was given in marriage with accused 1. At the time of solemnizing marriage, the accused demanded dowry of Taka 40,000/-. The informant paid him Taka 20,000/- in cash, a bicycle, gold ornaments, wrist watch, cattle and others things. During their wedlock his sister gave birth to two children. After the marriage, the accused persons started claiming the balance amount of dowry of Taka 20,000/- to the victim and for its nonpayment they started torturing her. In this regard *salishes* were held in several occasions. The accused persons on the day of occurrence told the victim to bring dowry of Taka 20,000/- from her house and on its refusal the accused pushed her into the yard of the house and assaulted her. Accused Momin Gazi with iron crowbar struck on the upper part of her right eye, right side of nose, right and left legs and other parts of the body. Accused Jabeda indiscriminately beat her with bamboo stick. The victim made hue and cry and on

her outcry PW5 Abdus Samad went there and rescued the victim from the clutch of the accused and informed the fact to the informant and others. Thereafter, the informant and other witnesses came to the house but in the meantime the victim met her death. He lodged UD case but at the time of making inquest they found injuries on different parts of victim's body. They went to the police station to lodge the FIR but police advised them to file the case in the Court. Consequently, they filed a complaint case in the Tribunal which was subsequently sent to the police station and registered as Keshabpur Police Station Case No.8 dated 14.06.2006 corresponding to GR 158 of 2006 under sections 11(Ka) and 30 of the Ain, 2000 against 2 accused including the condemned-convict.

Sirajul Islam, a Sub-Inspector of police investigated the case. During investigation, he arrested accused number 2, seized some *alamots*, visited the place of occurrence, prepared sketch map and index and held inquest of the dead body. He recorded the statements of the witnesses, collected autopsy report and finding *prima facie* case against the

accused persons submitted a charge sheet against them on 24.11.2006 under sections 11(Ka) and 30 of the Ain, 2000.

The record of the case was then transmitted to the Tribunal for holding trial. The Tribunal took cognizance of offence against all the accused under the selfsame sections of the Ain. Learned Judge of the Tribunal subsequently framed charge against accused Momin Gazi on 20.09.2007 under section 11(Ka) of the Ain, 2000 and co-accused Jabeda Khatun under sections 11(Ka) and 30 of the selfsame Ain. The charge, so framed were read over to the accused persons, to which they pleaded not guilty and claimed to be tried.

During trial, the prosecution examined 9 witnesses and they were cross-examined by the defence. After conclusion of examination of prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code, to which he reiterated his innocence and demanded justice but did not examine any defence witness. The defence case as it transpires from the trend of cross-examining the prosecution witnesses are of innocence; that the victim committed suicide by hanging and that the accused was not in the house of occurrence at the material time. He never

demanded dowry to the victim and tortured her to death for its nonpayment. However, learned Judge of the Tribunal found husband Monin Gazi guilty of the offence under section 11(Ka) of the Ain and sentenced him thereunder to death with fine but acquitted the co-accused from the charges against her. .

Mr. Syed Ejaz Kabir, learned Deputy Attorney General takes us through the materials on record and submits that the victim wife was found dead in the house of the condemned-convict husband. As per the inquest and the autopsy report, the death is found homicidal in nature due to asphyxia resulting from pressure on the upper part of the chest and neck. Since the victim died in the house of her husband and her death is found and proved as homicidal, the husband is to explain the death which he failed to do. The occurrence took place on 20.05.2006. The condemned-convict remained absconding and surrendered before the Tribunal on 01.02.2007, *i.e.*, after 9 months of occurrence. Even after conclusion of trial and examining him under section 342 of the Code he absconded. The aforesaid fact and evidence proves that none but the condemned-convict killed

his wife, the victim. Mr. Kabir further submits that the witnesses successfully proved that convict Monin Gazi killed the victim wife for nonpayment of dowry and as such the judgment and order of conviction and sentence under section 11(Ka) of the Ain is found correct which may not be interfered with by this Court. The reference, therefore, would be accepted.

Mr. Hafizur Rahman Khan, learned Advocate appointed as a State Defence Lawyer for condemned-convict Momin Gazi (absconding) submits that the demand of dowry by the condemned-convict as claimed by the prosecution do not come within the meaning of section 2(Yeo) of the Ain, 2000. The demand of dowry and killing for its nonpayment also has not been proved by the evidence of prosecution witnesses. There is no eyewitness to the occurrence. Mr. Khan further submits that the prosecution witnesses did not support the allegation brought in the FIR about finding injuries on the person of the victim. If the evidence of witnesses and the inquest report is compared with autopsy report, it creates a serious doubt as to the cause of death of the victim. The autopsy report exhibit-2, therefore, cannot be

accepted as true and correct as to the cause of victim's death. Since the prosecution witnesses failed to prove the charge against the condemned-convict, therefore, the judgment and order of conviction and sentence cannot be sustained in law only on the ground that the convict absconded at the fag end of the trial.

To address the submissions of the learned Deputy Attorney General and the learned Advocate appointed State Defence Lawyer, let us have a blink on the evidence of prosecution witnesses.

PW1 Takbar Ali alias Md. Takbar, informant and brother of the deceased stated that the occurrence took place at about 9:00 am on 20.05.2006. They went to the house of the accused and found her sister dead. The men who were walking in the road told them that the accused beat the victim on demand of dowry. They rushed to the occurrence house and found the victim's dead body covered with cloths. They uncovered the cloth and found injuries on the nose and other parts of victim's body. They found injuries on the head, thigh and on left leg. Accused Momin Gazi, before the death sent the victim sister to their house for dowry of Taka 20,000/-

and for its nonpayment he assaulted and killed her. He heard the occurrence from neighbour Samad and others. They went to the police station. Police came, held inquest on the dead body, prepared a report and took their signatures. He proved the inquest exhibit-1 and identified his signature thereon. In cross-examination by the defence, he stated that the distance of their house and that of the accused would be 1½ km. They reached to the house of the accused at about 8:30 am. He saw the accused to beat the victim on demand of dowry. In one occasion his sister was crying and told about the torture upon her. The villagers told them about assaulting the victim on demand of dowry. They did not file any case against the accused before because they were poor. He denied the defence suggestion that the accused did not torture the victim on demand of dowry. He further denied that her sister did not die when she was under the custody of the accused. He denied all other material suggestions put to him.

PW2 Aklima Khatun, a sworn sister of the informant stated that she could not remember the date of occurrence but it may be at about 9:00 am 2½ years ago. She heard the news of victim's death and rushed to the house of the accused and

found the dead body lying in the courtyard of the house. The dead body was covered with cloth. She uncovered the cloth and found injuries on the nose, lower part of right eye and upper right heel of victim's body. Police took the dead body. She knew nothing else. At this stage she was declared hostile and cross-examined by the prosecution, to which she stated that she was not present in the marriage ceremony of the victim. She heard that there was disagreement between the victim and her accused husband. She could not say whether accused Momin Gazi used to torture the victim for dowry. She did not hear that accused Momin Gazi killed the victim for dowry of Taka 20,000/-. Before the death of victim there was a quarrel between the accused and the victim. She saw the dead body of the victim. She denied the suggestion of the prosecution that accused Momin Gazi beat the victim for dowry of Taka 20,000/- and killed her. She denied that as the accused was his distant relative she deposed falsely in part. In cross-examination by the defence she stated that she went to the occurrence house at noon. She denied the defence suggestion that she did not at all go to the house of

occurrence on the date of occurrence or she did not find mark of injuries on the nose, eyes and thigh of the victim.

PW3 Md. Fazlur Rahman alias Md. Fazlu, a brother-in-law of the victim stated that the occurrence took place at about 9:00 am 1½ years ago on 6th Jyastha. He heard the news of death of his sister-in-law and rushed to the occurrence house with other relatives and found the victim's dead body. He found marks of injuries on the person of the deceased as stated by PWs 1 and 2. He stated that accused Momin Gazi demanded dowry of Taka 20,000/- to the informant and for its nonpayment he killed the victim. He heard from Abdus Samad that for nonpayment of dowry accused Momin Gazi and his mother assaulted the victim and killed her. Police held inquest in his presence. In cross-examination by the defence, he stated that the distance of his house and that of the accused would be 6 km. It was Sunday and he reached in the house of the accused at about 9:30 am. The accused did not demand dowry in his presence. He heard that accused Momin Gazi killed the victim on demand of dowry. He denied the defence suggestion that witness Samad told the fact to them and he did not see marks of injuries on

the person of the victim or that he deposed falsely being a relative of the victim.

PW4 Mst. Saleha Begum, mother of the victim stated that the occurrence took place at about 9:00 am 2½ years ago. Accused Momin Gazi told her that her daughter became ill. They rushed to the house and found the dead body at the southern side of the house. They also found mark of injuries on the nose and thigh of the victim. She also found mark of injury below victim's right knee. She subsequently heard that accused Momin Gazi killed the victim on demand of dowry. Before killing the accused demanded Taka 20,000/- as dowry. They paid Taka 20,000/- to the accused but he further demand the same amount to PW1. In cross-examination by the defence, she stated that at about 8:00-9:00 am accused Momin Gazi informed them about the illness of the victim. They went to the house of the accused and found victim's dead body on the bank of the pond situated at the southern side of the house. The villagers were present there but she could not remember their names. After marriage they paid Taka 10,000/- to the accused sitting in the verandah of their house. Previously, the accused tortured the victim on demand

of dowry. The son of the accused resides with him but the daughter resides with the accused. She denied the defence suggestion that the accused did not torture the victim on demand of dowry.

PW5 Abdus Samad, a brother-in-law of the victim and neighbour of the accused stated that the occurrence took place about 2 years ago. In the morning, before *adhan* he went out for work. He returned home later on and came to learn from his wife Marjina that his sister-in-law, the victim died. He went to the house of the accused and found the dead body covered with mat. He did not know anything more. At this stage he was declared hostile by the prosecution and cross-examined, to which he stated that he could not say whether the occurrence took place on 20.05.2006. He denied that at about 9:00 am he saw the dead body of victim and found marks of injuries on her nose and upper part of left thigh. He did not know whether the accused beat the victim to death for dowry of Taka 20,000/-. He denied the suggestion of the prosecution that taking advantage from the relatives of accused Momin Gazi he deposed falsely only to save the accused. In cross-examination by the defence he

stated that police did not examine him. After the death of victim he did not meet with any relatives of Momin Gazi.

PW6 Monsur Sarder alias Munsur Ali, a brother-in-law of the informant failed to remember the date of occurrence but stated that it was at 9:00 am, would be on 20 of 2 years ago. His mother-in-law informed him that the victim died in the house of accused Momin Gazi. Hearing the said news, they rushed to the house of occurrence and found the dead body of victim. Police came and in his presence held inquest. He found injuries on the right eyes, on the upper part of left thigh and at the bottom of victim's knee. Accused Momin Gazi used to torture the victim and for that reason *salishes* were held on several occasions. At this stage the prosecution declared him hostile and cross-examined, to which he stated that the occurrence took place on 20.05.2006. He did not hear whether the accused beat the victim on demand of dowry but he heard from his mother-in-law and brother-in-law of doing so. In cross-examination by the defence he failed to state the date of holding *salish*. He was not present in the *salish*. His mother-in-law and the informant after 1 month of victim's death told him that

accused killed the victim on demand of dowry. Police did not examine him. He did not see accused Momin Gazi to beat the victim but he heard it. He denied all other material suggestions put to him.

PW7 Md. Atiar Rahman, a neighbour nephew of the informant stated that the occurrence took place at about 9:00 am on 20.05.2006 while mother of the victim went to their house and told him that Manwara died. They went to the house of the accused and found the dead body of victim. He also noticed injuries on the nose and left side of the left eye of the victim. He further found injuries on the other parts of the victim's body. Subsequently, he visited the house of the accused. Accused Momin Gazi came to the house of victim's mother and told about victim's death. At this stage he was declared hostile by the prosecution and cross-examined, to which he stated that he did not hear the reason of beating the victim. He returned home hurriedly. He denied the suggestion that when he went to the house of the accused he did not hear that accused Momin Gazi killed the victim on demand of dowry. But he heard that the accused beat her. He denied that he being biased by the relatives of accused

Momin Gazi deposed partly true. In cross-examination by the defence, he stated that he did not know whether at the life time of victim she told him that accused Momin tortured her on demand of dowry. Police did not examine him. He denied the defence suggestion that at about 9:00 am on 20.05.2006 victim's mother went to his house and informed him about the death of victim. He further denied of going to the house of the accused and finding there victim's dead body.

PW8 Shekhor Ali alias Sekhar Ali, a constable of police took the dead body of the victim to the morgue at about 10:00 am on the day of occurrence for holding autopsy. In cross-examination by the defence, he stated that police did not examine him. He could not say anything more except taking the dead body of the victim.

PW9 GKM Kamruzzaman, a doctor who was posted to 250 baded Jashore Hospital at the material time stated that on 21.05.2006 he held autopsy on the dead body of victim Manwara with other 2 doctors. He proved the autopsy report exhibit-2 and identified his signature thereon. After receiving the viscera report they passed opinion as to the cause of

death. They found no existence of poison in the viscera report and accordingly passed opinion as under-

“In our opinion death was due to asphyxia resulting from pressure on upper part of the chest and neck which is ante mortem and homicidal in nature”

He proved the report exhibit-3 and identified his signature thereon. In cross-examination by the defence, he denied the suggestion that they did not mention the marks of injuries in the report. They kept passing of the opinion in the autopsy report till receipt of viscera report. He denied that they did not do the postmortem examination properly and submitted a biased report.

These are all oral evidence of the prosecution witnesses.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocate appointed as State Defence Lawyer. Out of 9 prosecution witnesses PW2 Aklima Khatun, PW5 Abdus Samad, PW6 Monsur Sarder and PW7 Md. Atiar Rahman were declared hostile by the prosecution and cross-examined by the both the prosecution and the defence.

But the prosecution witnesses proved that victim Manwara Begum was found dead in the courtyard of the house of condemned-convict husband Momin Gazi. In evidence PWs 1, 4 and 7 proved that the condemned-convict informed PW4, mother of the deceased that the victim fell ill. Hearing the said news the informant and other relatives rushed to the occurrence house and found the dead body of the victim lying in the courtyard of condemned-convict's house but the accused absconded. All of the prosecution witnesses, even some of the hostile witnesses in a voice told that in the courtyard of convict's house they found marks of injuries on the person of the dead victim. The informant himself filed an UD case and on its basis the inquest was held. In the inquest, police found marks of injuries on victim's body and consequently the dead body was sent to the morgue for holding autopsy. In the inquest several injuries on the right side of right eye, over the right side of nose and below the left ear of the victim were found. Furthermore, the nails were found blueish and her right leg was found tendered with black mark. Her upper part of left knee was found tendered and blackish. Since it was written

in the UD case that smell of poison was also found into the mouth of the victim, therefore, after autopsy viscera was sent for chemical examination. After obtaining report of chemical examination that 'no poison was found' the doctor opined that the death was due to asphyxia resulting from pressure on upper part of the chest and neck which is antemortem and homicidal in nature.

Although, the post mortem report does not tally with the inquest report in toto but in case of any conflict between the inquest and the autopsy report, the autopsy report having been issued by an expert shall prevail as per settled position of law. Here, as per postmortem examination report blood stained/liquid is found coming out from nose, bruise cyanosis around the right eye, anterior chest wall congested and right left kidneys were found slightly congested. As per the opinion passed by the doctor in the autopsy report, it can be safely held that the victim was pressed on her chest either by leg or anything else and she was assaulted which resulted her death. The death was antemortem and homicidal in nature. The death is neither natural nor accidental or suicidal. This is a clear case of killing.

Although the condemned-convict, the husband of the deceased informed about the illness of the victim to PWs 1, 4 and 7 in the morning but thereafter he remained absconding. He remained absconding long days and surrendered in the Tribunal on 01.02.2007, *i.e.*, after 9 months of the day of occurrence. By cross-examining the prosecution witnesses the condemned-convict did not explain the death of his wife. The defence did not make out any definite case that the death was for other reason not as claimed by the prosecution. The prosecution by evidence of witnesses successfully proved that earlier the convict demanded dowry, he took Taka 20,000/- from the informant and he further demanded dowry of Taka 20,000/- to the victim and killed her for its nonpayment. The prosecution successfully proved the charge against the condemned-convict under section 11(Ka) of the Ain. The condemned-convict remained absconding 9 months before trial and after obtaining bail from the Tribunal and at the fag end of the trial he again absconded. The aforesaid conduct of the condemned-convict unerringly proves his guilt that he committed the offence of murder. The non examination of the IO and declaring PWs 2, 5, 6 and 7 as

hostile in no way effects the prosecution case that victim Manwara was killed by her husband convict Momin Gazi.

In the premises above, this reference is accepted. The judgment and order of conviction and sentence of death passed by the Tribunal is hereby confirmed.

The concerned authority is directed to secure the arrest of the condemned-convict to execute his sentence of death.

Communicate this judgment and send down the records of the Tribunal.

K.M. Rasheduzzaman Raja, J.

I agree.