

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

Present:

Mr. Justice Bhishmadev Chakraborty
and

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 101 of 2019

The State ...petitioner

-Versus-

Md. Zahidul Islam

...condemned-convict (Absconding)

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

...for the State

Mr. Md. Hafizur Rahman Khan, Advocate

...appointed as a State Defence Lawyer

Heard on: 26.07.2026 and 28.07.2026

Judgment on: 28.07.2026

K.M. Rasheduzzaman Raja, J:

This reference under section 29 of the Nari-o-Shishu
Nirjatan Daman Ain, 2000, hereinafter ‘the Ain’, 2000 has
been sent by the learned Judge, Nari-o-Shishu Nirjatan
Daman Tribunal-1, Jeshore, hereinafter ‘the Tribunal,’ for
confirmation of the death sentence awarded upon condemned

convict Md. Zahidul Islam under section 11(Ka) of the Ain, 2000 by the judgment and order dated 29.08.2019 passed in Nari-o-Shishu Case No. 387 of 2004 arising out of GR No. 454/2004 corresponding to Kotowali P.S. Case No. 41 dated 14.07.2004.

The prosecution case, in short, is that deceased Taslima got married with condemned convict Md. Zahidul Islam. Accused Md. Mohidul Islam instructed his brother accused Zahidul Islam to demand dowry to his wife Taslima for Taka 10,000/- (Ten thousand) at 08:00/09:00 p.m. on 29-08-2001. Earlier P.W. 1 Mst. Jahanara Khatun, mother of the deceased, paid dowry of Taka 14,000/- to accused Zahidul Islam. Taslima expressed her inability to pay the dowry. Following her refusal to pay dowry accused Zahidul Islam, Mohidul Islam, Jamir Hossain, Kawser Molla and Amena Khatun assaulted and beat Taslima Khatun with a cutlass-pad (বড়ির আছার). On such injury blood was flowing from the ears of Taslima. Accused Mohidul Islam beat Taslima with iron rod resulting in the breaking of the bone of her back. Accused Jamir Hossain broke the wrist of Taslima by inflicting blow of iron rod. Accused Amena Khatun trampled

victim Taslima. Suffering from such injury Taslima wanted to drink water. The accused persons called Dr. Krisna in their house to provide treatment to Taslima who expressed his inability to give treatment. In such condition of injury Taslima died in the house of accused persons. Then the accused persons kept the dead body hanging in a jackfruit tree and announced that she committed suicide. On the next morning, a van driver of the village of the accused informed the informant P.W.1 Mst. Jahanara Khatun that her daughter committed suicide by hanging. P.W.1 along with her husband P.W.6 Abdus Samad, son-in-law P.W.4 Gias Uddin and brother P.W.5 Md. Nazir Mir went to the house of the accused and found the dead body of Taslima lying in the *verandah*, of the house of the accused Zahidul Islam. They came to know from the neighbours that the accused persons kept the dead body of Taslima hanging after killing her. On examination of the dead body of Taslima she found blood coming out from her right ear and her left hand was found broken. She also found marks of injury in the left side of her back. P.W.1 Mst. Jahanara Khatun and her husband P.W.6 Abdus Samad went to police station to file a case but without

recording their case, the police started a UD case on the occurrence. Thereafter, she filed a petition of complaint before the cognizance court of Magistrate on 11-07-2002.

Learned Magistrate sent the petition of complaint to Kotowali Police Station for recording a case treating the same as an FIR by the order dated 14-07-2004.

Receiving the order of the learned Magistrate, Kotowali Police Station, Jeshore registered Kotowali P.S. Case No. 41 dated 14.07.2004 under section 11(Ka) and 30 of the Ain, 2000 against the accused including the convict. Police investigated the case and submitted the charge sheet against all the accused persons named in the FIR under sections 11(Ka) and 30 of the Ain, 2000. Learned Magistrate then transmitted the record of the Code to the Tribunal for holding trial.

Learned Judge of the Tribunal receiving the record of the case took cognizance of offence against all the accused and started Nari-o-Shisu Nirjatan Daman Case No. 387 of 2004 and subsequently framed charge against the accused persons under sections 11(Ka) and 30 of the Ain. The charge

could not be read over to the accused as none of the accused persons were present.

To bring home the charges brought against the accused persons the prosecution produced 10 witnesses. After recording of the evidence accused Jamir Hossain, who was present subsequently during the trial, was examined under section 342 of the Code to which he claimed his innocence and expressed his desire not to adduce any counter evidence.

The defence case as appears from the trend of cross-examination is that of innocence and deceased Taslima committed suicide by hanging being unable to bear the colic pain but the informant has filed this case after lapse of long time only to harass the accused persons.

Learned Judge of the Tribunal hearing the prosecution and the State Defence Lawyer and the learned Advocate for accused Md. Jamir Hossain found condemned convict Zahidul Islam guilty of offence under section 11(Ka) of the Ain and convicted and sentenced him thereunder to suffer death penalty by the judgment and order dated 29.08.2019 acquitting the other 4 accused persons. Then the reference

was made under section 29 of the Ain to this Division for confirmation of the sentence.

Mr. Mohammad Imam Hossain (Tarek), learned Deputy Attorney General submits that the prosecution adduced 10 witnesses to prove the charge brought against the accused persons. Condemned convict Zahidul Islam is the husband of deceased Taslima and her dead body was found in his house. Although some of the witnesses were declared hostile by the prosecution but many of them have corroborated the prosecution case in their cross-examination. The inquest report and the post mortem report are found to be in consonance with the cause of death by strangulation. The defence could not establish any case to controvert the prosecution case and, therefore, the reference should be accepted. Mr. Hossain has referred to the cases of Aminul Islam Bulbul Vs. State, 21 BLC (AD) 232 and The State Vs. Abdur Razzak Howlader, LEX/BDHC/0232/2025 and relied on the principle laid therein.

On the other hand, Mr. Md. Hafizur Rahman Khan, learned Advocate being appointed as a State Defence Lawyer has opposed the reference submitting that the prosecution has

responsibility to prove that at the relevant time the husband of the deceased was very much present in his house. The Investigating Officer (IO) could not gather sufficient evidence to prove the presence of the accused in his house. The witnesses have given contradictory evidence regarding presence of the husband of the deceased in his house at the relevant time. Neither the Daroga who prepared the inquest report nor the I.O. himself appeared before the Court to testify the facts and circumstances which they have allegedly found. The absconsion of the accused itself cannot be a ground for his conviction. Mr. Khan has relied on the principles laid down in the cases of *The State Vs. Md. Shafiqul Islam*, 43 DLR (AD) 92; *Alamgir Hossain & anr Vs. State*, 22 BLC (AD) 155 and *Mokter Hossain Khan (Md.) Vs. The State*, 13 MLR (AD) 186.

We have already found that the prosecution has examined 10 witnesses to prove the charge brought against the condemned convict. Now, let us examine the some and substances of the evidence of the prosecution witnesses both oral and circumstantial to see how far the prosecution has been able to connect the responsibility of the condemned

convict Zahidul Islam with the killing of his wife Taslima Khatun on the date of occurrence at their house.

P.W. 1 Jahanara Khatun has deposed that she cannot remember the date of occurrence exactly. The occurrence took place in the year of 2001 at 08:00/09:00 at night. Mohidul Islam put pressure on his brother condemned convict Zahidul Islam to demand dowry to his wife deceased Taslima. Therefore, Zahidul Islam demanded dowry of Taka 10,000/- (ten thousand) to his wife. As she expressed her inability to pay the dowry, the accused persons assaulted and beat her with the cutlass pad. They inflicted blow on her head resulting in bleeding from her right ear. Accused Mohidul Islam inflicted iron rod blow on the left side of her back and on her hand causing broken injury on her wrist. Accused Amena Khatun trampled the body of Taslima. The accused persons called Dr. Krisna who examining Taslima expressed his inability to provide her treatment. Thereafter, Taslima succumbed to her injuries in the house of the accused persons. The accused persons then hanged the dead body of Taslima in the jackfruit tree with her wearing *sharee* and announced that she committed suicide by hanging. A van

driver of the village of the accused going to their village informed them that their daughter committed suicide by hanging. Hearing such occurrence she along with her husband P.W. 6 Abdus Samad, her son in law P.W. 4 Gias Uddin and her brother P.W. 5 Md. Nazir Mir went to the house of the accused persons and found the dead body of Taslima lying in their *verandah*. They came to know from the neighbours that the accused persons hanged the dead body of Taslima in the jackfruit tree after killing her. Examining the dead body of Taslima, she found blood flowing from her right ear and her left hand broken. She also found injury mark on the back of the deceased and showed those injuries to her husband, brother and son-in-law. She and her husband P.W. 6 Abdus Samad went to police station to lodge an FIR but police recorded a UD case instead of receiving their FIR. Thereafter, they filed a petition of complaint before the cognizance Magistrate. In cross-examination she has stated that she did not see the accused persons beating her daughter Taslima. However, she found marks of injury on her body. She found her left hand broken, ribs broken and blood coming out from the ear of Taslima.

She has stated that she lives $3\frac{1}{2}$ miles away from the house of the accused and she visited the house one month ago. She has filed the case after 9/10 months of the occurrence. Police arrived and held inquest over the dead body in her presence. Turning all sides the Daroga observed the dead body and prepared an inquest report with her signature. She has denied that she found no mark of injury on the dead body of Taslima or deceased Taslima committed suicide by hanging with her wearing *sharee* from the jackfruit tree being unable to bear her stomach pain.

P.W. 2 Mst. Selina Khatun alias Selina has deposed that she did not know deceased Taslima as her house stood 400 cubits away from their house. She never visited the house of the deceased. She cannot remember the date of occurrence. The occurrence took place 7 years ago and she heard at night that the wife of accused Zahidul Islam died. She knows nothing more. The prosecution has declared her hostile and in cross-examination of prosecution she has stated that she cannot say whether accused Zahidul Islam killed his wife Taslima demanding dowry and kept her dead body hanging from the jackfruit tree. She has denied that

being a neighbour of the accused she deposed falsely to save the accused. In cross-examination of the State Defence Lawyer she has stated that she knew nothing about the occurrence.

P.W. 3 Mst. Selina Khatun alias Selina has deposed that she did not know informant Jahanara or her daughter Taslima. She lives in the same village of accused Zahidul Islam. She cannot remember the date of occurrence which took place probably 7 years ago. She heard in the morning that the wife of accused Zahidul Islam committed suicide. The prosecution declared her hostile. In cross-examination of the prosecution she has stated that she does not know whether accused Zahidul Islam killed her wife Taslima for dowry and kept her dead body hanging by her wearing *sharee* from the jackfruit tree and announced that she committed suicide. She has denied that she deposed falsely to save accused Zahidul Islam being a neighbour. In cross-examination of the State Defence Lawyer she has stated that she neither witnessed nor heard anything about the occurrence.

P.W. 4 Gias Uddin, son-in-law of the informant, has deposed that deceased Taslima was his sister-in-law. He cannot remember the date of occurrence which probably took place 7/8 years ago. Hearing about the death of his sister-in-law he went to the house of her husband accused Zahidul Islam in the morning with his wife. Going there he found the dead body of Taslima hanging from the tree. He then got down the dead body with the help of villagers of the accused and kept the same in the *verandah* of accused Zahidul Islam. He found no marks of injury on the body of the deceased. He inquired about the cause of death and came to know from the local people that Taslima committed suicide following a quarrel with her husband. The prosecution declared him hostile. In cross-examination of the prosecution he has stated that he found no marks of injury on the dead body. But in the post mortem report the doctor found some injuries. He has denied that he also found those injuries in the body of the deceased or he concealed those injuries to save the accused being influenced by him and his relatives.

P.W. 5 Md. Nazir Mir, brother of the informant, has deposed that deceased Taslima is his niece. He cannot

remember the date of occurrence which took place 8/9 years ago. In the morning on the date of occurrence, two people informed him that his niece Taslima committed suicide by hanging. Hearing such occurrence he went to the house of the accused Zahidul Islam with his sister Fatema and P.W. 1 Jahanara Khatun. Going there they found the dead body of Taslima lying in the *verandah* of the house of the accused. His sister Fatema and informant Jahanara found marks of injury in the body of Taslima. However, he did not see but Fatema and Jahanara told him that they saw such injuries. He did not hear why Zahidul Islam beat her wife Taslima. The prosecution has declared him hostile and in cross-examination of the prosecution he has stated that he did not hear accused demanding dowry of Taka 10,000/- (ten thousand) to the deceased at 08:00/09:00 p.m. on 29.08.2001 and when Taslima expressed her inability to pay the dowry her husband accused Zahidul Islam inflicted a blow on her head by the cutlass pad resulting injury on her ear. He has denied that he himself saw the injuries on the body of the deceased. However, he has stated that accused Zahidul Islam kept the dead body hanging with her wearing *sharee* for

announcing that she committed suicide. In cross-examination of the State Defence he has stated that he found the dead body of Taslima lying and he did not find *sharee* wrapping around her neck.

P.W. 6 Abdus Samad, father of the deceased has deposed that he cannot remember the date of occurrence which probably took place 7/8 years ago at 08:00/09:00 p.m. He got information from accused Jamir, brother of his son-in-law accused Zahidul Islam, at 10:00/11:00 a.m. on the next day that his daughter died. Hearing such occurrence, he went to the house of accused Zahidul Islam along with 4/5 people and going there found the dead body of Taslima in the *verandah* of the accused. He could not see the dead body uncovering the same. He came to know going there that the deceased committed suicide. The prosecution declared him hostile and in cross-examination of the prosecution he has stated that the occurrence took place on 29.08.2001. Accused Zahidul Islam, Mohidul Islam, Jamir Hossain and others lived in a joint mess. After marriage, accused Zahidul Islam used to demand dowry to his daughter Taslima. Taslima was of sound health. His daughter Taslima informed him that

accused Zahidul demanded dowry of Taka 10,000/- (ten thousand) to her. The accused persons killed Taslima as she could not satisfy their demand of dowry. In cross-examination of the State Defence Lawyer, he has stated that he went to the house of his son-in-law accused Zahidul Islam on the next day of his daughter's death. He got information from Jamir, brother of Zahidul, about the death of his daughter. He does not know whether Taslima was suffering from any stomach pain.

P.W. 7 Nazrul Islam has deposed that the informant is his neighbouring sister. The occurrence took place at night 4/5 years ago. He came to know from the informant that accused Zahidul Islam assaulted his wife Taslima for dowry. In cross-examination he has stated that he did not see the accused beating Taslima. He heard about such beating from the people of the village of the informant.

P.W. 8 Quayem Ali Master has deposed that the informant Jahanara Khatun is his niece by relation. He cannot remember the date of occurrence which took place at night in the year of 2001. Informant Jahanara told him that someone killed her daughter Taslima and she disclosed the

name of that man but he cannot remember his name. The prosecution declared him hostile and in cross-examination of the prosecution he has stated that the occurrence took place at 08:00/09:00 p.m. on 29.08.2001. He has denied that the informant told him that accused Zahidul Islam and his brother Mohidul Islam killed Taslima demanding dowry or he deposed falsely concealing the facts being influenced by the accused.

P.W. 9 Dr. G.K.M. Kamruzzaman has deposed that he was a Medical Officer posted in General Hospital, Khulna on 31.08.2001. Being a member of the medical board comprised of two members, he received the dead body of Taslima Khatun from Constable No. 99 Md. Nehal Uddin. Holding autopsy on the dead body, he found following injuries-

(1) A bruise 3"x1" on the right [lateral surface of neck, about its middle and Transverse].

In his opinion the cause of death was due to asphyxia resulting from strangulation which was ante-mortem and Homicidal in nature.

He has marked the autopsy report and his signature thereon as exhibits. In cross-examination he has stated that

the marks of injury were found in the neck of the deceased. These injuries were not similar to suicidal hanging. Why he mentioned homicidal hanging instead of suicide, he did not mention in the report.

P.W. 10 Mozahar Ali was tendered but the defence declined to put him under cross-examination.

On perusal of the above evidence of the prosecution witnesses, it appears that almost all the witnesses except P.W. 1 Mst. Jahanara Khatun, P.W. 7 Nazrul Islam and P.W. 9 Dr. G.K.M. Kamruzzaman have been declared hostile. In spite of that P.W. 1 Mst. Jahanara Khatun, P.W. 6 Abdus Samad, P.W. 7 Nazrul Islam have corroborated the prosecution case supporting each other to some extent. It appears from the evidence of P.W. 1 Mst. Jahanara Khatun and her husband P.W. 6 Abdus Samad, P.W. 5 Md. Nazir Mir that they visited the house of the accused persons and observed the dead body. P.W. 1 and P.W. 6 have stated that accused Zahidul Islam inflicted blows on the deceased on her failure to give dowry of tk. 10,000/- (ten thousand). P.W. 6 Abdus Samad has categorically stated that his daughter deceased Taslima informed him that her husband Zahidul

Islam demanded dowry of tk. 10,000/- (ten thousand) to her. P.W. 7 Md. Nazir Mir has stated that his sister Fatema and informant Jahanara Khatun found marks of injury on the body of the deceased and told him about such injury. P.W. 9 Dr. G.K.M. Kamruzzaman has found a bruise on the right surface of neck about its middle and it was lateral and transverse which does not match the injury of suicidal hanging.

The defence could not prove their case that the deceased was suffering from stomach pain by putting the witnesses under cross-examination. On perusal of the record, it appears that initially Mohammad Ismail Hossain, the local UP Member, filed a UD case to Kotowali police station, Jeshore on 30.08.2001 alleging that his neighbour Taslima Khatun committed suicide by hanging with her wearing *sharee* from the jackfruit tree at 03.00 a.m. on 30.08.2001 being unable to bear her chronic stomach pain. Police investigated the UD case and submitted final report on 14.07.2004 i.e. after almost 1 year on the ground of filing of Kotowali P.S. Case No. 41 dated 14.07.2004 under sections

11(Ka) and 30 of the Ain. By this long span of time police failed to prove the fact of suicide.

P.W. 6 Abdus Samad, father of the deceased, has stated in cross-examination of the state defence lawyer that his daughter was of sound health. The accused condemned convict Zahidul Islam, husband of the deceased, is found absent from the very beginning. The Court subsequently declared him fugitive following the procedure of law. So, he cannot be called to be a mere absconder. A fugitive for long time can get no favour of law. Admittedly, deceased Taslima was found dead in the house of her husband condemned convict Zahidul Islam and the occurrence took place at night on the date of occurrence. In a wife killing case, the husband's continued absence lends weight to the circumstantial evidence against him.

Relying on the case of *The State Vs. Md. Shafiqul Islam* 43 DLR (AD) 92 learned State Defence Lawyer Mr. Khan submits that to make the husband liable, the minimum fact of presence of the husband in the house at the relevant time must be proved. It was held in the aforesaid case that –

“When it is proved that the wife died of assault in the house of her husband, there would be strong suspicion against the husband that at his hand the wife died. To make the husband liable, the minimum fact that must be brought on record, either by direct or circumstantial evidence, is that he was in the house at the relevant time.”

Let us examine the facts and circumstances of the case. P.W. 1 Mst. Jahanara Khatun, mother of the deceased has stated that upon found marks of injury on the body of her daughter she along with her husband P.W. 6 Abdus Samad went to the police station to file a case but police without registering their case opened a UD case. We get support of such allegation upon found that police started UD Case No. 157 dated 30-08-2001 on an application filed by the local UP Member Ismail Hossain. Neither the husband nor any of his relation went to the police station to file such a case. It indicates that the relatives of the deceased went into hiding just after the death of Taslima.

The defence could not bring out from the prosecution witnesses or by adducing any evidence on behalf of the accused persons that Zahidul Islam was not present in the house at the relevant time. Even accused Md. Jamir Hossain, brother of Zahidul Islam, did not say anything about absence of his brother Zahidul Islam at the time of his examination under section 342 of the Code. In absence of any specific case regarding absence of the husband of the deceased at his house the prosecution should not be made liable for proving the presence of the husband at the relevant time. Unlike the case of State Vs. Md. Shafiqul Islam 43 DLR (AD) 92 the husband of the deceased is absent till now.

P.W. 1 Mst. Jahanara Khatun, the informant has categorically stated that at the instance of his brother Mohidul accused Zahidul Islam demanded dowry to the deceased and on her failure to satisfy his demand Zahidul Islam and his relatives assaulted her daughter and done to death. So, it comes out of her evidence that accused Zahidul Islam, husband of the deceased was present in his house on the fateful night when his wife Toslima met the death. Therefore, it was the responsibility of the condemned convict

Zahidul Islam to explain how his wife was killed or died while living in his house. But without giving such explanation husband Zahidul Islam is found to have become fugitive till today. The principle laid down in the case of Md. Shafiqul Islam (supra) is found to be of no help to the fugitive condemned convict Zahidul Islam.

On the other hand, admittedly the dead body of the deceased was recovered from the house of her husband. Police held inquest over the dead body and found injuries on it which supports physical assault on the deceased. The demand of dowry has been corroborated by P.W. 1, P.W. 6 and P.W. 7. The death of the deceased was investigated earlier by police registering a UD case for 1 year but failed to submit any report supporting the case of a suicidal hanging. Rather, the Investigating Officer has found after investigation that the deceased was killed by strangulation and, thereafter, her dead body was kept hanging from the jackfruit tree. Although neither the Daroga who held inquest nor the IO has been examined by the prosecution but the witness of the inquest report has testified before the Court supporting the inquest and almost all the witnesses were

declared hostile. Whatever support for the prosecution case has come out, has come out only from the cross-examination of the prosecution witnesses. Therefore, any corroboration or contradiction of their statements recorded by the IO under section 161 of the Code was not required. So, the evidence of the IO is not found to be of so much worthy to support the defence case or discredit the prosecution case. In this circumstance, we hold that non-appearance of the IO or the Daroga holding inquest did not affect the prosecution case causing any fatal defect in the trial.

In view of the above discussions, we hold that the prosecution has been succeeded in proving the case that the condemned convict Zahidul Islam killed his wife Taslima Khatun on the date of occurrence on her failure to satisfy his demand of dowry. The learned Judge of the Tribunal is found to have committed no mistake or error in awarding sentence upon the condemned convict by the impugned judgment. However, upon consideration of the entire gamut of evidence, we are inclined to hold that the sentence for imprisonment of life shall be proportionate to the offence the

condemned convict has committed in this case. Therefore, the death sentence is commuted to imprisonment for life.

In the result, the death reference is rejected. The death sentence is commuted to the sentence of imprisonment for life. The Tribunal is directed to recall the earlier conviction Warrant of Arrest and issue a fresh Warrant of Arrest mentioning the modified sentence.

Communicate the judgment and order and transmit the records of the Tribunal.

Bhishmadev Chakrabortty, J:

I agree