

**Present:**

**Mr. Justice Md. Emdadul Huq**

And

**Mr. Justice Mohammad Ullah**

**CRIMINAL APPEAL NO. 2394 OF 1995**

Md. Nur Alam and another  
.....Appellants.

-Vs-

The State

..... Respondent.

Mr. A.K.M. Fazlul Huq Khan (Farid) with

Mr. Md. Shafiquzzaman, Advocate

.... For the Appellants.

Mr. Md. Abdur Rahman Howladar, AAG

.... For the State.

Hearing on 8.4.2012, 15.4.2012, 17.4.2012,  
18.4.2012, 19.4.2012, 25.4.2012

And

**Judgment on 02.5.2012.**

**Mohammad Ullah, J.**

This criminal appeal is from the judgment and order dated 8.10.1994 by which the learned Sessions Judge, Tangail, in Session Case No. 96 of 1994, convicted the two appellants under sections 302 and 34 of the Penal Code and sentenced both of them to suffer rigorous imprisonment for life.

The prosecution case, in brief, is that the informant Md. Ashrab Ali lodged First Information Report (**shortly the FIR**) on 02.01.1994 about killing of his son Md. Rafiqul Islam. He stated that his son had

been working in a shop of a relative named Jahangir Hossain at Baby Stand Road (Kandapara). He alleged that on 29.12.1993 at about 8.30 a.m. the accused Md. Nur Alam and Md. A. Latif had taken his son Rafiq with them. In that night his son did not return home. So the informant started searching for his son and the accused persons, but could not trace them. Thereafter on 02.1.1994, on finding the accused persons at Kandapara Baby Stand, the informant and his companions apprehended them, who on interrogation disclosed that they had taken Rafiq with them on the pretext of business activities and subsequently took Tk. 4200/- from his son and killed him by strangulation at the bank of Jamuna River in the night following 29.12.1993 and they had thrown away the dead body of Rafiq into the river. During such interrogation some police personnel appeared there and the accused persons again disclosed the same facts to the police. Thereafter the informant, his companions and the police personnel went to the bank of river Jamuna along with the accused persons who showed the place of killing. Then on further search, the dead body of informant's son was found in a floating condition near an island at a distance of 3½ kilometer from the place of killing. The dead body of the victim Rafiq was lifted therefrom and was identified by the informant. Thereafter FIR was lodged and it was recorded as Tangail Police Station Case No. 2 dated 2.1.1994.

During investigation, both the accused persons, on 4.1.1994, made confessional statements under section 164 of the Code of Criminal Procedure, 1898 (**shortly the Code, 1898**) implicating themselves in the commission of murder. However, the accused Abdul Latif and Md.Nurul Alam filed two separate applications dated 30-1-1994 and 16-2-1994 respectively for retraction of their confession recorded earlier.

After investigation police submitted charge sheet dated 28.2.1994 under sections 302,201,379 and 411 of the Penal Code against the two accused persons.

The trial court, on 24.10.1994, framed charge under sections 302,201 and 34 of the Penal Code against the accused-persons. They pleaded not guilty and claimed to be tried.

Prosecution produced 17 witnesses of whom PW. 8 was tendered but not examined by prosecution. The other 16 P.W's. were examined by prosecution. Defence cross-examined all the P.W's. except P.W. 8, 11, 12 and 14, but did not produce any counter evidence.

After closure of prosecution evidence, the accused persons were examined under section 342 of the Code, 1898 whereupon they pleaded innocence and submitted separate written statements.

From the trend of cross-examination of the prosecution witnesses, the defence pleas appear to be that they were falsely implicated in the

case out of previous enmity and grudge at the instance of one Jahangir Hossain.

In his written statement, the accused Abdul Latif stated that he was totally innocent. Police arrested him from his house at the instance of Jahangir Hossain. He confessed his guilt out of torture of the police. He was implicated in the instant case out of village conspiracy.

In the separate written statement, accused Nur Alam also stated facts similar to those of accused Abdul Latif.

The trial court, after conclusion of the trial, found the appellants guilty of the offence under sections 302/34, 201/34 and 379/34 of the Penal Code and convicted and sentenced both the appellants as stated above.

Against the said judgment and order of conviction and sentence both the appellants preferred this Criminal Appeal and on 7.7.1997 they were granted bail.

Mr. Md. Safiquzzaman, the learned Advocate appearing on behalf of the appellants, made the following submissions:

- 1) The delay in lodging the FIR has not been explained.

2) Police recorded a General Diary (G.D) dated 2.1.1994 (Exhibit - 15) which should have been treated as the FIR of the case and the FIR should have been treated as 161 statement.

3) There is no eye witness to the alleged occurrence and the prosecution failed to prove the charge by producing any independent and natural witnesses.

4) The confessional statements of the appellants recorded by the Magistrate (P.W. 9) were not true and voluntary, rather the same were extracted by putting them under torture by the police by keeping the appellants in illegal custody.

5) The appellants were minors and they were falsely implicated in the alleged murder of the victim Md. Rafiqul Islam at the instance of one Jahangir Hossain at whose shop the victim used to work.

6) The learned Sessions Judge failed to consider the material discrepancies in the prosecution evidence and the conviction and sentence is based on misreading and non-consideration of the evidence on record and thus the appeal should be allowed.

In support of his submission Mr. Safiquzzaman, the learned Advocate, referred to the case of (1) The State vs. Md. Farid Karim, 8 BLT (AD) 87, (2) the case of Dula Mia alias Nurul Islam and others vs. The State, 14 BLD, 477 and (3) the State vs. Sarowaruddin, 5 BLC, 451.

In reply Mr. Md. Abdur Rahman Howlader, the learned AAG, submits that prosecution has produced sufficient and credible evidence and proved the charge beyond reasonable doubt and therefore the appeal should be dismissed.

Mr. Howlader further submits that there are strong corroborating evidence with the confessional statement which are true and voluntary, and the learned Sessions Judge after considering the evidence on record rightly convicted the appellants.

For coming to a proper decision about sustainability of the impugned judgment and order of conviction and sentence we need to examine and assess the evidence on record keeping in view of the charge framed. Accordingly the evidence on record is briefly presented below:

P.W. 1 Md.Ashrab Ali being the informant and father of the victim Rafiq reiterated the facts as stated in the FIR (Exhibit-7).

In cross-examination he stated that he had given Tk. 4200/- to his son Rafiq 3 /4 days prior to the occurrence. He stated that he had not seen the occurrence, but heard from Jahangir that the accused persons had taken his son with them.

P.W. 2 Md. Hossain Ali is a Rickshaw Van puller and a seizure list witness. He identified the accused-persons on the dock and stated that on 2.1.1994 at 11.00 p.m. he had gone to the police station and

found the accused persons. He also stated that the accused persons confessed in his presence that they had killed the victim Rafiq by strangulation. He further stated that Police had recovered a money bag and a shorts from the house of the accused A. Latif and prepared seizure list. He proved the seizure list and his signature therein as exhibit 1 and 1/1 respectively. He stated that witness Jahangir had died before 2-3 months of his (P.W. 2's) deposition.

In cross-examination he stated that he heard about the occurrence from Jahangir.

P.W. 3 Md. Baki is the brother-in-law of the informant. He identified the accused persons on the dock and stated that on 29.12.1993 at about 8.30 a.m. the accused persons took the victim with them to Char Gopal near Jamuna River and both of them stated that they had killed the victim Rafiq thereat by strangulation and threw the dead body of the victim to the Jamuna River. P.W 3 further stated that the accused persons were firstly apprehended and people interrogated them in his presence and they disclosed that they had killed the victim and thereafter he (P.W. 3) along with the other witnesses and the police personnel went to the place of occurrence with the accused persons. The accused persons showed to them the place of killing and thereafter on searching they recovered the dead body of the victim. They came back to the police station with the dead body of the victim and thereafter the

informant lodged the FIR. P.W. 3 further stated that on 02.01.1994 at 1.00 p.m. accused A. Latif at his house took out (বাহির করিয়া দেয়) Tk. 300/- in his presence and seizure list was prepared and he signed the seizure list (Exhibit 1 / 2) at the Thana.

In cross-examination P.W. 3 stated that victim Rafiq had been working in the shop of Jahangir. He stated that he had not seen the occurrence and that the dead body of the victim Rafiq was recovered at a distance of 3 ½ miles from the place of killing as shown by the accused persons. He also stated that the accused persons were apprehended and firstly taken to the shop of Jahangir. The accused persons were given good lesson by the local people. He denied the suggestion that the accused persons confessed their guilt at the fear of police.

P.W. 4 Md. Shahin Mia, a baby taxi driver, stated that he heard that the victim Rafiq was killed by the accused persons. He also stated that, by his baby taxi, the accused persons were taken to the police station from the shop of Jahangir.

In cross-examination he stated that he heard that the accused persons were beaten up.

P.W. 5 Md. Delkhosh, a shop keeper, stated that the occurrence took place on 29.12.1993. He identified the accused persons on the dock.



He stated that, on query, the accused persons in his presence disclosed that they had killed the victim Rafiq.

In cross-examination he stated that he had no relationship with the Jahangir. He also stated that he and Jahangir did not beat up the accused persons. He denied the suggestion that he deposed falsely.

P.W. 6 Md. Sukuruddin, is the house tutor of the accused A. Latif. He stated that, on 30.12.1993 at 7.00 a.m., he had gone to the house of Latif and remained thereat till 9.00 a.m. Accused A. Latif gave him Tk. 2000/- requesting him to fill up the form of S.S.C examination as a private candidate. He further stated that he deposited Tk. 2000/- to the local police station on demand and heard that Latif had killed a boy.

In cross-examination he stated that Latif said that his father provided Tk. 2000/- to him.

P.W. 7 Constable A. Hamid stated that on 30.12.1994 Daroga took him to the Baby Stand. He came to know that a dead body was lying at the bank of river Jamuna. So P.W. 7, Daroga Shaleh Ahmed, the constable Mahtab Uddin and Shashanko went to Boalkandi, under Chowhali Police Station, Sirajgonj District, and they found a dead body in a floating condition in the Jamuna River. He further stated that the dead body was lifted to the bank of river Jamuna, and it was identified as dead body of the victim Rafiq. Then it was taken to the police station

and on the next day he took the dead body to Tangail hospital for post mortem examination. He identified the dead body to the doctor.

In cross-examination he stated that he was not acquainted with the deceased.

P.W. 8 was tendered and not examined by the prosecution, nor cross-examined by the defence.

P.W. 9, Md. Habibul Islam, Magistrate, 1<sup>st</sup> Class, on 04.01.1994 recorded the confessional statements of both the appellants under section 164 of the Code, 1898. He proved the same as exhibit 2 and 3 and his signature therein as exhibit 2/1 and 3/1.

In cross-examination he stated that on 1.1.1994 at 7.00 a.m. the accused appellants were apprehended from Bolukakandi.

He denied the suggestion that there were several injury marks on the body of the appellants and that the confessional statements were not true and voluntary.

P.W. 10, Md. Hafizur Rahman, stated that on 3.1.1994 at 4.00 p.m. constable Shashanko Sarkar brought the dead body of victim Rafiqul Islam and he held the post mortem examination of the dead body at Tangail Sadar Hospital and found injuries and recorded his opinion as follows:

*“1) Body was partly decomposed.*

*2) Bloody discharge from nose.*

*3) Abrasion mark found on both side of neck.*

*Scalp, brain were congested, lungs, congested. Trachea, Congested stomach full and congested liver, Spleen, Kidney were congested, right chest 3<sup>rd</sup> rib fractured Trachea fractured.*

*In my opinion death was due to asphyxia as result of strangulation (throttling) which was ante mortem and homicidal in nature.”*

In cross-examination he stated that the dead body was taken from Balukakandi to Tangail Police Station. Decomposition usually starts after 72 hours in winter season.

P.W. 11, Jahirul Islam, a witness of the inquest report, stated that on 2.1.1994 he had gone to Boalkandi Char for working. He found many people and the accused persons present there. He also found a dead body at the bank of the river. He did not know the identity of the dead body. Police prepared inquest report of the dead body and he signed therein.

Defence declined to cross-examine this witness.

P.W. 12, Manobendra Pal Milton, a seizure list witness, stated that on 4.1.1994 Sukuruddin Master (P.W. 6) handed over Tk. 2000/- to the Investigation Officer who prepared a seizure list and he (P.W. 12) signed the seizure list. He proved the seizure list as exhibit 4 and his signature therein as exhibit 4/1.

Defence declined to cross-examine this witness.

P.W.13 Shashankao Kumar is a constable who stated that on 2.1.1994 he and Daroga Saleh Ahmed had gone to the Baby Stand at Kandapara on hearing that two persons were apprehended. They found that accused Nur Alam and A. Latif had been apprehended by the informant and his companions.

P.W. 13 further stated that the accused persons were taken to a place of the River so that the dead body could be recovered. However the dead body was found at 3 ½ miles down stream of the River, at Boalkandi under Chowhali Police Station, Sirajgonj. Father of the victim and others identified the dead body. Doroga Saleh Ahmed with the help of people recovered the dead body and held inquest over the dead body of the victim. This witness and constable Mahatab Uddin took the dead body to the Morgue.

P.W. 13 also proved C.C dated 2.1.1994 as exhibit 5 and his signature therein as exhibit 5/1. After Post mortem this witness took back the dead body through a chalan and proved the same as exhibit-6.

In cross-examination P.W. 13 stated that he alongwith others recovered the dead body at the showing of the accused persons. He denied the suggestion that the accused persons were beaten up.

P.W. 14 Moshlem uddin Sikder stated that in his presence Tk. 2000/- had been seized from witness Sukuruddin (P.W. 6) and he signed the seizure list and proved the same and his signature therein as exhibit 4 and 4/2 respectively.

Defence declined to cross examine this witness.

P.W. 15, A Mannan, the officer in-charge of Tangail Police Station stated that he recorded the FIR and proved the same as exhibit 7 and his signature therein as exhibit 7/1.

In cross-examination he stated that inquiry was started according to the G.D. prior to lodging of the FIR.

P.W. 16 Inspector Saleh Ahmed stated that on 2.1.1994 he along with 4 other police personnel went to Kandapara Baby Stand following G.D. Entry No. 54 dated 2.1.1994 and found the accused persons already apprehended by the informant and other witnesses. Accused persons were arrested by him under section 54 of the Code, 1898. Thereafter P.W. 16 interrogated the accused persons and his companion police force and others along with the accused persons went to the place of killing and recovered the dead body of the victim Rafiq at the pointing out of the accused persons. Inquest of the dead body was held and it was sent to the Morgue. He also stated that the informant lodged FIR being No. 2 dated 2.1.1994 and the accused persons were shown arrested in

this case. This witness recovered Tk. 2000/- from the accused persons and prepared seizure list exhibit 4 and proved his signature therein as exhibit 4/3.

He stated that he was assigned with investigation of the case and during investigation he examined witnesses under section 161 of the Code, 1898, prepared sketch map of the places of occurrence with index (exhibit 8 and 9). On his transfer Daroga Rashid Bhuiyan took up the investigation.

P.W. 17 S.I. A. Rashid Bhuiyan, stated that he conducted rest of the investigation and submitted the charge sheet against the accused persons.

We have perused the materials on the lower court record including the evidence adduced by the prosecution, confessional statements of the appellants and their retraction application, the charge framed, the examination sheet of the accused persons under section 342 of the Code, 1988 and the impugned judgment.

We have also considered the grounds taken in the memorandum of appeal, the submissions of the learned Advocate for the appellants and of the learned AAG. We have also gone through the reported cases referred to by Mr. Safiquzzaman, the learned Advocate for the appellants.

That the death of victim Rafiq was homicidal as a result of strangulation is not disputed. This aspect is further proved by the post mortem examination report and the oral evidence of various witnesses.

The fact-in-issue is whether the appellants caused the homicide and if so whether it attracts sections 302 and 34 of the Penal Code.

It appears from the evidence on record that the appellants on 29.12.1993 took the victim Rafiq with them and went to the bank of river Jamuna. When the victim could not be traced out, his father and others searched for him and the appellants. Thereafter on 2.1.1994 the appellants were apprehended and on interrogation they disclosed the fact of killing of the victim after taking of Tk. 4200/- and their extra judicial confession led to the discovery of the dead body from the Jamuna River in presence of witnesses. The appellants also made judicial confession on 4.1.1994 and admitted their guilt to the effect that they had killed Rafiq by strangulation at the bank of River Jamuna.

It is true that there is no eye witness in the instant case and the case rests upon the confession of the appellants which led to recovery of the dead body of the victim Rafiq and the circumstantial evidence relating thereto.

For the convenience of understanding the confessional statements are quoted below:-

মোঃ আঃ লতিফ

গত ২৯/১২/১৯৯৩ ইং সকালে (১) আমি, (২) নূর আলম, পিতা- ফজল, গ্রাম- ভালুক কান্দি, (৩) রফিকুল ইসলাম, পিতা- আশ্রব আলী, গ্রাম- ভালুক কান্দি তিনজনে বসে আলাপ করি। রফিক বলে দোকানে ৪২০০/- টাকা আছে। আমি এবং নূর আলম রফিককে বলি তুমি ৪২০০/- টাকা নিয়ে বিকাল ৪ টার সময় মালঞ্চ সিনেমা হলের সামনে থাকবে। আমরা সেখানে যেয়ে রফিককে টাকা সহ পাই। পরে আমরা তিনজনে রিকসায় করে চাদ বাজারে আসি। তিনজনে একত্রে ভাত খাই বিশ টাকা। সেখান থেকে লাল পুলের নিকট যাই। সেখান থেকে রিকসায় চাড়াবাড়ী যাই। সেখান থেকে হাটিয়া আনাহোলা চিনা বালীর হাট খোলা হয়ে যমুনা নদীর পাড়ে যাই। রাত্র তখন ১২ টা হবে। রফিক আমার উরুতে মাথা রেখে শুয়ে পড়ে। নূর আলম আয়ের নিকট বসেছিল। আমি রফিকের গলায় টিপি দিয়ে ধরি। নূর আলম পায়ে ও লিংগে ধরে। যখন আর্ধমরা হয় তখন নূর আলমও গলায় ধরে। মরার পরে দুইজনে রফিকের মুখে বালি দেই। পরে দুইজনে টেনে নিয়ে উরু সমান পানিতে ফেলে দেই। পরে আমরা চলে আসি। বাড়ীতে এসে শুয়ে থাকি। শনিবার দিন ১/১/১৯৯৪ ইং তারিখে সকালে পুলিশে ধরে। বিকালে থানায় নিয়ে আসে। আমাদেরকে লাশের নিকট নিয়ে যায়। আমরা লাশ বাহির করে দেই।

স্বাঃ/- মোঃ আঃ লতিফ।

মোঃ নূর আলম

আমি, রফিক ও লতিফ ভালুক কান্দি পুলের সামনে আলাপ করেছি বুধবার ২৯/১২/১৯৯৩ ইং লতিফের পিতার নাম মাহতাব উদ্দিন, সাং ভালুক কান্দি, রফিকের পিতার নাম জানিনা এবং তবে আমাদের গ্রামের। আমি ও লতিফ রফিককে বলি তুমি ৪২০০/- টাকা নিয়ে মালঞ্চ সিনেমা হলের সামনে থাকবে বিকাল ৪ টার সময়। আমরা ৪ টার সময় তোমার নিকট যাবো। আমি ও লতিফ ৪ টার সময় মালঞ্চ সিনেমা হলের নিকট যেয়ে টাকা সহ রফিককে পাই। পাওয়ার পর ৪২০০/- টাকা রফিক লতিফের হাতে দেয়। টাকা দেয়ার পর আমাকে ৩০০/- টাকা লতিফ দেয়। আমি এবং লতিফ চাদরের জন্য যাই। রফিক সেখানেই থাকে। পরে ৫ টার সময় আমি এবং লতিফ চাদর নিয়ে সেখানে আসি। পরে আমরা তিনজনে (ছেড়া) বাজারে যাই। সেখানে তিনজনেই হোটলে ভাত খাই। (ছেড়া) পরে সন্ধ্যা ৭টার দিকে লাল পুলের কাছে যাই। পরে রিকসায় চরে আমরা চাড়াবাড়ী মসজিদের কাছে নামি। পরে আমরা আনোহলা চিনা খালির মাঝখান দিয়ে যমুনার চরে যাই। তখন রাত্রি অনুমান ১২টা। লতিফের উরুর মধ্যে রফিক চাদর বিছায়ে মাথা রেখে ঘুমায়। আমি পায়ের নিকট বসে থাকি। রাত্র ১টার দিকে লতিফ রফিকের গলাটিপে ধরে। আমি পায়ে ধরে থাকি। যখন মারা যায় তখন আমিও গলায় হাত দেই। রফিকের মুখের ভিতরে আমি এবং লতিফ বালি দেই।



আমি দুই পা ধরি এবং লতিফ হাত ধরে রফিককে যমুনা পানিতে ফেলে দেই। পরে আমরা বাড়ীতে এসে পড়ি রাত্রে ৩টা/৩.৩০টার দিকে। পুলিশ আমাদের ধরার পর তাহাদের সাথে যেয়ে লাশ উদ্ধার করে দেই।

স্বাঃ/ - মোঃ নুর আলম মিয়া।

We find that the appellants were arrested on 2.1.1994 and their confession was recorded on 4.1.1994. P.W. 9 Md. Habibul Islam, Magistrate, 1<sup>st</sup> Class, recorded those confessions after complying with all legal formalities as laid down in section 364 of the Code, 1898. He was extensively cross-examined by the defence, but nothing could be elicited to shake the credibility to his evidence.

It is pertinent to point out that at the time of recording confession by P.W. 9, the appellants did not raise any objection regarding its truth and voluntariness but later on both the appellants sought to retract their confession by filing applications and they also filed two separate applications claiming themselves innocent at the time examining them under section 342 of the Code, 1898.

We have gone through the retraction applications. It appears to us that the appellants made out new story of torture, which are inconsistent with that of the evidence on record. So the applications of retraction do not discredit their confession and other evidence on record.

It is in evidence that the appellants made extra judicial confession firstly before the local people and thereafter before the police and such

confession led to the discovery of the dead body of the victim on 2.1.1994 at the pointing out of the appellants and thereafter FIR was lodged on the same day at 18.45. On 4.1.1994 the appellants made judicial confession before P.W. 9- Magistrate, 1<sup>st</sup> Class and disclosed similar facts which appears to us to be true and voluntary. The manner of killing as stated in the confessional statement is corroborated by post mortem examination report.

In the instant case the confession of the appellants were not only inculpatory in nature, but also true and voluntary and the learned Sessions Judge relied on the confession and the testimony of the prosecution witnesses namely P.W.1, P.W. 2, P.W. 3, P.W. 5, P.W. 10, P.W. 13 and P.W. 16, and convicted and sentenced both the appellants on finding them guilty for the offence committed under sections 302 and 34 of the Penal Code.

In the case of Islamuddin (Md.) alias Din Islam Vs. The State 13 BLC(AD) 81, it was observed by the Appellate Division as follow:

*“It is now settled principle of law that judicial confession if it is found to be true and voluntary can form the sloe basis of conviction as against the marker of the same. The High Court Division has rightly found the judicial confession of the condemned-prisoner true and voluntary and considering the same, the extra judicial confession and, circumstances of the case, found the*

*condemned-prisoner guilty and accordingly imposed the sentence of death upon him.”*

Similar views were taken in the cases of Hazrat Ali and others Vs. The State 44 DLR(AD) 51, Abdur Rashid and others Vs. The State 3 BLD 206, Gour Chandra Pal Vs. The State 59 DLR 17, Shahjahan Ali (Md.) alias Md. Shahjahan Vs. The State 59 DLR 396, The State Vs. Abul Kalam Azad and others 8 BLC 464.

The trial Court rightly convicted the appellants after considering the evidence on record.

The learned advocate for the appellants raised a question about recording G.D. Entry dated 02.01.1994 (Exhibit-15). According to him that G.D entry should have been treated as FIR and the FIR should have been treated as 161 statements.

It is necessary to mention here that the Officer-in-Charge of Tangail Police Station on 02.01.1994 at 8.15 a.m. recorded a G.D. Entry on obtaining some information about apprehension of the appellants by the local people. The contents of the said G.D. Entry are reproduced below for better understanding.

০৮.১৫ ----- সংবাদ নোট পার্শ্ব লিখিত সময়ে পরস্পর লোক মুখে সংবাদ শুনা যায় যে, টাংগাইল কান্দাপাড়াস্থ বেবী ষ্টাভে জাহাঙ্গীর হোসেনের দোকানের কর্মচারী মোঃ রফিকুল ইসলাম গত ২৯/১২/১৯৯৩ ইং তারিখ হইতে নিখোঁজ হইয়াছে। তাহাকে খোজা খোজি করিয়া তাহার আত্মীয় স্বজনরা পাইতেছেন। সেই জন্য দুই ব্যক্তিকে জাহাঙ্গীর হোসেন ও

নিখোজ রফিকুল ইসলামের লোকজন অদ্য ভোর অনুমান ০৭.০০ ঘটিকার সময় আটক করিয়াছে। আটক লোক দুই জনকে জিজ্ঞাসাবাদ করিলে তাহারা রফিকুল ইসলাম সম্পর্কে বিভিন্ন সময় বিভিন্ন কথা-বার্তা বলিতেছে এই নিয়া বেবী ষ্টান্ডে হৈ চৈ শুরু হইয়াছে এবং সেখানকার শান্তি শৃঙ্খলার অবনতি ঘটায় আশংকা বলিয়া শুনিতে পাইলাম। এই জনশ্রুতির সত্য মিথ্যা যাচাই করিয়া প্রয়োজনীয় ব্যবস্থা গ্রহন এবং সেখানকার শান্তি শৃঙ্খলা রক্ষা করার জন্য জরুরীভিত্তিতে পুলিশ ফোর্স মোতায়েন করা প্রয়োজনীয়তা দেখা দিয়াছে। ভবিষ্যতের জন্য সংবাদ ডাইরী ভুক্ত করা হইল।

স্বা/ আঃ মান্নান  
ও,সি,  
টাংগাইল থানা  
তাং- ২/১/১৯৯৪ইং

On a plain reading of contents of the above G.D. it is clear that there is no contradiction between the contents of the G.D. and the formal FIR and other evidences. The course of events took place show that the G.D. Entry was recorded first with initial information. Then on the same day the informant lodged a formal FIR after getting the dead body of his son, and stated whatever was within his knowledge.

The main purpose of an FIR is to give information of a cognizable offence to the police and to set the law in motion. So even if the G.D is treated as the FIR, and the formal FIR as a statement recorded under section 161 of the Code, 1898, that does not in any way affect the credibility of the prosecution case or the evidence on record as a whole. The information recorded in this G.D Entry and the formal FIR -cum- 161 statements are consistent with each other and also with other evidence on record. So the fact of formal recording of the FIR in

question does not discredit the prosecution case and such recording has not prejudiced the accused persons.

The learned Advocate for the appellants further draws our attention and submits that the appellants were minor at the time of commission of the offence and it was not considered by the trial court. But we find from the materials on record namely the examination sheet recorded on 12.9.1995 and 13.9.1995 under section 342 of the Code, 1898 that the age of the appellant No. 1 Md. Nur Alam was shown to be 28 years and age of the appellant No. 2 Md. A. Latif was shown to be 27 years. So we find that the appellants were major at the time of commission of offence on 30.12.1993 i.e. the night following 29.12.1993. So the submissions of the learned Advocate for the appellants as to minority do not merit consideration.

In view of the above we find no merit in the appeal.

In the result, the appeal is dismissed.

The impugned judgment and order of conviction and sentence dated 8.10.1995 passed in Session Case No. 96 of 1994 by the learned Sessions Judge, Tangail is affirmed.

The convict appellants Md. Nur Alam and Md. A. Latif, who were granted bail by this Court, are directed to surrender before the learned Sessions Judge, Tangail within 60 (sixty) days from the date of receipt of

the copy of this judgment by the trial court and they will serve the remaining period of sentence in accordance with law. If they do not surrender the learned Sessions Judge shall take necessary action in accordance with law for securing their arrest.

Send a copy of this judgment and order to the said court along with the lower court records.

**Md. Emdadul Huq, J.**

I agree.